

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU
SUIT NO: FCT/HC/ CV/7327/2023
MOTION NO. FCT/HC/M/16878/2024
DELIVERED ON THE 24/03/2025**

BETWEEN:

ALI RAPHAEL ADEJO.....CLAIMANT/RESPONDENT

AND

OBAJI GRACE OJOMA.....DEFENDANT/APPLICANT

RULING

By a Motion on Notice dated the 17/12/2024 and filed on the same day the Defendant/Applicant is praying this Honourable Court for the following reliefs:

- 1. An Order** staying proceedings of this Honourable Court in suit No. **FCT/HC/CV/7327/2023** pending the hearing and determination of the Defendant/Applicant Appeal pending before the Court of Appeal Abuja Judicial Division with Appeal No. **CA/ABJ/958/2024**.
- 2. An Order** of Interlocutory Injunction restraining the Claimant herein from either by himself, his agents. Privies or through any person howsoever from acting upon or taking any step or further step towards the

realization and implementation of the Ruling (now Appealed against) delivered by his Lordship Hon. Justice Eleoje Eneche (now JCA) on the 18th day of May, 2024, pending the hearing and determination of the Defendant Applicant's Appeal by filing a Notice of Appeal pending before the Court of Appeal Abuja Judicial Division.

3. Omnibus Prayer.

This Application is predicated upon 7 grounds:

1. That the Defendant/Applicant has a constitutional right of Appeal as entrenched in the 1999 Constitution of the Federal Republic of Nigeria 1999 as Amended.
2. That Ruling in respect of Motion Number **M/12810/2023** filed by the Claimant was delivered by this Honourable Court on the 8th day of May, 2024 in which all the reliefs sought for the said Motion paper were granted as prayed despite the Defendant counter affidavit opposing the said Application.
3. That dissatisfied by the said Ruling the Defendant/Applicant herein have lodged an Appeal containing substantial Grounds of Appeal against the said Ruling of this Honourable Court delivered on the 8th day May, 2024 with Appeal number; **CA/ABJ/958/2024**.

4. That the said Ruling had determined issue which relates primarily to the reliefs sought for in the substantive suit as contained in the Claimants Originating process.
5. That if the outcome of the Appeal is favourable to the Defendant/Applicant it will have great consequential effect on the proceedings sought to be stayed if not stayed.
6. An Order of this Hon. Court is required to maintain the status quo and preserve the subject matter of the Appeal.
7. There are exceptional circumstances warranting the grant of the reliefs being sought.

The Applicant filed an affidavit of 17 paragraphs deposed to by one Aneke Tochukwu wherein he averred thus:

That he was informed by the Defendant/Applicant herein, while in a briefing session on the 20th day of November, 2024 at about 1:00pm at O.S. Achem, Legal consult, law firm of the Counsel to the Defendant/Applicant O.S. Achem, Esq located at No. 43 Usuman Street off Gana Street, Maitama, FCT, Abuja and I verily believe him of the following facts:

That Claimant commenced an action against the Defendant/Applicant via a writ of summons before this Honourable Court seeking the reliefs contained in the said writ.

That the subject matter of the Claimant suit relates to issue of joint access and custody of the Child of the already dissolved marriage between the Claimant and the Defendant herein.

That the Claimant herein clearly and consistently denied the paternity of the said child and as such never made it an issue during the proceeding that dissolved the marriage.

That instituting the instant suit against the Defendant/Applicant herein, the Claimant filed a Motion seeking for reliefs already sought for in the substantive suit.

That the said Claimant's Application was heard and Ruling delivered on the 8th day of May, 2024.

That the Defendant/Applicant being dissatisfied with the Ruling of 8th day of May, 2024 and the Orders granted by this Honourable Court Appealed against the said Ruling of the Court of Appeal Abuja division and also compiled and transmitted the records of Appeal which has been duly served on the Claimant herein. A copy of Notice of Appeal and the front page of the record of Appeal is attached herewith and marked as Exhibit AO-1 and AO-2 respectively.

That the ground of Appeal raised substantial and recondite issues of law and if the outcome of the Appeal is favourable to the Defendant/Applicant it will have great consequential effect on the continuous hearing of the substantive case by this Hon. Court.

That an Order of this Honourable Court is required to stay further proceeding in this case and maintain the status quo in this case pending the hearing and determination of the Defendant/Applicant pending Appeal before the Court of Appeal Abuja Division.

That the execution of the Orders granted by the Ruling of this Honourable Court Appealed against will determine the substantive suit at Interlocutory stage denying the Defendant/Applicant fair hearing.

That it is in the interest of Justice to stay further proceedings in this case pending the hearing and determination of the Appeal as the Claimant would not in any way be prejudiced if this Application is granted.

Counsel in support of the Application filed a written address wherein he argued succinctly in urging this Court to grant their prayers relying on the cases of *VASWANI TRADING CO. VS. SAVALAKH & CO. (1972) 12 SCNJ 77* on condition for grant of stay *KOKU V. KOKU (1997) 8 NWLR (Pt. 616) page 672 @ 683-684* and the case of *OLUNLOYO VS. ADEDAYO ADEDARIN (2001) 7 SCNJ 155 at 162* on Condition for exercises of discretion.

Counsel finally urged this court to grant the reliefs sought.

In response to this Application, Claimant/Respondent filed a 26 paragraph counter affidavit deposed to by the Respondent himself wherein he averred thus:

That paragraph **7, 8, 11, 12, 14, 15** and **16** of the Affidavit in support of the Applicant's Motion on Notion are false.

That the grounds of Appeal filed by Applicant are false, misleading laced with half-truth and concocted facts.

That the subject matter of the suit relates to the join access and custody of the only child of the dissolved marriage between the Claimant and the Defendant.

That there is a presumption of legitimacy of the child by the Claimant/Respondent.

That even though the paternity of child has not been determined. He has the Legal right to the child of the dissolved marriage.

He did not file a Motion seeking for reliefs already sought for in the substantive suit rather a Motion which was heard and Ruling delivered on the 8th day of May, 2024.

He concluded that the Applicant has discharged her duty in seeking the discretion of the Court and urged the Court to grant the Application.

That the execution of the Orders granted by the Ruling of this Honourable Court will not determine the substantive suit at the Interlocutory stage.

That the res as it relates to this suit is preserved and not threatened to be damaged.

That he has been denied access to the child by the Defendant/Applicant of the dissolved marriage despite many attempts to have access to him.

That he has made efforts to provide and take up welfare for the child of the dissolved marriage but the Defendant/Applicant has consistently denied the request. Copies of the correspondence between his counsel and the Defendant/Applicant's counsel is herein Exhibited and marked as Exhibit 'A' and 'B'

That he is denied to have access to and provide for the child of the dissolved marriage has caused him great hardship in the forms of emotional torture, anxiety and stress.

That it is not in the interest of a child not to know and have access to his farther.

That this denial of access to the child by the Defendant/Applicant will affect the child emotionally, socially and mentally.

That an Order of stay of proceedings will occasion a delay and time is of essence.

That the grant of this Application will cause greater hardship to him.

That there are no special and exceptional circumstances disclosed by the Applicant/Defendant.

That a grant of this Application will deny the Claimant/Defendant a plethora of rights.

That a grant of this Application will keep the rights of the child to the dissolved marriage in abeyance.

Counsel to the Claimant submitted a written address wherein he formulated 2 issues for the determination of this Honourable Court:

1. Whether the Applicant/Defendant has made out a case to be entitled to the grant for an order to stay of proceedings.
2. Whether in view of the facts deposed in the affidavit in support of the Motion on Notice, the Applicant/Defendant has satisfied the conditions that entitles her to an Interlocutory Injunction.

Counsel argued succinctly in urging the Court to refuse the Application. He however, relied on the case of ***MOBIL OIL (NIG) PLC VS. KENA ENERGY INT'L (20030 LPELR-5862 (CA) (Pp. 5-14 para. F)*** to prove that the Defendant has not made out a case to entitled her to the grant of the Order sought.

He cited ***DINGYADI & ANOR VS. INEC & ORS (2010) LPELR – 40142 (SC) (Pp. 206-207 para C)*** on the fact that the existence of an Appeal is not a conclusive ground that entitles an Applicant grant of stay.

After careful consideration of the Claimant's Application the Defendant's counter affidavit, the Exhibits attached and the respective counsel addresses ,I find that an Appeal has been duly entered and Appeal Number obtained and acknowledged by both parties.

It is trite that an Appeal is deemed to be properly entered once the Appellant has filed the requisite Notice of Appeal, pays the prescribed fees and Appeal docket number is assigned by the Registrar which in this case was not disputed by the Respondent see the case of ***OKAFOR VS. ATTORNEY GENERAL OF LAGOS STATE (2022) 14 NWLR (Pt. 1500) 110.***

It is also clear from the ruling of this Court that it has already granted part of the Claimant's Claims at an Interlocutory stage. Therefore, I hold that the Application is Meritorious and accordingly granted.

**SIGNED:
HON. JUDGE
24/03/2025.**

Appearance:

*Douglas Ondor, Esq, with Monica M. Dzuamo, Esq, for the Claimant/Respondent
Onu S. Achem, Esq, for the Defendant/Applicant*