IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 13

CASE NUMBER : SUIT NO: CV/1670/2020

DATE: : WEDNESDAY 6TH NOVEMBER, 2024

BETWEEN:

APIRIYE ELSIE JAMABO ..... CLAIMANT/RESPONDENT

AND

1. HON. MINISTER OF THE FCT.
2. FED. CAP. DEV. AUTHORITY } **DEFENDANTS/ APPLICANTS**
3. ALHAJI MOHAMMED T. LIMAN

RULING

This Ruling is at the instance of the Defendants/Applicants who approached this Honourable Court praying for an Order or Orders staying further proceedings in this matter pending the hearing and determination of the Appeal lodged against the interlocutory Ruling of the court delivered on the 6th day of February, 2023.

The grounds upon which this application is brought are as follows:-

1. The Applicant filed a motion challenging the jurisdiction of the court to hear and determine this suit on the grounds of it being an abuse of court process.

2. After arguments that court directed the Applicant to file his statement of defence to the statement which is said to be abusive of the court without determining whether the proceedings abused the process of court.

3. Once the issue of jurisdiction is raised, the court must decide it one way or the other before proceeding.

In support of the application is an affidavit of 14 paragraphs duly deposed to by the Applicant in this suit.

It is the deposition of the Applicant that the Claimant brought these proceedings against him and two others claiming ownership of a land which had been entertained and decided by the same FCT High Court in the suit No. **FCT/HC/CV/140/2002** and **FCT/HC/CV/54/2007**.

That the Court of Appeal equally rendered its decision in respect of the same land and against the Claimant.

That when the Claimant commenced the present proceedings, Applicant's counsel raised objection informing the court that this case had gone through the High Court and the court of Appeal up till Supreme Court and this court was then functus officio and could not exercise any jurisdiction over the matter.

That after the arguments, the court adjourned for ruling and on the 6th day of February, 2023, the court delivered its ruling but failed to decide whether the proceedings were abusive of the process of court and order the Applicant to file pleadings.

That the Applicant is dissatisfied with the ruling of the court and has instructed his counsel to appeal the said ruling.

That his counsel advised him that the ruling is interlocutory also leave of either this court or Court of Appeal is required before he can validly appeal the said Ruling.

That this court can only grant him leave to appeal within 14 days of the ruling being delivered and it is now over 30 days since the ruling was delivered.

That he has now applied to the Court of Appeal for leave to appeal the said Ruling and same is now pending before the Court of Appeal. A copy of the application is exhibited here as Annexure "MT1".

That he wants this court to wait for the court of Appeal to render its decision on his appeal before it may proceed.

That he don't want his appeal to become academic or spent should this court continue and finish before the Court of Appeal.

That the Court of Appeal will be utterly helpless should this court conclude its ruling before the Court of Appeal renders its opinion.

In line with the procedure, written address was filed wherein learned counsel submits that being a party in the proceedings, the Applicant is entitled to appeal as of right against that Ruling of this Court delivered on the 6th day of February, 2023. By the

Rules of the Court of Appeal and Court of Appeal Act however, that right must be exercised within 14 days otherwise that leave or extension of time can only be granted by the Court of Appeal.

It is the argument of the learned counsel that in compliance, the Applicant as per Exhibit "MT1" approached the court of Appeal for its leave to appeal the said ruling since the ruling was delivered on the 6th day of February, 2023 and the matter is adjourned to the 7th day of March, 2023 for hearing and the danger is that if this application is not granted the entire appeal process could be rendered impotent. The case of ***B.B APUGO & SONS LTD. VS. OHMB (2016) 13 NWLR (Pt. 1529) 206 at 264 was cited.***

It is the contention of the learned counsel that the issue before the court is what should this court do in view of the application filed before the court of Appeal for leave and extension of time, should the court ignore the processes in the Court of Appeal and continue or should this court respect the higher court and allow it deal with the application.

FROZEN FOODS (NIG.) LTD. VS. OJOMO (2022) 14 NWLR (Pt. 1850) 299 at 330 was cited.

Learned counsel urge the court to grant the application.

Upon service, Claimant/Respondent filed counter affidavit of 18 paragraphs duly deposed to by **Apiriye Elsie Jamabo** Claimant/Respondent in this suit that she is the allottee and beneficial owner of Plot 100 Cadastral Zone B04 Jabi District, Abuja of approximately 2528.60Sqm.

That the proceedings mentioned in paragraph 2 of the affidavit in support of the Applicant's motion were conducted in her absence and without any notification while she is on record as the lawful allotee of Plot 100, Cadastral Zone B04, Jabi, District Abuja of approximately 2528.60Sqm.

That before the action leading to this suit was commenced; she wrote a letter to the Director of Lands, Abuja Geographic Information System (AGIS), a department of the 1st and 2nd Defendants/Respondents requesting information and status of her land in issue and her letter was duly acknowledged. The copy of the letter is attached as Exhibit "A" and till date the 1st and 2nd Defendants/Respondents have ignored and refused to reply the said letter.

That on the 21st day of May, 2020 she instructed her counsel to institute an action on her behalf upon the failure of the 1st and

2nd Defendants/Respondents to reply her letter. Copy of the letter of instruction is attached and marked as Exhibit "B".

That contrary to the depositions of the Applicant, she did not file any application whatsoever to consolidate suit No. **FCT/HC/CV/54/2007** and Suit No. **FCT/HC/CV/1140/2007** and she did not know anything about any of the suits.

That she only got to know about the said cases when her counsel drew her attention to the motion on notice seeking to dismiss the suit leading to this application which was filed by the Applicant in this court, that she is not privy to any of the suits and she did not authorize same and she is also not privy nor a party to Appeal No. **CV/A/570/M/2012** and she did not instruct anybody whatsoever to appeal the decision of the court in suit No. **FCT/HC/CV/ 1140/2007** on her behalf.

That she did not make any application to the Court of Appeal howsoever for leave to appeal as an interested person and she did not authorize any either and that she has not sold her land to anybody in whatever circumstance.

That she was informed by one of her counsel that the decision sought to be appealed by the Applicant is an interlocutory order on the jurisdiction of this court and is abnormal to seek

indulgence of a court he has alleged lacks jurisdiction on the matter.

That the Applicant's application for stay of proceedings is incompetent.

That the application of the Applicant at the Court of Appeal (Annexure MT1) is defective as the first point of call is this court and not the Court of Appeal.

That the application in Exhibit "MT1" is not competent, the Applicant's application to stay proceedings has already become irrelevant and totally unnecessary.

That the Applicant's application is a ploy to frustrate the wheel of justice in her case.

In line with the law and procedure, learned counsel for the Claimant/Respondent filed written address wherein sole issue was distilled for determination to with:-

Whether the court can exercise its discretionary power in favour of the Applicant.

Arguing on the above, learned counsel submits that granting of motion for stay of proceedings is discretionary and for a stay of

proceeding to be granted, there must be a valid notice of appeal filed. He added that the preservation of the res is also an important consideration in granting stay. If the Res cannot be destroyed it is needless to grant stay of proceedings. The case of ***ALHAJI MUHAMMAD MAIGARI DINYADI & ANOR VS.INEC & ORS. (2010) LPELR 40142 (SC) at Pages 206 – 207 Paragraphs C – D*** was cited.

Learned counsel submits that the subject matter of this suit is land and cannot be destroyed and it will serve the interest of justice for the application for stay to be refused on the ground that the expeditious trial and disposal of the suit will serve the interest of the parties in this suits rather embarking on a fruitless appeal.

Learned counsel argued that the ruling of this court being sought to appeal is an interlocutory order which requires the leave of either this court or the Court of Appeal. The court is referred to sections 241 and 242 of the 1999 constitution (as amended) and section 14 of the Court of Appeal Act.

Learned counsel further argued that where the law provides that an application can be made either to the Lower Court or the Appellate Court, the application must first be made to the lower

court and upon refusal by the lower court, similar application can be made to the Appellate Court.

Learned counsel submits on the above that failure of the Applicant to first seek leave to appeal the Interlocutory Order of this Honourable Court before this court renders the annexure MI1 incompetent and consequently makes this instant application an exercise in futility. He cited ***OYEDELE & ORS. VS. SOIUNMINU & ORS. (2002) LPELR 57454 (CA) Page 8 Paragraph E Sections 14(2)*** of the Court of Appeal Act and Order 6, Rule 4 of the Court of Appeal Rules.

Learned counsel further submits that even though Order 6 Rule 4 of the Rules of the Court of Appeal gives room for a party to seek leave at the Court of Appeal at first instance in some exceptional cases, but the Applicant however did not show any special circumstance which makes it impossible or impracticable to first apply before this Honourable Court.

It is further the submission of the learned counsel that the law is settled where the procedure for doing anything has been laid down in a statue, no other method of doing is allowed or acceptable, it is trite law that one of the pre-conditions for a court to be competent to entertain any cause or matter must have

come before the court initiated by the process of law and upon fulfillment of any condition precedent. The case of ***PLATEAU CONST. LTD. VS. AWARE (2014) 6 NWLR (Pt. 1404) 519 Page 541 paragraphs D – E*** was cited.

It is further the submission of the learned counsel that one of the conditions for the grant of leave to appeal is whether the proposed notice and grounds of appeal are substantial and arguable! It is the submission of counsel that the entire grounds of appeal in Exhibit "MT4" of annexure "MT1" is vague and presents the appellate court with no reasonable ground of Appeal to adjudicate upon. He cited the case of ***GARGA VS. STATE (2022) 14 NWLR (Pt. 1850) at 383.***

Learned counsel therefore submits that there is no valid appeal filed by the Applicant before the Court of Appeal to make this Honourable Court invoke her discretion to grant the application of the Applicant therein and this has made their application for stay of proceedings nothing but water in a basket and the court is urge to so hold.

Learned counsel urge the court to dismiss the application of the Applicant with costs for making an attempt to frustrate the case

of the Claimant/Respondent and for wasting the time of this Honourable Court.

COURT

I have gone through the affidavits of parties in respect of the application under consideration. I have equally gone through their respective addresses accompanying their affidavits. I shall be brief but succinctly in considering the application in the interest of justice.

The cardinal issue that calls for determination is whether or not the Applicant has made out a case to justify a grant of the relief sought.

The review of the respective depositions for and against the application in view is very clear.

It would not make any additional sense reproducing the same issues and argument hook, line and sinker as contained in the Motion paper, on the one hand, and counter affidavit on the other hand… Suffices to state, however, that I shall revert back to the respective depositions and argument where necessary in the course of this ruling.

The conundrum is with respect to the Ruling of this Court delivered on the 6th day of February 2023.

For the records, this is a civil proceeding in which Defendant/Applicant filed a motion praying for an order of this Court staying further proceedings pending the hearing and determination of the Appeal lodged against the interlocutory Ruling of this Court on the ground of it being an abuse of Court process.

It is on record that learned counsel for the Defendant raised an objection that this case had gone through the High court and Court of Appeal and up to Supreme Court and this Court was then functus officio and could not exercise any jurisdiction over the matter.

The law is trite on the guiding principles in granting or refusing stay of proceeding. These principle includes the following:-

i. There must be a competent appeal, where there is no competent pending appeal, there is both in law and in fact nothing to stay. The court will therefore not consider an application for stay of proceedings in respect of invalid appeals.

ii. The pending appeal must be arguable. This is decided by considering the grounds of Appeal filed. At this stage the Applicant needs not prove that the appeal will succeed. Once the Applicant could show that the appeal is arguable, a stay could be granted.

iii. The Applicant must establish that there are special and exceptional circumstance to warrant the grant of the applications; ***FRN VS OGBULAFOR & ORS (2012) LPELR 7947.***

I must state here from the onset that an application for stay of proceeding being an equitable remedy, the Applicant must place before the court all materials facts to enable the court consider the application sympathetically.

Indeed the court has a discretionary power to exercise in the matter and like every other discretionary power, it must exercise such power judicially and judiciously. In other words, the discretionary power must not be exercised in a vacuum but in relation to the existing facts of the particular case before the court.

It is a cardinal principle of our law on stay of proceeding for the Applicant to satisfy the court that a valid and credible appeal was

actually pending in appeal court ***OWO & ORS VS ADETILOYE & ORS (1998) LPELR 6388 (CA).***

However, the judicial process allows, in deserving instances, a stoppage of the process, even if temporally in the event of a meritorious application for stay of proceedings. See ***ANAMCO VS FIRST MAUNA TRUST LTD (2000)1 NWLR (PT 640) PAGE 311.***

Let it be known, that application for stay is not granted as a matter of cause as it is not a mechanical relief slavishly following the filing of an appeal. It is indeed a matter of facts and a very hard one in the combined content.

Per TOBI JSC (as he then was) in NIHA FISHING CO. LTD VS LAWINA CORPORATION (2008) 6 -7 (SC Pt. 11) 200.

The law for all time sake is settled on when such an application should be granted.

It is only when an interlocutory appeal will dispose off the substantive case that a stay of proceedings will be granted. When and where grant of stay will unnecessarily delay the procedure, stay of proceedings will not be granted. See

OLUYEMO & ANOR VS TITILAYO & ORS (2009) LPELR 4773 (CA).

In the instant case, Defendant/Applicant seeks order of this Court staying further proceedings pending the hearing and determination of the Appeal lodged against the Ruling of this Court delivered on the 6th day of February 2023.

It is most obvious as rightly deposed to by claimant/Respondent that the proceedings mentioned in paragraph 2 in support of the Applicants motion were conducted in her absence.

That she is neither privy nor party to Appeal and she did not instruct anybody whatsoever to Appeal the decision of the Court on her behalf.

In this matter, a perusal of the Ruling of the Court appealed against shows it is an interlocutory one on the Applicant's challenge to the jurisdiction of the Court to entertain the substantive suit. Undoubtedly, the decision will not determine or dispose finally the rights of the parties in the substantive suit. It is therefore an issue which the Applicant can take up along with Appeal on the substantive suit at the end of the day if they do not succeed. For this may serve as one of the sufficient reason to refuse this application.

I have further given a thought to the contention vis-à-vis the judicial authorities cited by the learned counsel for the Claimant/ Respondent counsel on the failure of the learned counsel for the Defendant/Applicant to obtain leave of this Court.

The Order of Court appealed against being an Interlocutory one, the Notice of Appeal against it must comply with the provision of Section 15 of the Court of Appeal Act for it to be competent and arguable and thus be the foundation of this application. **Section 15 (1)** of the Court of Appeal Act provides as follows: -

> *"Where in the exercise by the High Court of a State or, as the case may be, by the Federal High Court of its original jurisdiction an Interlocutory Order or decision is made in the course of any suit or matter, an appeal shall by leave of that Court or of the Court of Appeal, lie to the Court of Appeal, but no appeal shall lie from any Order made exparte, or by consent of the parties or relating only to costs".*

Section 15(2) provides as follows: -

> *"Nothing in subsection 1 of this Section, shall be construed so as to authorize an application to the Court of Appeal in the first instance for leave to appeal from an Interlocutory*

Order or decision made in the course of any suit or matter brought in the High Court of a State or the Federal High Court".

By the foregoing provisions of the Court of Appeal Act which this Court takes judicial notice of under Section 122(2) of the Evidence Act 2011, it is apparent that an appeal to the Court of Appeal against an interlocutory decision of the High Court of a State or Federal High Court made in the course of the suit can only lie with the leave of that Court and no application for leave against such an Interlocutory Order or decision of the Court shall be made in the first instance to the Court of Appeal. Construing the Section, vis-à-vis need to obtain leave of Court to appeal against an Interlocutory Order, the Court of Appeal in ***EKANEM VS. UMANAH (2006) 11 NWLR (PT. 992) P. 510*** held thus: -

"Leave is required to appeal against an interlocutory decisions and the application for leave to appeal against an interlocutory decision, as in the instant case, from the trial Court to the Court of Appeal must comply with Section 25(2)(a) of the Court of Appeal Act…." It held further: - "Leave to appeal is a Constitutional requirement under Sections 241, 242 and 243 of the Constitution. It is

conterminous with permission. Thus a Notice of Appeal filed in defiance of leave to appeal, whether within or outside the period prescribed by Section 25(2)(a) of the Court of Appeal Act is incompetent…."

In this matter, a look at the records shows the decision of the Court against which the Applicant filed a Notice of Appeal is an Interlocutory decision, neither sought nor obtained leave of the Court before filing the Appeal. There is no such application pending before the Court. In the light of the mandatory provision of Section 15(1) of the Court of Appeal Act that leave of the trial High Court must be obtained before an appeal against its interlocutory decision can be filed and the Applicant herein having not obtained the leave before filing the Appeal, the Notice of Appeal is incompetent and it cannot be relied on or be the subtraction for the instant application. By this, the fundamental factor that the Applicant needs to satisfy before the application can be granted has not been satisfied. For this reason alone, this application ought to be dismissed.

I have nevertheless given due consideration to the facts of the matter and other factors which ought to be satisfied for the application to be granted. In this regard, a brief trip down the

memory lane of the proceedings of Court leading to the making of the Order appealed against is necessary.

Applicant at best is a busy body who has no business at all before this court. The said application lacken in merit and procedurally defective is hereby and accordingly refused.

Justice Y. Halilu
Hon. Judge
6th November, 2024

APPEARANCES

J.W. Eke, Esq. – for the Claimant.

Dauda A. Usman, Esq. – for the 3rd Defendant.

Other Parties not in Court and or represented.