

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 18 GUDU-ABUJA
ON TUESDAY THE 22ND DAY OF OCTOBER 2024
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO: FCT/HC/CV/7988/2023

BETWEEN:

LUMEN – DEO REALITES AND CONSTRUCTIONS LTD } ...APPLICANT

AND

OMOARE AYODEJI JEROME RESPONDENT

BENCH RULING

Applicant in this suit filed motion on notice with motion no: M/12107/2024 dated 4th September, 2024 and filed on 6th September, 2024, the motion is brought under Order 61 Rule I of High Court of the FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court. It is seeking for an injunction restraining the Respondent from executing, enforcing, and/or giving effect in any manner whatsoever to the judgment in **SUIT NO: HC/CV/7988/2023** delivered by this Honourable Court on the 13th day of June, 2024 pending the determination of the appeal filed by the Appellant/Applicant at the Court of Appeal and for such other order(s) as this Honourable Court may deem fit to make in the circumstance.

The grounds of this application are:

- (1) To prevent the house/property subject matter of the appeal from being wasted
- (2) To ensure that the appeal, if successful, is not rendered nugatory.

Attached to the application is a 21 paragraphs affidavit, a notice of appeal marked as Exhibit Lumen 1 and a written address.

Respondent on its part filed a 17 paragraphs counter-affidavit dated 19th September, 2024 and attached to is a written address.

Having read arguments of both parties in their various written addresses attached to their application, it is my view that both learned counsel to the Applicant and Respondent failed to address the propriety of the Notice of Appeal otherwise known as Exhibits Lumen 1” A cursory look at the Notice of Appeal merely reflects a stamp from the registry of the FCT High Court Appeal Unit. There is no proof that the Records of Appeal has been compiled and transmitted neither is there proof of payment of same. More importantly the Notice of Appeal (Exhibit Lumen 1) has not been entered at the court of Appeal. It is trite that a Notice of Appeal cannot act as a stay of execution of the court Judgement until same has been duly entered at the court of Appeal.

The question to be asked here is at what instance will an appeal be deemed to have been entered? In **PDP & ORS V. BADAIRE & ORS (2019) LPELR-47063 (CA)** it was held thus;

"With regards to the second ground of the preliminary objection, the records of appeal show that upon the delivery of judgment by the lower Court on the 4th of July 2018, the Appellants caused a notice of appeal to be filed on the 5th of July, 2018 and the records of appeal were compiled and transmitted to this Court on the 25th of July, 2018. The records of appeal were accepted by the Registry of this Court and the appeal was given an appeal number on the said 25th of July, 2018. By the provisions of Order 4 Rules 10 and 11 of the Court of Appeal Rules, the appeal was deemed entered in this Court on that day and from thence onwards, this Court became seised of everything to do with the matter and every application thereafter was to be made to this Court."

That is to say that appeal would be said to have been entered where the records of appeal has been compiled and transmitted to the Court of Appeal,

same accepted by the Registry of the Court of Appeal and the appeal given an appeal number. Once it is so entered, an appeal is then said to be pending and the lower court is divested of jurisdiction. However, the only document in the Court file is the Notice of Appeal with no Appeal Number which goes to say that Appeal has not been entered at the Court of Appeal.

Thus, in the light of the above, this application lacks merit and is hereby struck it out.

Parties: Absent.

Appearance: Sylvester Okonkwo appearing for Applicant Hope Omorogie appearing with Raphealla Adaaku for Respondent.

Hon. Justice Modupe Osho-Adebiyi
Hon. Judge
22nd October, 2024