



## **RULING**

This Ruling is at the instance of the judgment Debtors/Applicants who approached this Honourable Court vide a Motion seeking for:-

1. An Order of this Honourable Court granting a stay of further execution of the Ruling/Judgment of the Lower Court delivered on the 29<sup>th</sup> March, 2023 pending determination of the Applicant's appeal against the said Ruling/Judgment.

The Applicant's application was predicated on the following grounds:-

- a. That the Honourable Court is empowered by law to receive, hear and determine appeals from District Court within the Federal Capital Territory.
- b. That based on the terms of settlement mutually agreed by the parties filed on the 21<sup>st</sup> January, 2021 the Lower Court entered consent judgment on the terms therein.
- c. That the Judgment Debtor/Applicant in compliance with the consent judgment of the lower court performed the obligation therein by making payment of the N300,000.00

(Three Hundred Thousand Naira) and also delivered part of the item.

- d. By the said terms of settlement, Judgment Creditor is only entitled to delivery of its remaining items without more.
- e. That the Judgment Creditor/Respondent without an official demand of the remaining items yet to be delivered commenced a Garnishee Proceedings in excess of the Applicant's indebtedness.
- f. The Applicant is dissatisfied of the Ruling/Judgment of the lower court dismissing the motion of the Applicant and thus making the Order Nisi absolute against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively.

In support of the Applicant's application is a 20 paragraphs affidavit deposed to by one I. Collins Chukwukere, the 2<sup>nd</sup> Applicant in this suit.

It is the deposition of the Judgment Debtors/Applicants that on the 21<sup>st</sup> day of January, 2021 they entered into a mutual agreement which led to filing and adopting same as a Consent Judgment at the Lower Court and Applicant have fully complied

with the monetary obligation and had delivered over fifty (50) percent of the items under the said consent judgment.

The Judgment Debtor/Applicant avers that in the contrary to the terms of settlement, on 14<sup>th</sup> day of October, 2022, the 1<sup>st</sup> Respondent without official demand commenced garnishee proceedings and grounded Applicants business for no just cause.

The Judgment Debtor/Applicant in his deposition further states that on becoming aware of the above, Applicant filed a Motion on Notice to set aside the Order Nisi which have been dismissed on the 29<sup>th</sup> March, 2023 by the lower court.

The Applicant further stated that they have lodged an Appeal against the Ruling/Judgment to the High Court.

The Judgment Debtor/Applicant will prosecute the appeal diligently and it is not intended as a sham to frustrate the Execution of the Judgment.

That if the execution of the said Ruling/Judgment of the Court is not stayed, it would occasion double jeopardy and a miscarriage of justice on the Applicant as sum in the Garnishee Order Nisi is far above the Applicant indebtedness.

The Applicant further avers that if the execution of the Ruling/Judgment of the court is not stayed, and the Applicants appeal succeeds, it would foist on the High Court a situation of complete hopelessness and efforts made in the appeal will amount to futility.

That it is in the interest of justice to grant this application as the Respondent will not be prejudiced.

In line with the law, a written address was filed along with the application wherein counsel formulated sole issue for determination to wit;

**Whether or not in the circumstance of this case the Applicants have placed sufficient materials before the Honourable Court to warrant the exercise of the discretion of the Honourable Court in granting this application.**

It is the submission of learned counsel that an application of this nature seeks to invoke the discretionary powers of the court. Thus it is an equitable remedy. ***ABOSELDEHYDE VS. U.M.B. LTD. (2013) 13 NELR (Pt. 1370) 91 at 129 was cited.***

Learned counsel submits that in an application of such a nature, the Applicant must adduce reasons, satisfying to the court to warrant the court in exercise of its discretion in the Applicant's favour. He cited ***AMADI VS. CHUKWU & ORS. (2013) 5 NWLR (Pt. 1347) at 304.***

Counsel humbly submits from the above authorities that this application is sufficient for the court to make an Order Staying Executing the enforcement of the Ruling of the court delivered on the 29<sup>th</sup> March, 2023 pending the determination of the Appeal against the said ruling.

He cited ***NIGERIAN BREWERY PLC. VS. DUMUJE (2016) 8 NWLR (Pt. 1515) Page 536, Paragraph 514.***

Learned counsel urged the court to grant the application as prayed.

On their part, Judgment Creditors/ Respondents filed a counter affidavit deposed to by Andrey Akhigbe Anderson, the Judgment Creditor/Respondent in this suit.

It is the deposition of the Creditor/Respondent that a ruling of the Trial Court had been delivered on 29<sup>th</sup> March, 2023 and at the time of deposing to this counter affidavit, the 1<sup>st</sup> and 4<sup>th</sup>

Garnishees have refused or neglected to comply with the ruling of the Trial Court delivered on 29<sup>th</sup> March, 2023.

The Judgment Creditor/Respondent contends that the Applicants had filed a similar motion on the 31<sup>st</sup> of March, 2023 for Stay of Execution at the lower court of its ruling but was not served until the 2<sup>nd</sup> of June, 2023.

The Creditor/Respondent further contends that there is no ruling of the lower court refusing the said motion; rather it was the Applicant that left the motion in abeyance.

The Creditor/Respondent stated that the said Order Garnishee absolute which the Applicant is trying tooth and nail to stay was not even directed against the Judgment Debtors/Applicants but rather against the Garnishee that is, Access Bank and First Bank respectively.

That he verily believed that the instant motion and the supposed appeal filed by the Judgment Debtors herein is just another gambit conjured up to deny him the fruits of the judgment of the Lower Court.

In line with the procedure, written address was filed; two issues were formulated by the learned counsel of the Judgment Creditor/Respondent to wit:

- a. **Whether the Applicants has shown special and exceptional reasons why their application for stay of execution should be granted.**
- b. **Whether the Applicant's instant Motion on Notice for Stay of Execution is competent and does not amount to an abuse of court process in view of the fact that there is no ruling of the lower Magistrates Court refusing the Motion for Stay of Execution, said motion which is still pending before the Magistrate court.**

On issue 1, **Whether the Applicants has shown special and exceptional reasons why their application for stay of execution should be granted.**

It is the submission of learned counsel that there has been no reason or exceptional circumstances shown by the Applicants to warrant the grant of the instant application, thus a Stay of Execution would be granted if the Applicant is able to show



special and exceptional reasons. He cited ***SPDC NIG. LTD. VS. AMADI & ORS. (2011) LPELR 3204 (SC).***

Learned counsel submits that the court has the unimpeded discretion to grant or refuse a stay. In this and all other instances of discretion, the court is bound to exercise the discretion both judicially and judiciously and not erratically. He cited PHMB VS. UTOMI (1999) 13 NWLR (Pt. 636) Paragraphs 572 at 574 – 575.

The court is humbly urge not to be misled by the Applicants in this case as it is glaring from all indications that the Applicants have not acted in good faith or in a manner that they should be deemed trust worthy or shown any reason or special circumstances why their application should be granted.

**On issue 2, *Whether the Applicant's instant Motion on Notice for Stay of Execution is competent and does not amount to an abuse of court process in view of the fact that there is no ruling of the lower Magistrates Court refusing the Motion for Stay of Execution, said motion which is still pending before the Magistrate court.***

Arguing on the above, counsel submits that where the Applicants file a Motion for Stay of Execution at the Lower Court regarding the same subject matter yet to be ruled upon and proceed to this

Honourable Court to file the same application, it amounts to abuse of court process. ***EZE & ANORS VS. ECONOMIC AND FINANCIAL CRIMES COMMISSION (2022) LCN/16506 (CA) was cited.***

Learned counsel submits that the approach of the Applicants has cost grave inconvenience to the Judgment Creditor/Respondent, and interfered with the administration of justice.

The Court is humbly urge to dismiss this application with cost for been frivolous, vexatious and waste of court's time.

### **COURT:-**

Briefly, this application is brought to stay further execution of Judgment of the lower court delivered on the 29<sup>th</sup> March, 2023 in favour of the Respondents.

Applicants/Appellants, being dissatisfied with the Judgment, filed a Notice of Appeal against the Judgment of the trial Honourable Court, and a Motion for Stay of Execution after filing Notice of Appeal.

The law at the moment is that a successful litigant must not be deprived of the fruit of his victory for having won their case; they are entitled to be allowed to enjoy the fruits of their success.

Execution of the Judgment should and ought not to be stayed unless and until special circumstances exist to justify the stay of same.

***OKAFOR VS NNAIFE (1987) 4 NWLR (Pt. 64) page 129.***

All authorities are to the effect that what constitute special or exceptional circumstance to warrant a grant of stay of execution is dependent upon the circumstance and peculiarities of the facts governing each case.

Before an applicant can succeed in an application for stay of execution, he must satisfy the following conditions;

- (1) The chances of the applicant on appeal. If there are no chances of his succeeding on the appeal, then the application may be refused.
- (2) The Subject matter in dispute must be one which can be preserved whether in maintaining the status quo, until the determination of the appeal, the Justice of the matter will be met.
- (3) Where the Judgment is in respect of money and costs, whether there is a reasonable probability of recovering the money from the respondent if the appeal succeeds.

(4) The Applicant must show special or exceptional circumstances so that the balance of Justice is weight in favour of granting the stay.

***VASWANI TRADING CO. VS SALALKH & CO. (1972) 12 SC 77.***

Now, taken the conditions enumerated above, has Appellants/Applicants met the requirement for a stay of execution of the Judgment of this court?

An appeal is deemed to have been brought when the Notice of Appeal has been filed at the registry of the Appeal Court.

It is the Notice of appeal that gives a trial court the jurisdiction to entertain any such further application for stay of execution before Appeal is entered.

***The NIGERIA NAVY & ORS VS LABINJO (2012) LPELR 7868 (SC).***

The Appellant stated that it had filed a Notice of Appeal and that where stay of execution is not granted, it would occasion double jeopardy and a miscarriage of justice on the Appellants. Whereas the Respondent maintained that the Notice of Appeal was incompetent and therefore, Court cannot grant this application.

For all intents and purposes, a successful party must always be helped by court to reap the fruits of their labour.

It is trite that once a matter is on Appeal, the court has jurisdiction to preserve the 'Res' to avoid foisting hopelessness and futility on both Court and successful party.

We are fortified and indeed swayed by the facts and evidence before us to stay further execution of the Judgment in issue.

On the whole, the execution of Judgment of this Honourable Court delivered on the 29<sup>th</sup> day of March, 2019 is hereby stayed, pending the hearing and determination of the Appeal filed by the Appellant.

***Hon. Justice Y. Halilu  
(Presiding Judge)  
28<sup>th</sup> February, 2024***

***Hon. Justice E. Enenche  
(Hon. Judge)  
28<sup>th</sup> February, 2024***