In an action for the recovery of professional fees, the case was heard for a period spanning three (3) years and judgment was entered in favour of the Judgment Creditor/Respondent herein on the 1st March, 2021.

Being dissatisfied with the decision, the judgment debtor/applicant appealed against same and also filed an application dated 25th March, 2021 seeking for the following reliefs:

In opposition, the Judgment Creditor/Respondent filed a 17 paragraphs counter affidavit and a written address in compliance with the Rules of Court. In the address no issue(s) was raised or streamlined for the determination of the court, but the address equally dealt with the settled principles governing grant of stay of execution and it was contented that on the materials, the Applicant has not disclosed any exceptional circumstances to warrant the exercise of the court's discretion in her favour.

At the hearing, I.D. Njoku of counsel for the Judgment Creditor/Respondent relied on the paragraphs of the Counter-Affidavit and adopted the contents of the written address in urging the court to dismiss the application.

From the materials and submissions of counsel on both sides of the aisle, the issue to be resolved falls within a very narrow legal compass. Any application for stay of execution must be resolved within settled principles developed by our courts over a period of time governing the grant or refusal of such applications. The application of these principles and indeed the success of the application is necessarily predicated on the cogency and quality of the facts presented to support the grant of the application.

Now an order for stay of execution on the authorities is not granted as a matter of course. The power which inheres in court to grant the application is both equitable and discretionary. Like all equitable discretions, it is required to be exercised judicially and judiciously having regard to all the materials placed before the court and the dictates of justice where an applicant has exercised his constitutional right of appeal. See

The grant is usually based on the Applicant showing the existence of special or exceptional circumstances warranting the suspension or stay of execution of the judgment given in favour of the respondent who was successful in the litigation and who is thereby ordinarily entitled to the enjoyment of the fruits or benefits of his success in the said judgment. Thus the policy or attitude of court is not to deprive a successful litigant from the enjoyment of the fruits of his victory unless proof of these special or exceptional circumstances showing that the balance of justice is in favour of grant of stay of execution. See

The party applying has the burden to satisfy the trial court that in the particular situation or circumstances of his case and on the balance of convenience, he is entitled to the discretionary order of stay to be exercised or made in his favour and a refusal to so order would be unjust and inequitable. In this regard, it is the balance of hardships rather than the convenience of the party applying that is considered as a basis for the grant of stay. The consideration of the convenience of the applicant without regard to equal consideration of the right of or convenience of the other party i.e the respondent will be an unjust and inequitable exercise of discretion.

The key question here is whether the applicant has by the materials crossed this threshold of disclosing special and exceptional circumstances. In addressing this question, it is to the materials I must take my bearing from.

It may be pertinent before doing so to refer to the immortal pronouncement of the Apex Court in as to what constitutes or qualifies as special or exceptional circumstances that would warrant a grant of stay of execution. The court stated that special or exceptional circumstances, which vary from case to case are such that involve a consideration of some collateral circumstance and perhaps in some cases inherent matters which may unless, the order of stay is granted, destroy the subject matter of the proceedings and foist upon the court especially the Court of Appeal, as in the instant case, a situation of complete helplessness or render nugatory any order or orders of the Court of Appeal or paralyse in one way or the other, the exercise by the litigant of his constitutional right of appeal or generally provide a situation in which whatever happens to the case, and in particular even if the appellant succeeds in the Court of Appeal, there could be no return to the status quo.

The above are some of the applicable principles. As stated earlier, the next task is to apply these principles to the facts of this case and then resolve the key question whether the Applicant has creditably established entitlement to the reliefs sought.

Now the basis of the application as can clearly be discerned from the affidavit in support are as follows:

There is really nothing in the above affidavit of the Applicant beyond the averment that the Applicant is not satisfied with the Judgment of court and has filed a notice of appeal clearly streamlining the special circumstances putting the court in a commanding height to grant the extant application. The Applicant may have referred to a Notice of Appeal filed but how that constitutes special or exceptional circumstances was not defined. It is settled law that special circumstances may include strong, weighty and substantial grounds of appeal, but this alone may not suffice. That a ground of appeal is weighty, strong, substantial and arguable does not necessarily mean the appeal may succeed. See Therefore, a strong and substantial ground of appeal alone may not be enough to found special and exceptional circumstances. So the substantiality of a ground of appeal is not fool proof for granting a stay. Even where the grounds of appeal are substantial, it does not automatically entitle an Applicant to a grant of stay, particularly when the res is money. See

; the Applicant must still show that there are strong reasons for granting a stay and a court must consider other factors before reaching a final decision on the question of stay. These factors include the conduct of the Applicant and balance of convenience. It is against these factors that the court eventually decides the manner in which to exercise discretion on a grant or refusal of stay. See and

I have carefully examined the Notice of Appeal, Exhibit A. While not sitting as Court of Appeal over my decision, I do not think on a calm evaluation that the said grounds of appeal are such that would constitute the collateral circumstances stated in the case of on the basis of which a stay of execution can be granted. The Notice of Appeal contains two grounds. Ground 1 is simply complaining that the court erred in assuming jurisdiction in the light of non compliance with the legal practitioners Act with respect to service of Bill of Charges. Ground 2 has no particulars but it complains that the decision of the court is against the weight of evidence in assuming jurisdiction to entertain the action. As much as I have sought to be persuaded, I do not accept that the grounds of appeal can be said to relate to any difficult area of the law in which the principles are not well settled or that there is a dearth of judicial authorities dealing with the issues raised and the law well settled in that area. I do therefore think that the grounds of appeal disclose any substantial or weighty points or issues of law.

I only need repeat at the risk of sounding prolix that even where the notice contains substantial points of law, it does not automatically inure or lead to a grant to stay. It has to be a weighty and substantial point in an area that is to some extent recondite and either side could have judgment in his favour. See . I do not see what is recondite, difficult or novel raised by the extant appeal. See . It is also noteworthy here to refer to the salient decision of the Supreme Court in where the court per (of blessed memory) stated thus:

The point to underscore is simply that it is not enough to state that the notice of appeal contain substantial, arguable and recondite issues of law. There is nothing magical about these words and the mere mention of them does not automatically mean a court would grant the application. The Applicant must relate the grounds of Appeal to the facts and nature of the case itself and show for example that unless a stay is granted, the appellant would end up having the subject matter of the dispute destroyed or foist upon the Court of Appeal a situation of complete helplessness or render nugatory any orders the court of Appeal may make or paralyses one way or the order the exercise of the appellants constitutional right in that even assuming he succeeds on appeal, a return to the *status-quo* would be impossible. This certainly is not the case here. The judgment subject of appeal only involves the sum of a little above ═ found to be the professional fees due to Judgment creditor. The Judgment creditor has averred in his counter-affidavit that it is a sum he can readily pay back in the unlikely event the appeal succeeds. This averment was not challenged or denied and it is taken in law as Applicant has equally not stated anywhere that she is incapable of paying the Judgment sum or that the payment will in any manner prevent her from exercising her right of appeal. So where is the fairness in seeking to deny the Judgment creditor the fruits of his victory? The condition precedent for the validity of applications of this nature must be fairness. The extant application completely lacks this element.

Furthermore, it must be noted that the judgment in this case is predicated on a monetary claim as already alluded to. An applicant for stay of execution in

situations of this nature has thrust upon himself serious responsibilities beyond empty and sterile averments if the court is to intervene and deny a successful litigant of the fruit of his victory. In

the Court of Appeal per Aderemi J.S.C (as he then was) provided an instructive insight to conditions for the grant of stay of execution in monetary judgment as follows:

The averments by Applicant in the entirety of the paragraphs of the supporting affidavit do not aggregate or denote convincing fact(s) that if the judgment debt is paid over to the judgment creditor, there is no reasonable probability that the sum will be paid back in the event the appeal is successful. Indeed the Applicant did not state anything on this critical issue.

The failure of the Applicant to meaningfully address this point as earlier alluded to is fatal. On the authorities, this factor is material in deciding whether to grant or refuse an application for stay of execution of a money judgment. Furthermore, on the authorities, where the Judgment is a monetary sum and the plaintiff is capable of paying back is a decisive factor in refusing to grant a stay of execution. Similarly a stay of execution would not be granted if an Applicant is unable to prove that the respondent will not be able to pay back the money if they succeed on appeal. See

I note that in , the Applicant averred that if the Judgment is not stayed, it will result in an unnecessary spate of litigation that will, in fact, deny the Applicant the fruit of the Judgment on appeal if it ends in her favour. The

Applicant has not however defined or streamlined what and how litigation will arise from the Judgment if stay is not granted. Spate of litigation by who and for what? There is already an appeal so what other litigation will come about is difficult to fathom. The court really has no business and indeed will not engage in any idle exercise of speculative posturing as done by Applicant. Any reference by Applicant to " is simply a red herring and is discountenanced without much ado. The Applicant has the means to engage in but does not want to pay the Judgment sum of about ₦300,000. I just wonder.

I also note in paragraph 13 of the Application, the Applicant alluded to irreparable and greater hardship, including unnecessary but avoidable cost been occasioned against Applicant if stay is not granted without again stating in clear terms how this hardship and avoidable cost will affect the exercise of the right of appeal. Is it that the Applicant is saying that she will not be able to prosecute the appeal if she is made to pay the judgment debt immediately? This point I must state clearly, was not precisely defined by her. Let me however generally state that one of the circumstances which a court takes into consideration in an application for stay of execution is whether the refusal to grant a stay will paralyze in one way or the other the exercise of a party of his constitutional right of appeal. See

However, before a court can hold that a judgment debtor's right of appeal will be paralyzed if a stay is not granted, the judgment debtor must make full and frank disclosure of his assets, means and liabilities, the costs of the appeal, counsel fees to enable the court decide whether a refusal of stay would indeed paralyze the right of appeal. See

The important consideration to determine if in truth the judgment debtor would not have the resources to prosecute the appeal is dependent on whether she has made a full and frank disclosure of her assets, means and liabilities.

In this case, there is absolutely no doubt that the Applicant has not made out any disclosure at all of any of her assets and liabilities to even put the court in a position to determine that she will not be able to prosecute the appeal if the judgment debt is paid immediately. There is therefore on that basis no ground

constituting a special and exceptional circumstances to warrant grant of stay. In the Apex Court per Belgore J.S.C (as he then was) stated thus:

None of the circumstances stated in the above instructive scenario painted by the revered Jurist arise in this case.

The Applicant in paragraph 16 of the supporting affidavit deposed that the Applicant is ready, willing and capable to pursue the appeal with utmost diligence, dedication and seriousness, without any delay.

The above appears to be a hollow averment. The Applicant has up till date not even complied with the provision of which provides thus:

In this case, the Notice of Appeal exhibit A was filed in the Registry of this court on the 22nd March, 2021. Since the filing of the said Notice of Appeal, there is no evidence of payment whatsoever by the Applicant for the

compilation of the records which ought to be done within 14 days of the filing of the Notice of Appeal. This is indeed fatal to the extant application for stay by the Applicant.

What the Applicant has done was simply to file the Notice of Appeal and go to sleep. It was the usual deliberate and dilatory interventions hitherto utilized by counsel to deny and/or frustrate the Judgment Creditor from the enjoyment of the fruits of his judgment using unfairly the instrument of the appeal and an application for stay as cover.

This new progressive and salutary intervention by the Rules was inserted to stop this calculated mischief. The simple idea is that filing a notice of appeal and application for stay is not sufficient any longer. An applicant must now exhibit manifest seriousness and diligently pursue his appeal by paying for compilation of records and transmission of same to the Court of Appeal. With the payment and compilation of Records, the Appeal process has effectively now been set in motion and the usual tactics to delay Appeals and frustrate the execution of judgments would hopefully now be reduced to the barest minimum. The failure by Applicant to comply with the provision also gravely undermines the extant application.

On the whole, the application completely lacks merit and it is accordingly dismissed.