



2. AN ORDER of interlocutory injunction restraining the Respondents, their servants, officers, agents, assigns or anybody or authority acting for them or on their behalf from disposing of or auctioning properties already attached and in custody of the 2<sup>nd</sup> Respondent to wit:
  - i. Ford Escape SUV with registration no. CF1136RBC
  - ii. Set of cushion chairs
  - iii. Big Samsung fridge RS21HFTPN 610 liters
  - iv. Small Heir Thermocool fridge
  - v. 1 NR45 inches vizio television
  - vi. SG TV 40 F500
  - vii. Scan frost gas cookers & Samsung microwaves
  - viii. Gas cylinder JKexer machine
  - ix. GoTV, DSTV, Sony decoders
  - x. 1 Binatone and 1 Ellington standing fanspending the determination of this appeal.
3. AN ORDER of interlocutory injunction restraining the Respondents, their servants, officers, agents, assigns or anybody or authority acting for them or on their behalf from further executing or attaching the properties of the judgment Debtor/Applicant pending the hearing and determination of the appeal.
4. In the alternative, AN ORDER of this Honourable Court mandating the 2<sup>nd</sup> Respondent to deposit the proceeds from the auction of the properties, if any, into an interest yielding account of this Honourable Court pending the determination of the Appeal.
5. AND FOR SUCH FURTHER OR OTHER ORDER this Honourable court may deem fit to make in the circumstances.”

The application is supported by a 17- paragraphed affidavit with three (3) exhibits annexed thereto, and predicated on the following grounds:

1. The 1<sup>st</sup> Respondent got a judgment against the Applicant in Suit No. CV/329/17 dated the 22/12/2017 before his Worship Chief Magistrate FatiTafida of Chief Magistrate Court 1 sitting at Wuse Zone 6, Abuja.
2. That the said judgment was enforced against the Applicant on 21/6/2018, wherein certain items as contained on the face of the motion paper were attached by the Enforcement Department of the High Court i.e. the 2<sup>nd</sup> Respondents in satisfaction of the Judgment sum.
3. That the Respondents are threatening to embark on another execution of the said Judgment upon disposing the items attached should the proceeds of the first execution not be enough to satisfy the Judgment sum.
4. That the Judgment Debtor/Applicant being dissatisfied with the said Judgment has now prepared and filed his Notice of Appeal, Motion for Extension of Time as well as complied and transmitted the record of proceedings of the lower court.
5. That it is in the interest of justice to restrain the Respondent from tampering with the res pending the determination of the appeal.

At the hearing, parties adopted their respective addresses. The sole issue formulated for determination in the Applicant's written address dated the 3<sup>rd</sup> May 2019 is: ***Whether the Court can in the circumstance of this matter***

***stay further execution of the Judgment pending the determination of the said Appeal.***

The Applicant's contention is that the auction/sale/release of proceeds of auction as well as stay of further execution of the judgment of the Lower Court be stayed pending the determination of the appeal. Counsel submits that the first execution and sale has not been completed in that some of the items attached during the execution have not been sold. He queried why the Respondents are in a hurry to carry out further execution, when the first execution was yet to be concluded.

In ***OKAFOR & ORS v. NNAIFE (1987) LPELR-2420 (SC)***, the Supreme Court (per *Oputa, JSC*) stated thus:

“What principles will, and should, guide the courts in applications for a stay of execution. These principles have been reiterated in very many decisions of this Court. Perhaps it may be well here to re-emphasize some of them (1) The Courts have an unimpeded discretion to grant or refuse a Stay. In this, like in all other instances of discretion, the court is bound to exercise that discretion both judicially and judiciously and not erratically. (2) A discretion to grant or refuse a Stay must take into account the competing right of the parties to justice. A discretion that is biased in favour of an application for a Stay but does not adequately take into account the Respondent's equal right to justice is a discretion that has not been judicially exercised. (3) A winning plaintiff or party has a right to the fruit of his judgment and the courts will not make a practice at the instance of an unsuccessful litigant of depriving a successful one of the fruits of the judgment in his favour until further appeal is determined...(4)

An unsuccessful litigant applying for a Stay must show “Special Circumstances” or “exceptional circumstances” eloquently pleading that the balance of justice is obviously weighted in favour of a Stay.(5)What will constitute these “Special or Exceptional” circumstances will no doubt vary from case to case. By and large, however, this court in VASWANI TRADING COMPANY VS SAVALAKH AND COMPANY (1972)12 SC 77 at page 82, held that such circumstances will involve “a consideration of some collateral circumstance and perhaps in some cases inherent matters which may, unless the order for Stay is granted, destroy the subject matter of the proceedings or foist upon the Court, especially the Court of Appeal, a situation of complete helplessness or render nugatory any order or orders of the Court of Appeal or paralyse, in one way or the other, the exercise by the litigant of his constitutional right of appeal or generally provide a situation in which whatsoever happens to the case, and in particular even if the appellant succeeds in the Court of Appeal, there and in the Court of Appeal, there could be no return to the status quo” (6) The onus is therefore, on the party applying for a Stay pending appeal to satisfy the court that in the peculiar circumstances of his case a refusal of a Stay would be unjust and inequitable. (7) The court will grant a Stay where its refusal would deprive the Appellant of the means of prosecuting the appeal... The above are some of the general rules guiding and governing the court in the exercise of its discretion to grant or refuse a Stay. The above list is not, however exhaustive.”

In the instant case, the Judgment Debtor/Applicant’s reason for seeking a stay of further execution of the judgment is contained in the affidavit in support of the application, with particular referenceto paragraph 5(i), (j), (k), (l), (p), (r), (s)and (t). We have equally examined the Notice of Appeal

and Exhibit SD3 attached to the further and better affidavit, which is a letter written by learned counsel for the Judgment Debtor/Applicant to the 2<sup>nd</sup> Respondent who acknowledged receipt on 8/4/19.

However, the 2<sup>nd</sup> Respondent did not respond to Exhibit SD3. He equally refused, failed or neglected to appear before this court even though Hearing Notice was duly served on him. As things stand now, there is no official report of the sale of seized items carried out by the 2<sup>nd</sup> Respondent or the amount realized from the sale. The grouse of the Judgment Debtor/Applicant is that the Respondents [especially the 2<sup>nd</sup> Respondent] have refused to declare the exact amount realized from the sale of his seized properties. His further contention is that the appeal raises grounds of appeal that are jurisdictional in nature, which are likely to succeed.

It is not in dispute that execution has been levied and some of the attached goods sold by auction. To our mind, the 2<sup>nd</sup> Respondent's failure or neglect to respond to the Judgment Debtor/Applicant's request dated 8/4/19 [Exhibit SD3] "*for details of the items subject of execution*" constitutes a special or exceptional circumstance to warrant the grant of stay of further execution.

We accordingly record an order staying further execution of the judgment delivered on 22/12/17 by *His Worship, Fati Tafida* in Suit No. CV/329/17 pending the determination of the appeal. The Respondents

are equally hereby restrained from disposing of or selling, whether by way of public auction, private treaty or otherwise howsoever, the residue of the items attached in execution of the said Judgment which are still in the custody or control of the 2<sup>nd</sup> Respondent pending the determination of the appeal. IT IS SO ORDERED.

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**PETER OYINAFFEN**

Presiding Judge

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**ASMAUAKANBI-YUSUF**

Hon. Judge

**Counsel:**

***E. S. Maji, Esq.*** (with him: ***O. G. Adeyanju, Esq.***) for the Appellant/Applicant.

***Vincent Adodo, Esq.*** (with him: ***Myson Nejo, Esq.***) for the Respondent.