

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)  
HOLDEN AT WUSE ZONE 2  
HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU  
AND  
HIS LORDSHIP HON. JUSTICE Y. HALILU  
ON THE 30<sup>TH</sup> DAY OF OCTOBER, 2018

APPEAL NO: CVA/305/17

BETWEEN:

1. XAMXIRAX PROPERTIES DEVELOPMENT COMPANY LTD } JUDGEMENT DEBTOR/  
2. BELLO MAARUF } APPELLANT/APPLICANT

AND

MR. DAHIRU TATA -----RESPONDENT

*G. U. NWANERI appears with ALEX O. C. IBE for the appellant.*

*ABDULRAHAMAN MADAKI appears with PAUL M. AYAM for the Judgement  
Creditor/Respondent.*

**RULING**

The instant application was filed by the judgement debtor/appellant/applicant on the 11<sup>th</sup> day June 2018 and dated the same day seeking for an Order varying the order of stay of execution made on the 16<sup>th</sup> day of May 2018 by my learned brothers **Hon. Justice S. C. Orji** and **S. M. Nasir** at the previous appeal session, to wit that the judgement debtors/appellants/applicants deposit the judgement debt into an interest yielding account in the name of the Chief Registrar of the High Court on or before the 16<sup>th</sup> day of June 2018.

The unconditional stay of execution was made pending the hearing and determination of the appeal filed by the applicants in this court. The appeal was adjourned for hearing before this panel. Rather taking further steps towards the hearing of the appeal, the judgement debtors/appellants/applicants filed an application under consideration.

In addition to the order varying the stay of execution, the judgment debtors/appellants/applicants further seeks in the alternative an Order staying execution of the Order of my learned brothers and an injunction restraining the respondents from enforcing or taking any steps to enforce the order of the court made on 16<sup>th</sup> May, 2018.

In support of the application is a 6 paragraph affidavit deposed to by **Gerald Umunna Nwaneri**, a legal practitioner and counsel in the law firm engaged by the applicant to prosecute their appeal. The summary of the deponent's story is that the 1<sup>st</sup> applicant got a judgement in suit No. FCT/HC/CV/858/2014 in respect of property in contention between the applicants and the respondents, which the applicants are yet to execute. And if executed, the judgement sum inclusive of post judgement interest will be sufficient to satisfy the judgement in plaint No.CV/46/2016 as both claims and judgements obtained therein are related to the subject property. The deponent further averred that if this court does vary its order for stay of execution the judgement of the lower court and proceed to enforce same, they the applicants would be out of funds in prosecuting this appeal against the judgement of the lower court delivered on the 7<sup>th</sup> of December, 2016.

In opposition, the respondent filed a 22 paragraph counter-affidavit of one **Chijioke Okpo Ogboji** also a legal practitioner in the law firm of counsel representing the respondents.

In **Paragraph 14** thereof the deponent averred that the applicants became tenants of the respondent between 30<sup>th</sup> June 2013 to 29<sup>th</sup> June 2014 and paid **₦2,750,000 (Two Million Seven Hundred and Fifty Thousand Naira)** only and held back the balance of **₦1,250,000 (One Million Two Hundred and Fifty Thousand Naira)** for further renovation out of **₦4,000,000 (Four Million Naira)** agreed as rent for that period and thereafter.

**"Paragraph 15:** That the applicants held on to the respondent property until 24<sup>th</sup> October, 2016 when possession was given-up without payment of rent from 30<sup>th</sup> June 2014. A copy of the hand over from signed by both parties is attached herein as Exhibit AB.

**Paragraph 16:** That on the 13<sup>th</sup> September 2017, the respondent went to enforce the judgement of the lower court delivered on 7<sup>th</sup> December 2016 in Suit No. CV/46/2016 and the applicant pleaded to be given three months to pay the judgement sum and wrote a letter to the respondent's solicitor to this effect dated 15<sup>th</sup> September 2017. That said letter is attached herein as Exhibit AC.

**Paragraph 17:** That the applicants obtained the judgement on 20<sup>th</sup> November 2015 and never took steps to enforce the said judgment against third party in suit No. CV/858/2014 for a period of about two and half years.”

The respondents stated further in **Paragraph 21** that it will be in the interest of justice if the application is refused as the respondents will be prejudiced. All the parties filed written addresses which were adopted by their respective counsel on 26/6/18.

We have taken an insightful look into the circumstances that led to the instant application by the applicants. We have equally considered the argument canvassed by all the parties in their written addresses. There is no doubt that this application is an invitation by the applicant to this court to sit on appeal over the decision of our learned brothers. The grant or refusal of a stay of execution of judgement is discretionary based on peculiar facts and circumstances of each case. Therefore to seek for a variation or stay of the execution of such order by a court of coordinate jurisdiction is tantamount to questioning the exercise of discretion of the court.

The res which the judgement debtor/appellant/applicant seeks to stay is monetary judgement. It is trite that the court will not make it a habit denying or depriving a successful litigant the fruits of his judgement. The lower court has not asked that the judgement sum be paid to the respondents but into the accounts of the High Court of the Federal Capital Territory so that whichever party succeeds at the end of the appeal has its money.

The claim of the applicants that it will be difficult for them to prosecute the appeal is baseless and not substantiated in any form. The burden is on the applicants to supply material facts to show their financial position. The exercise of inherent jurisdiction of the court in granting an application is not at large; it must be exercised within the compartments of equity, fairness and justice.

This application we hold is a waste of time and a calculated attempt at frustrating the respondents. Consequently, it is hereby struck out.

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**HON JUSTICE A. S. ADEPOJU**

**Presiding Judge**

**30/10/2018**

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**HON JUSTICE Y. HALILU**

**Hon. Judge**

**30/10/2018**