

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 9TH February, 2022

FCT/HC/CV/980/21

BETWEEN

OYAWOYE YUNUS OYEYEMI-----

CLAIMANT

AND

1. IWUH GOZIE PRINCE WILL }

2. SPEAKEASY LIMITED }

DEFENDANTS

RULING

By this motion on notice No. M/9167/2021 dated and filed on the 13th December, 2021 Applicant are praying the Court for the following orders:-

1. An order of this Court staying proceedings in suit FCT/HC/CV/980/2021 between Oyawoye Yunus Oyeyemi and Iwuh Gozie Prince Will and Speakeasy Limited pending the determination of appeal against the ruling of the Court delivered on the 12th November, 2021.

2. And for such further order(s) as this Court may deem fit to make in the circumstances.

The facts as relied upon by the Applicant and stated in their affidavit in support was deposed to by one Idukurilum Victoria Akinyemi, a litigation secretary at the law firm of Counsel to the Applicants wherein she avers that the Applicant filed a preliminary objection challenging the jurisdiction of this Court and the Claimant/Respondent filed a counter affidavit joining issues.

That this Court delivered its ruling on the 12th November, 2021 wherein the preliminary objection was overruled. Applicant has filed a notice of appeal on the 24th November, 2021.

That the appeal raises substantial point of law capable of determining the existence of the substantive suit as presently instituted before trial. That it is necessary to grant this application so as to render the outcome of the appeal effectual and not nugatory and the respondent will not be prejudiced if this application is granted. Attached to this application is a copy of the ruling of this Court dated 12th November, 2021 and a written address by Counsel to the Applicant wherein he formulated a sole issue for determination.

Whether or not it is necessary to grant this application, Counsel on behalf of the Applicant states that the law requires an application of this nature to satisfy some condition to be able to earn the discretion of the Court.

1. There must be a valid appeal
2. The appeal must be an arguable appeal.

3. The applicant must show special and exceptional circumstances. See ***NNPC & ORS VS ODIDEPO ENTP (2008) NWLR (pt 1090) 583*** Counsel argued that the issues to be determined in the appeal is jurisdiction which is very crucial to any suit. Counsel relied on ***BOYE VS ADEYEYE (2012) 12 NWLR (pt1314) 357 at 404.*** Counsel states that continuing with the trial may lead to Judgment while the appeal may be pending.

As a result, it becomes necessary to stay proceeding as continuing with the trial will render the outcome of the appeal nugatory.

The Claimant Respondent filed a counter affidavit opposing the Applicant application. Same was deposed to by one Kayle Hamza. The litigation Secretary at the law firm of Claimants/Respondent Counsel wherein she avers to the following facts.

That this Court delivered its ruling striking out the Defendant/Applicant motion of preliminary objection on the 12th November, 2021. Defendant/Applicant appeal the ruling via a notice of appeal filed on the 24th November, 2021 but waited till 13th December, 2021 before filing the application. That there is no pending appeal as the Defendant/Applicant has not complied and transmitted record of appeal or the record of appeal has not been entered at the Court of Appeal. That the said notice of appeal was filed by the Defendant/Applicant to waste the time of the Court and frustrate the suit of the Claimant which was commenced under the special procedure of summary judgment. That the notice of appeal filed by the Applicant is not supposed to

warrant a stay of proceeding in this suit which will bring hardship on the Claimant /Respondent. A party applying for a stay of further proceedings invokes the discretion of Court which cannot be exercised as a matter of course but judicially and judiciously with extreme caution. The demands of justice dictates that when a party intends to exercise his constitutional right of appeal in a matter the order for stay of further proceedings must be made for the preservation of the res the subject matter of the dispute so as to ensure that the appeal if unsuccessful is not rendered nugatory.

Since the very discretion of stay of further proceedings in a litigation is ant-thesis to speedy hearing of the case the majority opinion Leans infamously against the grant of a stay of proceedings pending the determination of an appeal where the grounds are lacking in substance, frivolous and grossly incompetent.

The exercise of discretion of Court to grant or refuse a stay of proceedings pending an appeal against an interlocutory order depends on the peculiar facts and circumstances of each case. A major consideration where an interlocutory order does not finally dispose of the case is that it could be wrong to stay proceedings simply because of an appeal which has been lodged against it by an aggrieved party as such an order could be made the subject of appeal after the final judgment see. ***GOVT OF ABIA STATE & ORS VS ANAEANJI & ORS (2007) LPELR 5014 (CA)***

One of the yardstick followed by Court of Appeal in decided authorities is that an application for stay of further proceedings must disclose first from the affidavit evidence and the exhibited notice of appeal that the grounds of appeal are substantial and arguable. It is acceptable as special and exceptional circumstances where the grounds of appeal raise a genuine issue of jurisdiction and not merely as ploy to delay the hearing of the case.

I have looked at the annexure attached to this application and conclude that the grounds of appeal raise issue of jurisdiction and competence of Court which is genuine, substantial and arguable the Court has laid down a number of criteria to be considered before a Court can exercise its undoubted judicial and judicious discretion to grant such an order of stay. The onus therefore lies squarely on an Applicant such as this to establish to the satisfaction of the Court in view of the position of the law that an appeal does not operate as a stay of proceedings see ***KIGO NIG LTD VS HOLMAN BROS NIG LTD & ORS (1980) 5-7 SC 60.***

The exercise of discretion to grant a stay of proceedings will be prompted by the peculiar circumstances of each case in which all factors for and against the grant of stay proceedings must be carefully and meticulously weighed see ***AYENI VS ELEDO (2005) 12 NWLR (pt939)9 PDP VS ABUBAKAR (2007)2 NWLR (pt1018) 303 at 314 -315.***

Emphasis is laid on the fact the issue of jurisdiction should not be used as a camouflage, neither should it be seen as a magic hand

to conjure a stay of proceedings see ***AREJOYE VS UBA (1986)2 NWLR (PT20) 101 OKEM ENTP LTD VS NDIC (2003) 5 NWLR (Pt 814) 492.***

In the instant case the Applicants grounds of appeal are:-

1. On question of law, that a suit is not properly before the Court until all parties have been served.

Non compliance with the provision of a statute i.e Supreme Court decision see ***NEURAL PROPRIETARY VS U.N.I.C INSURANCE PLC (2015) LPELR (40998)1 at 9-10.***

That the Court failed to exercise its discretion in the Applicants favour. On the 1st grounds after a perusal of the case file I noticed that the 2nd Defendant was served a motion on notice and writ of summons on the 2nd July, 2021.

Both processes were collected by one Olorundare Blessing. The cashier to the 2nd Defendant in this case while the 1st Defendant is the chief executive officer of the 2nd Defendant (see paragraph 1 of Defendants joint statement on oath) see 56 of Companies and Allied Matters Act (CAMA) provides that any act of the members or of a managing director while carrying on in the usual way of business of the company shall be treated as the act of the company itself and the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person provided that.

The company shall not incur civil liability to person if that person had actual knowledge at the time of the transaction in question or

if having regards to his position with a relationship to the company he ought to have known of the absence of such power or of the irregularity.

By virtue of section 65 Companies and Allied Matters Act (CAMA) any act of the Managing Director while carrying on in the usual way business of the company itself.

A director of a company is in the eye of the law, an agent of the company for which he acts and the general principle of the law of principal and agent will apply see ***KOFI VS DOLARI (2017) LPELR 43186 (CA)***

The 1st Defendant is an agent of the 2nd Defendant in the instant case and by the position of the 1st Defendant (Chief Executive officer) there is no way he would not have had knowledge that the 2nd Defendant was not served with the Court processes. The suite initially was properly before the Court.

On the 2nd ground for appeal I noticed that the parties in their memorandum of understanding marked as exhibit A used the word "shall". In their paragraph 14(a) and (b) which is the dispute resolution clause. In ***NEURAL PROPRIETIES VS UNIC INSURANCE (supra)***. The Court held that before a court of law can decline jurisdiction on the basis of an arbitration clause, the law requires that a clause must be mandatory, precise and unequivocal see also ***KURUBO VS ZACH – MOTISON NIG LTD*** . Where parties have chosen to determine for themselves that they will refer any of their dispute to arbitration instead of resorting to regular Courts, the Court has a prima facie duty to

act upon their agreement. There is however nothing in the memorandum of understanding that exclude a right of action on the contract but a party against whom an action has been brought may apply to the discretionary power of the Court to stay proceedings in the action so that parties may resort to the procedure that have agreed upon see ***OBEMBE VS WEMABOD ESTATES LTD VS TRANSOEAN SHIPPING VENTURES PRIVATE LTD VS M.T. SEA ETERLING (2018) LPELR 45108.***

The Court should not be seen to encourage the breach of a valid arbitration agreement which is also a means by which contract dispute are settled by a procedure agreed by the parties see ***POLARIS BANK VS MAGIC SUPPORT NIG LTD (2020) LPELR 53106 CA.***

Stay of proceedings is a serious grave and fundamental interruption or the right of a party to conduct litigation towards the trial on the bases of the substantial merit of his case and therefore the general practice of the Court is that a stay of proceedings should not be granted, unless the proceedings beyond all reasonable doubt ought not to be allowed to continued see ***OBI VS ELENWOKE (1998) 6 NWLR (pt 554) page 456-437.***

From the grounds of appeal it would be just for this Court to grant the stay of proceeds, this is because the clause contained in the memorandum of understanding between the Claimant and Defendant duly signed for the case to be first taking to arbitration

first of all. This made me to grant this application. Also on the issue of jurisdiction raised by the Applicant. In granting an order for stay of proceedings the Court should be guided primarily by the necessity to be fair to both parties. I therefore on a final consideration granted this application. Accordingly same is hereby granted under the following condition.

That the Applicant is given 6 month from today to do the needful or alternatively after the expiration of 6 months. I would not hesitate to proceed if the Applicant refuse to take this advantage and act appropriately according to the rules of the Court of Appeal.

HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)
9/02/2022