

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ZUBA, ABUJA
ON THURSDAY THE 21ST DAY OF MARCH, 2024
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE
SUIT NO.: FCT/HC/CV/898/2017
MOTION NO.: M/4850/2024

BETWEEN:

SHUWARI CONSOLIDATED ENTERPRISES ----- JUDGMENT
NIGERIA LIMITED CREDITOR

AND

ASO SAVINGS AND LOANS PLC ----- JUDGMENT
DEBTOR

BENCH RULING

On the 23rd day of February, 2024 this Court delivered a lengthy but well considered Judgment. But while the Judgment Creditor was about to kick-start the enjoyment of the fruit of the Judgment the Judgment Debtor filed a Notice of Appeal challenging the Judgment of the Court. They followed that up with a Motion for Stay of Execution of the said Judgment.

In the Motion which was filed on the 1st day of March, 2024 barely 8 days after the Judgment was delivered. In the Motion the Judgment Debtor is seeking 2 prayers – Stay of Execution of the said Judgment and Injunction restraining the Judgment Creditor or their members, Agents, Privies, Assigns from taking any step to execute the said Judgment. They supported the Motion with Affidavit id 5 paragraphs and a Written Address. The Counsel for the Judgment Debtor had adopted the Written Address before all in Court today.

Upon receipt of the Motion the Judgment Creditor fired back with a Counter Affidavit of 11 paragraphs. He attached 2 documents – Letter of Complaint written to the Manager of the Estate – Taslee Palm Estate and to the Commissioner of Police FCT Command. In both letters he laid bare the complaints and urge the Commissioner of Police to use his good office to forestall peace in the place and to investigate the matter. He adopted their Written Address.

The Judgment Debtor filed a Further Affidavit and Reply on Points of Law to the Counter Affidavit and adopted same in Court today too.

The Court allowed the Judgment Creditor to respond since he did not have time to file a Counter Affidavit having been served the Further Affidavit yesterday in Court.

The Court deems as if hereunder attached seriatim the arguments and submission of the parties as contained in both the Affidavit and Further Affidavit and Reply on Points of Law and Written Address as well as the Counter and

Written Address filed by the Judgment Creditor and their adumbration.

The question is should this Court stop the Execution and further execution of the Judgment it delivered on 23rd February, 2024 exactly 27 days ago based on the Notice of Appeal filed by the Judgment Debtor? Again, is there really a pending Appeal in this case bearing in mind that there is no evidence of transmission of Record of Appeal or the Record of Proceeding in this case to the Court of Appeal even as I deliver this Ruling?

Before I answer the above questions posed by the Court let me first answer the questions raised by the parties in the application in the main Further Affidavit and Further Reply to the Counter Affidavit and those raised by the Judgment Creditor in the Counter Affidavit.

On whether this is a proper case for exercise of Court discretion to grant the application as sought by the Judgment Creditor.

It is the view of this Court that it is NOT a proper case for the Court to exercise its discretion in favour of the Applicant/Judgment Debtor by granting this application.

On whether the Judgment Debtor's application for Stay of Execution ought to be granted as prayed;

It is the humble view of this Court that the application for Stay ought not and shall not be granted by this Court.

The Court will give its reason along with the answer to the questions posed by this Court earlier in this Ruling.

To start with, not answering the question posed above seriatim. It is the view of this Court that there is no pending Appeal as far as this case is concerned. For an Appeal to be pending there must be evidence of compilation and due transmission of Record of Appeal. That means that there will be fully compiled Record made in spiral binding, containing all the documents filed by all parties in a Suit Appealed against. It should have both the Notice of Appeal as filed and Record of Proceedings as typed and CTC of the Judgment Appealed against and list of Exhibits tendered by the parties in the course of the case. All shall be made in 21 copies and with a letter from the Appeal Unit of the High Court forwarding the said Record of Appeal, the file and all Exhibits to Court of Appeal. Upon taking same to Court of Appeal, the Court will acknowledge receipt of same documents and enter it into their Record book and give the file a Number and give a letter to the Appeal Unit of the High Court stating who took delivery of the Record of the Appeal and showing vividly the new number of the case at the Court of Appeal. It is only when that is done that it can be said that there is a pending Appeal. Once the Court sees the letter from the Court of Appeal, the Court below will hands-off the case and hold that there is a pending Appeal.

In this case there is no pending Appeal. There is no evidence that Appeal has been entered by the Judgment Debtor. The mere filing of Notice of Appeal is not evidence of a pending Appeal. No Court will hands-off a case by been served a

mere Notice of Appeal filed by a party. This Court shall not hands-off the case or Stay Execution of the Judgment delivered on 23rd February, 2024 just because the Judgment Debtor filed a mere Notice of Appeal because there is no evidence to show that the Record of Appeal has been transmitted to the Court of Appeal and that the Court of Appeal is seized of the matter. This Court shall not grant the Stay of Execution of the Judgment of 23rd February, 2024.

This means that it is the view of this Court that there is no pending Appeal in this case. The Judgment Creditor should enjoy the fruit of its Judgment as this Court has not stayed the Execution of the said Judgment.

It is the law that grant of application for Stay of Execution of Judgment duly delivered by a Court of competent jurisdiction is not granted as a matter of course or based on sentiments or emotion or by mere filing of Motion for Stay of Execution by a Judgment Debtor. For Court to exercise its discretion it must be based on sound judicial and judicious reasons not on mere application or eloquent adumbration by a Counsel of the Judgment Debtor who has filed such application for Stay of Execution of Judgment. Such application must be based on sound reason showing that if it is not granted it will render fact accompli to the Judgment of the Court of Appeal where/if there is actual pending Appeal which has been fully entered by the Judgment Debtor. There is no such pending Appeal in this case. The Judgment Debtor should also show special and exceptional reason and circumstance which should suade the Court to show that the Judgment Debtor will suffer if the Stay is not

granted or that if the Judgment at the Court of Appeal favours the Judgment Debtor that non-grant of the Stay will render the Judgment Nugatory.

In this case, this Court had searched the length and breadth of the Affidavit, Further Affidavit and Reply on Points of Law as well as the submission in the Written Address of the Judgment Debtor but has not seen such special and exceptional circumstance raised by the Judgment Debtor. The exercise of Court's discretion is not based on sentiments as I have earlier stated. This Court has not seen the reason why it should exercise the discretion in favour of the Judgment Debtor as sought in this application as they have not shown any special exceptional circumstance why Court should do so.

Having gone through the submission of the Judgment Creditor in their Counter Affidavit and Written Address, it is glaringly clear that if the Court grants the application and stay the execution of the Judgment of 23rd February, 2024 as sought by the Judgment Debtor that it will be anti-justice and the Judgment Creditor will be denied the enjoyment of the fruit of the Judgment which it got from a very protracted beak in Court since 2017 when this Suit was filed.

From all indication there is no merit in this application. There is no justice in granting the said application for Stay of Execution as sought by the Judgment Debtor in this application. The Judgment Creditor deserves and should enjoy the fruit of the said Judgment delivered on the 23rd

February, 2024. The said Judgment should be executed without delay.

The application to Stay the Execution and further Execution of the said Judgment delivered on the 23rd of February, 2024 by this Court in this case as well as the application for Interlocutory Injunction filed by the Judgment Debtor – Aso Savings and Loans PLC is hereby DISMISSED for lacking in merit.

This is the Bench Ruling of this Court.

Delivered today the ____ day of _____ 2024 by me.

K.N. OGBONNAYA
HON. JUDGE