

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON THURSDAY THE 27TH DAY OF JUNE, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/6986/2023

BETWEEN:

MR. RICHY ONOLEMEMEN --- JUDGMENT CREDITOR
(Suing through his lawful Attorney
Barrister Felix Onolememen)

AND

MR. EMMANUEL EGWU ---- JUDGMENT DEBTOR

RULING

Unless and until Appeal is properly compiled, served on the other party and evidence of compilation and transmission and Endorsement and Return showing that the party was served it cannot be said that there is a pending Appeal.

Again, for there to be a pending Appeal, the original case file must also be taken to Court of Appeal and

Court of Appeal will be in charge and in control. So also where there is an Exhibit. Anything outside that it means that there is no pending Appeal. Mere filing of Notice of Appeal does not culminate into Appeal. Mere bringing a paper with Appeal Number on it where there is no evidence of service of Appeal compiled record on the other party is not pending Appeal.

In every Judgment especially in monetary Judgment it is the joy and inspiration and wish of the Judgment Creditor to enjoy the fruit of the Judgment, but that joy fizzles out by the application for Stay of Execution or Set Aside a Judgment usually filed by the Judgment Debtor. Such application usually bedevils the Judgment and frustrates the joy and dash the hope of the Judgment Creditor.

Oftentimes the party – Judgment Debtor may even loose more money than the Judgment sum at the end of the day and may still loose the case at the Appeal Court or Supreme Court depending on where the matter end.

In this case Judgment was delivered on the 15th day of March, 2024. The Judgment Debtor filed a Motion for Stay of Execution and Notice of Appeal on 19th March, 2024. The Judgment Creditor countered by filing a

Counter Affidavit on 21st April, 2024. Today they are in Court and have moved the Motion and the Counter Affidavit. The Judgment Debtor stated he had entered Appeal. The Judgment Creditor stated he was not served. The Judgment Debtor said he was served. But the Judgment Creditor stated that what was served has nothing to do with the case. The Judgment Debtor has a document which he says has the Court of Appeal case Number. The debate was hot and Amici lent their voices.

But from all indication there is no evidence that the Judgment Creditor was served. Besides, the case file is still in this Court. The Judgment Creditor had urged this Court to dismiss the Motion while the Judgment Debtor wants Court to hold that Appeal is still pending.

But from all before me and given the fact that there is no evidence to show that the Judgment Creditor was served though there is a document that was served on him which has nothing to do with this case.

Again after 60 days the Appeal Unit has no right to compile record. The party who appealed the case has a right to compile and then give the document to the Appeal Unit to transmit.

In this case the compilation by Appeal Unit on 14th June, 2024 after 60 days is wrong and unlawful. The Judgment Debtor ought to have done the compilation but most unfortunately he was deceived by the Appeal Unit staff who as it were messed the whole thing up.

There is no properly compiled and transmitted Record. The document served on the Judgment Creditor is not and has nothing to do with this case though the cover page has his name but everything else has nothing to do with him including the Notice of Appeal.

Since the Court has not seen any evidence of properly transmitted Record of Appeal the Court will hold that there is no pending Appeal. So where there is no pending Appeal the Court cannot stay the Execution of the Judgment of this Court.

Also there is no special and exceptional circumstance in the fact in support of the Motion for Stay to sue this Court to grant the Stay.

Again, as rightly pointed out by the Judgment Creditor, the Judgment is a monetary Judgment. There is no evidence of peculiarity on the part of the Judgment Debtor. Besides, he did not attach any evidence to show his inability and why the Court should grant the Stay. Definitely, it is the Judgment Creditor who will suffer if the Court grants this Stay.

Every Judgment Creditor should be allowed to enjoy the fruit of the Judgment unless there is an overwhelming reason why he should not. In this case there is such overwhelming reason.

Application for Stay of Execution NOT granted because it is not meritorious. It is therefore DISMISSED.

This is the Ruling of this Court.

Delivered today the ____ day of _____ 2024 by me.

K.N. OGBONNAYA
HON. JUDGE

APPEARANCE:

JUDGMENT CREDITOR COUNSEL: FELIX A.
ONOLEMEMEN ESQ.

DEFENDANT COUNSEL: EMMANUEL I. OKANI ESQ.