

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA**  
**IN THE GWAGWALADA JUDICIAL DIVISION**  
**HOLDEN AT ZUBA**

**BEFORE HIS LORDSHIP:- THE HON. JUSTICE A. O. EBONG**

**THIS MONDAY, THE 31<sup>ST</sup> DAY OF MAY, 2019**

**SUIT NO: FCT/HC/CV/3553/2015**

**BETWEEN:**

**DR. MRS. BLESSING IGBOBU ..... PLAINTIFF**

**AND**

**OBINNA MACEURIEL IWUOHA ..... DEFENDANT**

**JUDGMENT**

The parties in this suit were married in March 2010. Barely two years into the marriage, the plaintiff herein, who was the wife, petitioned the High Court of Kogi State for divorce, and they were divorced in 2013.

On the 31/7/2015, she instituted the present suit against the defendant, her former husband, claiming as follows:

1. A declaration that the landed property measuring 100 x 70 including the structures situate therein located at Orozo beside 1<sup>st</sup> transformer bus stop, Karshi Road, Abuja FCT, belongs to the plaintiff.
2. An order of perpetual injunction restraining the defendant, his agents, privies or any other person whatsoever called from alienating, selling, mortgaging the said land and the structures situate therein without the written consent or authorisation of the plaintiff or in any way interfering with

the plaintiff's right and interest over or in respect of the said land and the structures therein situate at Orozo beside 1<sup>st</sup> transformer bus stop, Karshi Road, Abuja FCT.

3. An order of the Honourable Court directing the defendant to pay over all the monies collected as rents so far by him from the tenants (from when the tenants moved into the property in 2010 till date) to (the) Registrar of the Honourable Court for the purpose of same being paid to the plaintiff.
4. An order of the Honourable Court awarding cost of this suit put at N300,000 (Three hundred thousand Naira) only in favour of the plaintiff against the defendant.
5. An order of the Honourable Court awarding 15% interest on the judgment sum per month until the judgment sum is liquidated completely.

The defendant denied the above claims, and counter-claimed against the plaintiff for return of the title documents and for perpetual injunction restraining her from trespassing into the land in dispute or otherwise interfering with his rights and interests therein. The defendant's statement of defence is dated 26/9/2016, filed 27/9/2016 and deemed properly filed on the 28/9/2016.

The parties filed witness depositions and testified in person in support of their respective cases.

According to the plaintiff who is a medical doctor with the Federal Medical Centre, Lokoja, Kogi State, she had desired to invest in property within the Federal Capital Territory (FCT),

and this prompted her to search for a plot of land to buy and build a house in the FCT. In the course of the search, the defendant informed her sometime in 2010 that he had found someone willing to sell his piece of land with already built structures on it, located at Orozo, FCT Abuja. He told her the cost of the land was N1,100,000 (One million, one hundred thousand Naira), covering the purchase price of the land and ten per cent (10%) agency fees. He encouraged her to look for money to buy the property so as not to miss the opportunity, as he on his part had no such huge amount to purchase the land. She was able to raise the sum required but due to her tight work schedule, she could not come to Abuja to conclude the transaction.

That the defendant then urged her to pay the money into his own account so that he could buy the land on her behalf. Acting on this suggestion, she transferred the sum of N1,100,000.00 from her Guaranty Trust Bank account to the defendant on the 20/12/2010, and the defendant bought the land as agreed, the following day, 21/12/2010. But thereafter, he kept giving excuses for not returning the title documents to her; he also failed to return to his family at Lokoja, but was shuttling between Abuja and Kano State. The defendant at this point also started selling off her properties, including her cars, and abandoned her and the children for about two years at Lokoja.

To safeguard the Orozo property, she instructed the defendant to let it out to tenants, which he did, but has till date refused to account for or remit the rents collected to her. She said it took the intervention of family relations and friends before the defendant finally released the sale agreement of the property to her. Thereupon, she discovered that the defendant had

purchased the property in their joint names, and when she queried him on it, he said it was because they were married. She later petitioned for divorce on account of the defendant's conduct, particularly in abandoning her and their children without provision for their upkeep, and for many other "*unforgivable*" wrongdoings perpetrated by him. She also appointed a care-taker to manage the property and render accounts to her. It was the caretaker who later called to inform her that the defendant was taking potential buyers to the property with the intention of selling it. She tendered her GTB account statement as Exhibit 1, and the Land Sale Agreement on the disputed property as Exhibit 2.

Under cross-examination, she admitted that her name as "Dr. Blessing," is not written on Exhibit 2, not even as a witness, and that she has never met the seller of the land. She stated that the land was bought within 24 hours of her transferring the money to the defendant, and that she trusted the defendant to represent her interest in the transaction. In further cross-examination by the defence counsel, PW1 could not say if there were any other title documents on the property beside Exhibit 2; but she knew that the seller Mr. Moses Mbom, had bought the land from the owner and that there is a document to that effect, but she was not certain where the document was. She denied that she ransacked the defendant's bags to take the title documents, but in her hurry to take hold of the property, she only took the document she tendered here in Court and left the others behind. She insisted that the defendant brought the documents to her by himself, due to pressure from her relatives.

She stated that Exhibit 1 represents a sale of the property to her; that at the time of purchase of the property the defendant

had no job; that he was a banker when they got married but lost his job soon after, and never worked for up to six months; and that his earnings could not even sustain him hence she was sending money to support him.

The defendant took the witness stand on the 23/1/2018. In his evidence, he denied the case presented by the plaintiff. He said the plaintiff who works at the Federal Medical Centre, Lokoja, did not at any time look for or have need for a plot of land for accommodation in the FCT. That rather, he was the one residing at Abuja at the material time, and it was he that sought for and got the property in dispute for his purpose and use. That at the time of purchase of the land, he and the plaintiff were married and several monetary transactions and exchanges took place between them as such husband and wife.

He claimed he never abandoned his family or disposed of the plaintiff's property. He said problem started between him and the plaintiff when he lost his job, as a result of which he became faced with some financial difficulties and was no longer able to meet all the financial responsibilities of the home. That the plaintiff, aided by her mother who had come to stay with them, turned their home into a living hell for him by constantly goading and insulting him for his jobless situation and his inability to take care of his family or contribute to the upkeep of the home, accusing him of being a shameless pest who was feeding off his wife. That it got to a point that she began to deny him of his conjugal rights.

He stated that he tried as much as possible to manage the situation as a man, and for the sake of his marriage. That while he sought for another job, he even engaged in cab driving and

some minor jobs and businesses. He moved to Abuja when he could not secure another job in Lokoja, but was managing to visit Lokoja on regular basis. It was at this time that the plaintiff petitioned for divorce and kept pushing for it despite the intervention of family members, and even while he was fighting for his life in the hospital after being involved in a near fatal accident. That she took the opportunity of his absence to ransack his personal effects and take possession of the Land Sale Agreement (Exhibit 2) in respect of the property in dispute. She also confiscated all his belongings while he was in the hospital, and moved to a new residence which she has refused to disclose to him.

It is his case that he bought the property in his name and for his purpose; that there were tenants already in the property at the time of the purchase; that he did not buy the property in any other person's name or jointly for himself and the plaintiff; that even though he informed the plaintiff about the property, he never had any understanding with her that it would belong to both of them. He insisted that the property in dispute does not belong to the plaintiff and that he does not require her consent to collect rents from the tenants. The defendant tendered no document to support his case.

Cross-examined by the learned counsel for the plaintiff, the defendant admitted that his name is not "*Mrs. Obinna Maceuriel Iwuoha*", but "*Mr. Obinna Maceuriel Iwuoha*." He further agreed that Exhibit 1 showed a transfer of the sum of N1,100,000.00 from the plaintiff to himself on the 20/12/2010. He confirmed that Exhibit 2 is dated 21/12/2010 and states that the property was sold "*To Mr/Mrs Obinna M. Iwuoha*", and that the title "*Mrs*" is not cancelled in the clause showing the name(s) of the purchaser(s) in the document.

It is pertinent to state that the plaintiff filed a reply to the defendant's statement of defence and a defence to his counterclaim, to refute his case in this matter. That pleading was accompanied with an additional witness statement on oath deposed to by the plaintiff on the 20/1/2017. The defence counsel made arguments on this process which will be considered in due course.

At the close of the evidence of DW1, the parties filed and exchanged their final written addresses. The defendant initially filed his final address on the 23/4/2018, but this was later substituted with leave of Court granted on the 1/3/2019, with the final address dated 19/4/2018 but filed 7/12/2018. The defendant equally filed a reply on points of law on the same 7/12/2018. Mr. K. A. Amaliri, learned defence counsel adopted both addresses in open court, and prayed the Court to dismiss the plaintiff's suit but grant the defendant's counterclaim.

Mr. E. M. D. Umukoro filed his final written address on behalf of the plaintiff on the 15/11/2018, though dated 14/11/2018. He similarly adopted same and urged the Court to grant the reliefs sought by the claimant.

Two issues are submitted for determination in the defendant's final address, as follows:

- (i) *Whether having regard to the totality of the evidence adduced by the plaintiff, whether she has not failed to prove her case.*
- (ii) *Whether the counter claimant has made out a case for his claims to succeed.*

Arguing both issues together, the defence counsel submitted that the plaintiff did not prove her case even with the three exhibits she tendered. He contended that her problem started right from the pleadings, especially the reply and the additional witness statement on oath which, according to him, she failed to adopt. It was his view that by failing to adopt her additional witness statement on oath, the plaintiff had abandoned her reply to the statement of defence. He argued that as things stand, the final pleadings in this case were the statement of defence and the defendant's witness statement on oath which had cancelled every material allegation made by the plaintiff. He urged the Court to discountenance the plaintiff's reply and additional witness statement on oath.

Mr. Amaliri referred to the case of ODION V. AMANGE (No.2) (2010) 12 NWLR (Pt.1207) 13 at 60 where it was held that until a plaintiff discharges the burden of proof on him there will be nothing for the defendant to react to by way of defence; and that where a plaintiff fails to adduce satisfactory evidence to prove what was asserted, there will be no duty on the defendant to adduce evidence because the plaintiff is to succeed on the strength of his own case, not on the absence of evidence from the defendant. He urged the Court to hold in line with the above decision that the plaintiff has failed to prove her case.

He submitted further that the plaintiff's pleading and entire case was marred by what he called a *comedy of errors*. Among these, counsel cited the following:

- (a) The reference in the opening paragraph of the plaintiff's defence to counterclaim, to a 3<sup>rd</sup> and 6<sup>th</sup> defendants;



- (b) The fact that what is purportedly denied by the said defence to counterclaim is “*every allegation of fact contained in the plaintiff’s further amended statement of claim*”, rather than the allegations of fact contained in the defendant’s statement of defence/counter-claim; and
- (c) The denial in paragraph 1 of the defence to counterclaim of paragraphs 1-24 of the counterclaim, whereas according to the defendant, the counterclaim has only two paragraphs, namely paragraph 25(a) and (b).

Learned counsel urged the Court to hold, based on these said errors, that the counterclaim was not challenged at all.

With regard to who the buyer in Exhibit 2 was, Mr. Amaliri contended that the expression “*Mr/Mrs*” as appears in the document should be read as “*Mr or Mrs*” rather than “*Mr and Mrs*” as claimed by PW1; and that if thus read then the buyer would be either the defendant or the plaintiff as applicable. He submitted that other parts of the exhibit have however clearly indicated who the buyer is, and that fact was also confirmed by the plaintiff under cross-examination when she stated that the buyer was Obinna Iwuoha.

Counsel argued that the plaintiff’s evidence about Exhibit 2 can only be hearsay evidence, as she was neither the maker of the document nor a witness to its making. He urged the court not to attach any weight to her evidence on the document because not being its maker or a witness to it, she was not the proper person to testify on it. He relied for this on FLASH FIXED LTD

V. AKATUGBA (2001) 9 NWLR (Pt.73) 746 at 766; BELGORE & 2 ORS V. ABDULFATAH AHMED & ORS (2013) 8 NWLR (Pt.1355) 60 at 100; and ABDULMALIK V. TIJANI (2012) LPELR-19731(CA). He argued that had Exhibit 2 been prepared for the plaintiff and the defendant as being alleged by the plaintiff, then the document would have read “*Mr/Dr*” or “*Mr/Dr Mrs*”, and that provision would have been made for the signature of two buyers instead of one. He submitted that as a party to Exhibit 2, DW1’s evidence on the document is to be preferred to that of PW1, and his evidence was that the inscription of “*Mr/Mrs*” in the document was just a format, and the non-cancellation of “*Mrs*” from the form was a mere oversight.

The defence counsel argued further that PW1’s failure to tender the second part of Exhibit 2 amounted to withholding evidence. He urged the Court to invoke that presumption in section 167(d) of the Evidence Act 2011 against her, citing the decisions in TEWOGBADE V. AKANDE (1968) NMLR 404; AWOSHILE V. SHOTUMBO (1986) 3 NWLR (pT.29) at 471; and IGBEKE V. EMORDI (2010) 11 NWLR (Pt.1204) 1 at 35. He submitted also that while the defendant has not denied that the plaintiff transferred funds to his account, there was no evidence tying the said funds to Exhibit 2 or signifying that it was used for the purchase of the res.

Finally, on whether the defendant is entitled to his counterclaim, Mr. Amaliri reiterated his earlier contention that the counterclaim was not challenged as the plaintiff’s reply to it and her additional witness statement on oath had been abandoned or riddled with incurable errors. He urged the Court to dismiss the main suit and grant the counter claim.

The plaintiff's counsel raised one issue for determination in his final address, to wit:

*Has the claimant proved her case on the balance of probability to entitle her to all the reliefs claimed before the Honourable Court.*

Before arguing this issue, learned counsel addressed a preliminary point on the competence of the final address filed for the defendant. He submitted that the said address was worthless in that contrary to Rule 10 of the Rules of Professional Conduct 2007, the NBA stamp affixed thereon was not that of Mr. K. Amaliri, the counsel for the defendant who signed and filed the address, but that of another lawyer, named Ezinna Brendan. He relied on the decision of the Supreme Court in GEN. BELLO SARKIN YAKI V. SEN ATIKU ABUBAKAR BAGUDU (2015) LPELR-25721(SC).

He thereafter proceeded to respond to the arguments made by the defence counsel in his said final address, in the event that the Court is minded to countenance the defective address. On the alleged failure of the plaintiff to adopt her additional witness statement on oath, Mr. Umukoro submitted that the allegation was untrue. He founded on the Court's record for the 11/5/2017. On the references to the 3<sup>rd</sup> and 6<sup>th</sup> defendants and the plaintiff's further amended statement of claim in the plaintiff's defence to counter-claim, he submitted that these were mere typographical errors, similar to that made by the defence counsel himself in misspelling the defendant, his own client's middle name in his processes. He argued that no human is free from mistakes, hence the law allows courts to correct mistakes and not to visit the mistakes of counsel on

litigants, citing *AKANBI V. ALAO* (1989) 3NWLR (Pt.108), and other cases.

Mr. Umukoro also disagreed with the defence counsel's view on the proper interpretation of the words "*Mr/Mrs*" in Exhibit 2. He submitted that, in any case, based on the evidence that the property was purchased with money provided by the plaintiff, that created a constructive trust in her favour over the property. He referred to *COOKE V. HEAD* (1972) 1 WLR 518; *HESELTINE V. HESELTINE* (1971) 1 WLR 342, among other authorities, on this point. As regards the argument on hearsay and withholding of evidence, counsel submitted that neither was applicable to the facts of the instant case. On the whole, he urged the Court to disregard the arguments of the defendant.

Coming to his sole issue for determination, learned counsel referred to section 134 of the Evidence Act, and submitted that in civil cases a claimant succeeds or fails on the preponderance of evidence or balance of probabilities. He further relied on section 131 Evidence Act and the cases of *FAMUROTI V. AGBEKE* (1991) 5 NWLR (Pt.189) 1, 13e and *ALHAJI ATARU & SONS LTD V. IDRIS* (1999) 6 NWLR (Pt.606) 330 SC, to support the contention that the burden of proving a case first lies on the claimant.

He then referred to Exhibit 1, the claimant's statement of account showing that she transferred the sum of N1.1m to the defendant on the 20/12/2010, and Exhibit 2, the sale agreement made just a day after the transfer of the money to the defendant, and urged the Court to hold that what the claimant transferred to the defendant via Exhibit 1 was the purchase price of the land.

Learned counsel noted the defendant's attempt to deny the implication of the above evidence by claiming that several monetary transactions were done between the parties without providing any evidence of any such monetary transactions. He argued that the said claim by the defendant, being unsupported by any material evidence, goes to no issue and should be deemed as abandoned. He urged the Court to hold in the circumstances that the transfer of the sum of N1.1m by the plaintiff to the defendant was by no means a normal transaction between them.

Arguing further, counsel said whereas the plaintiff transferred the money to the defendant on the understanding/agreement that she was the one buying the property, Exhibit 2 shows that the defendant purchased the land in their joint names, to wit: "*Mr/Mrs Obinna M. Iwuoha.*" He argued that the defendant's attempt to deny this was futile as Exhibit 2 speaks for itself and shows that the land was sold to *Mr/Mrs Obinna M. Iwuoha*; that the defendant was not *Mrs Obinna M. Iwuoha*, and the only person who matched that description at the material time was the plaintiff.

The plaintiff's counsel submitted that considering the time frame between the plaintiff's transfer of the money and the purchase of the land as shown in Exhibits 1 and 2, it is proper for the Court to presume that the money sent to the defendant was for the purchase of the land in dispute and same was carried out. Relying on section 167 of the Evidence Act, counsel urged the Court to hold that the money transferred to the defendant was for the purchase of the res only and no more, in the absence of any other contrary evidence. He submitted finally that a property purchased in such

circumstances belonged to the claimant on the authority of M. A. JOLUGBO V. M. A. AINA (2016) ALL FWLR (Pt.859) at 864.

He urged the Court to find for the claimant and grant all her claims.

Learned counsel for the defendant filed a reply on points of law to address the plaintiff's argument relating to (i) his failure to affix his NBA stamp to his final address; (ii) the "blunders" in the claimant's processes being typographical errors; (iii) the applicability of the principle of constructive trust; etcetera.

I have given due consideration to all the arguments made.

### RESOLUTION

In an action for declaration of title, it is trite that the burden is on the claimant to establish ownership of the land he claims on a balance of probabilities or preponderance of evidence. He must plead and prove to the satisfaction of the court the precise nature of the title claimed and the method by which he acquired same; and he is to succeed on the strength of his case, not on the weakness or absence of the defence. See EKITI STATE GOVERNOR & ORS V. ABE & ORS (2016) LPELR-40152(CA); ADESANYA V. ADERONMU (2000) FWLR (Pt.15) 2492 SC.

The principle that a claimant must succeed on the strength of his own case, however, admits of at least two exceptions, one of which is that he can take advantage of any fact in the defence which supports his own case: see OKPALA & ANOR. V. IBEME & ORS (1989) LPELR-22512(SC) at 18 A-F.

The question for decision in this case is whether the plaintiff has proved by credible and convincing evidence, her ownership of the land in dispute. That is the main issue for determination; but before delving into it, I must dispose of the preliminary points argued by both parties.

The first relates to the alleged failure of the plaintiff to adopt her additional witness statement on oath in support of her reply to statement of defence and defence to counter-claim. It was the defence counsel that floated this argument, and I can say without much ado that same has no support in the record of Court. Let me reproduce what transpired in this regard on the 11/5/2017 during the claimant's evidence-in-chief, as contained in the record. She stated thus:

*"I remember deposing to a witness statement for this case on 31/7/15. I can identify it through my passport and signature on it. ... I wish the Court to adopt it as my evidence in this case.*

*I also recall deposing to an additional witness statement on oath on 20/1/17. I can equally identify it through my photograph and signature. I wish the Court to adopt same as my further evidence in this case."*

It is clear from this that the plaintiff's additional witness statement on oath had been duly adopted by her at the trial of this case.

The second point relates to the erroneous references in the opening paragraph of the claimant's defence to counter-claim, to "*the 3<sup>rd</sup> and 6<sup>th</sup> defendants*", and "*the plaintiff's further amended statement of claim.*" The defence counsel also complained on this point about the denial by the claimant in her

said defence to counter-claim, of paragraphs 1 - 24 of the counter-claim, whereas, according to him, the counter-claim has only two paragraphs, i.e. paragraph 25(a) and (b). He urged the Court to hold based on the above observations that the plaintiff had failed to challenge the counter-claim. I think that this argument is faulty. It is true that on its face, the defendant's counter-claim has only one numbered paragraph under it, which is paragraph 25. However, the said paragraph 25 states thus:

*“25. The defendant by virtue of the foregoing facts counterclaims as follows: ...” (Underlining for emphasis)*

The legal effect of the above pleading in paragraph 25 of the counter-claim is that it has incorporated all the facts pleaded in the preceding paragraphs of the document into the counter-claim. See CHIEF THOMAS EKPEMOPOLO & ORS. V. GODWIN EDREMODA & ORS (2009) 8 NWLR (Pt.1142) 166, and OKOMU OIL PALM CO. LTD V. ISERHIENHEN (2001) 6 NWLR (Pt.710) 660 at 681. In effect, therefore, the defendant's counter-claim contains 25 paragraphs, and not one paragraph as his learned counsel has, with respect, misconceived. The denial by the plaintiff in her defence to counter-claim of paragraphs 1 - 24 of the counter-claim is thus in order.

For the other erroneous references in the said defence to a non-existent 3<sup>rd</sup> and 6<sup>th</sup> defendants and plaintiff's further amended statement of claim, I am of the view that they are not sufficient to vitiate the said pleading. A party's pleading is read as a whole and not in isolated phrases; and the Court is to give effect to the purport of the entire pleading as can be drawn from such community reading: AZUBUOGU V. ORANEZI & ORS



(2017) LPELR-42669(SC); AKOBI V. OSADEBE (2014) LPELR-22655(CA); KOLO & ANOR. V. BINTU (2017) LPELR-43428(CA). A wholesome reading of the claimants defence to the counter-claim shows clearly that she has denied the defendant's case in the counter-claim. It would be contrary to justice to hold otherwise. It is common knowledge that technicality no longer holds sway in the litigation process.

The claimant's counsel, on his part, argued that the defendant's final address was irregular as a result of Mr. Amaliri's failure to affix his NBA stamp thereon. The final address that the claimant's counsel must have had in mind for this submission would be that filed on the 23/4/2018 with the NBA seal of one Ezinna Brendan Ukoha pasted on it. That final address had however been substituted on the 1/3/2019 with a new final address dated 19/4/2018 and filed on the 7/12/2018. The substitution was effected in open court on the said 1/3/2019 via a motion on notice which the claimant's counsel, who was present in Court, did not oppose. It is surprising, therefore, that the said claimant's counsel should still be complaining in his final address of a process which is no longer extant before the Court.

The above disposes of the preliminary issues argued by both sides. I now turn to the main question for determination. The crux of the disagreement between the parties in this case is on who owns the property in dispute which was bought at a time that they were still married to each other. Much argument was made by both sides as to whose name is stated on Exhibit 2 as the buyer of the property. While it is agreed that the name of the buyer as contained in the Exhibit is "*Mr/Mrs Obinna M. Iwuoha*", neither party accepts that the property is jointly owned. They each rather claim sole ownership thereof. The

solution, thus, does not rest with the name of the buyer as stated in Exhibit 2. The real test, in my view, is who provided the funds for the purchase of the land? The owner of the money owns the land purchased with it.

The settled position of the law is that where one person finances the purchase of property, title to such property enures in his favour regardless of whose name appears in the conveyance. That is the concept of implied or resulting trust. The Supreme Court explained the doctrine in UGHUTEVBE V. SHONOWO & ANOR (2004) LPELR-3317(SC) as follows:

*“The general proposition is that where on a purchase, property is conveyed in the name of someone other than the purchaser, the presumption is that the trust of the legal estate results to the man who advances the purchase money. If the advance of the purchase money by the real purchaser does not appear on the face of the deed, and even if it is stated to have been made by the nominal purchaser, parol evidence is admissible to prove by whom it was actually made.”*

See also OBIKA V. OBIKA (2018) LPELR-43965(CA); JOLUGBO & ANOR V. AINA & ANOR (2016) LPELR-40352(CA).

One fact that stands out from the evidence in this case is that it was the claimant that provided the funds with which the property in dispute was purchased. The defendant had no money of his own which he could have used to acquire it. The overwhelming evidence, including the defendant’s own admission, is that he was down and out and just struggling to survive at the time of purchase of the land. He had lost his job

not long after getting married to the claimant in March 2010; and thereafter his condition became intolerable that he had to leave Lokoja to Abuja. In paragraphs 9 and 10 of his statement of defence, the defendant pleaded, inter alia, regarding his condition at the time:

*“9. ... As a result of the lost (sic) of his job the defendant faced some financial difficulties and was not able to meet all the financial responsibilities of his home....”*

*“10. The defendant avers further that the plaintiff and her mother turned their home into a living hell for the defendant as the plaintiff ably encouraged and supported by the mother, constantly goaded and insulted him for his jobless situation and his (inability) to take care of his family and failure to contribute to the upkeep of the home, accusing him of being a shameless pest who is feeding off his wife.”*

Even when the defendant got to Abuja, the facts show that he was still struggling to make ends meet. He pleaded in paragraph 11 of his defence that he was barely managing to visit his family at Lokoja on a regular basis. The claimant also gave unrebutted evidence that at the time the property was bought the defendant had no job. That was the condition of the defendant when the claimant transferred the sum of N1,100,000.00 to him on the 20/12/2010, and the following day (21/12/2010) he bought the property in dispute for the sum of N1,000,000.00 via Exhibit 2. It is conclusive from the above facts that the land in dispute was purchased with funds provided by the claimant. By the principle of resulting trust enunciated earlier, she is entitled its ownership.

It is instructive that throughout this case, the defendant never alleged that he acquired the land with money derived from any other source. All he said is that he bought the property in his own name and for his purpose. That does not make him the owner of the property. Even though the presumption of resulting trust can be rebutted by credible evidence to the contrary, there is no such rebuttal evidence in this case. The defendant's argument that there is no evidence tying the transferred funds in Exhibit 1 to the purchase of the land is certainly misconceived. It is for the defendant himself who never denied receiving the money sent by the claimant, to explain what else he used it for other than the purchase of the property. This is in the light of the overwhelming evidence before the Court that he had no job at the material time, and hence had no other visible means of funding the acquisition of the land.

The defence counsel also contended that the plaintiff's case was not founded on constructive trust. I do not see any merit in that argument. The claimant pleaded and showed by cogent evidence that she gave money to the defendant to purchase the property in dispute for her. He bought the land alright, but did so in name(s) other than that of the claimant. In my view, the doctrine of resultant trust applies in that situation for the purpose of determining who the true and rightful owner of the property is.

Let me also say here that contrary to the defence counsel's argument in his final address, the presumption of withholding evidence in section 167(d) of the Evidence Act is inapplicable against the claimant on the facts and circumstances of this case. There is no material document pleaded by either party which she has been shown to have withheld from the Court.

Both parties pleaded and rested their cases mainly on Exhibits 1 and 2 which were duly tendered in evidence by the claimant. The case of the defendant, which his learned counsel put to the claimant in the course of her cross-examination, was that the title documents had been with the defendant and, during his absence, the claimant had ransacked his bags and taken same away. But because she was in a hurry to take possession of the property, she only went away with Exhibit 2 and left the other documents behind. The same defendant cannot now turn round to accuse the claimant of withholding the said "*other documents*" which, on his own showing, she never collected from him. It is the defendant himself that ought to have tendered any such other document in his possession if he considered it material to the determination of this case. If any party should be guilty of withholding evidence, on these facts I rather think it is the defendant. Be that as it may, I do not believe that there is any such withheld document that could change the fortunes of this case, given the established fact that the purchase price of the land in dispute was provided by the plaintiff.

Based on the foregoing, I find for the claimant on title to the property in dispute, and grant the perpetual injunction sought against the defendant.

The claimant also prayed for account of rents collected by the defendant from tenants on the property from 2010 till date, and for payment of same to the Registrar of this Court for onward delivery to her. The defendant did not deny collecting the said rents as alleged. Having found that the property belonged to the claimant *ab initio* and that the defendant was no more than a trustee in respect of same, there is a legal duty on him to render account of the rents received from the property. See

OBIKA V. OBIKA, supra. The order for account is accordingly granted as prayed.

The claimant further prayed for monthly interest on the judgment sum at the rate of 15% (fifteen per cent) until its final liquidation. As the basis for claiming interest at such rate was not shown, that relief is refused. In its place, the statutory interest of 10% per annum authorised by Order 39 Rule 4 of this Court's Rules, shall apply.

This is a 2015 case in which countless court appearances have been made for the claimant. I assess the cost of the action at N250,000.00 in favour of the claimant and against the defendant.

The defendant has no title to the land in dispute. He therefore has no right to its title document(s) or to injunction against the plaintiff, its true owner. His counter-claim, in the circumstances, is misconceived and is hereby dismissed.

For the avoidance of doubt, I hold that the claimant has proved her case by a preponderance of evidence against the defendant. Judgment is accordingly entered in her favour and against the defendant in the following terms:

1. It is declared that the landed property measuring 100 x 70 including the structures situate therein located at Orozo beside 1<sup>st</sup> transformer bus stop, Karshi Road, Abuja FCT, belongs to the plaintiff.
2. The defendant, his agents, privies or any other person whatsoever called are hereby restrained by a perpetual injunction from alienating, selling, or mortgaging the said

land and the structures situate therein without the written consent or authorisation of the plaintiff or in any way interfering with the plaintiff's right and interest over or in respect of the said land and the structures therein situate at Orozo beside 1<sup>st</sup> transformer bus stop, Karshi Road, Abuja FCT.

3. The defendant is further directed to pay over all the monies collected as rents so far by him from the tenants in the property (from when the tenants moved into the property in 2010 till date) to the Registrar of this Court for onward delivery to the plaintiff.
4. I award cost of this action in the sum of N250,000.00 (Two hundred and fifty thousand Naira) against the defendant and in favour of the plaintiff.
5. All moneys due for payment under this judgment shall attract interest at the rate of 10% per annum from today until they are fully liquidated.

The counter-claim is dismissed for lack of merit.

(SGD)

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HON. JUSTICE A. O. EBONG  
(31/05/2019)

### LEGAL REPRESENTATION

E. M. D. UMUKORO, ESQ, for the Plaintiff.

K. A. AMALIRI, ESQ., for the Defendant/Counter-claimant