

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

MOTION NO. FCT/HC/M/2535/2024

DATE: 5-11-24

B E T W E E N

GASCOMEDIA NIGERIA LIMITED

}

PLAINTIFF/APPLICANT

AND

- 1. FEDERAL CAPITAL DEVELOPMENT
AUTHORITY**
- 2. MINISTER OF FEDERAL CAPITAL
TERRITORY**
- 3. ASMAR PROPERTIES AND ESTATE
DEVELOPERS LIMITED**

}

DEFENDANTS/RESPONDENTS

R U L I N G

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Claimant/Applicant in this case is Gascomedia Nigeria Limited vide a Motion on Notice No. M/2535/2024 dated 11th January, 2024 prayed this Honourable Court for a sole relief to wit:

“An Order staying further proceedings in this matter pending the determination of the Appeal against the Ruling of the Honourable Court delivered on 26-5-2022.”

The said application is premised on 7 grounds to wit:

1. The Applicant has appealed the Ruling of the Honourable Court delivered on 26th May, 2022.
2. Appeal has been entered at the Court of Appeal in Appeal No.CA/ABJ/CV/1084/2023.
3. The Appeal raises fundamental grounds and issues of law and fact including that;
 - a. The Ruling of the Honourable Court is with respect, erroneous because the Court wrongly refused the Applicant's application to amend, whereas amendment can be made at any time and stage of proceedings until judgment is delivered.
 - b. The Ruling of the Court failed to recognize the fact that it ought to allow an amendment that will enable a party place before it all relevant and crucial issues that will

enable the Court to arrive at just determination of the case.

- c. By not allowing the Applicant to amend and bring in relevant facts and documents, the said refusal has denied the Applicant of its right to fair hearing.
4. The interest of justice would be served by grant of this application.
5. If this application is refused and the appeal succeeds, the Applicant would be greatly prejudiced because, in the interim, this Court would take decisions based on its findings in the Ruling being appealed as it is stopped from taking a position different from what it has already decided and the Respondents would take actions detrimental to the interest of the Applicant.
6. If this application is refused and the appeal succeeds, and this matter proceeds to judgment in the Respondents' favour and it is executed, the Applicant would be unable to recover the res from the Respondents.
7. If this application is refused it would foist a fait accompli on the Court of Appeal.

In support of this application is a 7 paragraphs affidavit deposed to by the Applicant's Learned Counsel himself with 4 Exhibits attached and a written address.

He submitted that upon receipt of counter affidavit from the 3rd Defendants/Respondents that they filed a further affidavit of 4 paragraphs dated 22nd January, 2024. He also intimated the Court that at the Appellate level, parties have filed and exchanged briefs of arguments. He finally adopt his written address as his oral submission and relied on the depositions of his two affidavits as he urged me to grant this application since the appeal has already been entered at the Court of Appeal.

Reacting quickly, is the submission of the 3rd Defendant/Respondent's Learned Counsel that they have filed a counter affidavit of 6 paragraphs dated 18th January, 2024 along with a written address dated same day in opposition to the grant of this application.

He too adopted his written address as his oral arguments and relied on the content of his counter affidavit as he finally urged me to refuse this application.

In the Applicant's Learned Counsel's written address, he submitted a lone issue for determination to wit:

“Whether the Applicant has disclosed special circumstances to warrant a grant of this application”

Meanwhile, the Respondent’s Learned Counsel submitted two issues for determination. They are;

1. “Whether this application as presently constituted can be entertained by this Honourable Court?
2. Whether the Plaintiff/Applicant has made out a case for a favourable consideration of her application”

With due respect to the Respondent’s learned counsel, there is no need for proliferation of issues.

I think the appropriate issue for determination is as conches by the Applicant’s Learned Counsel. I adopt his lone issue submitted for determination of this application as apt and germane.

According to the Applicant’s Counsel, the conditions to be fulfilled for a grant of an order for stay of proceedings are in exhaustive. And that what is important is whether the Applicant has disclosed exceptional circumstances that warrant the grant of the order. He relied on the cases of **MOBIL PRODUCING NIG. UNLTD. VS. AYENI (2008) 1 N.W.L.R. (PART 1067); VASWANI TRADING CO. VS. SAVALAHK (1972) 12 SC 77** where the Apex Court held:

“that what amounts to special and exceptional circumstance will depend on the facts of each case”

He submitted further that the Applicant has filed a valid Notice of Appeal having sought and obtained the leave of Appellate Court to appeal against the interlocutory decision of this Court. Most importantly, he submitted that the Appeal has been entered at the Court of Appeal with **Appeal No. CA/ABJ/CV/1084/2023**, thus this Honourable Court lacks jurisdiction to continue with this matter until the appeal has been determined.

On the part of the Respondent’s Counsel, he argued that where an appeal is pending against an interlocutory decision, the trial Court is divested of jurisdiction to entertain an application for stay of proceeding, only the Court of Appeal can. He referred to the case of **OKEKE VS. YAROSON (1999) 11 N.W.L.R. (PART 625) 106**. He argued further that the grant or refusal of an application for stay of proceedings is at discretion of Court which must be exercised judicially and judiciously taking into consideration the competing rights of the parties. He called in aid the authority of **EZE VS. OKONLOJI (1997) 7 N.W.L.R. (PART 513) 512**.

Still submitting, he said the pendency of an appeal simpliciter does not operate as stay, an Applicant must establish that there

exists a special and exceptional circumstance that could warrant a stay of proceedings. He cited the cases of **AKILU VS. FAWEHINMI (NO. 2) (1989) 2 N.W.L.R. (PART 102) 122; GENERAL OIL LTD. VS. ODUNISAN (1990) 7 N.W.L.R. (PART 163).**

He said Applicant has not shown vide his affidavit before the Court that, there are recondite and substantial points of law which could constitute special and exceptional circumstances. He cited the case of **UNIABUJA VS. IBIETAN (1998) 3 N.W.L.R. (PART 54) 387.**

I have considered the arguments and submissions of both Learned Counsel for and against the grant of this application.

According to **Black's Law Dictionary, 9th Edition, 2009 at page 1548**, the word stay is defined as the postponement or halting of a proceeding, Judgment. Etc. It also denotes an order to suspend or halt all or part of a judicial proceeding or a Judgment resulting from that proceeding.

Invariably, the need for an order of stay of proceedings arises where a trial Court rules on an interlocutory point. Thus, any party aggrieved by that ruling may appeal against it. And after filing the appeal, the aggrieved party may equally apply to the Court for stay of the proceedings pending the determination of the appeal.

Therefore, with due respect, it is not correct in law as argued by the Respondent's Learned Counsel that this Court cannot entertain this application. Indeed, this court has requisite power to entertain this application more so that the said appeal has been entered at the Court of Appeal and I so hold. See the case of the **REGISTERED TRUSTEES OF PEOPLES CLUB OF NIG. VS. THE REGISTERED TRUSTEES OF ANSAR-U-DEEN OF NIG. & ORS. (2012) L.P.E.L.R. – 7979 (CA)**

Equally, the case of **OBI VS. ELEWONKE & 3 ORS (1998) 6 N.W.L.R. (PART 554) 436** supplied to this Court by the Respondent's Learned Counsel cannot assist his argument as the principle of law expatiated in that case cannot apply to this instant application *mutantis mutandis*.

The Plaintiff/Applicant in this case has appealed against the ruling of this Court and the said appeal is now pending before the Court of Appeal, the appeal having been entered, I think the best thing to do is tarry a little and wait for the outcome of that pending appeal. Therefore, this application is competent.

It was held by the Appellate Court in the case of **STANBIC IBTC BANK VS. LONG TERM GLOBAL CAPITAL LTD. & ORS. (2016) L.P.E.L.R. – 4051 (CA)** thus;

*“Before an application for stay of execution, proceedings or for injunction pending appeal becomes competent, an appeal against the decision sought to be stayed must have been entered in the Court, it will be an error to grant an injunction pending appeal when there is no competent appeal against the decision sought to be stayed. See **MOBIL OIL (NIG.) LTD. v. AGADAIGHO (1988) N.S.C.C.**”*

It is for the above reason, that I find merit in this application. Therefore, I grant this application. An order is hereby made staying further proceedings in this case pending the outcome of the appeal against the ruling of this Court delivered on 26th May, 2022.

.....

S. B. Belgore

(Judge) 5-11- 2024