

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

(APPEAL DIVISION)

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE THEIR LORDSHIPS:

On Wednesday 28th day of February, 2024

HON. JUSTICE Y. HALILU - PRESIDING

HON. JUSTICE E. ENENCHE - MEMBER

APPEAL NO.:CVA/25/2023

SUIT NO.: CV/DUT/383/2022

BETWEEN:

MRS. JUDITH OBEHI APPELLANT

AND

CHIEF CELESTINE UNNI RESPONDENT

RULING

The Appellant vide a Motion on Notice dated 22nd September, 2023 and filed on 25th September, 2023 approached this Honourable Court for an Order staying the execution of the Judgment of the Honourable Court delivered on the 19th day of January, 2023 for lack of jurisdiction.

And for such further Order as this Honourable Court may deem fit to make in the circumstances.

The ground for this application is as follows:-

1. That this Court lacks jurisdiction to adjudicate and deliver Judgment in this suit having denied/deprived the Appellant her Constitutional Rights to fair hearing as enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The application is supported by 10 paragraph affidavit deposed to by Emmanuel Abdul Enamah, legal practitioner in the law firm of Counsel to the Appellant. It is the deposition of the Appellant;

That on the 19th day of January, 2023, the District Court of the Federal Capital Territory, holden at Dutse-Alhaji delivered

judgment wherein the Appellant was ordered to pay the Respondent based on the Plaint before the aforesaid Court to the total sum of N6,400,000.0 (Six Million, Four Hundred Thousand Naira) only, for an alleged illegal excavation of laterite by the Appellant.

That despite the fact that the Appellant admitted knowing nothing about the excavated laterite safe to say that the Respondent placed the laterite on an easement thereby causing obstruction to the Appellant's entrance to the building she is constructing for her cousin as admitted in the Plaint of the Respondent.

That the Appellant had notified the Respondent on several occasions to abate the blockade on easement caused with the said laterite as the Appellant could not access the entrance gate of her cousin's house she is constructing due to the obstruction caused by the Respondent.

That despite the fact that the Appellant admitted knowing nothing about the excavated laterite and having filed her Statement of Defence, Counter-claims as well as a Notice of Preliminary Objection challenging the jurisdiction of the Court, the District Court delivered its ruling on the said Notice of Preliminary Objection in favour of the Respondent, immediately foreclosed

the Defence of the Appellant and converted the said ruling as its final judgment same day granting all the reliefs of the Respondent which are in excess of the court's threshold jurisdiction.

That the Judgment of the District Court dated the 19th day of January, 2023 be set aside and its execution stayed for want of jurisdiction. A copy of the said Judgment is hereto attached and marked Exhibit "A".

That the Appellant having filed her Notice of Appeal, Appellant's Brief of Argument and a Motion for Stay of Execution of Judgment at the District Court which was declined, intends to stay the execution of the aforesaid judgment of the District Court as a stay of execution of the said judgment is expedient.

That it will serve the interest of justice if the application is granted and that the Respondent will not be prejudiced thereby.

In line with procedure, written address was filed wherein sole issue was formulated for determination to-wit;

"Whether the Court has power to order a stay execution of the Judgment of this Honourable Court

delivered on the 19th day of January, 2023 for lack of jurisdiction pending appeal.”

It is the submission of learned counsel, that it is trite that the pre-eminent status or stature of jurisdiction in scheme of legal proceedings is well ingrained in our jurisprudence. It is therefore restating the obvious that jurisdiction is the first test in the legal authority of a Court or Tribunal and its absence disqualifies the Court or Tribunal from determining the substantive issues submitted to it for adjudication. This is so because jurisdiction is the lifeline of judicial power (and Judicialism) without which the entire proceedings constitutes a nullity however brilliantly they may otherwise have been conducted. ***MADUKOLU VS. NKEMDILIM (1962) 1 ALL NLR 587 at 595*** was cited.

Learned counsel submits, that while it is on record that the Appellant Applicant admitted knowing nothing about the excavated laterite and having filed her Statement of Defence, Counter-claims as well as a Notice of Preliminary Objection challenging the jurisdiction of the Court, the Court in annoyance delivered its ruling on the said Notice of Preliminary Objection in favour of the Claimant/ Respondent, foreclosed the Defence of

the Defendant/ Applicant and converted the said ruling as its final judgment.

Learned counsel further submits, that in civil jurisprudence, where the issue arises as to whether or not a Court can entertain a suit, it is to the plaintiff's claim that reference must be made in order to find an answer and this court is urged to so hold. ***TUKUR VS.GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR (PT. 117) 517 AT 549*** was cited.

It is the contention of learned counsel, that the discretion of the court as to the range of the matters for which the court may grant the indulgence to do an act or take step in pre-trial, or trial or post-trial proceedings appears to be infinite. The only limitation is that since the dispensation is discretionary, it must be exercised judicially and judiciously by balancing the interest of the parties. In the instant case, the interest of the parties will not in any way be prejudiced by the granting of this application and this Court is urged to so hold.

Learned counsel also submits, that Claimant/Respondent instituted this suit by a plaint dated the 27th day of July, 2022, and annexed to the aforementioned originating process is the Claimant/ Respondent's written statement on oath dated 27th day

of July, 2022 which was adopted by the Claimant/Respondent (Chief Celestine Unni) as his evidence-in-chief in this suit, as well as the amended plaint dated the 27th day of October, 2022. The court is referred to paragraphs 1 to 5, of the Claimant/Respondent's amended Plaint and written statement on oath dated the 27th day of October 2022.

Learned counsel argued, that this Honourable lacks the jurisdiction to grant the Claimant/Respondent the claims in his Plaint and by virtue of Order II, Rule 5 and Order XV Rule 1(g) of the District Court of the Federal Capital Territory, Abuja, (Civil Procedure) Rules 2021, this Honourable Court has the power to stay the execution of its judgment.

In conclusion, learned counsel placed reliance heavily on the Appellant's affidavit in support of the Motion, the Principles laid down in the above cited statutory and judicial authorities, and submit that it would properly meet the interest of justice to exercise the Court's discretion in favour of the Appellant and this Court is urged to grant the Appellant's application as prayed.

On their part, Respondent filed 16 paragraph counter affidavit deposed to by Joy Akunna Udugwu, litigation Secretary in the Law Firm of Counsel to the Judgment Creditor/Respondent. It is

the deposition that the Applicant's affidavit has failed to disclose any circumstances, considerable triable issues and or recondite issues to warrant the Court exercising stay of execution on its behalf.

That the Appellant equally failed to raise any arguable issues in the Notice of Appeal to warrant the Court to exercise equitable relief of stay on its behalf.

That the grounds of Appeal raised by the Appellant are not sustainable as it has failed to disclose any exceptional circumstances.

That he know of a fact that the Applicant is making attempt to delay and frustrate the judgment/creditor/Respondent from reaping the fruit of its Judgment.

That this judgment is of special type which does not warrant stay since it is monetary in nature, there is nothing to stay.

That the Appellant had equally failed to furnish the Court with the Statement of account in order to assist the Court in exercising its discretion.

That for the Appellant's application amounts to an Abuse of Court Process.

That contrary to paragraph 7 of the Applicant's deposition, that the Notice of Appeal does not contain any arguable issues rather they are issues already addressed by the Lower Court at the Trial level seeking equitable reliefs like stay of execution.

That the application is not proper as it is frivolous, abuse of Court Process, equivocal and it is a ploy to perverse justice in this suit.

That the stay of execution filed by the Judgment Debtor cannot deprive the Judgment Creditor/Respondent from reaping the fruit of its judgment.

That it will be in the interest of justice if this frivolous application is dismissed with the sum of N1,000,000.00 (One Million Naira) for lacking merit and amounting to Abuse of Court Process.

In line with law and procedure, lone issue was formulated for determination to-with;

"Whether the Applicant is entitled to stay of execution sought."

It is the submission of learned counsel, that the trite principle of law is that before the Court can grant a stay of execution, the party seeking for it must disclose exceptional circumstances or

convince the Court that there is inherent recondite issue of law enough to persuade the Court to grant a stay.

Learned counsel argued, that the fact that a ground of Appeal raised a recondite point of law, do not ipso facto warrant an automatic grant of stay of execution especially where the subject matter is money. In such a case as in the instant case, the Applicant must show very strong reasons why stay of execution should be granted.

DITA LTD. VS. WEMA BANK LTD. (1997)4 NWLR (Pt. 501). Page 41, Paragraphs B – C was cited

Learned counsel further argued, that the law is that Court rarely grants stay of execution in monetary judgment. Court was emphatic in its directive to the Judgment Debtor/Applicant which is to pay the various mentioned sums to the Creditor/Respondent. Till date, this Order has not been carried out and the Applicant thereby violating the clear Order of this Honourable Court.

S.P.D.C. NIGERIA LTD. VS. OKEI (2007) 17 NWLR (Pt. 1002) was cited.

Learned counsel submits, that the prayer for the stay of execution made by the Applicant pending appeal is clearly to prevent the

Respondent from reaping the fruit of his successful trial. The attempt to stall it from reaping the fruits of its judgment is serious disrespect to the course of justice on the part of the Respondent if granted.

Learned counsel further submits, that there is nothing to show that the Respondent will be prejudiced if this payment or the other of the court is carried out by making this payment according the Rules of the Court and no cogent and compelling evidence was shown to justify the continued delay.

Counsel concludes, that the Applicant could not prove the burden placed on him to convince the Court to grant the stay on its behalf, the appropriate step is to discountenance this application and dismiss same with the substantial cost of N1,000,000.00 (One Million Naira) only for lacking in merit.

COURT:-

We have gone through the Motion on Notice as aptly argued by the Learned Counsel for the Appellant and the reaction of the Learned Counsel for the Respondent. We shall be brief in resolving the conundrum in the interest of justice and fairplay.

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.

See 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 Appellant/ Applicant met the requirement for a stay of execution of the Judgment of this court?

An appeal shall be deemed to have been brought when the Notice of appeal has been filed at the registry of the court below. In order to kick-start the process of appeal it is a necessary prerequisite to the hearing of an appeal. It is the Notice of the appeal that gives an appellate court the necessary jurisdiction to hear appeal.

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

The Appellant stated that having filed her Statement of Defence, Counter-claims as well as a Notice of Preliminary Objection challenging the jurisdiction of the Court, the District Court delivered its ruling on the said Notice of Preliminary Objection in favour of the Respondent, immediately foreclosed the Defence of the Appellant and converted the said ruling as its final judgment same day granting all the reliefs of the Respondent which are in excess of the court's threshold jurisdiction.

Also, having filed her Notice of Appeal, Appellant's Brief of Argument and a Motion for Stay of Execution of Judgment at the District Court which was declined, intends to stay the execution of the aforesaid judgment of the District Court as a stay of execution of the said judgment is expedient. That it will serve the interest of justice if the application is granted and that the Respondent will not be prejudiced thereby.

Whereas the Respondent maintained, that the Appellant's application is not proper as it is frivolous, abuse of Court Process, equivocal and it is a ploy to pervert justice in this suit. That the stay of execution filed by the Judgment Debtor cannot deprive

the Judgment Creditor/Respondent from reaping the fruit of its judgment.

For all intents and purposes, a successful party must always be helped by court to reap the fruits of his 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 execution of the Judgment in issue.

On the whole, the execution of Judgment of the Lower Court delivered on the 19th day of January, 2023 is hereby stayed, pending the hearing and determination of the Appeal filed by the Appellant.

***Hon. Justice Y. Halilu
Enenche
(Presiding Judge)
28th February, 2024***

***Hon. Justice E.
(Hon. Judge)
28th February, 2024***