

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

**DATE: 30TH JANUARY, 2023
BETWEEN**

FCT/HC/CV/1466/21

JAMUB CONSTRUCTION LIMITED-----

CLAIMANT/RESPONDENT

AND

- 1. FEDERAL GOVERNMENT OF NIGERIA**
- 2. ATTORNEY GENERAL OF THE FEDERATION**
- 3. COLONEL M. D. DIKIO (RTD)**

DEFENDANTS/RESPONDENTS

**(SUED AS THE INTERIM ADMINISTRATOR
OF THE PRESIDENTIAL AMNESTY PROGRAMME)**

IN THE MATTER OF APPLICATION BY:

- 1. ANDERSON PATRICK EDDY**
- 2. ABEKI OVIEKPASIMEJAMES**
- 3. RAPHAEL SOLOMON**
- 4. TAVIE E. MONGU**
- 5. IZIBENADU GEORGE**
- 6. ROBINSON MAYOR**
- 7. YELEBEFAMMAVABALIUS**
- 8. NAIRA E. LAMBERT**
- 9. YAKIE OVIEZIBE .C**
- 10. TANIZE EGBA**
- 11. ENIENI SAMUEL**
- 12. MATHEW G. NOEL**
- 13. DANIEL OGUN**

**PARTIES SEEKING TO BE JOINED/
APPLICANTS**

14. APPAH M. TEDIETA
15. AYAOWEIDOGOODENIMEKESOME
16. EGEDUZEIGWVERIGHTEOUS
17. OSAIN KALIZIBECHARLES
18. VICTOR DORIS TAMADU
19. OBELE ADUTOMVIE
20. RICHARD JACOB L.
21. MARGARET B. ESANMASUODE
22. BOKIZIBEOGILIVIE
23. PELESAI CANAAN
24. JEREMIAH UWUMOKPO
25. OGBARA ISAIAH
26. WURADA DUKE G
27. ESTHER E. BALIUS
28. IKETE YENESOM RAPHAEL
29. IBANI FELIX
30. OTOBO KENNETH
31. SUAMA ZETOVIE
32. OTOBO ROBINSON
33. EKANEM BLESSING CHARLES
34. BURUTOLU TARIMOBOWEI SHALOM
35. KEHINDE OLUWAFEMI OYINPREYE
36. GLORY BOGINA
37. FAITH IBOMOERE ISAAC
38. JULIUS ZINAKI
39. JONNY JULIUS
40. RAYMOND SEMIYU
41. DICKSON OGOINTA
42. TBOY OSIGWE
43. IZIBEYA DIENIZE
44. OYIMINI OGORI
45. FELICIA OKWUNU
46. DELIDIE M. IKIBA
47. SAVIOR FRANK
48. JOSEPH JOSEPHINE
49. AMINIVIEJOMBO
50. AKUEGBEFAMVIE
51. BLESSING VICTOR
52. ETIEVIEYA ENOCH

**PARTIES SEEKING TO BE JOIN/
APPLICANTS**

53. OSOM RENNER
54. CHRISTIAN MICHAEL
55. CATHERINE KPOLOVIE
56. SOLOMON FRANCIS
57. ENINIYA ABARIJU
58. CAPTAIN OKOGORIM
59. BENJI OSIN
60. EGELEMA DARIUS
61. BOMA P. DARIUS
62. CASTRO. I. OYABA
63. RACHAEL WURADAH
64. SEIGHA ILUMA
65. AYIBANUA OKPOBO
66. DONALD EGBO
67. PULOVIE SUNDAY
68. SAMUEL BARMA
69. ZEMONOVIE EMMANUEL
70. ELELEKIYA ABRAHAM
71. TIMIPA ADULPHUS
72. TINA EGBA
73. RUTH AARON ODEDE
74. KIENI ABRAHAM
75. ALHAJI JOYFUL
76. DAVIDSON GIFT
77. DIEKIVIE OBADUN
78. ALLEN ADIOVIE
79. NICKSON PETER
80. EBIGONI DAVID
81. AWOLOWO IZIBEYA
82. AYIMOVIE S. OTUZI
83. NELLY MATHHEW
84. UTAVIE GEORGE
85. NEWMAN G. IKEKWA
86. THANKGODNIMEZE
87. IZIBEYA ILE
88. ZIBEMAN A. GEORGE
89. GIDEON ABAZE
90. INSURANCE MATHEW

**PARTIES SEEKING TO BE JOINED/
APPLICANTS**

91. ESUZE EKETIOMO
92. TARI AYENTUA
93. SINIME GEORGE
94. DAVIDE OLALI
95. UKPEYA DANDISON
96. MOKPEZE EMMANUEL
97. OLALI SUWOFIEN
98. CHURCHILL RUFUS
99. ENIBELEM OTOM
100. MELFORD ORIOS
101. ASUEFIEN PETERS
102. ISAAC JONATHAN
103. AMAWULU SEABOY
104. FRANCIS GOODLUCK
105. OGILIVIE BOKIZIBE
106. DELIME DOGOOD
107. SOUVIE AYEBATEKE
108. PRINCEWILL LAMBERT
109. MEYA INESEI
110. DIEOVIETO AGBASA
111. KPOMTOMEZE OYOWEI
112. PRECIOUS EGBA
113. CLINTON AZI EGBO
114. ONONIME AKALI
115. ESUENIENI BENEATH
116. ABRAHAM HIL
117. LUCKY JACOB
118. TEVIE SINGESI
119. MARSHALL OLODO
120. PATRICIA OGBERE
121. TARIS GOWON
122. SHARON ZONFATE
123. VIVIAN E.
124. TINA JACOB

**PARTIES SEEKING TO BE JOINED/
APPLICANTS**

RULING

The Applicant brought this application pursuant to order 61 rules 1 and 2 and section 6(6) and section 36 of the 1999 Constitution and under

the inherent jurisdiction of this Court. Counsel on behalf of the Applicant shall be heard for the following:-

1. An order for stay of further proceedings in this suit pending the hearing and final determination of the appeal against the ruling of this Court delivered on 10th November, 2022 pending before the Court of Appeal
2. And for such further order(s) as this Court may deem fit to make in the circumstances.

This application is dated 14th November, 2022 the grounds for this application are all contained in the motion on notice. In support of this application is an affidavit of 21 paragraph affidavit deposed to by one Anderw Patrick Eddy the 1st Applicant in this application. The Applicant graphically deposed to the fact when the ruling was delivered, which the appeal was properly filed within 14 days despite the fact that the ruling of this Court was not ready as at the time of filing our notice of appeal. All these facts and other facts as contained in the applicants affidavit in support gave factual account of when the ruling was delivered and other consideration regarding the appeal said to have been filed. In compliance with the rules of this Court Applicant also filed a written address dated 21st November, 2022 which raised a sole issue for determination thus:-

Whether this Court has the discretionary power to stay proceedings in this matter pending the outcome of the Applicants appeal.

Applicant having shown diligence in prosecuting the appeal. The Applicant in support of the above issue raised for determination cited the case of **CHIEF JONES AGU & ANOR VS COP (2010) LPELR 40026 CA, SPINNERS NIG LTD VS CHARTERED BANK LTD (2001) 14 NWLR (Pt.723)195 and VASWANI TRADING CO VS SARHAT & CO (1972)SC77.**

See also Order 4 Rule 11 of the Court of Appeal Rules 2016 **DINGUSALI VS INEC (2010)LPELR 40142 SC P. 108 paragraphs' B-C REGISTERED TRUSTEES OF ASSEMBLIES OF God MISSION OF NIG. VS JULIET ELEPO TORI (2017) LPELR 43069 CA**, based on the forgoing Counsel urge this Court to grant their application. In opposition to the motion filed by the Applicant the Claimant's/Respondent filed a counter affidavit dated 29th November, 2022 same is deposed to by Mayowa Mogbojumi a legal practitioner in the law firm of Oluwaseyi bangboyi Counsel to the Claimant/Respondent same contained 9 paragraphs particularly paragraph 4 to 9 where the Claimant/Respondent countered almost all the paragraphs of the Applicant's affidavit in support of the motion filed by the Applicant. Claimant's Respondent filed a written address dated 29th November, 2022. Same raised a sole issue for determination to wit:-

Whether the Applicant have disclosed any special circumstances in the affidavit in support of the motion to warrant the grant of the application for stay of proceeding. In support of the issues raised for determination Counsel cited the case of **UBA VS ETIABA (2010) ALLFWLR (pt 548) 845 Order 835 paragraphs 9-11 SC Courts are to act according to the rules of reason and justice not according to private opinion but according to law not honour.**

*The discretionary powers of Courts in determination of application is no less forcefully applicable in application for stay of proceedings see **MATUK V FRN (2017) LPELR(pt 901) 722 at 714 paragraph G.***

The principle guiding the Courts in the consideration of an application for stay of proceedings has been stated and rested in plethora of decision see **ABDLIKREEM VS AYINTA (2013)All FWLR (pt 708)1011 Q 1017 ADENIYI VS AKINYEDE (2010) ALL FWLR (pt 503) 1257 Q 1324.**

Respondent's Counsel submitted that in reaction to the 1st requirement that the Applicant have no valid appeal before the Court of Appeal this is predicated on the facts that:-

1. The Applicant appeal is an interlocutory appeal.
2. The notice of appeal was filed within 14 days as required by section 24 of the Court Appeal Act.

However the grounds contains question of mixed law and facts for which leave to file same is mandatory required by section 241 (1) (a) of the Constitution.

The Applicant failed to first seek leave of this Court or that of the Court of Appeal before filing this motion of appeal.

In ***NGIYE VS DISU (2018) ALL FWLR (Pt 746) 990 at 1007*** Per Kekere-Ekin JSC.

The Supreme Court held that a decision is a final decision only when it has fully determined the right of the parties ruling on the application for joinder having not fully determined the rights of the parties to this proceedings is not a final decision but an interlocutory decision for which leave is required to appeal.

The grounds raised in the Applicants motion of appeal are grounds of mixed law and facts. In particular grounds 2 and 5 which complain about evidence of the affidavit evidence. See ***IKEOKWU VS AMCON (2019) LPELR 47578. See also NJEMANUZE VS NJEMENJE (2013) 8 NWLR (pt 1356) 376 SC.***

Held in relation to classification of grounds of appeal thus:-

“ The Court for quite long has set out some of the criteria for distinguishing a grounds of law from that of

mixed law and facts. Some of these principles can be summarized in the following manner”

iii) Where a ground of appeal questions the evaluation of facts before the application of the law, it is a ground of mixed law and fact.

(vii) A ground of appeal which complains that the decision of the Court is against the evidence a weight of evidence or certain unresolved contradiction in the evidence of a witness, it is a purely a ground of fact (which requires leave for an appeal to a Court of appeal or a further Court of appeal)

From grounds 2 and 5 of the Applicants notice of appeal apparently complaining of execution of the affidavit evidence led by the parties in the application consequently, they are grounds of mixed law and facts.

The entire appeal is a challenge to the exercise of the judicial discretion of this Court in deciding the application for joinder one way or the other those grounds are of mixed law and facts. See **FIRST BANK OF NIGERIA PLC VS ABRAHAM (2009) ALL FWLR (PT 461)863 JSC ADENIYI VS OYELEYE (2014) ALLFWLR (pt 726) 538-577 paragraphs A-C. See also ADEJUWAN VS EXECUTIVE GOVERNOR EKITI STATE (2011)ALL FWLR (pt 595)360 – 373.**

Having neglected to first seek leave before the filing of the purported interlocutory appeal, the appeal is incompetent and cannot be basis for the grant of stay of proceeding. See **OFFI VS OGEH (2017) ALL FWLR (pt886) 2075**, the Supreme Court relying on its decision in **ABUBAKAR VS DAKNABA (2015)18 NWLR (pt 1491)213 – 234 -235.**

“Where leave, which means permission is a precondition before an Applicant can file a notice of appeal containing grounds of mixed law

and facts, an Applicant who file a notice of appeal without satisfying or obtaining that pre- condition would have his processes thrown out.

It is settled law that the mere filing of an appeal does not operate as a stay of proceeding see ***FASS INTERNATIONAL LTD VS HNB TRUSTEES LTD (2010) ALL FWLR (pt 547) 659 AT 675 paragraph E***. Counsel urge the Court to dismiss this application because :-

- i. There is no valid appeal upon which the grant of the application could be considered or made.
- ii. There is no special circumstances in the affidavit in support of the motion as to warrant the grant of the application.
- iii. The Applicant not being parties to this suit have no res to protect as the claim ventilated is against the Defendants on record and the suit can be effectively and efficiently determined without the presence of the Applicants who are mere interloper.

The Applicant filed an affidavit verifying compilation and transmission of record of appeal same is deposed to by Andrew Patrick Eddy the 1st Applicant in this application. The affidavit contained 10 paragraphs. I only rely heavily on paragraph 7 and 8.

Paragraph 7 and 8 of the Applicant bear diligently and ready to prosecute the appeal before the Court of appeal, has complied and transmitted the record of appeal in this suit to the Court of Appeal and the Claimant herein and the 1st -3rd Defendants have been duly served with the records of appeal.

That appeal has been duly entered at the Court of Appeal with respect to the present suit and proceedings kindly find attached proof of transmission of record of appeal in this suit clearly marked as exhibit 1.

I have reproduced substantially the position of both the Applicants and the Respondent various submission made by the same. I also took into consideration the applicable laws cited by the Applicant as can be seen in the ruling and also the response made by the Respondent. Equally issues for determination are equally considered by this Court which same were raised by the two lend gentlemen respectively for and against. Although the Applicant's in this case are not parties to this suit based on the ruling of this Court nevertheless same feel aggrieved and decided to proceed on appeal against the ruling of this Court. The nature of an order of stay of proceedings and the principles which should guide a Court in exercising its discretion to grant or refuse an application for stay have been adequately stated in the case of ***NNPC VS ODIDERE ENTP.PLC NIG. LTD (2008) 8 NWLR (PT1090)983 at 616-618.*** it should be noted in granting an order of stay of proceedings the Court should be guided purely by the necessity to be fair to both parties see ***OKAFOR VS NNAIFE (1987) 14 NWLR (pt.64) page 129-137.*** A stay of proceeding can only be granted by the Court when there is no other option open to it. In this case since this Court refused to joined them as Defendants in this suit as parties to the action this Court therefore in the interest of justice and in the exercise of its discretion which must be exercise judicially and judiciously is left with no option than to stay proceeding. Although the stage the matter is not the final pronouncement made by the Court. However if this appeal is not allow in the principle of justice and favour the Applicants can never be joined as parties in this matter and they would have no right to defend this action see ***CARRIBEAN TRADING & FEDILTY CORPORATION VS NNPC (1991) 6 NWLR (pt 197)page.*** I have no doubt in mind from the verifying affidavit especially paragraph 7 and 8 made me to comfortably stay further proceeding in this matter as can be seen from the record of

proceedings exhibit 1 attached to the verifying affidavit the Applicant had already entered appeal and they have transmitted 10 copies of the record of proceeding to the Court of Appeal exhibit 1 is an evidence of the above position the appeal has an appeal No. CA/ABJ/CV/1327/2022 for the above reason and facts a stay of proceeding will be granted where to do otherwise will tend to render any order of the Appellate Court nugatory. Especially in my opinion where this case is been defended by the Court without knowing the position of the Court of Appeal. See **SARAKAI VS KOTOYE (1992) 9 NWLR (pt. 264) page 156, BIOCON AGROCHEMICAL VS KUDU HOLDING LTD (1996) 35 LRCN 754 NWABUEZE VS NWOSU (1988) 4 NWLR (PT88) page 257** based on the above judicial authorities cited above I deem it just to grant the application same is hereby granted. Accordingly further proceedings in this matter is hereby stayed I must add in this ruling all other issues raised by the two learned gentlemen same cannot be considered in this ruling this is because he has to wait to hear what would be the outcome of the appeal.

**HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)**

Appearance

Oluwaseyi Bamigboye:- For the Claimant

L. Omoalybi:- For the 1st, 2nd and 3rd Defendant.

O.O Aweda:- Party seeking to be joined.

