

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

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/927/2022

BETWEEN:

MS ASABE WAZIRI.....CLAIMANT

AND

1. ABEH SIGNATURE LIMITED

2. MR. CECIL OSAKWE

3. MR. VICTOR GIWA

4. THE CHIEF REGISTRAR, FCT HIGH COURT

}.....**DEFENDANTS**

RULING

By the motion on notice with No. M/5363/2023 filed on the 24th February, 2023 where upon the applicant seeks for the following:

1. An order staying the proceedings of this court in suit No. FCT/CV/927/2022 - MS. ASABE WAZIRI v. ABEH SIGNATURE LIMITED & 3 ORS, pending the determination of the appeal viz Appeal No. CA/ABJ/CV/1433/2022 filed and entered against the ruling of this Honourable court delivered on the 7th day of December, 2022 upon an application made orally by the 3rd defendant on the 4th day of October, 2022.
2. And for such further order or orders as this Honourable court may deem fit to make in the circumstances of this case.

The grounds upon which this application was filed are contained in page 2 of the motion papers and is supported by twelve paragraphed affidavit and attached to it are the certified true copies of the ruling, notice of appeal and record of appeal and is accompanied by a written address of counsel.

It is in the affidavit that this Honourable court gave a ruling on the 7th day of December, 2022 refusing application made by the applicant, and being dissatisfied with the decision, the applicant filed this application. That the record of appeal have been

transmitted from this court to the Court of Appeal and same has been entered viz appeal No. CA/ABJ/CV/1433/2022, and that where the appeal succeeds, the outcome will affect the ruling of this Honourable court, and that if this proceedings is not stayed pending the hearing and determination of the appeal, the possible decision of the Court of Appeal will be rendered nugatory.

In his written address, the counsel to the applicant raised this issue for determination, to wit:

Whether the applicant is entitled to the reliefs sought?

It is argued that the applicant wants to exercise his constitutional right to appeal in so far as he has satisfied the requisite conditions, and he cited the case of **Madami V. Turaki & Ors (2016) LPELR – 41596 (CA)**, and further submitted that the applicant has satisfied the conditions for the grant of stay of proceedings, making reference to paragraphs 3 – 6 of the affidavit in support to the effect that the Notice of Appeal contains substantial and arguable point of law, and that the Record of Appeal has been transmitted from this court to the Court of Appeal. The counsel cited the provision of Order 6 Rule 10 of the Court of Appeal Rules, 2020, and cited the case of **Bilbis V. Zamfara State & Ors (2003) LPELR – 5294 (CA)** to the effect that the applicant has the right to appeal constitutionally and that right should not be stultified.

It is submitted that there is a valid and subsisting appeal pending before the Court of Appeal, and where there is a valid appeal, the trial court is enjoined to grant a stay of proceedings, and the case of **Dingyadi & Anor V. INEC & Ors (2010) LPELR – 40142 (SC)** was referred to. The case of **Regency Council of Nigeria & Ors V. Sodeinde & Ors (2013) LPELR – 20687 (CA)** was also referred to the effect that the decision of the Court of Appeal would be rendered nugatory if this court will continue with the proceedings.

The counsel also cited the case of **Deduwa V. Okorodudu (1974) 1 All NLR (pt 1) 272** and **Emmanuel V. Wapcipco Ltd (2001) 18 WRN 75** to the effect that where there is an application for stay of proceedings pending appeal the best to do by the trial court is to adjourn the matter pending before it pending the determination of the appeal. The counsel cited several other judicial authorities to support his application and concluded that the Supreme Court held

that the filing of a Notice of Appeal, especially when the notice of Appeal contains prima facie grounds of law, constitute a special or exceptional circumstance for the grant of an order for stay, and that the application is not an attempt to delay, frustrate, hamper or translate the proceedings of the court, as an order of stay of proceedings during trial does not therefore suggest a denial of the rig of the respondent to have his matter heard by the trial court, but a discretionary procedure of courts to ensure that the possible decision of an appellatant court is not rendered nugatory or otiose, and he urged the court to grant the application.

In his counter affidavit, the respondent stated that the applicant does not have a valid appeal at the Court of Appeal, and that the law required that there should be an application for leave to appeal against the ruling within 14 days of the delivery, and where the leave is refused, the applicant is required to file an application for leave at the Court of Appeal within 15 days, and this the applicant did not do so rather proceeded to file his Notice of Appeal on the 19th December, 2022 without any or the leaves.

It is also stated that the applicant has not established any special and exceptional circumstance to warrant the exercise of the court's discretion in his favour as this is a ploy to delay the proceedings of the substantive suit ad infinitum.

In his written address, the counsel to the respondent donated sole issue for determination similar to that of the applicant, thus:

“Whether the applicant is entitled to the order for stay of proceedings pending appeal sought in this application?”

The counsel answered the above question in the negative and cited the cases of **Owena Bank (Nig) Plc V. Olatunji (1999) 13 NWLR (pt 634) p. 218** and **Olawunmi V. Mohammed (1991) 4 NWLR (pt 186)** to the effect that an application of this nature will not be granted where an application for leave to appeal is still pending before the court, and it can only be granted where special and exceptional circumstances are shown to exist, and that it is a matter of fact and law and a very hard one in their combined content, and he cited the cases of **Akilu V. Fawehinmi (No. 2) (1989) 2 NWLR (pt 102) 122;** and **General Ok Ltd V. Oduntan (1990) 7 NWLR (pt 163) 423**, and also submitted that such application will not be granted where the

applicant seeks to delay the substantive suit through the application, and he referred to the case of **Eze V. Okonloji**. He also referred to the case of **Oduba V. Hony Managrachy (1997) 6 NWLR (pt 508) p. 191**.

The counsel submitted that the applicant does not have a valid pending appeal and urged the court to refuse the application with a cost of 500,000=.

Now, it is incumbent at this juncture to adopt the issue formulated by the applicant which was repeated by the counsel to the respondent to wit:

“Whether the applicant is entitled to relief sought?”

It is agreed that the applicant has the right to appeal constitutionally. It is also the contention of the applicant that he has satisfied the conditions for the grant of this application to the effect that the Notice of Appeal contains substantial or arguable points of law, and that the Record of Appeal has been transmitted from this court to the Court of Appeal; and there he relied on the case of **Malami V. Turaki & Ors (supra)**. It is the submission of the counsel to the applicant that there is a valid and subsisting appeal and therefore this court is enjoined to grant this application, and to this, he cited the case of **Dingyadi & Anor V. INEC & Ors (supra)**. While it is the contention of the respondent that this application will not be granted where an application for leave to appeal is still pending before the court, and it can only be granted where special and exceptional circumstances are shown to exist and it is a matter of fact and law and very hard one in their combined content, and he cited the case of **Akilu V. Fawehinmi (supra)**, and further submitted that such application will not be granted where the application seeks to delay the substantive suit through the application, and he cited the case of **Eze V. Okonloji (supra)**.

Thus, before an applicant can successfully stay proceedings in a law court, he must of necessity establish that:

- (a) There is a valid and subsisting appeal;
- (b) There is a special circumstances warranting a stay of proceedings; and
- (c) The justice/balance of convenience of the case is in favour of the applicant. See

The case of **Abdulkareem V. Ayinla (2012) All FWLR (pt 644) p. 191 at 196, paras. E – F**, and the Court of Appeal, Ilorin Division went further and held that the three conditions must co-exist for a successful application for stay of proceedings.

Now, whether the appeal is valid? Thus, the appeal was made against the obiter dictum which is an expression of opinion made in the process of writing a ruling by this court and as such cannot form part of the ratio decidendi of the ruling. It is therefore my opinion that obiter dictum is not binding on this court, even though it may have a weight, and if the appeal is against the obiter dictum, then to my mind is not valid as it is not appealable against the obiter dictum, and therefore, factor number one is not established. See the case of **Mobil Producing Nig. Unlimited V. Johnson (2019) All FWLR (pt 975) p. 818 at pp. 844 – 845, paras. F – C**.

Allegation of bias is one of the grounds upon which an appeal was filed against the ruling of this court, and to my mind, the applicant has satisfied this factor number two as to the existence of special and exceptional circumstances. By this, also the applicant has satisfied that the balance of convenience is in his favour.

Thus, even though the applicant has not satisfied the court as to the existence of the three factors that are required in granting this application, the court out of the abundance of caution, is inclined to grant this application thereby leaving the matter at the hand of the appeal court as to whether this court is bias or not. To this, the application is granted.

Hon. Judge
Signed
16/11/2023

Appearances:

The claimant is absent.

C. J. Abengowe Esq for the claimant.

Ade Ayo Onusosa Esq for the 2nd and 3rd defendants.