

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION  
HOLDEN AT JABI FCT ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**SUIT NO: FCT/HC/GRA/CV/473/2023**

**BETWEEN:**

**AEK BDC LIMITED.....JUDGMENT DEBTOR/APPLICANT**

**AND**

**AMINU AHMED.....JUDGMENT CREDITOR/RESPONDENT**

**RULING**

The judgment debtor/applicant filed this motion on notice with No. M/9388/2024 and seeks for the following orders:

- (1) An order of this Honourable court staying Execution of judgment in respect of AEK BDC Limited V. Aminu Ahmed delivered by Hon. Justice Babangida Hassan on the 6<sup>th</sup> of June, 2024, pending the hearing and determination of the applicant's appeal.
- (2) Any further or other orders as this Honourable court may deem fit to make in the circumstances.

The application is supported by seven paragraphed affidavit and attached to the affidavit are (1) application for certified true copy of the judgment, (2) Notice of Appeal, (3) application to compile records of the suit with No. CV/473/2023.

The application is accompanied by a written address of counsel.

It is stated in the affidavit the judgment debtor applied for a certified true copy of the Record of Proceedings of this Honourable court and the judgment of this court, and that

being dissatisfied with the said judgment delivered on the 6<sup>th</sup> June, 2024 by this Honourable court against them, the judgment debtor has filed a Notice of Appeal against the decision.

It is stated that the Notice of Appeal contain grounds of Appeal of error in law which are arguable and recondite and able to decide the appeal one way or the other, and that the judgment debtor has also applied for the cost of compilation of the Record of Appeal to enable payment ad transmission to the Court of Appeal in earnest.

It is stated that the execution of the ruling of this Honourable court will inevitably cripple the judgment, judgment debtor's ability to prosecute the appeal he has filed at the Court of Appeal. That if the judgment of this court is executed, it will foist a situation of complete helplessness on the Court of Appeal and render its judgment nugatory in the event the appeal succeeds and the judgment is set aside, and that the requirement of justice and supported by judicial authority would demand the execution of the judgment of this court be stayed pending the hearing and determination of the appeal, and the respondent would not be prejudiced by the grant of this application.

In his written address, the counsel to the judgment debtor/applicant raised this issue for determination, thus:

**Whether in the circumstances, the judgment debtor/applicant is entitled to the grant of application as prayed?**

The counsel submitted that this is an application which this Honourable court has the competence to grant, and he cited the case of **Umejuru V. Odoto (2009) All FWLR (pt 494) p. 1604 at 1618 – 1619, para. E – D** where the principles guiding the courts in the determination of an application of

this nature was expounded as it is both equitable and discretionary where it is required to be exercised judiciously and judicially with accordance with justice, and having regard to all the necessary relevant consideration, and he cited the case of **Ajomale V. Yaduat (No. 2) 2003 FWLR (pt 182) 1913.**

It is submitted that the party applying for stay has the onus or burden of satisfying the court that the particular situation or circumstance the balance of convenience, he is entitled to the discretionary order for stay and a refuse to do so would be unjust and inequitable, and that in this application it is the balance of hardships rather than the convenience of the party applying that is considered as the basis for the grant, and he cited the case of **S. P. D. C. (NIG) Ltd V. Amadi (2011) All FWLR (pt 593) 1816** to the effect that what the court will consider is whether:

- (a) There must be a pending appeal, which must contain or disclose substantial issues of to be determined;
- (b) The application must disclose special circumstances why the judgment should be stated; and
- (c) The application must disclose why matters should be put in status quo or reserve the res so as not to render the appeal nugatory.

The counsel submitted that firstly, there is a pending appeal duly filed at the Registry of this court containing grounds of appeal. He said the judgment delivered on the 6<sup>th</sup> June, 2024 is before the court. The application for the record of proceedings and judgment appealed against is attached and the Notice of Appeal as EXH. 2. The counsel submitted that a look at the said Notice of Appeal will

disclose that therein contained serious issues of law to be considered.

Secondly the counsel submitted that there are exceptional circumstances or factors that ought to be considered in the exercise of court's discretion:

- (a) The subject matter of the case may be destroyed if a stay of execution of judgment is not granted;
- (b) Where execution of judgment will foist upon the court and in the applicant a situation of complete helplessness;
- (c) Where the execution will be depriving the exercise of the applicant's constitutional right of appeal;
- (d) Where the execution will render nugatory any order of the court;
- (e) Where the applicant cannot be referred to his status quo;
- (f) The existence of compelling rights which are threatened.

To the counsel, the list is not exhaustive and it behooves on the judgment debtor to prove such special circumstances, and to him, looking at paragraph 3 of the judgment debtor's affidavit in support of this application will show that the judgment debtor has satisfied the circumstances for the grant of this application. He submitted that again the Notice of Appeal has a very high chance of success and it raises arguable fundamental issues, and he cited the case of **Advanced Coating Tech. Nig. Ltd V. F.B.N. (2009) All FWLR (pt 471) 993, paras. D – F** to the effect that the existence of arguable grounds of appeal especially in fundamental issues may also constitute special circumstances.

He also cited the cases of **Olejede V. Olaleye (2010) All FWLR ( pt 551)**, and **Ijaodola V. Rest T.C. & S. C. M. (2009) 15 NWLR (pt 110) 387 at 411 paras. G – H** as to the existence of recondite issue of law.

The counsel submitted that the maintenance of status quo is to afford the judgment debtor take advantage of his constitutional right to appeal, and it has to be maintained to enable the judgment debtor canvass the arguable grounds contained in the Notice of Appeal and this becomes imperative in view of the altitude of the respondent who is planning to enforce this judgment by obtaining a certificate of judgment.

The counsel submitted that while they argued that a party in whose favour an order is given has a right to enjoy the fruits of such order, they are quick to add that it is not the position of the law that such party be allowed to enjoy same where the enjoyment of same would produce manifest injustice on another party, and he relied on the maxim *Ubi Jus Ubiremedium*.

The counsel urged the court to be persuaded by good conscience and grant the application of the applicant as negation of same would be inequitable and would amount to depriving the applicant the means to prosecute the appeal, and he cited the case of **S.P.D.C.N. Ltd V. Amadi (supra)** to the effect that in considering an application for stay of execution of injunction, the grounds of appeal should not be taken in isolation, and he urged the court to grant the application.

In the counter affidavit of the respondent, it is stated on the 6<sup>th</sup> June, 2024, the court granted judgment in favour of the respondent and for all intent and purposes, the respondent is a registered entity under the CAMA 2020 and is a going concern, and that the respondent is credit worthy.

It is stated that the applicant's affidavit did not disclose financial difficulty and liabilities in respect of prosecution of his appeal, and this application is a ploy to prevent the respondent from reaping the benefits of judgment in this suit, and that the judgment is a monetary judgment, and the application is an effort to deny the respondent the fruit of his judgment.

In his written address, the counsel to the respondent raised this issue for determination, thus:

**Whether in the light of the affidavit evidence before this Honourable court including the grounds of appeal as contained in the applicant's Notice of Appeal, this Honourable court should exercise its discretion in favour of its judgment pending the hearing and determination of the appeal?**

The counsel submitted that it is trite law that a court has discretion to grant or refuse stay of execution pending an appeal or hearing of a substantive suit as the case may be but the discretion must be exercised judicially and judiciously bearing in mind the equal rights of the parties. The counsel went further to argue that it is the position of law that in determining application of this sort, the court must take the competing rights of the parties, and the onus is on the applicant to show special and exceptional circumstances entitling him to the equitable relief, and that a litigant is entitled to the fruits of judgment and the applicant must prove the existence of special and exceptional circumstances, and he cited the case of **Vaswani Trading Co. Ltd V. Xtodeavs Trading Co. Ltd (1993) 5 NWLR (pt 296) 675**. The counsel submitted that part of what constitute special circumstances are the grounds of appeal as highlighted in a valid Notice of Appeal.

The counsel submitted that the court may only consider the application upon filing of a valid notice of appeal, and he cited the case of **PDP & Ors V. Badoire & Ors (2019) LPELR – 47063 (CA)**

The counsel submitted that an 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. The counsel went further to submit that once it is so entered, an appeal is then said to be pending, and submitted further that only document before this court is a mere paper titled Notice of Appeal with the ground of Appeal and an issue is distilled from the ground thereof. The applicant has not attached any receipt showing proof of payment for transfer of records, Notice of Appeal bears no appeal number and as such this document may be considered as a mere piece of paper with the aim of stalling execution of judgment in favour of the respondent.

The counsel submitted that special circumstance depend and vary from case to case, and he cited the case of **Anachebe V. Ifeoma & Ors (2014) LPELR – 23181 (SC)** to the effect that the applicant must show: (1) There is a substantial and arguable grounds of appeal (2) That there are special or exceptional circumstance to warrant the grant of the application.

The counsel submitted that on the issue of substantial ground of appeal, he cited the case of **Cadoke & Ors V. Olobayo & Anor (1992) LPELR – 15138 (CA)** to the effect that it has long been recognised that it is not every point of law raised in an appeal that can constitute a special circumstance for the purpose of stay of execution....., the grounds of appeal against the judgment must therefore

be tested under microscopic mirror if the application is not a ruse to delay the enjoyment of the facts of the judgment by the respondent.

The counsel submitted that a close glance at the grounds of appeal, do not revealed any substantial issue to be tried and the grounds of appeal have already been dealt with by the court in her judgment dated 6<sup>th</sup> June, 2024. The counsel submitted that the grounds of appeal only refer to the filing of a Notice of Appeal, and the court made reference to the fact that the affidavit in support of the notice of intention to defend contains no strong defence and as such entered judgment in favour of the respondent, and that the issues are not recondite and/or substantial to grant a stay of execution. The counsel submitted that the judgment of the trial court is a monetary judgment, and the superior courts have dealt exclusively with the requirements for stay of execution, and he cited the case **of Blue Arron ..... Ltd V. Ejekwu Madu (2022) LPELR – 57909 (CA)** to the effect that the execution of the monetary judgment is not stayed and the only ground upon which execution of monetary judgment can be stayed is the filing of an affidavit showing that if the judgment sum and cost were paid there would be no reasonable probability of getting them back if the appeal succeeds, and the applicant failed to state that in his affidavit.

I adopt the issue for determination as already formulated by the counsel to the judgment debtor as follows:

**Whether in the circumstance of this application, the applicant is entitled to the relief?**

Thus, both stay of execution and stay of proceedings pending appeal are equitable remedies which are

dependent entirely on the discretionary powers of the court, and the court is expected to exercise the discretion judicially and judiciously and not as a matter of course. See the case of **Metuh V. FRN (2017) All FWLR (pt 901) p. 725 at 744, paras. F-G.**

It is also the law that an appeal does not operate as a stay. See the case of **S.P.D.C. (Nig.) Ltd V. Amadi (2011) All FWLR (pt 593) p. 1822 at 1836, paras. C-E.**

I looked at the documents exhibited and attached to the affidavit in support of this application and not seen the copy of the judgment sought to be stayed, and it is the law that the judgment to be stayed has to be placed before the court. See the case of **Sheshe V. Ibrahim (2012) All FWLR (pt 655) p. 330 at 360, paras. G-H.** where the Court of Appeal held that usually, it is exhibited to the affidavit in support of the application for stay as the fact of the existence of the judgment is a sine quo non to court entertaining the application. Where it is not exhibited, the application is liable to be struck out that for want of necessary materials for the application, in the instant application, the failure of the applicant to exhibit the copy of the judgment sought to be stayed is fatal to the case of the applicant as it is liable to be struck out, and I so hold.

As borne out from the affidavit in support of the application, the judgment sought to be stayed is a judgment delivered on the 6<sup>th</sup> June, 2024 and by the counter affidavit, more especially paragraph 4(m), the judgment is a monetary judgment. So in a judgment involving money, the terms upon which the court would grant a stay of execution are:

- (a) Whether making the applicant to satisfy the judgment would make his financial position such that he could not prosecute the appeal**

**(b) Whether it would be difficult to secure the refund of the judgment debt and costs from the judgment if the appeal succeeds, for which purpose the financial ability of the respondent is taken into account.**

It is not in the affidavit in support that those terms in paragraphs (a) and (b) above have not been deposed to to satisfy the court that the judgment would make the applicant's financial position such that the (applicant) could not prosecute the appeal, and that it would be difficult to secure the refund of the judgment debt and costs from the respondent if the appeal succeeds. However, the respondent stated in his counter affidavit that the respondent is credit worthy and that the applicant has failed to disclose financial difficulty and liabilities in respect of the prosecution of the appeal (paragraphs 4(g) (h) refer.

Premised on the above, the application is hereby refused and it is hereby struck out.

Hon. Judge  
Signed  
11/02/2025

Appearances:

O, G. Poloduke Esq for the judgment creditor/respondent.

Solomon Aor Esq appeared for the judgment debtor/applicant.