

IN THE HIGH COURT OF JUSTICE OF THE F. C. T.
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT APO, ABUJA
ON THURSDAY, THE 01ST DAY OF JUNE, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/1332/2021
MOTION NO.: FCT/HC/M/740/2023

BETWEEN:

KUNDERA MICHAEL MUNKAILU

CLAIMANT/RESPONDENT

AND

1. STERLING BANK PLC

APPLICANT

2. ADO ABDULKAREEM

3. TAUHEED YAHAYA

4. GLORIA



RESPONDENTS

RULING

This Ruling is on the application for stay of execution of the Judgment which this Honourable Court delivered on the 2nd of May, 2023.

By a Motion on Notice dated and filed on the 15th of May, 2023, the 1st Defendant/Applicant (Hereinafter referred to simply as the "Applicant") brought this application seeking the following reliefs:-

- 1. An Order of this Honourable Court staying execution of its Judgment delivered on 2nd May, 2023 in Suit No. CV/1332/2021 pending the hearing and determination of the Appeal already filed by the Appellant/Applicant against the Judgment.*

2. *And for such further or other Orders as this Honourable Court may deem fit to make in the circumstances.*

The application was founded on seven grounds. These grounds include the facts that the Applicant's appeal contained fundamental grounds of appeal and that the Claimant/Respondent would not be able to return the Judgment sum should the Applicant's appeal succeeds.

The application is supported by a 12-paragraph affidavit properly deposed to by one Katherine Joseph, a litigation executive in the law firm of Priory Terrace Solicitors, the law firm representing the Applicant. The Applicant also attached three exhibits which are identified as follows: the Notice of Appeal dated and filed on the 2nd of May, 2023 marked as **Exhibit PTS1**, the Notice of Appeal dated the 12th of May, 2023 but filed on the 15th of May, 2023 marked as **Exhibit PTS2**, **Exhibit PTS3** which is the acknowledgment receipt for the sum of One Hundred and Fourteen Thousand Naira (~~₦~~114,000.00) being the payment for the compilation and transmission of Records of Appeal to the Court of Appeal. The Applicant also filed a Written Address in support of the application.

In the affidavit in support of the application, the deponent, after confirming that the appeal was against the Judgment of this Court delivered in this suit on the 2nd of May, 2023, went on to aver that the Notice of Appeal contained arguable and substantial issues relating to banker-customer relationship and the extent of the application of the doctrine of vicarious liability. She swore that the Judgment Creditor/Respondent was a retiree who would not be able to return the Judgment sum should the Appeal be decided in favour of the Applicant.

In the Written Address in support of the application, learned Counsel for the Applicant raised the following sole issue for determination: “*Whether this Court should grant an Order for stay of execution of its judgment as sought by the Applicant herein pending the determination of the Appeal against the said judgment.*”

Learned Counsel prefaced his submissions on this sole issue by acknowledging that the grant or otherwise of applications of this nature lies at the discretion of the Court. He also highlighted the principles guiding the grant of applications for stay of execution of judgment. The factors to consider, according to learned counsel, are the existence of a competent appeal upon which the application is predicated, the substantiality of the grounds of appeal, the existence of special circumstances justifying the grant of the application and the necessity of maintain the *status quo* in order not to render the appeal nugatory.

For all his submissions on the sole issue he formulated, learned Counsel cited and relied on the following cases: ***Okafor v. Nnaife (1987) 4 NWLR (Pt. 64) 129, WAEC v. Obisesan (1998) 4 NWLR (Pt. 547) 666 at 670, Amadi v. Anulaobi (1992) NWLR (Pt. 238) 721, Okotie-Eboh v. Jadesimi (1999) 8 NWLR (Pt. 616) 598, National bank of Nigeria Limited v. Nigeria External Telecommunication Limited (1986) 3 NWLR (Pt. 31) 667, and Arojaye v. UBA Limited & Anor (1986) 2 NWLR (Pt. 20) 101*** among other cases to that effect.

On the 30th of May, 2023, the Claimant/Respondent filed his Counter-Affidavit and the Written Address in support of same which was dated the 26th of May, 2023. In the Counter-Affidavit, the deponent, who is the Claimant/Respondent

herein admitted paragraphs 4, 5, 6, and 7 of the affidavit in support of the application for stay of execution of the Judgment of this Court. He went on to swear that as a retired director, he received his pension from his pension administrator, in addition to the thriving businesses which he ran and which he used in taking care of himself and his family. He averred that the action of the Applicant whereby it moved his investment without his permission had occasioned him great hardship, and his health had deteriorated as a result. He, however, expressed his willingness for the Court to order that the judgment debt be paid into an interest-yielding account of this Honourable Court.

In the Written Address in support of the Counter-Affidavit, learned Counsel for the Claimant/Respondent formulated the following sole issue for determination: *“Whether the Applicant has made out a case and satisfied the principles for stay of execution pending appeal.”* Arguing this sole issue, learned Counsel submitted that the Court had the discretion to grant or refuse an application for stay of execution, adding that the discretion must be exercised judiciously and judicially. He maintained that a successful party must be allowed to enjoy the fruit of their Judgment.

Counsel enumerated the conditions that must exist before the Court can grant a stay of its Judgment. He added, however, that the Applicant has not satisfied any of the conditions laid down by the Courts in this regard.

He argued further that the Court had a duty to take into consideration the competing rights of the parties to justice, adding that a discretion which tilted towards the Applicant’s prayer for stay but failed to take into account the

Respondent's right to justice was a discretion that was not judiciously exercised. He also maintained that the fact that the Applicant was a thriving bank that was insured by the Nigeria Deposit Insurance Corporation was not a principle recognized by the Courts. He also maintained that an arguable point of law in a Notice of Appeal was not sufficient, adding such arguable point of law must be *recondite*. He therefore urged the Court to dismiss the application.

For all his submissions on the sole issue he formulated, Counsel cited and relied on the following cases: *Lijadu v. Lijadu (1991) 1 NWLR (Pt. 169) 627 at 644, Emeshie v. Abiose (1991) 2 NWLR (Pt. 172) 192, Okafor v. Nnaife (1987) 4 NWLR (Pt. 64) 129, Incar Nig. Plc v. Bolex Ent. (Nig.) Ltd (1996) 8 NWLR (Pt. 469) 687, Olunloye v. Adeniran (2001) 14 NWLR (Pt. 734) 699, Oyefeso v. Omogbein (1991) 4 NWLR (Pt. 187) 596, Union Bank Nig. Ltd. V. Emole (1999) 9 NWLR (Pt. 213) 74, First Bank Nig. Ltd v. Doyin Investment Nig. Ltd (1989) 1 NWLR (Pt. 99) 634, FBN Plc v. J. O. Imaseun & Sons Ltd (2005) 18 NWLR (Pt. 957) 258, Union Bank Ltd v. Odusote Bookstore Ltd (1994) 3 NWLR (Pt. 331) 129 and University of Abuja v. Ibietan (1998) 3 NWLR (Pt. 18) 621.*

Parties through their Counsel argued their respective positions for and against the application on the 30th of May, 2023. The Court thereafter adjourned for Ruling.

To determine this application, one sole issue calls for determination, and that is, ***“Whether from the facts and circumstances of this application, the Applicant has not satisfied the requirements for the grant of applications of***

this nature and therefore entitled to the exercise of the Court's discretionary powers in its favour by the grant of the reliefs sought in this application?"

A stay of execution is a judicial process or instrument through which the judgment of the court is put on hold until the happening of an event, usually, an appeal which has been lodged against the said Judgment. Where an order for stay of execution has been made, the rights of a successful party which arose from that judgment, or which are given effect to by that judgment are suspended until the appeal has been determined. See ***Aragbiji of Iragbiji Oba Rasheed Ayotunde Olabomi & Anor v. Olabode Oyewinle & Others (2013) LPELR-20969(SC) at 10-11, paras. G-A.***In ***Independent National Electoral Commission v. Obinna C. Nwosu (2018) LPELR-44019(CA) at 8, paras. C-E,*** the Court held that ***"Generally, stay of execution is a Court order to temporarily suspend the execution of a judgment or a Court order. The essence of an order for stay of execution is to maintain the status quo before the order and prevent the successful party from invoking the powers of the Courts in a process of execution."***

The question to consider, therefore, is whether the Applicant has satisfied the requirement of the law to enable this Court exercise its discretion in its favour. The principles which the Courts have distilled over the years, and which both the Applicant and the Respondent herein enumerated in their respective Written Addresses for and against the application are these: (a) whether there is a competent appeal on which the application is predicated; (b) whether the ground

of appeal contains substantial legal issues; (c) whether the Applicant has shown special circumstances justifying the grant of the application, (d) whether it will be right to maintain the status quo in order not to render the appeal nugatory, and (e) whether the Applicant attached to the application the Judgment whose execution the Applicant seeks to stay. See ***Alhaji Mojeed Odutola v. Chief (Mrs) Mosunmola Togonu-Bickersteth & Others (2022) LPELR-57574(CA) at22-23, paras. A-C.***

The circumstances under which Court can make an order for stay of execution were well-stated in the case of ***Moore Associates Ltd v. Exphar S.A. (2023) 3 NWLR (Pt. 1872) 619 S.C. at 643, paras B – G*** thus:

“For a court to order a stay of execution of any judgment pending an appeal lodged against it by the losing party, the following factors must be taken into account, to wit:

(a) whether the applicant has established special or exceptional circumstances; if he does, the court would grant a stay;

(b) whether or not granting a stay would render the appeal nugatory such as whether the res would be destroyed before the appeal is heard;

(c) whether making the applicant satisfy the judgment would make his financial position such that he could not prosecute the appeal; although poverty per se is not a ground for granting a stay;

(d)whether it would be difficult to secure the refund of the judgment debt or the damages and costs from the respondent if the appeal succeeds. For this purpose, the financial ability of the respondent is taken intoconsideration.”

The Court was more elaborate in the case of ***Alhaji Mojeed Odutola v. Chief (Mrs) Mosunmola Togonu-Bickersteth & Others (2022) LPELR-57574(CA) at 9-12, paras. E-C*** when it held per Affen, JCA that

“In an application for stay of execution pending appeal, the following considerations have been distilled from a long line of judicial authorities as guiding principles: (a) The Courts have an unimpeded discretion to grant or refuse a stay. This discretion, as in all other instances of judicial discretion, must be exercised both judicially and judiciously; (b) The competing rights of the parties to justice must be taken into consideration. A discretion that is biased in favour of an Applicant for stay but does not adequately take into account the Respondent's equal right to justice is a discretion that has not been judicially exercised; (c) An unsuccessful litigant applying for stay must show "special" or "exceptional" circumstances eloquently pleading that the balance of justice is obviously weighed in favour of a stay. What will constitute these "special" or "exceptional" circumstances will no doubt vary from case to case. By and large, such circumstances

will involve a consideration of some collateral circumstances and perhaps in some cases inherent matters which may unless the order for stay is granted, destroy the subject matter of the proceedings or foist upon the Court especially the appeal Court a situation of complete helplessness or render nugatory any order or orders of the Court of appeal or paralyse in one way or the other the exercise by the litigant of the constitutional right of appeal or generally provide a situation in which whatever happens to the case, and in particular even if the Appellant succeeds on appeal, there could be no return to the status quo; (d) The onus is on the Applicant to satisfy the Court that a refusal of stay would be unjust and inequitable in the peculiar circumstances of his case; (e) The Courts will grant a stay where its refusal would deprive the Appellant of the means of prosecuting the appeal; (f) The chances of the appeal are important. If the chances of the appeal are virtually nil, then a stay may be refused; (g) The nature of the subject matter in dispute, whether maintaining the status quo ante bellum until a final determination of the appeal in the case will meet the justice of the case; (h) Whether if the appeal succeeds, the Applicant will not be able to reap the benefits of the judgment on appeal; (i) Where the judgment is in respect of money and costs, whether there is remarkable probability of recovering these back from the Respondent if the appeal succeeds; and (j) Poverty simpliciter is not a special ground for

granting of stay of execution except where the effect will be to deprive the Appellant of the means of prosecuting his appeal. See generally: VINCENT STANDARD TRADING CO. LIMITED v XTODEUS TRADING CO. NIG. LIMITED & ANOR [1993] 5 NWLR (PT. 296) 675 at 686-688, OKAFOR v NNAIFE [1987] 4 NWLR (PT. 64) 129 at 136-137, VASWANI TRADING CO v SAVALAKH & CO supra and MARTINS v NICANNAR FOODS CO. LIMITED [1988] 2 NWLR (PT. 74) 55 at 83 amongst a host of other cases.”

It is important to note that the grant or otherwise of an application is an invitation to the Court to exercise its discretion one way or the other. In order to exercise this discretion, the Court must consider all the facts and circumstances of the case. See *Psychiatric Hospitals Management Board v. Utomi (1999) 13 NWLR (Pt. 636) 572 C.A. at 583, paras E – F; Carrena v. Akinlase (2008) 14 NWLR (Pt. 1107) 262 S.C. at 284 – 285, paras F – A; Pamol (Nig.) Ltd. v. Illah Agric Project Ltd. (2003) 8 NWLR (Pt. 821) 38 C.A. at 49-50, paras. E-D. In Cala Niger v. Lead Merchant Bank Ltd. (2004) 5 NWLR (Pt. 867) 575 C.A. at 595 – 596, paras G – A, the Court held that “Whether an application for stay of execution or proceedings would be granted or refused is entirely that of exercise of judicial discretion. The exercise of discretion in such a situation depends on the particular facts of each case as presented and the justice it demands. However, a stay of execution will only be granted if the applicant shows special or exceptional circumstance justifying the stay sought. This principle flows from the background that a successful*

litigant ought not be denied the fruits of his judgment unless there are special or exceptional circumstances.”

I have carefully considered the depositions in the affidavit in support of the application for stay of execution of the Judgment of this Court. I have also reflected on the exhibits attached to the affidavit. It is clear to my mind that the Applicant has not shown the existence of special or exceptional circumstances to justify the stay of the Judgment of this Court. **Exhibits PTS1 and PTS2**, too, did not disclose any substantial issue of law to be argued on appeal. In ***Alhaji Mojeed Odutola v. Chief (Mrs) Mosunmola Togonu-Bickersteth & Others (2022) LPELR-57574(CA) at 23-24, para. D-D***, the Court per Affen, JCA held that

“...the law, as I have always understood it, is that the mere raising of a substantial point of law is not conclusive of the matter nor does it lead inexorably to the grant of stay of execution. In order to satisfy the requirement of special or exceptional circumstance in the context of an application for stay of execution, what the law requires is not merely the raising of a substantial point of law per se, but a substantial issue of law to be decided on appeal in an area in which the law is to some extent recondite, such that either side may have a decision in his favour. See BALOGUN v BALOGUN (1969) 1 All NLR 349 at 351 (per Coker, JSC). A point of law is said to be recondite if it is novel, obscure, abstruse or little known. A notorious point of law which has been overburdened

with previous decisions, even if jurisdictional in nature, cannot be said to be recondite. See LIJADU v LIJADU [1991] 1 NWLR (PT. 169) 627 at 646 -per Niki Tobi, JCA (as he then was). What is more, even where a serious and recondite point of law is raised, it is not in all cases that an applicant is ipso facto entitled to a stay of execution. Each case must be viewed from its own surrounding circumstances. See AGBAJE v ADELAKAN [1990] 7 NWLR (PT. 164) 595 at 611.”

Besides, an applicant who seeks an order for stay of execution of judgment of a court must show that there is a valid and competent appeal against the Judgment. Mere filing of a Notice of Appeal does not make the appeal competent. A valid and competent appeal is an appeal that has been entered. I have perused through both **Exhibits PTS1 and PTS2** and there is nowhere on the face of same that shows the appeal of the Applicant has been entered. In *University of Agric., Makurdi v. Ogwuche (2000) 12 NWLR (Pt. 681) 360 C.A. at 367, paras E – F*, the Court held that **“A stay of execution in its connotation presupposes that there is a subsisting competent judgment which execution has to be stayed... The grounding of stay of execution is coterminous with the pendency of an appeal and the appellant has to apply for it, as it is not as a matter of right. Besides, it underscores the presence of a valid notice of appeal containing competent grounds in the matter.”**

I am not unmindful of Grounds 4 and 5 upon which this application is founded. The Applicant has stated thus:-

“4. The Judgment Creditor/Respondent is a retiree having retired from the services of the Federal Government of Nigeria.

“5. The Judgment Debtor/Applicant is a banking corporation incorporated under the laws of the Federal Republic of Nigeria and which is responsible for management of funds of its depositors.”

The Applicant iterated these grounds in paragraphs 8(ii) and (iii) and 9 of the affidavit in support of the application as well as paragraphs 16 and 17 of the Written Address in support of the application. What the Applicant has done is to plead the poverty of the Claimant/Respondent as a special ground for the grant of the application.

The Respondent, on the other hand, has challenged these grounds in paragraph 5(ii) of his Counter-Affidavit as well as in paragraphs 4.10, 4.11, 4.12 and 4.14 that he is not impecunious as the Applicant has projected. I must state that I agree with the submissions of learned Counsel for the Claimant/Respondent that the mere fact that the Judgment Debtor/Applicant is a financial institution is not enough to impel the Court to exercise its discretion in its favour. I align myself with the pronouncements of the Courts in ***FBN Plc v. J. O. Imaseun & Sons Ltd (2005) 18 NWLR (Pt. 957) 258***, ***Union Bank Ltd v. Odusote Bookstore Ltd (1994) 3 NWLR (Pt. 331) 129*** in this regard and which learned Counsel for the Claimant/Respondent has cited.

In any case, the Court has held in ***Alhaji Bala Abdulkadiri & Anor v. Alhaji Baba Inuwa Ali (1998) LPELR-6361(CA) at 8-10, paras C – A*** that “***The law is***

that poverty is not a special ground for granting a Stay of execution except where the effect will be to deprive the appellant of the means of prosecuting his appeal. In Nwabueze v. Obioma Nwosu (1988) 4 NWLR (Pt 88) 257 at 272 Nnamani 1.S.C. stated:- "In my view there were no exceptional circumstances to justify the grant of a stay of execution in this case. The respondent did not show that he had no resources. In any case poverty simpliciter has never been accepted as an exceptional circumstance."

For the reasons stated above, I hereby resolve the issue I have formulated in this Ruling against the Applicant. Though I am minded to dismiss in its entirety this application for stay of the Judgment of this Court delivered in this suit on the 2nd day of May, 2023, I shall however grant this application for stay of execution of the Judgment of this Court delivered in this suit on the 2nd day of May, 2023 in the interest of justice. In the exercise of my discretionary power therefore which is consistent with my equitable jurisdiction in applications of this nature, I hereby grant the principal relief sought in this application but subject to the Judgment Debtor/Applicant paying the entire Judgment sum into an interest-yielding account of this Court. This Order must be complied with within one month from the date of this Ruling. The Judgment Debtor/Applicant is hereby ordered to file an affidavit of compliance with this Order directing it to pay the judgment debt into an interest-yielding account of this Court. No cost is awarded. Parties should bear their costs.

This is the Ruling of this Court delivered today, the 01st day of June, 2023.

HON. JUSTICE A. H. MUSA
JUDGE
01/06/2023