

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 26TH DAY OF APRIL, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/615/2019
MOTION NO.:-FCT/HC/M/5111/2023

BETWEEN:

TUNDE V. NORDI:.....CLAIMANT/RESPONDENT

AND

**NIGERIAN EXPORT-IMPOT BANK (NEXIM):....DEFENDANT/
APPLICANT**

Ubong Udoekpo for the Claimant/Respondent.
Fatima Alhassan for the Defendant/Applicant.

RULING.

The Defendant/Applicant by this motion on notice dated 17th day of February, 2023 and filed on 21st day of February, 2023, prays the Court for the following:

1. An order staying all further proceeding in this matter pending the determination of the motion for leave to appeal already filed at the Court of Appeal, Abuja against the ruling of this honourable Court delivered in this suit on the 7th day of December, 2022.
2. And for such further order or other order as this honourable Court may deem fit to make in the circumstances.

In the supporting affidavit deposed to by one Nana Firdausi Badamasi, the Applicant averred that following the ruling of this Court delivered on 7th December, 2022, it applied to the Court

of Appeal by a Motion No. CA/ABJ/PRE/ROA/CV/61M/2023, for leave to appeal the said ruling, hence the filing of the instant application.

The learned Defendant/Applicant's counsel, Baba Lawal Aliyu, Esq, in his written address in support of the application, raised a sole issue for determination, to with;

“Whether all further proceedings in this matter ought to be stayed pending the determination of the Applicant’s motion for leave to appeal pending at the Court of Appeal?”

Arguing the issue for said, learned counsel contended that the Applicant by its Motion on Notice for leave to appeal filed on 23rd of January, 2023, has raised fundamental grounds of appeal challenging the Ruling of this Court delivered on the 7th December, 2022.

He submitted that by virtue of the provisions of Order 43 Rule 1 of the Rules of this Court, this Court has the vires to grant application for stay of proceedings in deserving instances.

He argued that there exists a special circumstance to warrant stay of proceedings of this Court pending the hearing and determination of the appeal upon the grant of the leave to appeal.

He referred inter alia, to **House of Assembly of Rivers State & Anor v. Asobari & Ors (2013) LPELR-22845(CA); Nalsa Team Associates v. NNPC (1996)NWLR(Pt.439)621.**

Learned counsel further contended that the Applicant's appeal raises recondite points of law as to the Applicant's right to fair hearing.

He further referred to **Balogun v. Balogun (1969)All NLR 348 at 351; Agbaje v. Adeleke (1990)7 NWLR (Pt.164) 595 at 611-612 and 617.**

He argued that this is a proper case, having regard especially to the nature of the proceedings and the fundamental issue of fair hearing raised, that compels the grant of a stay of all further proceedings pending the determination of the appeal.

He thus, urged the Court to stay all further proceedings in this matter pending the determination of the appeal at the Court of Appeal.

In opposition to the application, the Claimant/Respondent filed a 12 paragraphs counter-affidavit deposed to by one John John Akpai, wherein he averred that there is no valid and subsisting appeal before the Court of Appeal to warrant the grant of this application.

In his written address in support of the counter- affidavit, learned Claimant/Respondent's counsel, Akintunde Ogbontolu, raised a lone issue for determination, to wit;

“Whether this honourable Court ought to grant the Applicant's application for stay of proceedings?”

Relying on **UNIFAM Ind. Ltd v. Oceanic Int'l (Nig) Ltd (2007)All FWLR (Pt.352)1801,** he submitted that the grant of an application for stay of proceedings is within the discretion of the Court, which discretion must be exercised judicially and judiciously.

He further referred to **Wema Bank PLC v. Tonade (2008)All FWLR (Pt.443)1290,** and contended that before the Court can grant an application of this nature, the applicant must satisfy the following:

- a. That there is a valid and subsisting appeal.
- b. That there is a special circumstance warranting the grant of the application.
- c. That the justice of the case is in favour of granting a stay of proceedings.

He contended that the Defendant/Applicant in this case has failed to satisfy all these conditions, and therefore, that the application for stay of proceedings should be refused.

The fundamental and basic basis for the grant of a stay of proceedings pending appeal, is that there is a valid appeal pending at the Court of Appeal.

In **N.N.P.C. v. O.E. (Nig) Ltd (2008)NWLR (Pt.1090) 583 at 617-619**, the Court of Appeal, per Aboki, JCA, held inter alia that;

“In the exercise of its discretion to grant or refuse an application for stay of proceedings pending the determination of an appeal, the Court is to be guided by the following principles: (a) There must be a pending appeal. A stay of proceedings can be granted only if there is a pending appeal, which is valid in law.”

Thus, the first question to ask in considering an application for stay of proceedings pending appeal, is whether there is an appeal pending before the Court of Appeal.

In the instant application, the Applicant in its affidavit was clear on the fact that what it filed before the Court of Appeal is a motion for leave to appeal against the ruling of this Court.

Evidently therefore, no appeal by the Applicant is pending before the Court of Appeal against the ruling of this Court

before the Applicant brought this application for stay of proceedings pending appeal.

An application for leave to appeal is not the same as an appeal, and same is not granted as a matter of course. The Applicant cannot pre-empt the Appellate Court, as to presume that its application for leave to appeal must necessarily be granted. even if that were to be the case, the leave must have been granted and the Applicant's appeal filed and duly entered at the Court of Appeal before the Applicant can bring an application for stay of proceedings pending the appeal.

It is my considered view, that the instant application is an abuse of Court process, as the Applicant by same, wants this Court to stay its proceedings and wait for the Applicant to go and obtain the leave of the Court of Appeal to appeal against the ruling of this Court. No law gives the Applicant the right to such indulgence by this Court.

This application is therefore manifestly and inherently incompetent and frivolous, and same is accordingly dismissed.

Pursuant to Order 56 Rule 12 of the Rules of this Court, cost of N50, 000.00 (Fifty Thousand Naira) is ordered against the Defendant/Applicant for occasioning unnecessary delay in the proceedings in this case.

HON. JUSTICE A. O. OTALUKA
26/4/2023.