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## JOLUGBO & ANOR V. AINA & ANOR: AN ANSWER TO THE ISSUES ARISING FROM RESULTING AND CONSTRUCTIVE TRUSTS VIS-À-VIS PRESUMPTION OF ADVANCEMENT

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### **Keywords:**

*Property Ownership, Matrimonial Dispute, Possession Recovery, LSPDC Low Cost Housing Estate Legal Entanglement*

### **Abstract**

*As a matter of fact, a trust is a legal relationship between a donor, trustee and a beneficiary, where the donor appoints a trustee whom he hands over a given property of his to hold for the benefit of a beneficiary. This work strictly dealt with the issues arising from resulting trusts vis-à-vis a constructive trust. The work also analysed issues arising from presumption of advancement, with respect to properties purchased by husband for the wife and wife to the husband also, whether such properties are regarded as gifts or that each of them holds such as a resulting trustee. This work equally recommended that where a third party or an innocent party buys a property in good faith without any iota of fraudulent intention, that will await him under the law. Finally, the work concluded that if a husband purchases a property for her wife, it is regarded as a gift in law and vice-versa the wife.*

### **1.0 Introduction**

This case started out as a simple case of recovery of possession, and metamorphosed to a tug of war between an estranged couple as to who owned the property – a 3 bedroom flat at Flat 5, Block A78, phase 4, LSPDC Low Cost Housing Estate, Anikantama, Lagos. The husband, the 2<sup>nd</sup> appellant moved out of the matrimonial home in 1990, and sold the property to the 1<sup>st</sup> appellant in 1991. The 1<sup>st</sup> appellant perfected his title and was recognized by the 2<sup>nd</sup> respondent (LSPDC) as the new owner. The 1<sup>st</sup> respondent, the wife let the same property to one Mr. Ferreira, and collected 4 years rent

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from him after she moved out of the house in 1990. He was in possession of the property when the sale between the two appellants was effected. It was in an attempt by the 1<sup>st</sup> respondent to gain vacant possession from Mr. Ferreira that led to Suit NO. LD/3275/94, filed by the 1<sup>st</sup> appellant at the Lagos State High Court.

This case might look like a simple matter to decide, but it is not, considering the fact that there may be criticisms of the likely decision due to the fact that the decision may contradict section 43 of the 1999 Constitution which provides that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria and may also lead to criticism on the basis of the land law principle dealing with who can legally transfer a property to a third party. The case also highlights the contention as regards when a resulting trust arises; whether it is by the intentions of the parties or by operation of law where one or more persons supply the purchase price. Furthermore into the case, we can ascertain the fate of an innocent third party buyer who purchases the property from another party other than the “beneficial” owner of the property. One significant feature of this case is its clear distinction between legal ownership of the trust property and equitable ownership.

## 2.0 Facts of the Case

The case of *Jolugbo & Anor v Aina & Anor*<sup>1</sup> involved an estranged couple in a fight for recovery of possession of a three-bedroom flat at Flat 5, Block A78, Phase 4, LSDPC Low Cost Housing Estate, Anikantamo, Lagos. The 2<sup>nd</sup> Appellant who is the husband moved out of the flat in 1990 and in 1991 sold the property to the 1<sup>st</sup> appellant who was recognized as the new owner of the property by the 2<sup>nd</sup> respondent (LSPDC). On the other hand, the wife who is the 1<sup>st</sup> respondent let the property to one Mr. Ferreira, who has paid 4 years rent to the 2<sup>nd</sup> respondent after she moved out in 1990. The said Mr. Ferreira was in possession when the sale between the two appellants was effected and the 1<sup>st</sup> appellant made an attempt to gain vacant possession from Mr. Ferreira, claiming in the Lagos State High Court that he is the owner of the property through purchase from the 2<sup>nd</sup> appellant and backed by title documents issued by the 2<sup>nd</sup> respondent.

The 1<sup>st</sup> respondent applied to be made a party in Suit No. LD/3275/94, and was joined as 2<sup>nd</sup> defendant on 2<sup>nd</sup> June, 1995. She later applied to have the 2<sup>nd</sup> appellants, who sold the flat to the claimant, joined as the second claimant. Mr. Ferreira as the 1<sup>st</sup> defendant was struck out as a party on

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18/9/2001 because he was no more relevant as his lease expired and he had vacated the property. The wife (1<sup>st</sup> respondent) filed Suit No. Ld/1769/97—that was pending before another judge against her husband (2<sup>nd</sup> appellant), Mr. Jolugbo (1<sup>st</sup> appellant) and LSDPC (2<sup>nd</sup> respondent) wherein she claimed the following:

1. A declaration that the circumstances of the purchase of the property gave rise to the relationship of trustee and beneficiary with the attendant duties and obligations between the 1<sup>st</sup> defendant and the 1<sup>st</sup> plaintiff respectively.
2. A declaration that the purported sale of the premises, the subject matter of the suit by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant is a breach of the trust and the judiciary duty owed to the plaintiff is entitled to the remedy of the restitution.
3. The declaration that the title of the 1<sup>st</sup> defendant if any at all, is defective and therefore the defendant cannot obtain a better title from the defendant.
4. An order of this Honorable Court setting aside the purported sale of the property by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant.
5. An order of this Honorable Court nullifying the purported consent given by the 2<sup>ND</sup> defendant, LSPDC to the voidable sale of the said property by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant.
6. An order of this Honorable Court directing the 3<sup>rd</sup> defendant to expunge from its record the purported sale of the said property.
7. An order of this Honorable Court in exercise of its inherent and equitable jurisdiction compelling the 1<sup>st</sup> defendant to execute the documents of transfer of title of the property from the 1<sup>st</sup> defendant to the plaintiff which documents are now prepared by the plaintiff's solicitors and are ready for execution.
8. An order of perpetual injunction restricting the 1<sup>st</sup> and 2<sup>nd</sup> defendant, their servants, agents and privies from trespassing or in any other way interfering with the plaintiff's peaceful possession and occupation of the said property.
9. General damages in the sum of N250,000 against the 1<sup>st</sup> defendant for breach of trust.
10. Damages in the sum of N250,000 against the defendant, jointly and severally for the agony, trauma and embarrassment suffered by the plaintiff as a result of the unlawful and unauthorized sale of the plaintiff's property.
11. Special damages in the sum of N100, 000 against the 1<sup>st</sup> and 2<sup>nd</sup> defendant jointly and

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severally being the cost of this action.

The appellant filed a joint statement of defence of the 1<sup>st</sup> and 2<sup>nd</sup> defendants and counter claim in thesecond suit, wherein they counter claimed as follows:

1. The 1<sup>st</sup> and 2<sup>nd</sup> defendants affirm the government documents contained in paragraphs 1-31 of the statements of defence.
2. A mandating injunction compelling the plaintiff to release all documents and keys in connection with the said property to the 2<sup>nd</sup> defendant forthwith, being the new owner in respect thereof.
3. An order for account of the rents collected so far by the plaintiff in respect of the property in dispute from April 1990 to date and the payment of such money to the 2<sup>nd</sup> defendant.
4. Damages in sum of N200, 000 against the plaintiff in favor of the 1<sup>st</sup> and 2<sup>nd</sup> defendants for the agony, trauma and the embarrassment suffered as a result of the plaintiff's claim.
5. Special damages in the sum of N50,000 against the plaintiff being the cost of this action
6. An order of perpetual injunction restraining the plaintiff, her agents, privies or nominees from further act of trespass in respect of the property situate in and known as Flat 5, Block A78, LSDPC Low-cost Housing Estate.

Suit No. LD/3276 and Suit No. LD/769/97 were subsequently consolidated and the trial commenced before Hon. Justice D.F. Akinsanya J., on 4/11/1999. The 1<sup>st</sup> appellant testified as PW1, and he tendered Exhibits A-E. The 1<sup>st</sup> appellant called the 2<sup>nd</sup> appellant who testified as PW2, and tendered Exhibits G-S. On her part, the 1<sup>st</sup> respondent testified as DW1; she tendered Exhibits T, Y, V, W, X, Z and Exhibits AA-GG. The respondent called their daughter, Ms. Oyindamola Aina, as her DW2. The 2<sup>nd</sup> respondent, who was the 3<sup>rd</sup> defendant opted not to call witnesses. At the close of the trial counsel submitted and adopted their written addresses, and in his judgment delivered on 19/11/2004, Akinsanya J. held that the conduct of the 2<sup>nd</sup> claimant in attempting to sell the said flat above the head of his entire family is an unconscionable act. The judge held that a trust ensues for the benefit of the 1<sup>st</sup> defendant who from all the circumstances of the matter is the beneficiary of the trust and consequently the owner of the flat even though the document are in the name of the 2<sup>nd</sup> claimant, Mr. Olayinka Aina. Consequently, the 2<sup>nd</sup> claimant is not competent while that trust existed. The 2<sup>nd</sup> claimant (Mrs. Aina) was therefore granted those declaratory reliefs endorsed in her statement of claims in Suit No. LD/769/97, item Ns. 1, 2,3, 4, 5, 6,7 and 8; claims 9, 10 and 11 were refused.

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The appellant original appeal to the court was struck out on 17/6/2010 for failure to obtain, however by an order of the court dated 8/11/2013, they were granted an extension of time to file a notice and grounds of appeal and the notice of appeal so filed contained 4 grounds of appeal. They distilled 3 issues for determination in their brief settled by Oladele Ojogbede, Esq. i.e.,

1. Whether from evidence before the learned trial judge, a resulting or implied trust can be implied to exist in favor of the 1<sup>st</sup> respondent who produced no evidence of title against the preponderance of evidence in favor of the 2<sup>nd</sup> appellant, produced before the trial court.
2. Whether the 2<sup>nd</sup> appellant had authority/ power to pass title to the 1<sup>st</sup> appellant.
3. Whether from the totality of evidence adduced by the parties to the suit, the learned trial judge was right to be inclined by the weight of evidence proffered by the 1<sup>st</sup> respondent to accept her evidence as credible.

The appellants' stand on issue 1 is that a defence of resulting trust for which 1<sup>st</sup> respondent has not adduced any credible evidence cannot avail her in the face of a preponderance evidence of title, which have not been adduced. They submitted that though a court may infer a resulting or implied trust from presumed but unexpressed intention of parties, there must be some circumstances from which it can infer an intention to transfer title, citing *Ezennah v Attah*; that there are no circumstances demonstrating an unexpressed but presumed intention on 2<sup>nd</sup> appellant's part to transfer the property to the 1<sup>st</sup> respondent on trust; that she only relied on oral evidence against a preponderance of documentary evidence of title produced by 2<sup>nd</sup> appellant. She further argued that the relationship between them is one of trusteeship; that the circumstances of the purchase constituted the 2<sup>nd</sup> appellant, a trustee of the property on her behalf, that a resulting trust arises whenever the law deems it fit to infer trust from the circumstances, and that there is usually no expressed intention but the law ascribes a legal intention to make a presumed owner hold the property on trust, which can arise where two or more people supply the purchase price, and the document relating to the sale is taken out in the name of one or more, the holder(s) is presumed to hold the property on trust for himself and the other persons, who supplied the purchase price. She further submitted that where the legal title to a property is in one person, and the equitable right to the self-same property is in another person, a court of equity will infer an implied trust from unexpressed but presumed intention of the settler; that the legal title of the flat, though resided in the 2<sup>nd</sup> appellant by reason of allocation documents issued in his name, the equitable interest vests on her, who provided the purchase money and other collateral money thereby constituting him, an

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implied constructive trustee, holding the legal estate of the flat in her favour.

The appellant filed a reply brief in which they offered more or less, the same argument as in their brief, which is not the function of reply brief.

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 person who advanced 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, parole evidence is admissible to prove by whom it actually made.

The court held that the lower court was right to conclude that a trust ensues for the 1<sup>st</sup> respondent, who is a beneficiary and owner of the flat. The lower court was also right in holding that the 2<sup>nd</sup> appellant is not competent to pass title to the 1<sup>st</sup> appellant while that trust existed. Stripped of all the arguments canvassed in their brief of argument that relate to issue 1, the appellant's contention is that since the legal title of the property is vested in the 2<sup>nd</sup> appellant, it logically follows that he is legally competent to transfer it to a third party, and he is equally entitled to execute the deed of assignment and power of attorney in the favor of the 1<sup>st</sup> appellant, citing *Aigbobahi v. Aifuwa*, *Okelola v. Adelek*. They further argued the 2<sup>nd</sup> appellant notified and obtained consent of LSDPC (2<sup>nd</sup> Respondent) for the transaction; that 2<sup>nd</sup> appellant having established his authority to transfer the property, the onus shifted to the 1<sup>st</sup> respondent to adduce evidence in proof of her alleged competing interest in the property, which she failed to do, that even if there was a trust in her favor, the 1<sup>st</sup> respondent failed to notify LSDPC or LBIC of the existence of such trust which means a subsequent purchase for value would have no notice, whether constructive or imputed, of the trust; that even if the defence of the resulting trust availed the 1<sup>st</sup> respondent, the 1<sup>st</sup> appellant would still be a bonafide purchaser for value, as he took diligent steps to conduct a search at LSDPC (2<sup>nd</sup> respondent)'s office where the allocation to the 2<sup>nd</sup> appellant was confirmed and there was no notice of any such trust in its records, which would have constituted notice to the 1<sup>st</sup> appellant; that the letter purportedly written by the 1<sup>st</sup> respondent's solicitors to LBIC was written when consent had already been given – medicine after death; and such letter cannot constitute the kind of notice envisaged by law in the circumstances of this case. The court was urged to hold in their favour.

The court held that she is the only one that can validly transfer the property to a third party; and that the purported sale to the 1<sup>st</sup> appellant is unlawful, null and void and of no effect as "he who does

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not have cannot give” – “*nemo datquod non habet*”. The court was urged to resolve this issue in her favor, and affirm the lower court’s decision. It has been decided as an unfair rule since it is an innocent party buyer that will suffer and also because it is not necessarily in keeping the modern commerce and trade, but the law is what it is and we must apply it. The appellants based their claims on title documents in 2<sup>nd</sup> appellant’s name but 2<sup>nd</sup> appellant did not have it to give, he is nothing but a trustee, and the 1<sup>st</sup> respondent is a beneficiary of the trust. The court held that the appeal lacked merit and it fails and is dismissed, confirming the decision of the lower court and the 1<sup>st</sup> respondent is awarded costs of N100, 000.

### 3.0 Case Review

The case of *Jolugbo & Anor v, Aina & Anor* mainly centers on the equitable principle of resulting trust and presumption of advancement. A resulting trust arises where one person transfers property to another without gaining anything in return, the result of a resulting trust is that the recipient of the property holds the property in trust for the donor who is the owner. This was evident in the instant case where the court made a distinction on the presumption of advancement and held that the law also makes a distinction between the husband and the wife – when a wife buys a property and conveys it in the name of her husband, there is no presumption of advancement in favor of the husband; he holds in trust for his wife. However, if the husband purchases a property in his wife’s name, it is *prima facie* a gift to her.

It is pertinent to note that there are different classifications of trusts. There is Express trust, implied or resulting trust and conservative trusts. Express trust arise when the owner declares himself a trustee of the property for the benefit of another person or vests property in another as trustee for the benefit of another person. Implied trust or resulting trust arise from the presumed intentions of the owner; the presumed intention arises by operation of law not by agreement of the parties, where it will be unconscionable for the “apparent beneficial owner” or trustee to hold the property for his own benefit.

In this case, we are majorly concerned with implied or resulting trust, which may arise in the following circumstances–

1. Where an express trust fails
2. Where the beneficial interest under an express trust is not fully exhausted
3. Where there is a purchase in the name of another or where a person makes a voluntary conveyance of his property to another.

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Resulting trust is a trust imposed by law when someone transfers property under circumstances suggesting that he or she did not intend the transferee to have beneficiary interest in the property. A resulting trust arises because of the transferor's intention. It is also settled that a presumption of a resulting trust may be defeated by the presumption in trust, contract and family law that suggests that property from a parent to a child, or spouse to spouse, is a gift and would defeat any presumption of a resulting trust.

In this case, the Court of Appeal held that trustees are legal owners of the trust property but they are obliged to hold the property in trust for the benefit of one or more individuals. The trustees therefore owe a fiduciary duty to the beneficiaries who are the 'beneficial' owners of the trust property. The significant feature of the trust is its separation of the legal ownership of the trust property from its equitable or beneficial ownership. Where a woman purchases a property in the name of her husband, it does not belong to him. The presumption of advancement does not apply in this situation as the husband is holding the property in trust for his wife.

The decision of the lower court and the Court of Appeal is unarguably the accurate position of law as some critics have argued that resulting trust arise to reverse unjust enrichment.

They argue that resulting trust is a victory for unjust enrichment. However, before a resulting trust can be established, the burden of proving resulting trust lies on the party claiming it to give clear and convincing evidence that he furnished the purchase price. This was evident in this case; the wife, the 1<sup>st</sup> respondent was not disputing the fact that the legal title resides in the husband but she contends that the equitable interest resides with her since she provided the purchase price and the collateral money and consequently, he is holding the property in trust for her. The wife in her argument submitted that she established the circumstances that gave rise to the presumption in her favour. She conceded that the property was purchased in the 2<sup>nd</sup> appellant's name as shown by Exhibits "W" and "V", and she insisted that she paid the deposit of N1, 200. She argued that she paid the outstanding mortgage balance and Exhibits "Y" and "Y7" attests to this fact. Besides the payment of the initial deposit of N1,000 which she gave him, the 2<sup>nd</sup> appellant did not play any further role in the acquisition, renovation, management or repayment of the mortgage loan on the property except the sum of N1,000 which he surreptitiously paid into the account in 1990 to pave way for his fraudulent sale of the house in 1991.

The wife bore all the responsibilities towards the property including:

1. Advancing the initial deposit sum

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2. Opening the mortgage account (Exhibit T)
3. Servicing/payment of the mortgage loan; amongst others.

With these clear evidences, she argued that the relationship between them is one of trusteeship and from the circumstances of the case, the 2<sup>nd</sup> appellant is merely a trustee of the property on her behalf; that a resulting trust arises whenever the law deems it fit to infer a trust from the circumstances; and that there is usually no expressed intention but the law ascribes a legal intention to make a presumed owner hold the property in trust, which can arise where two or more persons supply the purchase price.

In the same vein, some scholars have argued in favor of the 2<sup>nd</sup> appellant, asserting that he had the right to transfer title to the 1<sup>st</sup> appellant based on the fact that the legal title of the property resides with him, therefore making him legally competent to transfer title to a third-party. They base their argument on the general land law principle that legal title is actual ownership of the property as when the property has been bought. They further argued that the 1<sup>st</sup> appellant is equally entitled to execute a deed of assignment and power of attorney in his favour. A deed of assignment is an essential land document required to bind the legality of the transaction between the two parties. Extensively, it transfers the ownership of land or property from an assignor to a new assignee. Though the appellants based their claims on the fact that the title document were in the name of the 2<sup>nd</sup> appellant, the law is what it is, as the 2<sup>nd</sup> appellant cannot give what he does not have. He is merely a trustee, and the 1<sup>st</sup> respondent is a beneficiary to that trust. The 1<sup>st</sup> respondent is the only one that can validly transfer the property to a third party and the purported sale to the 1<sup>st</sup> appellant is null and void due to the *nemo dat quod non habet* rule.

It should be noted that the land law principle where a title document of a property is in someone's name is still a subsisting principle which gives such a person a legal claim to the property. However, it should be distinguished from the principle of equitable interest of another person in the property especially in scenarios like the instant case where the equitable interest lies in the party who provided the purchase price, and the other party is merely holding the property as a trustee, hence his legal interest in the property. Consequently, he cannot validly transfer the property to a third party – *nemo dat quod non habet* – although the rule is said to be a harsh rule as it is the innocent third party buyer who suffers, but the law is what it is and it must be applied.

## 4.0 Conclusion and Recommendation

The decision in *Silver v Silver* is quite different from the decision from the decision reached in

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*Jlugbo & Anor v. Aina & Anor* In *Silver v. Silver*, delivered by Justice Amina Adamu Augie, JSC (as she then was), the court held that if a husband purchases a property in his wife's name, it is *prima facie* a gift to her. With the principle of resulting trust, the case of *Jlugbo and Amor v Aina* and an or took a different turn, as the court held that where a woman purchases a property in the name of her husband, the property does not belong to him, and the husband is merely holding the property in trust for his wife. The husband holds a legal title to the property, and the equitable interest in the property resides in her since she provided the purchase price and other collateral money, therefore she reserves the right to transfer title to a third party. This played out in the instant case where the court held that only the wife, the 1<sup>st</sup> respondent can validly transfer the property to a third party as the husband is merely a trustee to the property, holding it in trust for the wife. In this case, the purported sale to the 1<sup>st</sup> appellant was held to be null and void as he who does not have cannot give. The *nemo dat quod non habet* rule that applies in this instant case has been said to be a harsh rule to the third party buyer.

However, it is recommended that the rule may avail the innocent third party buyer where he acquired the property in good faith and without knowledge of the rights of the original owner of the property.

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