

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE**

**MOTION NO. FCT/HC/M/6132/2024**

**DATE: 14/5/2024**

**B E T W E E N**

**BRAINS & HAMMERS LIMITED**



**JUDGMENT DEBTOR/APPLICANT**

**AND**

**1. MAB GLOBAL ESTATE LTD.**

**2. DEPUTY SHERIFF OF THE HIGH COURT  
OF THE FEDERAL CAPITAL TERRITORY  
3. CHIEF REGISTRAR OF THE HIGH COURT  
OF THE FEDERAL CAPITAL TERRITORY**

**JUDGMENT CREDITOR/  
RESPONDENT**

**RESPONDENTS**

**R U L I N G**

**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

This Ruling concerns an application vide Motion Number **M/6132/2024** dated 27<sup>th</sup> March, 2024 but filed on the 28<sup>th</sup> March, 2024. It is brought pursuant to **Section 6(6)(b) and 36 1999 Constitution**(as amended)and **Order 43 Rule 1 of the Rules of this Court.**

The Judgment Debtor/Applicant is **Brains and Hammers Limited** while the Judgment Creditor/Respondent is **Mab Global Estate Limited**.

The application sought for the following orders:

1. **An Order** of this Honourable Court invalidating and setting aside the writ of attachment and the execution of Judgment delivered by Honourable Justice S. B. Belgore on the 5<sup>th</sup> of March, 2024 in **Suit No. FCT/HC/M/2772/2022 Between MAB GLOBAL ESTATE LTD. VS. BRAINS HAMMERS LTD** as being issued and made without jurisdiction by this Honourable Court, there being a feature that precludes the Honourable Court from issuing the said writ at the material time.
2. **An Order** of interlocutory injunction restraining the Respondents, their agents, messengers, privies, representatives, heirs and /or any person(s) acting pursuant to the 1<sup>st</sup> Respondent's request or any Respondent's request, instigation, and/or instruction from attempting, commencing, continuing or concluding any steps, action or process which is aimed at and/or acting upon or continuing the execution of the Judgment delivered by Honourable Justice S. B. Belgore on the 5<sup>th</sup> of March, 2024 in **Suit No.: FCT/HC/M/2772/2022 – Between MAB GLOBAL ESTATE LTD. v. BRAINS & HAMMERS LTD.**, and any orders made therein pending the hearing and determination of this application and also the Motion on Notice for stay of Execution (**Motion No. M/5194/2024**) filed by the Applicant for the stay of execution of the aforementioned Judgment delivered by this Honourable Court.

3. And for such further or other order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

The application is premised on 7 grounds to wit;

1. That this Honourable Court on 5<sup>th</sup> of March, 2024 granted leave to the Judgment Creditor to register and deem as the Judgment of this Court, the final Arbitral Award dated 22<sup>nd</sup> September, 2022.
2. That the Applicant/Judgment Debtor upon being dissatisfied with the Judgment delivered on 5<sup>th</sup> March, 2024 by Hon. Justice S. B. Belgore, immediately filed a Notice of Appeal to the Court of Appeal (Abuja Division) on 11<sup>th</sup> of March, 2024 challenging the entire Judgment of this Honourable Court.
3. That the Applicant/Judgment Debtor also filed a Motion on Notice for the stay of execution of the said Judgment on 11<sup>th</sup> March, 2024. The Motion for stay of execution is vide **Motion No. FCT/HC/M/5194/2024: BRAINS & HAMMERS LTD. v. MAB GLOBAL ESTATE LTD.**
4. The Notice of Appeal and the Motion for stay of execution of the Judgment of this Honourable Court both filed on 11<sup>th</sup> March, 2024 were duly served on the Judgment Creditor/Respondent.

5. The Motion on Notice for stay of execution – Motion No. FCT/HC/M/5194/2024: **BRAINS & HAMMERS LTD. v. MAB GLOBAL ESTATE LTD.** is pending before the Honourable Court and has neither been heard nor determined by the Honourable Court.
6. While the Notice of Appeal and the Motion for stay of execution of this Honourable Court (Motion No. FCT/HC/M/5194/2024: **BRAINS & HAMMERS LTD. v. MAB GLOBAL ESTATE LTD.**) was pending, the Judgment Creditor went ahead to obtain a Writ of Execution of the Judgment of this Honourable Court (the *res* in the aforesaid appeal and the Motion for stay of execution – Motion No. FCT/HC/M/5194/2024: **BRAINS & HAMMERS LTD. v. MAB GLOBAL ESTATE LTD.**) and to commence the execution of the said Judgment to render the *res* nugatory and foist a fait accompli on the Honourable Court.
7. The writ of attachment and its execution on the Applicant/Judgment was in breach of Applicant's Constitutional right to fair hearing namely having the Motion on Notice for the stay of execution of the said Judgment of 5<sup>th</sup> March, 2024 pending the hearing and determination of the Appeal (Motion No. FCT/HC/M/5194/2024: **BRAINS & HAMMERS LTD. v. MAB GLOBAL ESTATE LTD.** filed on 11<sup>th</sup> March, 2024) being duly heard and determined by the Honourable Court.

Moving the Application *brevi manu* in Court, the Applicant's Learned Silk, Mr. OgechiOgbonna, SAN, submitted that his application is supported by a 21 paragraphs affidavit deposed to by one Segun Aribisala and as well accompanied with a written address dated 27<sup>th</sup> March, 2024. He adopted the said written address and urged the Court to grant his application. He said further that he also filed a list of Additional authorities containing 5 (Five) decisions of the Supreme Court and Court of Appeal.

Still submitting while adumbrating in Court, he said upon being served with the counter affidavit of the 1<sup>st</sup> Respondent, he discovered that the deponent to the counter affidavit and the signature therein is one with that of the person who received the Motion for stay of execution when served on the 1<sup>st</sup> Respondent. He said the signature of the deponent tallies with Exhibit 2 attached to their affidavit in support.

That Exhibit 2 is the endorsement and return of the Motion for stay of execution showing that the 1<sup>st</sup> Respondent in particular was served with the Motion for stay of execution before the execution was levied. He contended that it is on this score that he filled these additional authorities. And that it is clear that there is internal contradiction in the evidence and case presented in this Court by the 1<sup>st</sup> Respondent.

Secondly, he argued that 1<sup>st</sup> Respondent admitted service of the Motion for stay of execution before the execution was levied.

Finally, he rounded up by saying that the 1<sup>st</sup> Respondent cannot be accorded any credibility on the issues in contest before this Court having presented untrue/false evidence before this Court. He referred the Court to

the case of **NNAJI OFFOR VS. UKONU (1986) 4 N.W.L.R. (PART 37) 505.**

He urged the Court to grant his application.

Reacting swiftly, the Learned Counsel to the 1<sup>st</sup> Respondent, Mr. Onyekachukwu Okeke Esq., submitted that he has filed a counter-affidavit of 44 paragraphs. It is dated and filed on 8<sup>th</sup> April, 2024 and deposed to by Tracy Olugbeyiwa with 4 Exhibits attached. He also filed a written address dated and filed 8<sup>th</sup> April, 2024.

He adopted the written address as his arguments and urged the Court to refuse the application of the Judgment Debtor/Applicant.

By way of adumbrating, he argued that the Applicant did not file a reply to their counter-affidavit. And the fact of signature being the same is a mere opinion which is subject to forensic expert evidence.

So far, these are the arguments and submissions of both learned Counsel in Court.

Now, I want to examine their submissions in their various written addresses as adopted before the Court along with the facts of this case.

On his part, the Applicant's Learned SAN submitted an issue for determination to wit:

***“Whether in the circumstances of this case, the Court should grant the Applicant’s application by setting aside the writ of attachment and execution issued by this Honourable Court and the execution of same writ of attachment levied upon the***

***Applicant by Respondents despite the pending Motion on Notice for stay of execution of the Judgment of this Honourable Court (Motion No. M/51941/2024 filed and served upon the 1st Respondent which is also pending for determination by this Honourable Court, and has not been determined by this Hon. Court”***

He submitted firstly that under our law, the records of this Hon. Court bind both the parties and the Hon. Court and none of them is allowed by law to resile from same. See **SAPO VS. SUNMONU (2010) 11 N.W.L.R. (PART 1205) 374.**

The Court is also enjoined to look at record which includes all processes filed by parties while writing its Judgment or Ruling despite the fact that the document was not tendered or admitted in evidence. See **AGBAHOMOVO VS. EDUYEGBE (1999) 3 N.W.L.R. (PART 594) 170.**

He also submitted that motion No. M/5194/2024 which is Exhibit 2 attached to the supporting affidavit is pending before this Court which is dated and filed on the 11<sup>th</sup> March, 2024 seeking an order for stay of execution of the Judgment delivered by this Court on the 5<sup>th</sup> March 2024. The said Motion was served on the 1<sup>st</sup> Respondent on the same date that it was filed.

He argued further that under the provision of **Section 6(6)(b) of the 1999 Constitution (as amended)**, it envisages the right of the person affected by decision of the Honourable Court to appeal against the Judgment in issue and to have the appeal determined without the res being decimated by the Judgment Creditor whilst the appeal is pending.

Hence, our law allows a litigant the right to apply for a stay of execution pending the hearing and determination of the appeal. Going further, he argued that an appeal is a continuation of hearing of the issues in context before the Honourable Court below. He relied on **Section 36** of the 1999 Constitution (as amended) and the case of **F.B.N. PLC VS. T.S.A. INDUSTRIES LTD. (2010) 15 N.W.L.R. (PART 1216) 247.**

He said a stay merely mandates the Honourable Court to refrain from further action on the res pending the hearing and determination of the appeal. It only prevents the machinery of law from being availed the beneficiary of the Judgment or order to enforce the Judgment in issue. See **F.B.N. VS. DANLAMI & ORS. (2021) L.P.E.L.R. 56317 (CA).**

The Learned Silk is not done yet, he said the trial Court and the Appellate Court have a Judicial duty to preserve the res pending the appeal. See **MAKINDE VS. AKINWALE (1995) 6 N.W.L.R. (PART 399) 1.**

Relying on the decision in **MAKINDE VS. ADEOGUN (supra)** and **AGIP NIG. LTD. VS. AGIP PETROL INTERNATIONAL & OTHERS (supra)**, he prayed that this Honourable Court should set aside the writ of attachment issued by this Honourable Court and its execution on the Applicant by the Respondents.

Therefore, the writ of execution, and machinery to execute same were made without jurisdiction is tantamount to nullity in law due to the existence of the pending Motion on Notice (M/5194/2024) for stay of execution before the Court which is a feature that ousts the jurisdiction of this Honourable Court.



See **MADUKOLUM VS. NKEMDILIM (1962) 2 S.C.N.L.R. 341, UBA VS.ADEMOLA (2009) 8 N.W.L.R. (PART 1142) page 113.**

It has been decided in plethora of cases that where an appeal and a Motion of execution is filed, parties are meant to stay further actions pending the hearing and determination of the application. The other party to the action is expected not to take any pre-emptory or other action prejudicial to the subject of the application before the determination of the application for stay, especially actions that in any way stultify or frustrate the exercise by the Court of its jurisdiction. See **EZEGBU VS. F.A.T.B. (1992) 7 N.W.L.R. (PART 251) 89, VASWANI TRADING & CO. VS. SAVALAKH & CO. (1972) 1 ALL N.L.R. 483.**

It is also settled law that where the writ of attachment and the execution have been improperly levied the Court can set same aside.

In this instant case, the Applicant filed a stay of execution of Judgment before this Honourable Court and filed a Notice of Appeal, both processes were served and acknowledged by the 1<sup>st</sup> Respondent before he inexplicably obtained the writ of attachment and execution which ought not to have been issued in the first place, executed the Judgment of this Court in the manner that apparently against the natural justice of fair hearing.

In the case **SOYANNWO VS. AKINYEMI (2001) 8 N.W.L.R. (PART 714) 954**, the Court of Appeal held that:

*“The enforcement of Judgment is an integral part of the Judgments where there had been a wrongful execution, the Court of trial is competent to set it aside. This same position was also re-echoed in*

*the case of PAVIX INT. C. LTD. VS. I.B.W.A. (1994) 5 N.W.L.R. (PART 347) 685”*

It is his further submission that going through the affidavit in support of the Applicant’s application and the circumstances, it is loudly shown that this Honourable Court has the duty to ensure that the processes of the law are not to be abused and in this regard returning parties to status quo prior to the execution pending the hearing and determination of the application. He call in aid the decision in **U.B.N. VS. FAJEBE FOODS (1994) 5 N.W.L.R. (PART 344)**, where the Honourable Court held:

***“Where the Judgment appealed against is executed whilst the motion for stay of execution of the Judgment is pending in Court, the Court which should at all times be master of the situation is competent to order the setting aside of the writ of execution or attachment and return the parties to the original status quo pending the determination of the substantive Motion for stay of execution. This is because the Court has inherent powers to see that its process was not abused by a proceeding without reasonable grounds, so as to be vexatious and harassing. The Court has the right to protect itself against such an abuse.”***

He argued further that the issuance of a writ of attachment and or execution during the pendency of an appeal and a motion for a stay of execution is to say the least more than irregular in the minimum. It is contrary to Nigeria’s legal system and is not in accord with the rules of

natural justice. The right thing to do is to hear the Motion for stay of execution and rule on it. It is only if it is refused before a writ for execution could be issued.

The issuance of a writ of execution or attachment which the 1<sup>st</sup> Respondent levied amounts to an abuse of the Court's process and over-reaching the Notice of Appeal and stay of execution filed by the Applicant, both which have been served on the 1<sup>st</sup> Respondent. See the case of **ARGOS (NIG.) LTD. VS. UMAR (2002) 8 N.W.L.R. (PART 769) 284**, where the Appellate Court held thus:

***“under normal circumstances, this Court will not set aside the issuance of a writ of attachment which has been levied or executed. However, in circumstances where the issuance of a writ of execution or attachment amounts to an abuse of the Court's process or over-reaching the other party, execution that has been carried out can be set aside”.***

***The Court can order the setting aside of a writ of possession already executed and return the parties to the original status quo. In the instant case, the issuance of the writ of attachment and the sale of the Applicant's goods is definitely an abuse of Court process”***

It is trite law that certain consequences follow wrongful or irregular execution of a writ of attachment. Apart from the execution being liable to being set aside, damages may be awarded to a person who is affected by the execution who is the Applicant in this circumstances as deposed to in

the affidavit in support. See the case of **PAVEX INT. CO. LTD. VS. I. B. W.A. (1994) 5 N.W.L.R. (PART 347) 685.**

He said in the circumstances of this case, this Honourable Court has the judicial duty to set aside the writ of execution already executed and all acts done further to that, and to restrain the Respondents from further execution of the Judgment and to take disciplinary action against the Respondent in this instance. See **IBWA LTD. VS. PAVIX INT. CO. (NIG.) LTD. (2000) 7 N.W.L.R. (PART 663) 105** where the Supreme Court held thus:

***“ .....In order to bring to bear the full weight of the disciplinary power of the Court on an erring Respondent who levied execution while an application for stay of execution is pending, there must be clear evidence that the Respondent/Judgment Creditor was well aware that the Applicant/Judgment Debtor had filed an application to the Appellate Court for a stay of execution pending the hearing of the appeal in that Court. The Applicant Judgment Debtor has to ensure first that he filed timeously his application for stay of execution of the Judgment Debt pending appeal. Secondly, he must ensure that the Respondent/Judgment Creditor was well aware of the application that he filed in the Court”***

It is his additional contention that the pending Motion for stay of execution pending Appeal (M/5194/2023) may not have been brought to

the attention of this Honourable Court by the Registry of the Court before the issuance of the writ and its execution upon the Applicant.

So far, these are the arguments and submissions of the Applicant in urging the court to grant its application.

On the other hand, the 1<sup>st</sup> Respondent's Learned Counsel submitted two issues for determination to wit;

a) **"Whether the Applicant has been able to show sufficient reasons to be entitled to the order sought for."**

b) **Whether the Constitutional Right to fair hearing of the Judgment Debtor/Applicant was breached by this Honourable Court?**

Mr. Onyekachukwu in his written submission argued that it is trite principle of law that for an Applicant to set aside execution of a Judgment, it must come under the following grounds:

- (i) The Judgment Creditor executed the Judgment against a person other than the Judgment Debtor;
- (ii) The person against whom the Judgment was executed, was never a party to the suit;
- (iii) Lack of service of the processes on the Judgment Debtor;
- (iv) Lack of jurisdiction of the Court who delivered the Judgment;
- (v) Whether the Judgment Debt has been satisfied and
- (vi) Execution of a Judgment outside the stipulated statutory period.

He said **Order IV Rule 8(1) and (2) of the Judgment Enforcement Rules under Sheriff and Civil Processes Act 2004**, provides that a Judgment shall be executed against the property of a Judgment Debtor within 6 (six) years and against the person of the Judgment Debtor within 2 (two) years from the date in which the Judgment was delivered, failing which the Judgment Creditor must file an Ex-parte application for leave of Court to execute the Judgment outside the stipulated statutory period. See **TIV VS. WOMBO (1996) 9 N.W.L.R. (PART 471); ADEYEMI-BERO VS. LAGOS STATE DEVELOPMENT PROEPRTY CORPORATION & ANOR. (2012) L.P.E.L.R. – 20615 (SC)**.

He submitted that the filing of an appeal has been severally held not to operate automatically as a stay of execution. See **VASWANI TRADIN CO. VS. SAVALAKH & CO. (1972) 12 SC 77**. The Judgment Debtor/Applicant must do more apart from merely filing an appeal he argued.

In the instant case, the Judgment Debtor/Applicant has not shown that the Judgment Creditor/Respondent is in default of any of these principles of our legal jurisprudence. The Judgment Debtor/Applicant was a party to the suit and fully participated in the whole legal proceedings till Judgment was delivered and the Judgment Creditor/Respondent duly served the Judgment Debtor/Applicant with all the processes including the said Judgment prior the execution, but the Judgment Debtor/Applicant did not deem it fit to act within time and also notify this Honourable Court of its intention to Appeal and the stay of execution until after the Judgment has been duly executed.

He contended that there was no single evidence to show that the purported application for stay of execution was served on the Court that delivered the Judgment until after the execution was levied and duly carried out. He too finally urged the court to dismiss this application.

I have considered the arguments and submissions from both sides. I have also beam light on the circumstances that culminated the facts of this case.

I want to adopt the sole issue submitted for resolution of the Court by the Learned SAN as the only issue that is germane for determination in the instant application.

The germane and most important question that is begging for answer in this instant application is this. Can the court in the circumstances of this case close its eyes against the pending application for stay of execution timeously filed by the Judgment Debtor/Applicant with the prove of serving same on the 1<sup>st</sup> Respondent who is the Judgment Creditor?

The facts that culminated to this instant application is as follows;

***“The Judgment in this case was delivered on the 5<sup>th</sup> March, 2024 and the Appellant/Judgment Debtor/Applicant filed timeously Notice of Appeal on the 11<sup>th</sup> March, 2024 along with Motion on Notice for stay of execution on the same 11<sup>th</sup> March, 2024 and those, two processes were served on the Judgment Creditor/ 1<sup>st</sup> Respondent on the same 11<sup>th</sup> March, 2024. See Exhibit 2 attached to the supporting affidavit. For the 1<sup>st</sup> Respondent to ignore these processes***

***and forged ahead to execute the same Judgment on the 25<sup>th</sup> March, 2024 to say the least is irregular”***

In the case of **ARGOS (NIG.)LTD. & ANOR. VS. UMAR & ANOR. (2002) L.P.E.L.R. – 9163 (CA)**; the Appellate Court held thus;

***”Under normal circumstances, this Court will not set aside the issuance of a writ of attachment which has been levied or executed. However, in certain circumstances where the issuance of a writ of execution or attachment amounts to an abuse of the Court’s process or over-reaching the other party, execution that has been carried out can be set aside...”***

The Appellate Court enjoined the trial court as to the next line of action to embark upon in order to serve the course of justice and not to shoot out the Applicant.

In the above case, it was held further thus;

***“...The right thing to do is to hear the Motion and rule on it. If it is refused, the writ of attachment and sale of goods could be issued. It is wrong to issue the said writ without hearing and ruling on the Motion. The issuance of the writ of attachment and sale of goods is definitely an abuse of the Court’s process which is intended to over-reach the Applicant. This in my opinion is one of the exceptional***



***circumstances where the writ of attachment can be set aside...”***

As a Minister in the temple of Justice, the 1<sup>st</sup> Respondent should have tarried a little having been served with Exhibit 2. Exhibit 2 are pending application vide Motion No. M/5194/2024 pending before this Court. The 1<sup>st</sup> Respondent should have known that any step taken having been served with exhibit 2 will definitely over-reach the Applicant which the law frown at.

I agree with the beautiful submission of the Learned Silk in his written address at paragraph 3.10 when he wrote thus:

***“...That the writ of attachment and its execution are nullity, being acts done without legal validity and contrary to law. The law in this case include the sanctity of the pending Motion for stay of execution filed on 11<sup>th</sup> March, 2024 and the Appeal. See MAKINDE v. ADEOGUN (2009) 1 N.W.L.R. (PART 1123) 575; AGIP NIG. LTD. v. AGIP PETROL INTERNATIONAL & OTHERS (2010) 5 N.W.LR. (PART 1187) 348 to the effect that illegality once brought to the attention of the Court overrides all other questions and the Court would not close its eyes to such illegality. Neither will the Court lend its aid to the perpetrators of any illegality...”***

It is for the above reasons that I agree with the Applicant and resolve the sole issue for determination in favour of the Applicant and set aside the wrongful issuance of a writ of execution and also restrain the

Respondents from further execution of the Judgment so as to protect the  
res in fidelity to the law. And I so hold.

I find considerable merit in this application and it is hereby granted.  
For avoidance of doubt prayers 1 and 2 are hereby granted.

SIGNED  
S. B. Belgore  
(Judge) 14- 5- 2024

