

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**(APPEAL DIVISION)**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**BEFORE THEIR LORDSHIPS:**

**On Wednesday 28<sup>th</sup> day of February, 2024**

**HON. JUSTICE Y. HALILU - PRESIDING**

**HON. JUSTICE E. ENENCHE - MEMBER**

**APPEAL**

**NO.:CVA/240/2023**

**SUIT NO.: CV/53/2019**

**BETWEEN:**

**TOCHUKWU C. NRABALU ..... APPELLANT**

**AND**

**MRS. SANDA D. LAWAL ..... RESPONDENT**

## **RULING**

This Ruling is at the instance of the Appellant/Applicant who approached this Honourable Court vide a Motion on Notice dated 7<sup>th</sup> April, 2023 and filed on 11<sup>th</sup> April, 2023 seeking for;

1. An Order of this Honourable Court granting a stay of execution of the Judgment delivered by his Worship Hon. Mohammed Abba-Bello Sadiq delivered on the 29<sup>th</sup> day of August, 2022, sitting at the Senior District Court of the Federal Capital Territory, Abuja in Suit No. CV/53/2019 between **MR. SANDA D. LAWAL VS. TOCHUKWU C. NRABULA** pending the hearing and determination of the Appeal before this Honourable Court in Appeal No: CVA/240/2022 between **TOCHUKWU V. NRABALU VS. MR. SANDA D. LAWAL.**
2. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is brought are as follows:-

- i. The Appellant/Applicant has on the 22<sup>nd</sup> day of September, 2022 filed Notice of Appeal against the Judgment delivered by the Trial Court 29<sup>th</sup> day of August, 2022.
- ii. The grounds contained in the Notice of Appeal involve substantial points of law and facts and have very high chances of success before this Honourable Court.
- iii. The decision of this Court may likely be rendered nugatory if this application is not granted.

In support of the Application is a 13 paragraph affidavit deposed to by one Ikenna Obila, litigation secretary in the Law Firm of Counsel to the Appellant/Applicant. It is the deposition of the Appellant/Applicant, that;

The Appellant/Applicant being dissatisfied with the Judgment of Trial Court, appealed against the said Judgment delivered on 29<sup>th</sup> day of August, 2022, sitting at the Senior District Court of the Federal Capital Territory, Abuja in Suit No: CV/53/2019 between ***MR. SANDA D. LAWAL VS. TOCHUKWU C. NRABALU.*** A copy of the said Judgment and the Notice and grounds of Appeal are collectively attached and marked as Exhibit "A".

The Appellant/Applicant has taken further steps and has applied for the certified true copy of the Record of Proceedings in the matter to enable him compile the Record of Appeal speedily and transmit same for timely determination of the appeal. A copy of the said application is hereby attached and marked as Exhibit "B".

That the grounds contained in the Notice of Appeal raise arguable and substantial questions of law and facts with a high probability of success before this Honourable Court.

That the Respondent will not be able to return the 'res' to status quo if the Appeal succeeds afterwards before this Honourable Court.

That the justice of the case requires that status quo be maintained and the execution of the Judgment stayed pending the hearing and determination of the Appeal before this Honourable Court.

That it will be in the interest of justice to stay the execution of the Judgment in the case as so not to foist a situation of complete helplessness on this Honourable Court with regard to the Appeal before it in the case that the said Judgment is executed and 'res' is damaged before hearing and determination of the Appeal.

That it will be in the interest of justice to grant this application to forestall a situation where this Honourable Court will be foisted with a fait accompli and its decision rendered nugatory in the case that said Judgment is executed before the hearing and determination of the Appeal.

That the Appellant/Applicant will suffer untold hardship if this application is refused and the Appellant/Applicant to prosecute this Appeal without adequate fund.

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

***"Whether this Honourable Court can exercise its discretion in favour of the Appellant/Applicant."***

It is the submission of learned counsel, that when a Court is called upon to exercise its discretion in favour of an application, it must ensure that it acts judicially and judiciously based on sound principle of law and by giving weight to relevant considerations – ***FIRST FUELS LTD. VS. NNPC (2007)2 NWLR (Pt. 1018) 276.*** It is also trite and held by this Court in plethora of cases that where leave is necessary before an Appeal can be validly filed, it ought to be applied for and obtained and notice of appeal filed within the statutory period.

***AMUDIPE VS. ARIJODI (1978)2 L.R.N 128*** was cited.

Learned counsel further submits, that the Respondent will not be prejudiced by the grant of this application as same will only further enhance a fair and just determination of the issues raised in this Appeal.

***C.S. SOLEYE VS. OLAWALESONIBARE (2000)6 NWLR (Pt. 775) 386*** was cited.

Learned counsel contends, that a stay of execution will be granted by the Court, where there are grounds of appeal showing substantial issue of law to be decided in the Appeal in which the law is to some extent recondite and where either side may have a decision in its favour. ***BALOGUN VS. BALOGUN (1969)1 ALL NLR 349; OKAFORV VS. NNAIFE (1987)4 NWLR (Pt. 64) Page 129*** were cited. The general purpose of granting stay of execution pending determination of appeal is to preserve the res in the case and in doing so, to maintain the status quo. There is need to preserve the res so that the Appeal Court is not presented with a fait accompli and the proceedings before it is rendered absolutely nugatory. The case of ***BALOGUN VS. BALOGUN (Supra)***.

Learned counsel also submits, that it is brought in absolute good faith in Order that justice will be done in this case. ***ADEKEYE VS. AKIN-OLUGBADE (1987)3 NWLR (Pt. 60) at 224*** was cited.

Learned counsel concludes by urging this Honourable Court to resolve the issue in favour of the Appellant/Applicant and grant the reliefs sought in the application.

On their part, Respondent filed a 4 paragraph counter affidavit deposed to by Faith Ojochide Attah, litigation secretary in the law firm of counsel to the Respondent. It is the deposition of the Respondent, that the Lower Court delivered Judgment in this case on the 29<sup>th</sup> day of August, 2022.

That the Appellant/Applicant filed a Notice of Appeal on the 22<sup>nd</sup> day of September, 2022.

That the Appellant/Applicant has neglected and totally failed to compile and transmit record of proceedings for the prosecution of this Appeal within the six(6) weeks period stipulated by Order XXVII Rule 3(1) of the Federal Capital Territory District Court Rules, 2021.

That the Appellant/Applicant has neglected to take any step in prosecuting this Appeal long after the time and opportunity given to him by law had elapsed.

That the Appellant/Applicant has refused to obey the Judgment and Order of the Lower Court made against him.

That no Record of Appeal was transmitted at the time when the Appellant/Applicant filed and served the Respondent's counsel a Motion for stay of execution of judgment of the Lower Court.

In line with procedure, written address was filed wherein sole issue that was formulated for determination by the Appellant/Applicant was argued here.

Learned counsel submits, that the facts and circumstances of this application have clearly shown that the Appellant is not diligent in prosecution his appeal by not taking the steps he ought to have taken within the time stipulated by the respective Rules of Court, and even after the stipulated time has long elapsed.

Order XXVII Rule 3(1) of the Federal Capital Territory District Court, Rules 2021 was cited.

Order 50 Rule 24(1)(a) and (b) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018.

In conclusion, learned counsel urge this Honourable Court, on the strength of the provisions of the rules Court referred and the judicial authorities cited above, to dismiss the Appellant's Motion for stay of execution of the Judgment of the Lower Court for lacking in both merit and substance.

**COURT:-**

We have taken an insightful look into the circumstances that led to the instant application by the Applicant. We have equally considered the argument canvassed by all the parties in their written addresses.

The grant or refusal of a stay of execution of Judgment is discretionary based on peculiar facts and circumstances of each case. Therefore to seek for a variation or stay of the execution of such order by a court of coordinate jurisdiction is tantamount to questioning the exercise of discretion of the court.

The Res which the Judgment Debtor/Appellant/Applicant seeks to stay is monetary Judgment. It is trite that the court will not make it a habit denying or depriving a successful litigant the fruits of his Judgment.

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.

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

The claim of the Applicant is, that the justice of the case requires that status quo be maintained and the execution of the Judgment stayed pending the hearing and determination of the Appeal before this Honourable Court. That the grounds contained in the Notice of Appeal raise arguable and substantial questions of law and facts with a high probability of success before this Honourable Court.

Whereas, the Respondent contends, that the Appellant/ Applicant has neglected and totally failed to compile and transmit record of proceedings for the prosecution of this Appeal within the six(6) weeks period stipulated by Order XXVII Rule 3(1) of the Federal Capital Territory District Court Rules, 2021. That no Record of Appeal was transmitted at the time when the Appellant/Applicant filed and served the Respondent's counsel a Motion for stay of execution of Judgment of the Lower Court.

It is trite that a Court sitting on Appeal has the duty to hear and determine all Appeals pending before it by giving a Judgment one way or the order to avoid denying a party right to fair hearing.

It is the law that the test of fairness in an Appeal proceeding is different from the test of fairness at the Court of first instance where the true test is the impression of a reasonable person who

was present at the trial, whereas at the appeal court, the test is whether having regards to the rules of court and the law, justice has been done and appears to have been done to the parties. Justice was not done to a party who's case before the Appellate Court was not considered on his brief before a decision affecting his right be reached.

The case of ***TUNBI VS OPAWOLE (2000) LPELR 3274 (SC)***.

We have no difficulty in arriving at the just conclusion that the facts and evidence before us are enough to grant to stay of execution of the Judgment in issue.

On the whole, the execution of Judgment of the Trial Court delivered by his Worship Hon. Mohammed Abba-Bello Sadiq delivered on the 29<sup>th</sup> day of August, 2022, sitting at the Senior District Court of the Federal Capital Territory, Abuja in Suit No. CV/53/2019 between ***MR. SANDA D. LAWAL VS. TOCHUKWU C. NRABULA*** is hereby stayed, pending the hearing and determination of the Appeal before this Honourable Court in Appeal No: CVA/240/2022 between ***TOCHUKWU V. NRABALU VS. MR. SANDA D. LAWAL***.

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

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***Hon. Justice E.  
(Hon. Judge)  
28<sup>th</sup> February, 2024***