

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

23RD DAY OF FEBRUARY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/2216/2016
MOTION NO. M/3199/2023

COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

DOO PETROLEUM COMPANY LIMITED

(Suing in the name of its Attorney,
MR. FRANK AMADI, doing business under the
name and style of **FRANK AMADI & PARTNERS**)

**CLAIMANT/
RESPONDENT**

AND

HAJIYA HALIMA MOHAMMED GAMBO ... DEFENDANT/APPLICANT

RULING

This application brought by the Defendant dated 11/01/2023 is for an Order of stay of further proceedings pending the hearing and determination of the interlocutory appeal filed against the Ruling of this Court delivered on the 7/06/2022.

Learned Counsel relies on the two grounds upon which the application is brought, which are:

- (1) That the Defendant is dissatisfied and has appealed against the said Ruling.
- (2) That an Order of stay of proceedings is necessary so as not to foist upon the Court of Appeal a situation of complete helplessness.

Learned Counsel further relies on the 11-paragraph Affidavit sworn to by Khoni Bobai, Counsel in Chambers handling this matter. The Affidavit is therefore defective and irregular having breached professional ethics.

Nevertheless, the depositions are records of the Court. I shall therefore make use of it.

She deposed that the Defendant/Applicant's right to testify and put up a proper defence in this case was extinguished. That Defendant is dissatisfied with the Ruling.

That appeal number has been assigned to the case. That the appeal raised substantial issues. That if the Court proceeds with the hearing, the appeal would have been rendered impotent.

The Claimant also relies on his 4-paragraph Counter Affidavit. Joy Sunday deposed that Defendant filed a Motion to reopen their case and Ruling was delivered refusing the application.

That this is a 2016 case and Respondent closed its case since 2018. That Defendant's Counsel has not been tardy in handling the matter by seeking for adjournment for various reasons.

That Defendant had ample opportunity to conduct the defence. That the appeal requires leave of Court. That the Notice of Appeal was filed without leave. No recondite issues of law was raised in the said Notice of Appeal.

I have also read the Written Addresses of Counsel. The appeal upon which Defendant's Counsel hinges his application is an interlocutory appeal. There is only one ground in the said Notice of Appeal.

Where an appeal is against an interlocutory decision as in this case, and it raises a question of facts or mixed law and facts, leave of Court is required. However, an appeal that is of right requires no leave of Court.

I have looked at the only ground of appeal. It is headed "Error in Law". It raises a question of mixed law and facts. In the circumstance, leave of Court is required before an appeal can be lodged.

The law is that leave of Court where it is required, is a condition precedent to the exercise of a right of appeal. Failure to seek leave as in this case renders the appeal incompetent.

In the circumstances, the application for stay of proceedings has no base to stand. Even if the appeal is competent before this Court, it is trite that the Court has discretion to grant or refuse an Order of stay of proceedings.

Such discretion is to be exercised judicially and judiciously. The exercise of discretion is prompted by the peculiar circumstances of each case in which all the factors for and against the grant of stay of proceedings must be carefully and meticulously weighed.

I have gone through the records. I completely agree with Claimant's Counter Affidavit, particularly paragraph 3 (d) - (p). The Defendant was given all the opportunity to defend her case but failed to do so.

The case is a 2016 case. The Claimant closed its case in 2018. For 5 years the defence could not conclude her defence. There has been a plethora of excuses until the Court foreclosed the Defendant.

In the peculiar circumstance of this case, it is my view that this alleged appeal is a further ploy to frustrate this case.

Additional factors that may also arise for consideration are:

- (1) A competent appeal.
- (2) Appeal is arguable.
- (3) The existence of special and exceptional circumstances.
- (4) The competing rights and convenience of both parties.
- (5) The action should not be an abuse of Court process.
- (6) Where the grant will unnecessarily delay and prolong proceedings, it should not be granted.

In my view, the appeal is not competent. No special circumstances have been proved by the Applicant.

I have weighed the competing rights and convenience of parties, it is in favour of the Claimant/Respondent. It is a case of landlord and tenant since 2016.

This application seems to me to be an abuse of Court process and of course, the grant of this application will unnecessarily delay and prolong litigation.

In totality and on the peculiar circumstance of this case, it will serve the interest of the administration of justice to refuse the application. It is hereby refused and accordingly dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
23/02/2023

Parties absent.

Lillian Ojemma, Esq. with O. J. Aboje, Esq. and K. K.

Ogbonnaya, Esq. for the Claimant.

P. O. Oghagbon, Esq. for the Defendant/Applicant.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
23/02/2023