

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

BEFORE HONOURABLE JUSTICE J ENOBIE OBANOR

ON THIS 15TH DAY OF JULY, 2024

SUIT NO: CV/1881/2022

MOTION NO: M/8119/2024

BETWEEN:

COMFORT JEHZI MUISANYA      ...      JUDGMENT CREDITOR/RESPONDENT

AND

REBECCA KASUWA      ...      JUDGMENT DEBTORS APPLICANTS

**RULING**

The application M/8119/2024 before the Court for determination was filed by the Judgment debtor/Applicant on 16<sup>th</sup> May, 2024 where in the following reliefs were sought:

1. An order staying execution of the Judgment of this Honourable Court delivered on the 13<sup>th</sup> day of May, 2024, in the suit between Comfort Jezhi Muisanya Vs Rebecca Kasuwa pending the hearing and determination of the Appeal filed at the Court of Court (sic).
2. An order of Injunction restraining the Judgment Creditor/Respondent by herself, Agents, Servants, Deputies, Assistants and all officers of the Nigerian Police, F.C.T. Police Command or any other officers of the Nigerian Police Force howsoever or any security personnel or persons howsoever acting on behalf of the Judgment Creditor/Respondent inclusive of the Officials of this Honourable Court

from selling, threatening to sell, dealing with, tempering with or threatening to evict the Applicant from the property subject matter of the Honourable Court's Judgment delivered on the 13<sup>th</sup> day of May, 2024, pending the hearing and determination of the Applicant's Appeal before the Court of Appeal (sic).

3. An order directing parties to maintain status quo ante bellum pending the hearing and determination of the Applicant's Appeal at the Court of Appeal.
4. And for such further order(s) as the Honourable Court may deem fit to make in the circumstances.

In support of the application is a nine (9) paragraph affidavit deposed to by the Applicant, Rebecca Kasuwa, three (3) Exhibits marked as Exhibits A to C. Equally filed in support is written address.

In response, the Judgment Creditor/Respondent on 1<sup>st</sup> July, 2024 filed a Counter-affidavit of 7 Paragraphs deposed to by the Judgment Creditor/Respondent and a written address in support of his Counter affidavit.

Counsel for the Judgment Debtors/Applicant in his written address filed raised one issue for determination, which is:

*Whether it is just and equitable to grant this application.*

On the other hand, Counsel to the Judgment Creditor/Respondent, distilled an issue for determination by the Court in his Written Address filed on 4<sup>th</sup> March, 2024, thus:

*Whether the Judgment Debtor/Applicant is entitled to an order of Stay of Execution of the Judgment of this Honourable Court.*

I have carefully considered the processes filed and submissions of learned Counsel on both sides in support of the application and in opposition to same. Having reviewed the grounds on which this application is based, as outlined in the motion paper, I shall adopt the sole issue raised by the Judgment Creditor/Respondent, to wit: *Whether the Judgment Debtor/Applicant is entitled to an order of Stay of Execution of the Judgment of this Honourable Court.*

In our adversarial legal system, it is a well-established principle that the decision to grant or deny an application for a stay of execution pending the outcome of an appeal is at the discretion of the Court. This discretion must be exercised judicially and judiciously, taking into account the evidence and specific circumstances of the case. See *ABOSELDEHYDE LABORATORIES PLC v. UNION MERCHANT BANK LTD & ANOR*(2013) LPELR-20180(SC).

Courts have identified several factors that serve as guidelines for exercising this discretion appropriately.

1. The grounds of appeal must raise substantial legal issues in an area of Law that is novel or recondite.
2. The application must disclose special circumstances why the judgment should be stayed.
3. The application must disclose why matters should be put in status quo or preserve the res so as not to render the appeal nugatory.

See *SPDC (NIG) LTD v. AMADI & ORS*(2011) LPELR-3204(SC).

The Judgment Debtor/Applicant has averred that she has lodged a Notice of Appeal at the Court of Appeal and equally applied for the compilation and transmission of the Record of Appeal. She also averred

that the Appeal supposedly filed at the Court of Appeal will be rendered nugatory if the execution of the judgment of this Court delivered on 13<sup>th</sup> May, 2024 is not stayed. The Applicant in her affidavit has also stated that the Notice of Appeal raised substantial and recondite issues for determination by the Court of Appeal.

It is a well-established legal doctrine that a court will only grant a stay of execution of a judgment if compelling or extraordinary circumstances justify such action. This principle is based on the presumption that a court's judgment is correct and fair unless proven otherwise. Generally, courts are reluctant to deny a successful litigant the benefits of their legal victory. These principles, as articulated by the Supreme Court, guide the consideration of a stay of execution.

In the case of OLUNLOYO v. ADENIRAN (2001) LPELR 2627(SC) the Supreme Court held as follows:

*"A litigant applying for a stay of execution must thus show special or exceptional circumstances pleading eloquently the balance of justice weighing in his favour, even though what constitutes special or exceptional circumstance may vary from case to case. See Okafor v. Nnaife (supra)."*

I have scrutinized the processes filed by the Applicant and the Exhibits attached and it is not contained therein the exceptional circumstances alluded to by the Applicant. This Court will not deny a successful litigant of the fruits of his labour without exceptional circumstances being presented by the Applicant.

Additionally, the law dictates that a stay of execution is not warranted in every case where the grounds of appeal raise points of law. In the present case, the Applicant contended that the appeal would be rendered nugatory if it succeeds. However, the Applicant has not demonstrated how the appeal would be rendered nugatory.

From the foregoing, it will not be out of place for this Court to reject the application of the Applicant. The application of the Applicant is hereby dismissed.

I so hold.

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HON. JUSTICE J. ENOBIE OBANOR

Judge

Legal Representation:

For the Judgment Creditor/Respondent; Mohammed Ndarani Mohammed, SAN, Paul Harris Ogbole, SAN and Jonathan Taidi, SAN.

For the Judgment Debtor/Applicant; Isaac Paul, Esq