

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON TUESDAY THE 15<sup>TH</sup> DAY OF APRIL, 2025**

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

**MOTION NO.: FCT/HC/M/1871/2023**

**MOTION NO.: FCT/HC/M/4158/2025**

**MOTION NO.: FCT/HC/M/179/2025**

**BETWEEN:**

1. HON. UMAR ISAH DODO  
2. SUNTRUST BANK NIG. LTD } **APPLICANTS**

**AND**

1. DR. CECELIA IBRU  
2. ESIJOLOME REWANE  
3. MR. ADEMOLA FASUBA  
4. THE DEPUTY SHERIFF, FCT HIGH COURT } **RESPONDENTS**

## **RULING ON STAY**

Be it known to the Counsel in this case that before me is Motion for Stay of Execution.

On the 14<sup>th</sup> day of March, 2025, this Court delivered a well considered Ruling/Judgment on the application for Order

of Certiorari and the Preliminary Objection that was challenging same.

Upon delivering of the Order in the Ruling, the Respondents filed a Motion to Stay the Execution of the Ruling. According to them, there is a pending application.

In this case, in this Court, the Counsel who filed this Motion for Stay of Execution stood for all the Respondents in the main Suit save the 4<sup>th</sup> Respondent – Deputy Sheriff of the High Court.

The application was supported by 12 paragraphs Affidavit. They claimed that there is a pending Appeal, and that if the Stay is not granted, it will foist on the Court of Appeal a fail accomplish.

The Respondent filed a Counter challenging same stating that it is an abuse of Court Process, and granting same will not be in the interest of justice as the party – 1<sup>st</sup> Applicant is an officer of the Court, and has no interest in the matter. That besides, the Applicant did not show any exceptional circumstance for Court to allow such application.

The Applicants had attached the Notice of Appeal filed at the Registry of the FCT High Court Abuja Appeal Section. The said application ought to have been filed at the Court of Appeal Abuja Division since this Court had, as a High Court, sat on Appellate ground over the matter. From the stamp on the document it shows that the Appeal was filed on the 18<sup>th</sup> of March, 2025, four (4) days after the Court delivered the Ruling.

It is the law that once a party is not satisfied with the decision of Court, it has a right to file an Appeal challenging the decision. But to do that, it must file for Stay of Execution of the decision pending the Appeal.

In this case the Applicants had done so, but they did so by filing the Appeal at the Registry of the same High Court which gave them the decision they want to appeal against. By doing so, the application is incompetent.

Again, by the arrangement of the names in the Motion itself is strange and not the right or proper thing to do. Hence, the application looks as if they are meant for different parties. That also is a fundamental issue making the Appeal incompetent. But this Court will, in exercise of its discretionary power to do real justice and not technical justice, not vitiate the proceeding. It will accept the Process and hold that the misnomer in the names of the parties is a mere irregularity.

Now, going to the real issue, from the length and breadth of the facts in support of the application, there is no pending Appeal. What is there is a Notice of Appeal. Filing a Notice of Appeal does not mean that there is a pending Appeal. There is no evidence of transmission of Record of Appeal before this Court. There is no evidence that there is a compilation of Record of Appeal also. The case file is still in this Court. Also there is no evidence to show that the Court has received any Record of Appeal or that it has given any Number to the case which would have made this Court to hands-off the case.

By the extant provision of the High Court Rule 2025 – **Order 55 Rule 1 – 3**, covers the A – Z about Appeal from High Court to Court of Appeal and issue of compilation of Record.

It has been held in plethora of cases that unless and until Records of Appeal are transmitted to Court of Appeal, and Court of Appeal takes judicial notice of same by giving a new Suit Number to the case, that there is no pending Appeal. Again, no Court can sit on Appellate ground on a matter it has decided.

By the fact that the Notice of Appeal was filed at the Appeal's Registry of the FCT High Court, and not at the Court of Appeal, this Motion is incompetent as there is no pending Notice of Appeal duly filed or even evidence of compiled and transmitted Record of Appeal. Court also refers to the extant provision of the Court of Appeal Rules, Order on Appeal.

Since there is no pending Appeal or evidence of any pending Appeal, and no evidence of compiled and transmitted Record or evidence of Notice of Appeal filed at the Court of Appeal, it is the humble view of this Court that there is no pending Appeal that will warrant this Court granting this application and/or staying its Ruling delivered on the 14<sup>th</sup> of March, 2025. More so, given the fact that the Applicants did not disclose exceptional circumstance that should make this Court stay the decision pending Appeal.

The Court noted both submission made by the Applicants' Counsel and the 1<sup>st</sup>, Respondent Counsel.

The Court also noted that the other document which the Applicants' Counsel talked about is never before this Court, and this Court cannot take judicial notice of same.

**This application lacks merit. It is therefore dismissed, same not being meritorious.** Therefore, the decision of this Court in this case still stands.

The paragraph 10 of the Affidavit in support of the Motion filed by the 1<sup>st</sup> Respondent is hereby Struck Out.

A Court becomes functus officio once it has delivered its decision. It will not take argument on any issue already debated but it has a right to hear Post-Judgment application on the decision it has made.

This Court had since 14<sup>th</sup> March, 2025, made its decision on the Preliminary Objection filed, and the issue of Certiorari and Prohibition. Today, it has dismissed the application for Stay of Execution of its decision.

Again, today the 1<sup>st</sup> Respondent Counsel had moved the Motion for Court to perfect its decision which is for Court to seal its decision by ordering that the Order in the decision be perfected. As far as that is concerned, this Court is not functus officio as erroneously insinuated by the Applicants' Counsel. This application is on the same issue which the Court had taken decision and made pronouncement.

Again, once an application is ripe for Hearing, and parties have responded to the application, it is said that the application is ripe for Hearing, and the Court will have no reason not to hear same, unless the Court has no chance in its docket. So the issue that an application was not set to be heard on a given date is highly misconceived and deceptively misleading.

This application is very ripe for Hearing where the parties have all responded to the application. So this Court is right to hear and entertain the Motion.

Since this Court has dismissed the Stay of Execution as there is no exceptional circumstance and/or pending Appeal, and besides, the 1<sup>st</sup> Respondent's Motion is on perfecting the decision of the Court in the Ruling delivered on 14<sup>th</sup> March, 2025, this Court hereby grants the application as prayed.

**This is the Bench Ruling of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2025 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE

**APPEARANCE:**

1<sup>ST</sup> & 2<sup>ND</sup> APPLICANTS' COUNSEL: C. OGALAGU ESQ.

S.E. NNADI ESQ.

H.V. CHUKWURE ESQ.

1<sup>ST</sup>, 3<sup>RD</sup> & 4<sup>TH</sup> RESPONDENTS' COUNSEL: BENJAMIN

AMAEFULE ESQ.

2<sup>ND</sup> RESPONDENT: NOT REPRESENTED