

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA APPEAL JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIPS: HON. JUSTICE B.KAWU (PRESIDING JUDGE)

HON. JUSTICE M.S IDRIS (JUDGE)

DATED:-27th JUNE, 2022

APPEAL NO.CRA/10/2022

CHARGE NO. CR/46/2020

BEWTEEN:

UMAR ISA ABUBAKAR-----

APPLICANT

AND

1. COMMISSIONER OF POLICE

2. CHIEF REGISTRAR, HIGH COURT MAITAMA

3. HEAD OF ENFORCEMENT UNIT

SHARIA COURT

RESPONDENTS

RULING

(DELIVERED BY HON. JUSTICE M.S IDRIS)

This is a motion on notice filed by the Applicant against the Defendants/Respondents. The motion is with a motion No. M/139/2022 dated and filed on the 17th January, 2022 same is seeking for the following reliefs:-

1. An order staying the execution of the judgment of the Grade 1 Area Court Kwali in this charge pending the hearing and determination of the appeal filed at the Appellate Court against

the judgment of the grade 1, Area Court delivered on the 1st February, 2020 in charge no CR/46/2020

2. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

Take further notice that the grounds upon which the application is brought in addition to those contained in the accompanying affidavit are as follows:-

1. That the grade 1, Area Court delivered its judgment on 1st February, 2020 against the Applicant.
2. That the Applicant being dissatisfied with the judgment has filed a notice of appeal against the said judgment delivered by the Grade 1, Area Court.
3. That the Appeal would raise substantial and arguable points of law that the judgment in the charge ought to be stayed until the appeal is heard and determined by the Area Court.
4. Unless this Honourable Court stays the execution of the judgment pending the hearing and determination of the appeal before the Appeal Court, this Grade 1, Area Court will be undermining the powers and authorities of this Honourable Court if it proceeds to execute the judgment given in this charge.
5. That it is in the interest of justice to grant this application.
6. That this Honourable Court has the discretion and requisite powers to grant this application.

In support of the motion on notice is a 13 paragraph affidavit deposed to by Jubril Bello a Counsel in the law firm of Marble partners LP, the law firm representing the Applicant, the

affidavit contained material facts that led to the application of the motion before the Court. The Respondent have not filed their counter affidavit. It would be on record that the Respondent going by the record of the Court same is aware of this pending motion on notice but same refused, neglect to file a counter affidavit. Having partly reproduced the content of this application aforesaid it is pertinent to note that issues of stay of execution is to a large extent a discretion of the Court. However such discretion must be exercised judicially and judiciously. I have looked at the process filed by the Applicant more importantly right of appeal is a constitutional right which to all intent and purpose cannot be denied in the spirit of justice and fair play. The grounds upon which the application may not be granted is when if such stay is granted it would cause hardship or it would be seen to have been granted arbitrarily. Thus, in an application for stay of execution, the Court is called upon to strike a balance between two competing rights of parties to justice. The right of a judgment creditor to enjoy the fruits of his success at the litigation on the one hand and the right of the judgment debtor to his constitutional right of appeal on the other hand thus, in ***NATIONAL PENSION COMMISSION VS FIRST GURENTEE PENSION LIMITED – CT (2014) 2 NWLR (pt 1391) 346 at 382*** held in all such application the balance of connivance is a relevant consideration. Thus the Application would not be granted where compensation would suffice and or where the Applicant cannot compensate the Respondent in the damages to be sufficed.

If the lower Court in this exercise of its discretion did not take this material into consideration the question would remain whether the said exercise was in accordance with the dictate of Justice.

From the above authority it becomes imperative to state in this ruling that issues of this nature ought to be granted by this Court this is because the application is going against the judgment of the Court delivered against the Applicant. Therefore it is the constitutional right of the Applicant to proceed on appeal that made me to grant this application for stay of execution. I so hold. There is substantial ground why the application should be granted.

HON. JUSTICE M.S IDRIS
(HON. JUDGE)

HON. JUSTICE B.KAWU
(PRESIDING JUDGE)

Appearance

George Ochima:- Appearing with is E.O Amupitan and J.A
Bello for the Applicant