

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA
ON THE 6TH DAY OF MAY, 2024

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

SUIT NO. FCT/HC/CV/2468/2020

MOTION NO. M/1211/2023

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

KEVIN OBI CLAIMANT/APPLICANT

AND

CHRISTIAN CHUKWUDI OBI DEFENDANT/RESPONDENT

RULING

The Motion seeks for an Order of staying further execution of the Judgment delivered by this Court on the 10/10/2023 pending the determination of the appeal.

Learned Counsel relies on the 5-paragraph Affidavit. He deposes that he is dissatisfied with the Judgment of this

Court. That Respondent is desirous of executing the Judgment.

That execution was done on 24/11/2023. Exhibit KV2 is a copy of the Inventory and Notice of Sale.

That Respondent is still desirous of carrying out further execution. That if this Judgment is further executed, the Applicant and his family will lose valuable properties.

That Applicant and his family have moved out of the subject matter to another residential apartment. He has not received the cost of compiling Records of Appeal.

The Respondent's Counter Affidavit was sworn to on the 15/01/2024. He deposes

that the Judgment Debtor have not paid the total judgment sum of ₦6 Million.

That Judgment Debtor filed a mere Notice of Appeal without paying for Records of Appeal.

That execution has been levied. That Judgment has been enforced.

No Record of Appeal has been transmitted. That Judgment Debtor has not fully obeyed the Judgment of the court by paying the judgment sum.

I have also considered the Written Submission of Counsel. The grant of stay of execution pending appeal is undoubtedly and clearly at the discretion of the Court. However, such discretion must be exercised judiciously.

An Applicant seeking for an Order of Stay of Execution must show special or exceptional circumstances why the Order should be made because the Court will not make an Order depriving a successful litigant of the fruits of his success.

The chances of the appeal succeeding in this case is slim.

I have also considered the nature of the subject matter. It is about ownership of property in question by two brothers. The property cannot dissipate. The subject matter cannot be destroyed.

The Applicant has not compiled and or transmitted Records of Appeal. There is no evidence suggesting that the Applicant has paid for compilation of Records of Appeal.

This Court will not make an Order of Stay of Execution in a case where execution had already been lawfully carried out.

Therefore an executed or completed Judgment cannot be stayed as the Court does not make an Order in vain.

In the circumstance of this case, the application fails and it is accordingly dismissed.

HON. JUSTICE U. P. KEKEMEKE, ACIArb (UK), FICMC
(HON. JUDGE)
06/05/2024

Parties absent.

M. A. Turaki, Esq. holds the brief of
Samson Okpetu, Esq. for the
Applicant.

E. G. Chuks Agwuh, Esq. with R. J. Ibrahim,
Esq. holding the brief of Echefu
Jude, Esq. for the Respondent.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
06/05/2024