

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 21ST DAY OF SEPTEMBER, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/476/2018
MOTION NO: M/8974/2020

BETWEEN:

STARLIGHT GOLDEN VENTURES LTD

JUDGEMENT

CREDITOR/RESPONDENT

AND

ABUJA ENVIROMENTAL PROTECTION BOARD

**JUDGEMENTDEB
TOR/APPLICANT**

RULING

By a Motion on Notice dated the 3rd of August 2020, and filed on the 4th August 2020 the Applicant filed this application seeking the following reliefs:-

1. *AN ORDER of this Honorable Court granting stay of execution of the Judgement of this Honorable Court delivered by Honorable Justice Jude O. Okeke on the 21st of May, 2020 in the sum of Five Million Naira, being nominal damages in favor of the Plaintiff/Respondent pending hearing and determination of the Defendant/Applicant's appeal to the Court of Appeal Abuja Division.*
2. *And for such further or other orders as this Honorable Court may deem fit to make in the circumstance.*

The grounds upon which this application was founded are:

1. The Plaintiff/Respondent instituted this action against the Defendant/Applicant *via* an Originating summons, supported by an affidavit.
2. Following a hearing which was *suo moto* ordered by the Court and conducted in the absence of the Defendant/Applicant on a date that the case was not ripe for hearing, this Honorable Court delivered its Judgement in favor of the Plaintiff/Respondent and against the Defendant/Applicant on the 21st of May 2020.
3. In the said Judgement, this Honorable Court, upon hearing *inter alia* that, the demolition of the Plaintiff/Respondent's structures on its property situate at Zone 3, Wuse, Abuja by the Defendant/Applicant is unlawful, illegal and wrongful and that the Defendant/Applicant did not join issues with the Plaintiff/Respondent on the issue of release of the Plaintiff/Respondent's properties seized by it on the 3rd of December 2018, awarded the sum of Five Million Naira in favor of the Plaintiff/Respondent as nominal damages, release of the said properties and grant of perpetual order of injunction against the Defendant/Applicant.
4. The Defendant/Applicant being dissatisfied with the said Judgement of this Honorable Court, instructed its Counsel to lodge an appeal against it at the Court of Appeal Abuja Division.
5. The Defendant/Applicant have lodged a valid and subsisting appeal against the said Judgement of this Honorable Court delivered on the 21st of May 2020, upon which the award of Five Million Naira nominal damages to the plaintiff/respondent was predicated.
6. If allowed to levy execution against the Defendant/Applicant in the sum of Five Million Naira, the Plaintiff/Respondent will not be in a position to

refund the said sum awarded to it in the event the Defendant/Applicant's pending appeal succeeds.

7. The Plaintiff/Respondent confirmed its inability to refund the said sum in the event the Defendant/Applicant's pending appeal at the Court of Appeal succeeds, in its deposition in paragraph 12 and 13 of the affidavit in support of the Originating Summons before this Honorable Court where it was stated that the acts of the Defendant/Applicant has led to huge damages and losses in earnings.
8. Unless this Honorable Court grants an order staying the execution of the judgement of this Honorable Court pending the determination of the appeal already lodged at the Court of Appeal by the Defendant/Applicant, the judgement of this Honorable Court would be enforced against the Defendant/Applicant without any hope of recovering the said sum in the event that the appeal succeeds.
9. Unless an order of stay of execution pending the appeal is granted in favor of the Defendant/Applicant, the eventual judgement of the Court of Appeal in favor of the Defendant/Applicant would be rendered nugatory and would in addition amount to a pyrrhic victory for the Defendant/Applicant since the judgement sum would have been dissipated by the Plaintiff/Respondent without any hope of recovering same.
10. The inability of the Judgement Creditor (Plaintiff/Respondent) to refund the Judgement sum to the Judgement Debtor (Defendant/Applicant) in the event that the appeal succeeds, constitutes special circumstance warranting the grant of this application.
11. The Defendant/Applicant's Notice of Appeal contains good, substantial and arguable grounds of appeal worthy of consideration by the Court of Appeal.

12. It is in the interest of justice to grant this application in order not to foist a *fait accompli* on the Court of Appeal or render nugatory the eventual decision of the Court of Appeal in the event that the Applicant's appeal succeeds.

In support of this application is a 17-paragraph affidavit deposed to by one AyokhaudeOnoti Priscilla and four exhibits attached. The exhibits are a copy of the said hearing notice for the case that was fixed on the 25th of February 2020, which was marked and attached as **Exhibit AA1**. The second exhibit that was attached and marked as **Exhibit AA2** is another hearing notice for the case that was fixed for the 24th of February 2020, then **Exhibit AA3**, which is a certified true copy of the Judgement dated 21st of May 2020 and **Exhibit AA4**, which is a Notice of Appeal.

Briefly, the facts deposed to in the affidavit in support is that the Plaintiff instituted this suit against the Defendant/Applicant by way of an Originating Summons and that the case was scheduled to have been heard on the 3rd of April 2019 and 14th of October 2019 but could not be heard because the said dates fell within the annual vacation of this Honorable Court and the celebration of the legal year. The deponent further averred that on Thursday the 20th of February 2020 the Defendant/Applicant was served with the hearing notice at its corporate headquarters at Central Area, Abuja, which was received by the Office of the Director of the Defendant/Applicant, fixing the date for hearing in the case on Tuesday the 25th of February 2020. A second hearing notice was again served on the Defendant/Applicant on Friday the 21st of February 2020 by the Plaintiff/Respondent at the corporate headquarters of the Defendant/Applicant, fixing the date for hearing on Monday 24th February 2020. That there was no notice of cancellation or withdrawal of the earlier hearing notice served on the Defendant/Applicant and the two hearing notice exhibited were brought to the

attention of the Counsel for the Defendant/Applicant in the evening of Monday the 24th of February at about 4.30pm.

It was further deposed by the deponent that the Defendant/Applicant was in court on the 25th February 2020 to attend the case having observed that the hearing notice served on the 21st February 2020 fixing the date for hearing on Monday 24th February 2020 was not ripe for hearing. The deponent said that while in court on the 25th of February 2020, Counsel for the Defendant/Applicant observed that the case was not listed in the general cause list and on further enquiries was informed that the matter was heard the previous day, the 24th February 2020 and that the Honorable Court had adjourned for Judgement. The deponent averred that the Judgement was delivered on the 21st of May 2020 in favor of the Plaintiff/Respondent and against the Defendant/Applicant.

The deponent further swore that upon holding *inter alia* that the demolition of the Plaintiff/Respondent's structure on its property situate at Zone 3 Wuse, Abuja by the Defendant/Applicant was unlawful, illegal and wrongful and that the Defendant/Applicant did not join issues with the Plaintiff/Respondent on the issues of the release of its properties seized by the Defendant/Applicant on the 3rd of December 2018, this Honorable Court awarded the sum of Five Million Naira in favor of the Plaintiff/Respondent as nominal damages, adding that the Honorable Court also ordered the release of the property and also granted perpetual order of injunction against the Defendant/Applicant. Being dissatisfied with the judgement of the Court, the Defendant/Applicant lodged an appeal against the whole Judgement at the Court of Appeal which has been validly lodged at the registry of the Appeal Unit of this Honorable Court.

The deponent also averred that the Plaintiff/Respondent would not be in a position to refund the said sum in the event that the Defendant/Applicant's pending appeal at the Court of Appeal succeeds if allowed to recover the said

Judgement sum from the Defendant/Applicant before the determination of the Applicant's appeal. She stated that the Plaintiff/Respondent confirmed its inability to refund the said sum of five Million naira when it deposed in the affidavit in support of the Originating Summons that it has suffered huge damages and losses in earnings which may kill its business and as such the said Judgement sum may be employed in settling or offsetting all or part of the said losses. He added that having regard to the protracted nature of appeals, if the Plaintiff/Respondent is allowed to recover the Judgement sum before the determination of the Applicant's Appeal, it would have dissipated the entire sum before the appeal is determined and it would be very difficult if not impossible to recover the judgment sum from the Plaintiff/Respondent in the event that the Defendant/Applicant succeeds. It was further stated that the Judgement sum of Five Million Naira constitutes the subject matter or *res* of litigation in this case and the Defendant/Applicant is willing and ready to prosecute its appeal expeditiously.

In the Written Address in support of this application, learned Counsel to the Defendant/Applicant formulated one sole issue for determination by this Court. The issue is:

“Whether the Applicant has placed sufficient material before this Honorable Court to warrant the exercise of its discretion in favor of the grant of stay of execution of its judgement?”

In his argument on this sole issue, learned Counsel submitted that the mandatory and overriding consideration ought to be given to the existence or otherwise of the special or exceptional circumstances which necessarily constitutes the basis of the exercise of the court's discretion in the applicant's favor. Learned Counsel listed out these special and exceptional circumstances and also relied on these

cases in support of his argument. The cases are ***Olunloyov.Adeniran(2001) 14 NWLR (PT 734) P. 703 at 709 para H 713 paras F-G, 709-710 paras H-C 715 paras F-G, PAMOL Nig. Ltd v.IllahAgric Project Ltd (2003) 8 NWLR (PT 821) 38 Pg 49-50 Para E, Achorv.Aduku(2005) 17 NWLR (PT 954) P 250 at pp 269-271 paras F-C and Vaswani Trading Company v.Savalakh Company (1972) N.S.C.C 692.***

Counsel submitted that the Applicant has met the requirements outlined in the above cases. These requirement according to counsel are the subsistence of a valid and competent appeal, the existence of substantial and arguable grounds of appeal disclosing recondite points of law, that this Honorable Court ought not to foist on the Court of Appeal a complete state of helplessness, the need to preserve the *res*, stultifying the Applicant's constitutional right of appeal, balance of convenience weighs in favor of the Applicant in the circumstances of this case and the overriding consideration with regards to stay of money judgement.

Learned Counsel for the Applicant finally concluded his argument by stating that the Applicant has met all the mandatory preconditions and requirements for the grant of an order of stay of execution pending the appeal in the circumstance of this case and that an order staying the execution of the Judgement of this Court appealed against ought to be granted in the circumstances of this case pending the determination pf the Applicant's appeal at the Court of Appeal.

On the 5th of December 2022 the Respondent filed his response in the form of a 16-paragraph Counter-Affidavit with an accompanying Written Address. The Counter-Affidavit was deposed to by one Mr Jonas Umeh who is a Counsel in the law firm representing the Respondent in this suit. The deponent averred that some of the facts in the Applicant's affidavit are not true and that the applicant was served with the hearing notices. He added that the Respondent is not asking that the Judgement sum be paid to him and that the Judgement sought to be

stayed by this application is a monetary Judgement. The deponent further swore that whether or not an appeal raised or did not raise any cogent, substantial or arguable grounds or issues of law for determination at the Court of Appeal is not a ground to warrant the grant of stay of execution of a monetary Judgement because in an application for stay, the Judgement sum is paid into an interest yielding account of the Court pending the determination of the appeal and not in the account of the Judgement Creditor/Respondent. This order of stay will not make the Court of Appeal to be foisted with a situation of complete helplessness in the event that the appeal is successful. Lastly, the deponent stated that it will be in the interest of justice to dismiss this application of stay of conditional stay of execution by an order that the Judgement sum be paid into an interest yielding account of the Court pending the determination of the Applicant's appeal.

In the Written Address in support learned counsel to the Respondent formulated two issues for the determination of this Court. These issues are:

“(1) What is the nature of the judgement of execution of which is sought to be stayed by this application? (2) Whether the court can in the circumstance of the nature of the judgement sought to be stayed by this application exercise its discretion to grant the reliefs sought as contained in the face of the motion paper?”

In his arguments on the first issue, learned Counsel submitted that the Judgement sought to be stayed by this application is monetary Judgement and a monetary Judgement is defined as that Judgement which contains an order for payment of a sum of money by the Judgment Debtor/Applicant or which can be executed for the Judgement sum against the Judgement Debtor/Applicant. Counsel also submitted that it is equally a common ground of the parties that the Judgement which execution is sought to be stayed by this application is a monetary Judgement.

On Issue Two, the learned Counsel to the Respondent submitted that the Court cannot in the circumstance of the nature of the Judgement sought to be stayed by this application, exercise its discretion to grant the relief sought. Counsel also submitted that for a stay of monetary Judgement, the Applicant must prove the existence of a special circumstance to warrant the grant of the stay of execution of such monetary Judgement. Counsel relied on the case of ***Mrs Veronica Olojede&Ors v.MrAdeola A.B. Olaleye&Ors (2010) NWLR (pt 1183) page 16-17***to argue that the Applicant has failed to place and prove the existence of any special circumstance to warrant the grant of this application. Learned Counsel for the Respondent finally submitted and argued that it is the duty of the party applying for a stay of execution to satisfy the Court that such party is entitled to the equitable discretion of the Court for a stay of execution, otherwise the Court will not deprive the successful party of the fruit of its judgement. The case of ***Lagos State Development & Property Corporation v. City Mark (West Africa) Ltd (1998) 7 SCNJ at page 141 Ratio 6***to support his final submission.

In the Further and Better Affidavit of the Applicant filed in response to the Respondent's Counter-Affidavit, the deponent, the sameMrsAyokhuodeOnoti Priscilla swore that the Applicant had filed an appeal against the said Judgement of this High Court on the 3rd of August 2020 at the appeal registry, adding that pursuant to the appeal the Applicant also made an applicationto the FCT Registry an application for the compilation and transmission of the records of appeal, duly received and acknowledged on the 29th of June 2020, the copy of this was marked and attached as **Exhibit CTA 1**. She added that there is an acknowledged receipt of these record which was issued. This copy of this is marked and attached as **Exhibit CTA2**. The deponent also swore that on the 3rd of June, 2020 the Applicant made an application for the record of proceedings at the FCT High Court No9 Registry, which was duly signed and acknowledged. A copy of it is marked and attached as **Exhibit CT3**.

It was further sworn by the deponent that the Applicant is serious with the prosecution of the appeal, and it will be in the interest of justice to stay the Judgement in order not to alter the *res* of the case. He added that the Respondent has not shown any reason why the Judgement should not be stayed pending the determination of the appeal. She added that the Applicant is a reputable government agency established by an Act of Parliament, which is responsible for the management and control of wastes in the FCT, and cannot elope with the Judgement debt when and if determined on appeal in their favor. The deponent stated that granting a conditional stay of execution and paying the Judgement debt into the Court as requested by the Respondent will cripple the operations of the Applicant and its eventual closure and it will lead to a floodgate of street trading and hawking which will further worsen the security situation of the Federal Capital Territory. She maintained that granting the stay of execution will also lead to shutting down of the central sewage system which would then be running constantly without maintenance and will lead to the outbreak of diseases, epidemic garbage and ultimately death of many residents in the FCT and its environs, adding that it will suffer irreparable damages which cannot be compensated in monetary terms if it is closed down and the termination of the appointment of over three thousand employees. The deponent finally swore that it will be ungodly, unconscionable and inhuman to have such funds paid into the Court at the expense and detriment of the services the Applicant is meant to provide for humanity.

Above is the compendious narrative of the case before me. To resolve the issues in the application filed by the parties in this matter, the Court has to determine this sole issue which is, ***“Whether from the facts and circumstances of this application, the Applicant is not entitled to the exercise of the Court’s discretionary powers in its favor by the grant of the reliefs sought in this application?”***

By way of introductory remarks, I will first start off by some judicial pronouncements which will avail this Court with the meaning and nature of stay of execution and the circumstances under which an application for same may or may not be granted. 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. But the Court cannot stay execution of a judgment that is yet to be given. 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.”***

The circumstances under which a 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 into consideration.”

On the effect of an order for stay of execution, the Supreme Court, in the case of *Nwora v. Nwabueze (2019) 7 NWLR (Pt. 1670) 1 S.C. at 35 – 36, paras H – B* held that *“An order for stay of execution of judgment cannot be made in vacuum as it cannot stand alone. An order of stay of execution pending appeal only prevents the beneficiary of a judgment or order from putting into operation the machinery of the law, the legal process of which warrants a stay of execution pending the determination of appeal.”*

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. IllahAgric 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.”

Now, back to the matter before me, I have this question to ask: has the Applicant in this case appeared to have justify the grant of the application of stay of execution of the Judgement of this Honorable Court delivered on the 21st of May 2020? The Applicant obviously thinks so because it has referred this court to **Exhibit AA4**, the grounds of appeal contained therein which the Applicant believes raises weighty, substantial issues of law. On the other hand, the Respondent does not think so. The Respondent believes that the Applicant has placed nothing before this Court to invoke the exercise of its equitable discretion.

Meanwhile, I have studied the exhibits before me. **Exhibit AA4**, which is the Notice of Appeal in which ground one is challenging part of the Judgement of the trial court by stating that there was an error in law which occasioned miscarriage of justice. Ground two is challenging another part of the Judgement which is on page 5 of the said judgement of this honorable court. Ground three and ground four are challenging different parts of the Judgement delivered in favor of the Respondent. Ground five which is the last ground on the Notice of Appeal, is challenging the reliefs granted by this Honorable Court in favor of the Respondent. I find it difficult to see how these grounds amount to weighty and essential points of law as asserted by the Applicant in this application.

I agree with the Counsel to the Respondent that the Applicant must prove the existence of special circumstance to warrant the grant of the stay in this matter. These special circumstances have been pronounced by the courts repeatedly in a plethora of authorities to the point of innui. Moreover, the courts have held that even where the appeal raises a recondite issue of law, the court may not grant

the application for stay of execution of judgement if issues raised do not disclose special and exceptional circumstances. See the case of ***Leaders Co Ltd v. Adetona (2003) 14 NWLR (Pt 840) 431 CA at 445 paras D-G***. Based on the above analysis, this Court is of the opinion that the Applicant in this case has not shown any special or exceptional circumstance for the grant of the stay of execution of Judgement delivered on the 21st of May 2020.

It was averred in the Applicant's Further and Better Affidavit that the Applicant is a reputable government agency established under the Act of Parliament and is responsible for the management and control of wastes in the Federal Capital Territory and it cannot elope with the Judgement debt when and if the appeal is determined in its favor. It has also contended that granting a conditional stay of execution and paying the judgement debt into the Court as requested by the Respondent will cripple the operations of the Applicant and its eventual closure. I do not see how these facts become recondite points of law. I am of the view that being an agency of government is not a ground for stay of execution. Moreover, being a government agency is even the reason the Applicant should have been circumspect in the performance of its particular functions. That this Court found it liable is a proof that it was reckless in the performance of its statutory duties. The Applicant cannot come by way of stay of execution to avoid its liabilities.

In as much as the Applicant has raised some facts that raise the question of the service of a valid hearing notice, it is not enough to enable this Court grant a stay of this judgement. This is especially so as the Applicant has acknowledged the fact that he was served with two hearing notices but choose the particular hearing notice to honor. Atleast, the Applicant has shown that he has been served with hearing notices instead of him not being served at all. Moreover, between the 25th of February, 2020 when the Applicant claimed it found out that the Court had heard the Judgment Creditor/Respondent on the 24th of February, 2020 and the 21st of May, 2020 when the Court delivered its Judgment in the suit,

the Applicant ought to have brought an application to set aside the proceedings of that day for lack of service of hearing notice. It cannot be heard at this stage making an application it ought to have made between the 25th of February, 2020 and the 21st of May, 2020. Equity aids the vigilant and not the indolent. See ***Ntuks v. NPA (2007) 13 NWLR (Pt. 1051) 392 at 428, paras C-D; A.-G. Adamawa State v. A.-G., Federation (2014) 14 NWLR (Pt. 1428) 515 at 559, para G; Dandume L.G.C. V. Yaro (2011) 11 NWLR (Pt. 1257) 159 at 176, para A; Ojo v. Adesida (2020) 10 NWLR (Pt. 1732) 347 at 374, para A. In Eze v. F.R.N. (2017) 15 NWLR (Pt. 1589) 433 at 478, paras D-E***, the Court held that ***“Each party to any pending litigation must be vigilant and if he is not so vigilant, he may deprive himself of fair hearing without remedy.”***

Another issue to point out is that, an applicant who seeks an order of stay of judgement of a Court must show that there is a competent appeal against the Judgement. See the case of ***University of AgricMakurdi v Ogwuche (2000) supra***. A competent appeal is an appeal that has been entered. An appeal that has been entered is shown by the appeal number on the face of the Notice of appeal. There is none on the face of **Exhibit AA4** attached to the Applicant’s application.

To give this whole matter a rest, for the reasons stated above, I hereby resolve the issue I have formulated in this Ruling against the Applicant. The application of the Defendant/Judgement Debtor/Applicant for stay of execution of the Judgement of this Court delivered on the 21st of May 2020 is hereby dismissed.

This is the Ruling of this Court delivered today the 21st September 2023.

HON. JUSTICE A. H. MUSA

JUDGE
21/09/2023