**GERHARD HUEBNER**

**V.**

**AERONAUTICAL INDUSTRIAL ENGINEERING AND PROJECT MANAGEMENT COMPANY LIMITED (AIEP/DANA)**

SUPREME COURT OF NIGERIA

7TH DAY OF APRIL 2017

SC. 198/2006

**LEX (2017) - SC. 198/2006**

OTHER CITATIONS

2PLR/2017/141 (SC)

**BEFORE THEIR LORDSHIP**

IBRAHIM TANKO MUHAMMAD JSC (Presided)

MARY UKAEGO PETER-ODILI JSC

KUMAI BAYANG AKA’AHS JSC

AMINA ADAMU AUGIE JSC

PAUL ADAMU GALINJE JSC (Read the Lead Judgment)

**BETWEEN**

GERHARD HUENER – Appellant

AND

AERONAUTICAL INDUSTRIAL ENGINEERING AND PROJECT MANAGEMENT CO. LTD (AIEP/DANA) – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, KADUNA DIVISION

2. HIGH COURT OF KADUNA STATE

**REPRESENTATION/LAWYERS**

R. A. OLUYEDE with KATE OKOH - for the Appellant.

S. A. ADENIRAN with B. E. GWADAH, Esq., Mrs.

W. AGYO and A.S. AGBU - for the Respondent.

**ISSUES FROM THE CAUSE(S) OF ACTION**

COMMERCIAL LAW - CONTRACT - ILLEGAL CONTRACTS:- Essence of – Enforceability of by court

COMMERCIAL LAW - CONTRACT AGAINST PUBLIC POLICY:- What constitutes – Legal effect - Proper treatment of by court

REAL ESTATE AND PROPERTY LAW - LAND - CONSTRUCTIVE OR IMPLIED TRUST:- Nature of.

REAL ESTATE AND PROPERTY LAW - LAND - IMPLIED OR RESULTING TRUST - Circumstances in which such may arise.

REAL ESTATE AND PROPERTY LAW - LAND - LEGAL ESTATE IN A LAND IN NIGERIA:- Alien – Capacity to hold legal estate - Whether possesses – Section 36(1), Land Use Act - Whether includes aliens in lawful occupation before promulgation of the Act vesting them with right to acquire legal estate in land in Nigeria.

REAL ESTATE AND PROPERTY LAW - LAND - TRUST:- Meaning and elements of - Property held in constructive trust - Party claiming for his benefits - Onus on proof that must be satisfied

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE – DOCUMENTS:- Contents of - Inadmissibility of oral evidence to vary - Section 132(1) and (3), Evidence Act, 2011 considered.

EVIDENCE – DOCUMENTS UNDER EVIDENCE ACT, 2011, SECTION 132(1) AND (3):- Contents of a document - Oral evidence – Whether admissibility to vary same

JUDGMENT AND ORDER - JUDICIAL PRECEDENT - DISSENTING JUDGMENT:– Essence and purport of - Whether binding.

JUDGMENT AND ORDER - DECISIONS OF COURT:– Need to confine same to parties before the court where decision(s) made and relative to their claims.

INTERPRETATION OF STATUTES - “ANY PERSON” IN SECTION 36(1), LAND USE ACT:- Meaning of - Whether includes aliens in lawful occupation before promulgation of the Act vesting them with right to acquire legal estate in land in Nigeria.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant, a German, claimed he was granted permission by the District Head of Kajuru District in Kaduna State to build a temporary weekend hospitality resort on a hilltop in Kajuru village. He subsequently converted the temporary structure to a permanent one and purchased the land surrounding the hill. However, since it was unlawful for him to hold a legal estate in Kaduna State, being a foreigner, he purchased the land in the name of the respondent and the certificate of occupancy was issued in respondent’s name.

The appellant subsequently filed an action in the High Court of Kaduna State seeking declaratory and injunctive reliefs to the effect, that the respondent holds the legal estate in the land in trust for the benefit of the appellant and is obliged to comply with his instructions in respect of transfer of the legal estate, that the issuance of certificate of occupancy in respondent’s favour does not affect the respondent’s position as trustee of the land. He also sought an injunction compelling the respondent to comply with appellant’s instructions concerning the transfer of the legal estate in the land to Kajuru Nig. Ltd. In the alternative, the appellant prayed for a declaration that the certificate of occupancy issued in respondent’s name was null and void for being based upon an illegal, void and/or voidable transaction and perpetual injunction restraining the respondent from interfering with appellant’s interest and possession of the land. The trial court dismissed appellant’s claims for failure to prove same.

Dissatisfied, the appellant appealed to the Court of Appeal where his appeal was dismissed. Dissatisfied still, the appellant appealed to the Supreme Court contending that the lower court erred in upholding the trial court’s holding that the appellant failed to prove the implied trust alleged to exist between him and the respondent.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, affirming the decision of the trial court that dismissed the Appellant’s claims for failure to prove same. Dissatisfied, the Appellant appealed to the Supreme Court.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

1. Whether the Court of Appeal was right to confirm the trial court’s exclusion of documentary and oral evidence which were adduced by the appellant before the trial court to establish circumstances by which it may be implied that the respondent held the legal estate in the subject-property upon a resultant/constructive trust in his favour.

2. Whether the Court of Appeal was right to hold that the appellant was obliged to prove an implied resultant/constructive trust by “credible and reliable evidence” showing the “grant” by him and “acceptance” by the defendant of the trust.

*BY RESPONDENT:*

“1. Whether the Court of Appeal was right to confirm the trial court’s finding at law and upon the facts and circumstance of the case before the trial court that the documentary evidence before it (i.e. trial court) as borne out by exhibits A1, A2 and A3 being the Kachia Local Government certificate of occupancy, and the Kaduna State certificate of occupancy respectively cannot be varied or altered by oral or extrinsic evidence as sought by the plaintiff/appellant to establish a “resultant” or implied or constructive trust in his favour.

2. Whether the Court of Appeal was right to hold that the appellant has the onus of proof as required by law (i.e. standard of proof in civil proceedings) to prove an “implied resultant/constructive” trust by credible and reliable evidence.”

*AS FORMULATED BY COURT:*

Whether the lower court is right when it dismissed the appellant’s appeal for failure to adduce sufficient evidence in proof of his claim that the respondent is holding the legal estate upon an implied trust in respect of the disputed property for his benefit by implication of law.

**MAIN JUDGMENT**

GALINJE JSC (DELIVERING THE LEAD JUDGMENT):

The appellant herein was the plaintiff at the Kaduna State High Court (hereinafter to be referred to as the trial court). At paragraph 19 of his statement of claim dated 17 May 1995 and filed on 24 October 1996, the appellant claimed against the respondent, the following reliefs:-

“(i) A declaration that the defendant holds the legal estate in the land at Kajuru, bought by the plaintiff in its name upon a resultant trust to the benefit of the plaintiff.

(ii) A declaration that the defendant is consequently obliged to comply with the instructions of the plaintiff in respect of the transfer of the legal estate in the said land.

(iii) A declaration that the issue of certificate of occupancy in favour of the defendant in respect of the land does not affect the position of the defendant as trustee nor that of the plaintiff as beneficiary of the legal estate.

(iv) An injunction compelling the defendant to comply with the plaintiff’s instruction concerning the transfer of the legal estate in the said land to Kajuru Nigeria Ltd.

(v) Alternatively to (i) above, a declaration that the receipts, applications and certificate of occupancy issued in the name of the defendant are null and void, being instruments issued pursuant to and based upon an illegal, void and or voidable transaction/ arrangement.

(vi) A perpetual injunction restraining the defendant from interfering with the interest of the plaintiff and possession of the said land.”

The respondent denied the claims as enumerated above and stated that they were frivolous, vexatious and constituted an abuse of court processes and should be dismissed. Issues having been joined between the parties, the case proceeded to trial. At the end of the trial which spanned slightly over 6 years, and in a reserved and considered judgment delivered on 5 November 2002, the appellant’s claims were dismissed in its entirety for lack of merit. The appellant’s appeal to the Court of Appeal was equally dismissed on 11 May 2006. The appeal herein is against the decision of the Court of Appeal (henceforth to be referred to as the lower court). The notice of appeal at page 703 of the printed record of this appeal dated and filed on 12 May 2006 contains three grounds of appeal.

Parties filed and exchanged briefs of argument. Mr. R.A. Oluyede, learned counsel for the appellant, who also settled the appellant’s amended brief of argument dated and filed on 13 May 2015 formulated two issues for determination of this appeal as follows:-

1. Whether the Court of Appeal was right to confirm the trial court’s exclusion of documentary and oral evidence which were adduced by the appellant before the trial court to establish circumstances by which it may be implied that the respondent held the legal estate in the subject-property upon a resultant/constructive trust in his favour.

2. Whether the Court of Appeal was right to hold that the appellant was obliged to prove an implied resultant/constructive trust by “credible and reliable evidence” showing the “grant” by him and “acceptance” by the defendant of the trust.

Mr. S. A. Adeniran, learned counsel for the respondent who also settled the respondent’s brief of argument also formulated two issues for the determination of this appeal and they read as follows:-

“1. Whether the Court of Appeal was right to confirm the trial court’s finding at law and upon the facts and circumstance of the case before the trial court that the documentary evidence before it (i.e. trial court) as borne out by exhibits A1, A2 and A3 being the Kachia Local Government certificate of occupancy, and the Kaduna State certificate of occupancy respectively cannot be varied or altered by oral or extrinsic evidence as sought by the plaintiff/appellant to establish a “resultant” or implied or constructive trust in his favour.

2. Whether the Court of Appeal was right to hold that the appellant has the onus of proof as required by law (i.e. standard of proof in civil proceedings) to prove an “implied resultant/constructive” trust by credible and reliable evidence.”

Learned counsel for the appellant filed a reply brief of argument on 5 November 2015 and same was deemed properly filed and served on 17 January 2017.

The issues formulated by both parties are similar. The main thrust of the appellant’s case is that there is between him and the respondent a relationship based on constructive trust in relation to the disputed property. Having read through the record of appeal and the briefs of argument filed by the respective parties, I am of the firm view that the only issue calling for the determination of this appeal is whether the lower court is right when it dismissed the appellant’s appeal for failure to adduce sufficient evidence in proof of his claim that the respondent is holding the legal estate upon an implied trust in respect of the disputed property for his benefit by implication of law.

Before I delve into the argument of counsel in this appeal, I wish to set out in brief the fact of this case. Sometimes in 1975, the District Head of Kajuru District in Kachia Local Government Area of Kaduna State, acting on the instruction of the Emir of Zaria granted permission to the appellant to build a temporary weekend hospitality resort on a hilltop in Kajuru village. The appellant initially built a temporary structure. Later he built a permanent structure which he named “The Kajuru castle”. As a result of the desire to expand the business, the appellant sometimes in 1981 commenced negotiation through the agency of the District Head to purchase the land surrounding the said hill measuring 70 hectares. He was in the final stages of the negotiation, when in 1986 he was appointed the Managing Director of the respondent. Being a German, the appellant was advised to buy the land in the respondent’s name as it was unlawful for him to hold a legal estate in Kaduna State. The appellant heeded the advice and purchased the land in the name of the respondent. The receipt which evidenced the purchase of the said land was issued in his name and the name of the respondent.

Subsequently a certificate of occupancy dated 1 January 1997 was issued to the appellant by Kachia Local Government.

This certificate was used in applying for a statutory certificate of occupancy from Kaduna State Government. The application was successful and a certificate of occupancy dated 6 March 1999 was issued by Kaduna State Government. Both certificates were issued in the name of the respondent and were admitted in evidence at the trial court as exhibits A1 and A3 respectively.

In his argument, learned counsel for the appellant submitted that the evidence before the trial court clearly established that the disputed property was purchased and developed with the appellant’s private resources and that exhibits A1 and A3 were admitted in evidence to establish the capacity of the respondent as an implied trustee for the benefit of the appellant and that the lower court was wrong when it relied on section 132(1)(a) of the Evidence Act and held that the testimonies of PW1- PW14 cannot vary exhibits A1 and A3 which were issued in the name of the respondent.

Learned counsel faulted the advice given to the appellant against holding legal estate in Nigeria and contended that the provision under the Land Tenure Law which forbids aliens from acquiring legal estate in land in Northern Nigeria was abrogated by the Land Use Act, 1978. In a further argument, learned counsel cited, sections 5(1) and 6(1) of the Land Use Act and submitted that the words “any person” used in those sections include aliens as well. According to the learned counsel, implied trust is an equitable conversion of the holder of the property into a trustee by operation of law as such the question of leading evidence to prove a ‘grant’ and ‘acceptance’ does not arise. In aid, learned counsel cited Ezeanah v. Attah (2004) 7 NWLR (Pt. 873) 468.

Finally, learned counsel urged this court to allow the appeal and set aside the decision of the lower court.

In his argument, learned counsel for the respondent submitted that the oral testimony of the appellant cannot vary the contents of exhibits A1 and A3 which were clearly issued in the name of the respondent and that the appellant on the authority of Ughutevbe v. Shonowo & Anor. (2004) All FWLR (Pt. 220) 1185 at 1211 - 1212, paragraphs E - A, failed to establish before the lower court the existence of any legal relationship between him and the respondent, as such he is not entitled to judgment in his favour. Learned counsel also cited in aid the authorities in Anayelugo v. Ogunbiyi (1998) 6 SCNJ 102; Abraham Oji v. Agbetola (1997) 5 SCNJ 94.

The lower court in its lead judgment delivered by my lord, Sanusi JCA (as he then was) at page 694 of the printed record of this appeal, held:-

“I will however add that issue of existence of trust resultant or implied had not been duly proved by the plaintiff/appellant by any credible evidence. It is the plaintiff who said that he granted the landed property in trust to the defendant company. There was no evidence produced by the plaintiff such as resolution by the defendant’s board or any document establishing such trust in that regard wherein the defendant company to which the plaintiff was a Managing Director, accepting such regard. In the surrounding circumstance of the instant case therefore, I hold that there was no credible and reliable evidence showing that an implied resultant/constructive trust existed in favour of the plaintiff.”

The claims of the appellant have been reproduced elsewhere in this judgment. Appellant did not set out a claim for declaration of title, his principal claim is for a declaration that the respondent holds the legal estate in the Land at Kajuru bought by him, the appellant, in the respondent’s name upon a resultanttrust to the benefit of the appellant. Trust is defined at page 1513 of the Black’s Law Dictionary, 7th Edition as the right enforceable solely in equity to the beneficial enjoyment of property to which another person holds the legal title. Where a party claims certain property that is held in constructive trust for his own benefit, he has a duty to prove that the title document in possession of the trustee is valid and in proper custody. The moment he successfully contradicts and renders the title document in the name of the trustee invalid, his claim automatically fails, since the success of his claim depends largely on the validity of the documents of title in the name of the trustee. In the instant case, the evidence called by the appellant at the trial court was not meant to contradict exhibits A1 and A3. On the contrary such evidence was called to strengthen those exhibits and was meant to justify the role the appellant played towards the acquisition of the property and exhibits A1 and A3. To that extent, the provision of section 132 of the Evidence Act was cited out of context before the lower court, and so I hold.

A constructive or implied trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstance that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee. See Beatty v. Guggenheim Exploration Co. 122 N.E 378, Black’s Law Dictionary, 7th Edition, page 1513. In Kotoye v. Saraki (1992) NWLR (Pt. 264) 156, (1992) 11/12 SCNJ 26, this court held that constructive trust, as in this case, is imposed by equity on the ground of conscience and is not based on the prior presumed intention of the parties. See Ughutevbe v. Shonowo; Ibekwe v. Nwosu (2011) 9 NWLR (Pt. 1251) 1 at 5, paragraphs A - C.

An implied trust is founded upon the unexpressed intention of the settlor and same is raised and created by implication of law from the surrounding circumstances of the case. It does not require agreement between the settlor and trustee. See Adekeye v. Akin Olugbade (1987) 3 NWLR (Pt. 60) 214 at 227; Kotoye v. Saraki (1994) 2 NWLR (Pt. 357) 414 at 443, paragraph H. Constructive trust is neither granted nor accepted, but it is foisted upon the parties by the operation of law. To that extent, the question of whether the appellant produced evidence of the resolute on of the board of the respondent authorizing such a trust does not arise at all. Trust involves three elements, namely:-

1. A trustee, who holds the trust property and is subject to equitable duties to deal with it for the benefit of another.

2. A beneficiary to whom the trustee owes equitable duties to deal with the trust property for his benefit.

3. Trust property, which is held by the trustee for the beneficiary. See Black’s Law Dictionary, page 1513.

From the evidence available at the trial court, it will appear that the appellant did acquire the disputed property with his personal money in the name of the respondent. This is so because the property in dispute was acquired between 1976 and 1985 before the appellant became the Managing Director of the respondent in 1986. Also, DW1, a witness called by the respondent admitted under cross-examination, the following at page 313 thus:-

“I confirmed that Mr. Huebner’s name was erased from exhibits A1. When I got to Kachia Local Government to collect exhibits A1, I saw Mr. Huebner’s name on the document, and I observed that Mr. Huebner’s name ought not to be in the document. I made this observation to the staff of the Kachia Local Government. And because of this observation, I did not collect the document that day.

When I went to collect the document finally, Mr. Huebner’s name had been erased from the document and AIEP’s name was put in its place. I played no role at all in obtaining exhibits A3.”

Having come to the conclusion that the disputed property was acquired by the appellant, the question that agitates my mind is whether the appellant was qualified and had the capacity to hold legal estate in land in Nigeria. The law is settled that equity does not operate in vacuum. In answer to this question, learned counsel for the respondent submitted that the appellant knew and had consistently maintained the fact that he as an alien cannot hold title to land by virtue of the relevant provisions of the Nigerian Law relating to landed property. Learned counsel further submitted that since the appellant is barred from holding title to land under the Land Use Act, 1978, he could not hold any legal interest over the disputed property which is capable of being entrusted to the respondent. In aid, learned counsel cited the case of Chief S. O. Ogunola & 6 Ors. v. Hoda Eiyekole & 9 Ors. (1990) 4 NWLR (Pt. 146) 632 at 647, paragraphs B - D. In that case, my learned brother, Olajide Olatawura (JSC) of blessed memory who delivered the lead judgment, said:-

“The learned trial judge in interpreting section 36(1) of the Land Use Act placed much reliance on the word any to include foreigners - section 1 of the Act specifically limits its benefits to Nigerians. It is my view that a non-Nigerian cannot apply for a statutory or customary right of occupancy because that section 36(1) provides for any person: aliens are not Nigerians. I reproduce section 1 of the Act if only to re-emphasise that the Act was promulgated for the benefit of Nigerians:

‘1. Subject to the provision of this Decree, all land comprised in the territory of each state in the Federation are hereby vested in the Military Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provision of this Decree’.”

In their concurring judgment, my lords, Obaseki, KaribiWhyte and Wali JJSC agreed entirely with the view expressed by Olatawura JSC. Agbaje JSC dissented. At page 656, he held:-

“In my judgment, a non-Nigerian who is a holder of land is entitled to the benefits of section 36(1) of the Act provided the non-Nigerian in the words of the definition section of the Act is a person entitled to a right of occupancy or a person to whom a right of occupancy has been validly assigned.”

Learned counsel for the appellant has urged this court to adopt the dissenting view of Agbaje JSC as it is more in accord with the law that creates trust. In alternative, learned counsel invited this court to look further into this matter and if necessary depart from the relevant holding, especially the dictum of Olatawura JSC. I wish to state clearly that the views expressed by my lord, Agbaje JSC was raised in a dissenting judgment. A dissenting judgment, however powerful, learned and articulate, is not the judgment of the court and therefore not binding. The judgment of the court is the majority judgment which is binding. See Orugbo v. Una (2002) FWLR (Pt. 127) 1024, (2002) 16 NWLR (Pt. 792) 175 at 208, paragraphs B - C. The law under which the case of Ogunola & Ors. v. Eiyekole was decided, that is the Land Use Act, 1978, has not been repealed or altered. It is still the extant law that regulates land administration in this country. The call therefore on this court to depart from the said decision is without merit. I entirely associate myself with the decision of my learned brothers in Ogunola & Ors v. Eiyekole and hold that the appellant being an alien had no legal capacity to hold interest in land in Kajuru Local Government Area of Kaduna State. This being so and by virtue of the Latin legal maxim, nemo dat quod non habet, the appellant cannot benefit from property which he was incapable of owning.

Finally, Kajuru Nigeria Ltd is not a party to this appeal, and was not made a party to this case at the trial. The law is settled that a court can only exercise its jurisdiction or power over parties before it and strictly in respect of the case between them upon issues raised and reliefs sought. It cannot do so concerning, and to the extent it may affect persons who are not parties before it and must resist the temptation to make pronouncement to that end. The court must confine its decision to the parties and their claims. See Ojogbue v. Nnubia (1972) 1 All NLR (Pt. 2) 226; Ochonma v. Unosi (1965) NMLR 321; Labide v. Regd. Trustee Cherubim & Seraphim (2003) FWLR (Pt. 142) 89 at 105, paragraphs G - H; Intercontractors (Nig.) Ltd v. UAC of (Nig.) Ltd (1988) 2 NWLR (Pt. 76) 303; Green v. Green (1987) 3 NWLR (Pt. 61) 481, (2001) FWLR (Pt. 76) 795. I therefore agree with the learned counsel for the respondent that the lower court was right when it upheld the refusal of the trial court to compel the respondent to comply with the appellant’s instructions concerning the transfer of the legal estate in the land to Kajuru Nigeria Limited.

Based on the reasons I have set out in this judgment, the sole issue formulated by me for determination of this appeal is resolved against the appellant. In the result, this appeal shall be and it is hereby dismissed. I make no order as to costs.

**MUHAMMAD JSC:**

I read in a draft form, the judgment of my learned brother, Galinje JSC, just delivered. I am in agreement with his reasoning and conclusion that the appeal is devoid of merit and it should be dismissed. I too dismiss the appeal. I abide by orders made by my learned brother including one on costs.

**PETER-ODILI JSC:**

I agree with the judgment just delivered by my learned brother, Paul Adamu Galinje JSC and to register my support for the reasoning, I shall make some remarks.

The appellant as plaintiff before the trial High Court Kaduna, commenced an action by writ of summons and statement of claim on 20 June 1995 which was later amended wherein the plaintiff/appellant claimed against the defendant/respondent as follows:

1. A declaration that the defendant holds the legal estate in the land at Kajuru, bought by the plaintiff in its name upon a resultant trust to the benefit of the plaintiff.

2. A declaration that the defendant is consequently obliged to comply with the instructions of the plaintiff in respect of the transfer of the legal estate in the said land.

3. A declaration that the issuance of certificate of occupancy in favour of the defendant in respect of the land does not affect the position of the defendant as trustee nor that of the plaintiff as the beneficiary of the legal estate.

4. An injunction compelling the defendant to comply with the plaintiff’s instructions concerning the transfer of the legal estate in the land to Kajuru Nigeria Limited.

5. Alternatively to (1) above, a declaration that the receipts, application and certificate of occupancy issued in the name of the defendant are null and void being instruments issued pursuant to and based upon an illegal, void and/or voidable transaction/agreement.

6. A perpetual injunction restraining the defendant from interfering with the interest of the plaintiff in and possession of the land. (See pages 69 - 70 of the record).

The plaintiff testified in proof of his case by deposition alongside one of his witnesses by name Mr. Kelubia Agholor and were cross-examined by interrogatories by virtue of their residence at the material time outside Nigeria and pursuant to an application in that respect (see pages 37 - 60) of the record and the ruling of the trial court made on 5 February 1996). (See pages 255 - 262 of the record).

Plaintiff in addition called 15 witnesses whose evidence are at pages 264, 267 - 276, 278, 284 - 285 and 288 - 289 of the record, and documents were tendered vide these witnesses and same admitted in evidence.

Responding to the plaintiff’s case, the respondent as defendant by his amended statement of defence dated 9 July 1999 (see pages 178 - 182 of the record) joined issues with the appellant (plaintiff) and respectively submitted that the appellant is not entitled to any of the reliefs claimed by the latter in the light of evidence adduced and the position of the law relating to the subject matter and the claims and therefore urged the trial court to dismiss the action. The respondent called four witnesses. (See pages 291 - 293, 310 - 315, 296 - 300) 341 -342 and 343 - 347 of the record.).

The trial High Court after a review and consideration of all the issues raised and the evidence led before it with due regard to relevant and applicable law affecting the subject matter and the reliefs sought before it, found and held that the plaintiff had failed to prove his claims and therefore dismissed same. (See pages 371 - 404 of the records.)

The plaintiff appealed to the Court of Appeal, Kaduna Division and the court dismissed the appeal vide the judgment of the Court of Appeal, Kaduna Division dated 11 May 2006 wherein all the four (4) issues but one were resolved against the appellant. And the Appeal was accordingly dismissed while the judgment of the trial court was therefore affirmed.

Further dissatisfied, the appellant has come before this court upon three grounds of appeal dated and filed on 12 May 2006.

On 17 January 2017, learned counsel for the appellant, R. Ajibola Oluyede at the hearing adopted his amended brief of argument filed on 13 May 2015, wherein he identified two issues for determination which are thus:

1. Whether the Court of Appeal was right to confirm the trial court’s exclusion of documentary and oral evidence which were adduced by the appellant before the trial court to establish circumstances by which it may be implied that the respondent held the legal estate in the subject property upon a resultant/constructive trust in his favour. (Grounds 1 and 2.)

2. Whether the Court of Appeal was right to hold that the appellant was obliged to prove an upheld resultant/constructive trust by “credible and reliable evidence showing the ·grant” by him and “acceptance” by the defendant of the trust. (Ground 3).

Learned counsel for the appellant adopted a reply brief of argument filed on 5 November 2015 and deemed filed on 17 January 2017.

Learned counsel for the respondent, S. A. Adeniran Esq. adopted their brief of argument filed on 16 September 2015 and deemed 17 January 2017 distilled two issues for determination which are stated hereunder, viz:

1. Whether the Court of Appeal was right to confirm the trial court’s finding at law and upon the facts and circumstance of the case before the trial court that the documentary evidence before it (i. e. trial court) as borne out by exhibits A1, A2 and A3 being the Kachia Local Government certificate of occupancy, and the Kaduna State certificate of occupancy respectively cannot be varied or altered by oral or extrinsic evidence as sought by the plaintiff/appellant to establish a “resultant” or implied or constructive trust in his favour (grounds 1 and 2).

2. Whether the Court of Appeal was right to hold that the appellant has the onus of proof as required by law (i.e. standard of proof in civil proceedings) to prove an “implied resultant/constructive” trust by credible and reliable evidence (Ground 3) For sake of convenience I shall make use of the issues as drafted by the appellant.

Issue No. 1

Whether the Court of Appeal was right to confirm the trial court’s exclusion of documentary and oral evidence which were adduced by the appellant before the trial court to establish circumstances by which it may be implied that the respondent held the legal estate in the subject property upon a resultant/ constructive trust in his favour.

Canvassing the position of the appellant, learned counsel, R. Ajibola Oluyede Esq., submitted that the evidence of PW1 - PW14 as well as the appellant established that the funds for the purchase and development of the land came from the appellant’s private resources even before he became the Managing Director of the respondent. That the evidence to elicit that aspect was not adduced because the court did not allow it which would have shown that the respondent was the named purchaser in exhibit A4 or the grantee of the rights of occupancy in exhibits A1 and A3. That the evidence did not contradict any of the terms of those documents but merely established that regardless of the tenor of those documents, the reality is that the funds for the purchase were advanced by the appellant. That the fact that the appellant believed he could not hold a legal title to land at the time the receipt (exhibit A4) was issued does not preclude him from explaining how hi name got on the receipt as he sought to do in this case.

Learned counsel stated on that the evidence rejected by the lower court did not offend the rule in section 132 of the Evidence Act and was in fact admissible under the exception in section 132(1)(a) of the Evidence Act. He referred to sections 5(1) and 6(1)(a) of the Land Use Act; Ezeanah v. Attah (2004) 7 NWLR (Pt. 873) 468; Ughutevbe v Shonowo (2004) 16 NWLR (Pt. 899) 300 at 334. Mr. S.A. Adeniran of counsel for the respondent submitted that oral testimony cannot vary the contents of the two certificates of occupancy i.e. exhibit A1 and exhibit A3 which certificates were applied for and granted in the name of the respondent. That the contents of exhibits B1, B2 and B3 are clear and lend credence to the valid pronouncement of the exhibit A3 and do not admit of any of the exceptions to section 132(1) of the Evidence Act.

That no credible evidence exists to prove a valid legal trust relationship of whatever form, implied or constructive between appellant and the respondent in law or in equity to be adjudged enforceable. He cited Ogunola & Ors. v. Hoda Eiyekole (1990) 4 NWLR (Pt. 146) 632 at 647.

He stated further that appellant by his actions and conduct, express or implied in the role he played in obtaining the certificate of occupancy over the Kajuru land subject of dispute did not only create an impression but clearly bears testimony to the fact that the land in law and principle belonged to the respondent and more so, to the authorities that were saddled by law to issue such certificates and to every reasonable man. That the appellant is estopped ordinarily from resiling on this position. He cited Ughetevbe v. Shonowo & Ors. (2004) All FWLR (Pt. 220) 1185 at 1211 - 1212; Mudaigaerhureh & 3 Ors. v. INEC & Ors. (2003) FWLR (Pt. 137) 1066 at 1081.

The stand of the appellant is that even if the evidence in court contradicted the documents as the court below held, the evidence was admissible to establish the capacity of the defendant as an implied trustee for the benefit of the plaintiff of the interest acquired from the framers vide exhibit A4, from Kachia Local Government and Kaduna State Government vide exhibits A1 and A3 respectively.

The respondent rejecting the posture of the appellant contends that the oral evidence cannot alter or vary the contents of the documentary evidence particularly exhibits A1 and A3.

For a fact, oral evidence is not acceptable to vary or alter a documentary evidence except for certain circumstances or exceptions. In this regard, a reference to section 132(1) of the Evidence Act, 2011 (as amended) is helpful and it provides thus:

“132 (1) when any judgment of any court or any other judicial or official proceedings, or any contract or any grant or other disposition of property has been reduced to the form of a document or series of documents, no evidence may be given of such judgment or proceedings, or of the terms of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents cases in which secondary evidence is admissible under the provisions herein before contained, nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence; provided that any of the following matters may be proved.

a. Fraud, intimidation, illegality, want of execution, the fact that it is wrongly dated, existence or want of failure, of consideration, mistake in fact or law, want of capacity in any contracting party or the capacity in which a contracting party acted when it is not inconsistent with the terms of the contract, or any other matter which if proved, would produce any effect upon the validity of any document, or of any part of it or which would entitle any person to any judgment, decree, or order relating thereto.

b. The existence of any separate oral agreement as to any matter on which a document is silent and which is not an assistant with its terms if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them.

c. The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition on property.

d. The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property.

e. Any usage or custom by which incidents not expressly mentioned in any contract are annexed to contracts of that description, unless the annexing of such incident to such contract would be repugnant to or inconsistent with the express terms of the contract.”

Sub-section (3) of this Act further provides that:

“(3) Oral evidence of the existence of a legal relationship is not excluded by fact that it has been created by a document when the fact to be proved is the existence of the relationship itself and not the terms on which it was established or is carried on.”

A glance at exhibits A1 and A3 show the name of the defendant/respondent as the holder of the two certificates of occupancy. There was no trace in the evidence proffered of a legal trust relationship express, implied or constructive existing between appellant and respondent on which whether in law or in equity any such allusion of trust would be placed.

The learned trial judge held thus:

“Exhibit A4 indicated that the farmers sold their farmlands to the defendants and the plaintiff and the oral testimonies of PW1 - 14 therefore cannot contradict the contents of exhibit A1 - B4. I so hold and on the other hand it is my findings that exhibits A1, A2, A3, - B1, B2, B3 and B4 confirm that the title over the property in Kajuru belongs to the defendant”.

The court below per Amiru Sanusi JCA (as he then was) at pages 691 and 694 of the record showed mastery of the subject before him and I cannot resist in quoting him albeit mere snippets of the judgment. He stated thus:

“Let me comment briefly on the prayers sought by the plaintiff/appellant on the intervention of equity.

It is the plaintiff/appellant’s claim that the defendant in the circumstance will not be allowed by equity to claim a benefit in the land to itself but should be regarded as holding the legal estate upon implied resultant or constructive trust for the plaintiff. Well, as I said above, there was no proof of a valid transfer by trust between the plaintiff and the defendant’s company and no reliable evidence was adduced by the plaintiff in that regard. Now, even if there was any agreement or understanding between them in that regard, the valid question is, in the light of the circumstance when the plaintiff cannot own land, can he give interest to the defendant what he himself does not and could not own? I do not think so, if he does or attempts to do so, that would amount to a wrongful act or default. See Ibekwe v. Maduka (1995) 4 NWLR (Pt. 392) 786. He who seeks equity must also do equity and also come with clean hands. See Lawal-Osula v. Lawal-Osula (1995) 3 NWLR (Pt. 382) 128. It is also an age long principle of law that even equity follows law and cannot circumvent the provisions of the law. See also Isichei v. Allagoa (1998) 12 NWLR (Pt. 577) 196”.

My lord, Sanusi JCA, (as he then was) stated on as follows:

“I will however add that issue of existence of trust resultant or implied had not been duly proved by the plaintiff/appellant by any credible evidence. It is the plaintiff who said that he granted the landed property in trust to the defendant company. There was no evidence produced by the plaintiff such as resolution by the defendant board of any document establishing such trust in that regard wherein the defendant company to which the plaintiff was a Managing Director, accepting such regard. In the surrounding circumstance of the instant case therefore, I hold that there was no credible and reliable evidence showing that an implied resultant/constructive trust existed in favour of the plaintiff.”

The appellant had sought to persuade the court that the transaction took place after the abrogation of the Land Tenure Law of the Northern Region of Nigeria, the lex situs of the land in question and so the exclusion of aliens to ownership of land no longer applied to the Land Use Act which act had no such forbidden clause. That the relevant sections 5(1) and 6(1)(c) of the Land Use Act are self explanatory.

Section 5(1) of the Land Act states that - “it shall be lawful for the Governor in respect of land, whether or not in an urban area-(a) to grant statutory rights of occupancy to any person for all purposes.” Section 6(1)(a) further states that

“it shall be lawful for a Local Government in respect of land in an urban to grant customary rights of occupancy to any person or organization for the use of land in the Local Government Area for agricultural, residential and other purposes.”

That beautiful argument of the appellant is not sustainable in view of the interpretation already given by this court to sections 5(1) and 6(1)(a) of the Land Use Act, 1978 and the interpretation of the phrase “any person” in section 36(1) of the same Act in the case of: Chief S. O. Ogunola & 6 Ors. v. Hoda Eiyekole & 9 Ors. (1990) 4 NWLR (Pt. 146) at page 632, page 647, paragraphs B - D where his lordship - Olajide Olatawura (JSC) reading the lead judgment held:

“The learned trial court in interpreting section 36(1) of the Land Use Act placed much reliance on the word any to include foreigners -section 1 of the Act specifically limits its benefits to Nigerians. It is my view that a non-Nigerian cannot apply for a statutory or customary right of occupancy because that section 36(1) provides for any person: aliens are not Nigerians. I reproduced section 1 of the Act if only to re-emphasis that the Act was promulgated for the benefit of Nigerians:

‘1. Subject to the provisions of this Decree, all land comprised in the territory of each state in the Federation are hereby vested in the Military Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provision of this Decree.’

It is my firm view therefore that the words “any person” under section 36(1) of the Act refer to and mean any Nigerian. The act has not abrogated any law which limits the rights of aliens to own property.

I will however share the views of Omololu-Thomas, JCA that any foreigner who has validly owned or occupied any land before the Act is deemed to be an occupier under the Act. This however must be in conformity with the definition of occupier under section 50 of the Land Use Act.”

The learned Jurist of blessed memory, Olatawura JSC had said it as it was in a way as to suggest, that he had a day like this with the facts of this case in mind, as with that dictum, the matter of what interpretation to be accorded sections 5(1) and 6(1) of the Land Use Act is therefore settled.

Then the nagging issue of whether implied trust on the basis of equity crops up in favour of the appellant. In considering it, the acts of the appellant come into question, firstly assuming he knew he was not qualified to own land in Northern Nigeria, he acted in going ahead to make the purchase wrongfully and illegally and therefore without clean hand which equity cannot encourage or assist. The flip side would be if he made the payments with his funds not being aware that he could not have such ownership, then his action would be caught up by the principle that, ignorance of the law is not an excuse. Therefore either way he lacked the capacity to enter into the purchasing transaction for land being a foreign national. It follows that whether in law or equity he lost out. See Robert Enature Ughetevbe v. Dr. Owodiran Shonowo (2004) All FWLR (Pt. 220) pages 1185 at 1211 - 1212 per Ejiwunmi JSC:

“If a man by his words or conduct willfully endeavours to cause another to believe in a certain state of things which the first knows to be false and if the second believes in such state of things and acts upon his belief, he who knowingly made this false statement is estopped from averring afterwards that such a state of things does not exist at the time: if a man either in express terms or by conduct make a representation to another of the existence of a state of facts which he intends to be acted upon in a certain way, and it be acted upon in that way in the belief of the existence of such a state of facts to the damage of him who so believes and acts, the first is estopped from denying the existence of such a state of facts. Thirdly, if a man whatever his real meaning may, so conducts himself that a reasonable man would take his conduct to mean a certain representation of facts and that it was intended to act upon it in a particular way, and he with such belief does not act in that way to his damage, the first is estopped from denying the facts as represented (Ige v. Amakri (1976) 11 SC. Referred to).”

To refresh the memory on what had happened in the beginning and can be seen is that indeed the plaintiff/appellant had made payments for the purchased land but did so in the name of the respondent as evidenced by the title documents. To now turn around to say at the time he did so he was actually making the purchase for himself is a situation that cannot be supported in the light of the law as he is estopped from so resiling having earlier put out himself as acting in a fiduciary relationship with the respondent company. To change course to lay claim to property acquired in the name of the respondent would be difficult to sustain and the allusion of an implied or constructive trust flies off the handle being not supported by any glimpse of evidence in that regard.

The court below effectively dealt with this when it held thus:

“... Even if it is true that he assisted the defendant or made arrangement for it to obtain the certificates of occupancy in the defendant/respondent’s name and for him to later transfer it on trust on the defendant as he claimed, such alleged “trust” could not be enforceable for the simple reason of illegality since the actual fact is that he could not legally speaking, obtain land as an alien and as well he cannot grant a trust property that he cannot own or could not belong to him. In any event, there is no credible and reliable evidence establishing any trust as rightly found by the trial court.”

Indeed, there is no angle on which a favourable consideration of the positions of the appellant can be made and so the issue is easily resolved against the appellant.

There is no need to get into the second issue as the resolution of issue 1 has settled the appeal.

From the foregoing and the well reasoned lead judgment, I dismiss the appeal and abide by the consequential orders made.

**AKA’AHS JSC:**

I had a preview of the judgement of my learned brother, Galinje JSC just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

It is necessary to give a brief historical evolution of the land tenure systems in Nigeria from the colonial period up to the promulgation of the Land Use Act in order to show that the intendment of the Act is for the benefit of Nigerians and not just anybody.

The term land tenure is derived from the latin word tenure which means “to hold”. Land is of fundamental importance in traditional Nigeria society, and is communally owned, although family or corporate ownership existed side by side with communal ownership. In a way, customary laws of land tenure have in the past given the farmer a feeling of reasonable permanence on the land he cultivates.

Due to Nigeria’s ethnic, geographical and cultural diversity, its pre-colonial land tenure system was largely complex. Various ethnic groups practiced different customary systems. No formal records of land transaction existed until the colonial period.

The colonial government started formal documentation of rights and interests (with land registration law) in Lagos in 1863. During the colonial period, the British Crown by virtue of invasion, coercion, treaty, cession, convention or agreement acquired lands.

Such lands became state land in post-colonial period. It was the Native Land Acquisition of 1900 and the Lands and Native Rights Ordinance of 1916 that established formal land tenure systems in the country. These laws created formal private ownerships of land. They mainly served for expropriatory reasons then.

Therefore, rural people practised their customary tenure system (so far the administration was not in need of their land). This was not the case in Northern Nigeria, where a semi-feudal system prevailed. To set the foundation for unification of tenure systems, the colonialists later declared all land in the northern part of Nigeria as public land. It created ordinances to empower their administrators to carry out expropriatory rights over such lands.

In 1962 the northern regional government enacted the Land Tenure Law and it subjected all land in that region to the control of the governor of the region for the use and benefit of all northern people. Within the same period (with interest shifting from agriculture to oil resources), the central government enacted the Petroleum Act. The Act gave all petroleum resources to the government. Following this in 1978 the national government promulgated the Land Use Act to unify tenure system all over the country. As part of its main effect to the Nigerian legal system, the Act states that:-

“... all lands comprised in the territory of each state in the federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians”. See: N. O. Adedipe et all (eds), “Rural Communal Tenure Regimes and Private Land Ownership in Western Nigeria (Rome: FAOSustainable Dimensions Series, 1997) cited in Olutola Abisoye Land Tenure in Southern Nigeria available online at <https://www.academia.edu>”.

The views stated above apply mostly in Southern Nigeria. In the North however particularly where Islam was practiced before the advent of colonial rule, records of land transaction were kept in the Arabic language by the Alkali courts.

Now to the appeal. The facts of the case have been well set out in the leading judgement. Although the appellant expended his own money to acquire the land in Kajuru and the certificate of occupancy was issued in the name of the respondent, it is against public policy to seek to circumvent the law.

The appellant as plaintiff pleaded in paragraphs 3, 4, 5 and 6 of the amended statement of claim the following facts:

“3. The plaintiff had over 20 years ago through the agency of the District Head of Kajuru been given a mountain in Kajuru which forms a part of the land subject matter of this case by the Emir of Zaria and had built a temporary structure on it even at this time.

4. Subsequently, in or about 1981 the plaintiff commenced negotiation through the agency of the District Head of Kajuru for the purchase of the land surrounding the said mountain all measuring in total about 70 hectares and was in the final stage of the purchase when in 1986 he was appointed the Managing Director of the defendant.

5. At this time the plaintiff, a German National legally resident and doing business in Nigeria for over 15 years was informed that he could not hold a legal estate in land in Kaduna State as he is an alien and was advised to buy the land in his company’s name upon a resultant trust for his benefit.

6. As the plaintiff was a share holder and Managing Director of the defendant, he decided after consultation with other directors to purchase the legal estate in the said land in the name of the defendant upon the understanding that the said estate was held for his benefit.”

Having lost at the High Court, the plaintiff as appellant appealed to the Court of Appeal and two of the issues namely issues 2 and 3 canvassed on behalf of the appellant were:-

“2. Whether the trial court was right to exclude the documentary and oral evidence which established the context in which the title documents to the Kajuru land were obtained and the premise for the plaintiff’s prayer for the intervention of equity.

3. Whether a resultant constructive trust existed by the application of law in favour of the plaintiff in the circumstances of the evidence before the court.”

In resolving these issues, Sanusi JCA (as he then was) in his judgement considered the arguments advanced by learned counsel for the appellant on the intervention of equity to stopthe respondent from claiming the benefit in the land to itself and the implied trust which enured to the benefit of the plaintiff/appellant when he said at pages 691 - 692 of the record:-

“... there was no proof of a valid transfer by trust between the plaintiff and the defendant’s company and no reliable evidence was adduced by the plaintiff in that regard. Now even if there was any agreement or understanding between them in that regard, the valid question is “in the light of the circumstance when the plaintiff cannot own land, can he give interest to the defendant what he himself does not and could not own?”

I do not think so. If he does or attempts to do so that would amount to a wrongful act and a party cannot benefit from his wrongful act or default. See Ibekwe v. Maduka (1995) 4 NWLR (Pt. 392) 786. He who seeks equity must also do equity and also come with clean hands. See Lawal-Osula v. Lawal-Osula (1995) 3 NWLR (Pt. 382) 128. It is also an age long principle of law that even equity follows law and cannot circumvent the provisions of the law. See also Isichei v. Allagoa (1998) 12 NWLR (Pt. 577) 196.

Before this court, learned counsel for the appellant sought to interpret section 6(1)(a) Land Use Act which provides that a Local Government has power to grant customary rights of occupancy to any person or organisation in respect of land not in an urban area for agricultural, residential and other purposes to include aliens. In his argument learned counsel for the respondent stated that the phrase “any person” as used in section 36(1) of the Land Use Act was interpreted by the Supreme Court in Chief S. O. Ogunola v. Hoda Eiyekole (1990) 4 NWLR (Pt. 146) 632 to exclude aliens in the ownership of land. However learned counsel for the appellant argued in the reply brief that an exception was made in respect of foreigners who were lawfully in occupation of land prior to the promulgation of the Land Use Act in 1978 since they were deemed to be occupiers under the Act. He therefore submitted that the decision of this Court in Ogunola v. Eiyekole did not prohibit the acquisition of interests in land in Nigeria by non-Nigerians. Turning to section 5 of the Land Tenure Law, 1962 under which the appellant could have acquired his interest in the disputed land, learned counsel contended that the section did not prohibit aliens from acquiring interest in land in the North as they were restricted only with regard to native lands and needed the Minister’s consent to such acquisition. Learned counsel then made an alternative submission by inviting this court to look further into the matter and if necessary depart from the decision in Ogunola v. Eiyekole if it has the effect of prohibiting non-Nigerians from acquiring interest in land in Nigeria since the definition of the phrase “any person” by Olatawura in the judgement was an orbiter dictumand therefore made per incuriam and the concurring judgement by Agbaje JSC conflicted with that of Olatawura JSC. He argued strongly that for the purpose of the development of the Nigerian economy and the Government’s policy on inflow of private direct foreign investment, for infrastructural and human resources development, a restriction on foreign ownership of land is now obsolete and obstructive and advocated for a repeal of the provision that restricts foreigners from owning land.

It is rather misleading for learned counsel for the appellant to describe Olatawura JSC’s definition of “any person” in section 36(1) of Land Use Act as an obiter dictum which was made per incuriam and conflict with the judgement of Agbaje JSC. Section 36(1) of the Land Use Act states:-

“36 (1) The following provisions of this section shall have effect in respect of land not in an urban area which was immediately before the commencement of this Decree held or occupied by any person”

In his judgement at page 647 Olatawura JSC said:-

“The learned trial judge in interpreting section 36(1) of the Land Use Act placed much reliance on the word any to include foreigners - section 1 of the Act specifically limits its benefits to Nigerians. It is my view that a non- Nigerian cannot apply for a statutory or customary right of occupancy because that section 36(1) provides for any person: aliens are not Nigerians, I reproduced section 1 of the Act if only to re-emphasise that the Act was promulgated for the benefit of Nigerians:

‘1. Subject to the provisions of this Decree, all land comprised in the territory of each State in the Federation are hereby vested in the Military Governor of that State and such land shall be held in trust and administered for the use and common benefits of all Nigerians in accordance with the provisions of this Decree.’

It is my firm view therefore that the words “any person” under section 36(1) of the Act refer to and mean any Nigerian. The Act has not abrogated any law which limits the rights of aliens to own property. I will however share the views of Omololu-Thomas JCA that any foreigner who has validly owned or occupied any land before the Act is deemed to be an occupier under the Act. This however must be in conformity with the definition of occupier under section 50 of the Land Use Act”.

Agbaje JSC disagreed with the interpretation of section 36(1) Land Use Act as given by Olatawura JSC and reasoned as follows at pages 654 - 655:-

“After considering and reconsidering the point I am inclined to the view that both the trial court and the Court of Appeal are right in their interpretation of section 36(1) of the Land Use Act. Section 36 is part of the transitional provisions of the Act. The following scenarios appear to me to be the situations in which the provisions may be applied

(1) Owners of land in possession of their land and who have developed it;

(2) Tenants in possession of land and who have developed it;

(3) Under (1) and (2) the tenants or the owners of the land may be Nigerians or non-Nigerians.

Section 36 is concerned with “a holder” or “an occupier” of land. Both words are defined in the Act thus:-

... It appears to me clear that neither of the two words is defined by reference to the citizenship of the person involved. I can find no warrant in the whole of the Land Use Act to do this. The expression “any Nigerian” obviously refers to citizens of Nigeria but the expression “any person” or any occupier” or “Any holder of land” in section 36 of the Act cannot in my view be so construed as to limit their application only to Nigerians.”

The judgement of the court on the interpretation of section 36 Land Use Act is that the ownership of land is limited to Nigerians and does not include aliens such as the appellant.

As stated earlier in this judgement before the promulgation of the Land Use Act, the Land Tenure Law, Cap. 59 Vol. II Laws of Northern Nigeria, 1963 was the legislation enacted to take care of land ownership in the Northern part of the country. While in the South apart from the colony of Lagos and those areas where the Native Land Acquisition and Native Rights Ordinances of 1900 and 1916 respectively applied, land was communally owned, although family or corporate ownership existed side by side with communal ownership. Individual families therefore could enter into land transactions with anybody whether they were Nigerians, corporate organisations or foreigners without any interference by Government. Section 5 of the Land Tenure Law provided as follows.-

“5. All native lands and all rights over the same are hereby declared to be under the control and subject to the disposition of the Minister and shall be held and administered for the use and common benefit of the natives, and no title to the occupation and use of any such lands by a non-native shall be valid without the consent of the Minister.

Under section 2 of the Law, “native” and “non-native” are defined as:-

“Native” means a person whose father was a member of any tribe indigenous to Northern Nigeria; and “Non - Native” means any person other than a native as above defined”.

A German national would therefore qualify as a non-native.

As pleaded in paragraph 3 of the amended statement of claim, the plaintiff/appellant came into occupation of the land before 1978 when the Land Tenure Law was in force; hence he could not acquire title to the occupation and use of the land without the consent of the Minister. As at 1981 when he commenced negotiation to purchase the land, he held no title, customary or statutory which he could validly pass to the respondent. Any agreement reached between the appellant and the respondent which enabled the latter to hold the legal estate in the land for the benefit of the appellant would be unenforceable since the appellant could not pass any title to the respondent. A court should not enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal provided the illegality is brought to the notice of the court and the person invoking the aid of the court is himself implicated in the illegality.

The illegality disclosed here is the attempt by the appellant to circumvent the provisions of the Land Use Act and this is against public policy and a contract may be against public policy either from the nature of the acts to be performed or from the nature of the consideration. Where a transaction is on the face of it, or from the facts adduced in evidence or the surrounding circumstances, apparently illegal, the court must act to enforce and protect the law of the land. See Sodipo v. Lemminkainen OY (1985) 2 NWLR (Pt. 8) 547. The alternative relief in paragraph 19(v) of the amended statement of claim wherein the plaintiff/appellant sought a declaration that the receipts, application and certificates of occupancy issued in the name of the defendant are null and void being instruments issued pursuant to and based upon an illegal, void and or voidable transaction/arrangement is a clear manifestation that the plaintiff/appellant is aware of his own wrongful act and wants to benefit from it. It is not open to the appellant to rely upon his wrongful act to allege that the certificate of occupancy in the name of the respondent is null and void and unenforceable. See Solanke v. Abed (1962) 1 All NLR 230; Oilfield Supply Centre Ltd v. Johnson (1987) 2 NWLR (Pt. 58) 625; Adedeji v. National Bank (Nig.) Ltd (1989) 1 NWLR (Pt. 96) 212 and Ibekwe v. Maduka (1995) 4 NWLR (Pt. 392) 786. It was the appellant who took the necessary steps to obtain the customary right of occupancy over the land and negotiated to change the title to a statutory right of occupancy which was issued in the name of the respondent, being a company registered in Nigeria and capable of acquiring interest in land. The appellant could not be treated as a deemed grantee of the land at the time the certificate of occupancy was issued in the name of the respondent. The lower court rightly observed that even if there was any agreement or understanding between the appellant and respondent as regards vesting title on the respondent by the issuance of the certificate of occupancy, the appellant could not grant to the respondent what he did not own and there was no valid transfer by trust between the appellant and the respondent.

As equity follows the law, anyone who seeks equity must come with clean hands and must not be seen to want to circumvent the provisions of the law.

It is for this reason and the more comprehensive reasons contained in the judgement of my learned brother, Galinje JSC that I found no merit in the appeal and accordingly dismissed it. I also make no order as to costs.

**AUGIE JSC:**

I have had a preview of the lead judgment just delivered by my learned brother, Galinje JSC, and I agree with his reasoning and conclusion. Unfortunately, the appeal will have to be dismissed.

He said all that is to be said in the lead judgment; but I will add a few comments to reiterate points made on resulting trusts.

At the Kaduna State High Court (trial court), the appellant claimed inter alia - a declaration that he holds the legal estate in the land at Kajuru that he bought in the respondent’s name upon a resultant trust to his benefit; that it is obliged to comply with his instructions in respect of transfer of the legal estate; and that the issue of a certificate of occupancy in its favour does not affect its position as trustee nor his as the beneficiary of the legal estate.

In its legal sense, “a trust” is the relationship, which arises wherever a person called the trustee, is compelled in equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one and who are termed cestuis que trust) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee but, to the beneficiaries or other object of the trust - Professor Keaton in Law of Trust, 9th Edition. To this end, there are express trusts, implied or resulting trusts, and constructive trusts. Express trusts arise when the owner declares himself a trustee of the property for the benefit of another person or vests property in another person as trustee for the benefit of another person. Implied or resulting trusts arise from the presumed intention of the owner, and the presumed intention arises by operation of law not by agreement of parties.

Constructive trusts are trusts imposed by equity regardless of the intention of the owner of the property, where it will be unconscionable for the “apparent beneficial owner’ or trustee to hold the property for his benefit - see Equity and Trust in Nigeria, 2nd Edition, by O. Fabunmi. We are concerned with implied or resulting trusts, which may arise in the following circumstances-

(i) Where an express trusts tells.

(ii) Where the beneficial interest under an express trust is not fully disposed of or exhausted.

(iii) Where there is a purchase in the name of another or where a person makes a voluntary conveyance of his property to another.

Parties cited Ezeanah v. Attah (2004) 7 NWLR (Pt. 873) 468 SC, wherein the appellant claimed that she applied for land allocation in her name, but it was signed on her behalf by the respondent. Certificate of occupancy was issued and given to the respondent who sent her a copy but refused to give her the original. She later discovered he was trying to alter the name therein and instituted an action, wherein she claimed inter alia a declaration that she is the bona fide owner of the land. The respondent counter-claimed against her for a declaration of ownership of the said property.

The High Court of the Federal Capital Territory (FCT) gave judgment in her favour and dismissed his counter-claim.

He then appealed to the court below, and appellant also cross appealed.

The court below allowed his appeal, granted his counter-claim, and dismissed her cross-appeal. She then appealed to this court.

In allowing her appeal, this court stated that resulting trust is also implied trust which is founded upon the unexpressed but presumed intention of the settlor. It further explained as follows Such trusts are also referred to as “resulting’’ because the beneficial interest in the property comes back or results to the person who provided the property or to his estate. Professor G. W. Keaton in his book titled, The Law of Trusts, 8th Edition (1963) gave the following example of implied and resulting trust at page 143 -

“The best example of a trust implied by law is where property is purchased by A in the name of B, that is to say, A supplies the purchase money; and B takes the conveyance. Here, in the absence of any explanation, facts, such as· an intention to give the property to B, equity presumes that A intended to hold the property in trust for him”. See also the case of Madu v. Madu (2008) All FWLR (Pt. 414) 1604, (2008) 6 NWLR (Pt. 1083) 296, wherein this Court, per I.T. Muhammad JSC, aptly observed -

“On the issue of “resulting trust” - - I think I should define the term first. It is a trust imposed by law when someone transfers property under circumstances suggesting that he or she did not intend the transferee to have beneficial interest in the property. A resulting trust thus arises because of the transferor’s intention.

The resulting trustee in a fiduciary relation to beneficiary; where it at all exists, is a genuine trustee.

- - It is unfortunate that the respondent cannot hide under the cover of a resulting trust to deprive the appellant of both the legal and beneficial interest; which go along with the title i.e. certificate of occupancy, in question. There was no foundation laid at all by the respondent to justify that - - - Before I drop my pen, I think I should observe that this case, as I see it, should be an eye-opener to many people.

Although, it is not illegal or prohibited to make use of another persons name in transactions that are solely meant to be in favour of a particular individual. I think it carries a lot of risks where there is a failure in achieving goals for which the transaction is meant.

I fail to appreciate the wisdom behind the concealment of name or identity of a person, who in actual sense, is the owner of a thing but would prefer to use the name of another person. The presumption is always that if a document for instance, bears the name of Mr. “X” it in law; belongs to Mr. “X” except where same is accompanied by conditions and exceptions. A good example is where a university certificate or a West African School Certificate (WASC) is issued in the name of X”. The presumption is that it is “X’’ that is the rightful owner of that certificate. So it is a dangerous practise where people prefer to hide their identities and resort to using the identities of others in transactions, which are from the bottom of their minds. If such transactions are meant to be held in such resulting trust I think they should be qualified by explanations, exceptions or conditions attached - - -.”

In this case, the appellant averred in his statement of claim that being a German national, he was informed that he could not hold a legal estate in land in Kaduna State, and was advised to buy the land in respondent’s name upon a resultant trust for his benefit.

But as I pointed out earlier on, an implied or resulting trust arises from the presumed intention of the owner, which in turn arises by operation of law and not by the agreement of parties.

Obviously, there is no getting around the fact that he knew that not being a Nigerian, he could not hold a legal estate in land. His argument that by sections 5(1) and 6(1)(a) of the Land Use Act, he can acquire a right of occupancy contrary to what he was told, flies in the face of this court’s decision in Ogunola & Ors. v. Eiyekole & Ors. (1990) 4 NWLR (Pt. 146) 632 that a non-Nigerian cannot apply for a statutory or customary right of occupancy.

The situation the appellant found himself in is unfortunate, but sentiments command no place in judicial deliberations – see Kalu v. F.RN. & Ors. (2016) LPELR-40108 (SC). The end result is that I also dismiss this appeal. I also make no order as to costs.

Appeal dismissed