

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

BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

SUIT NO: FCT/HC/CV/99/2025
MOTION NO. FCT/HC/M/6595/2025
DELIVERED ON THE 01/12/2025

BETWEEN:

IKECHUKWU OGBO.....CLAIMANT/RESPONDENT
(Suing by his Attorney Ogar Agbo Ogah)

AND

1. BELMONT HOTELS LIMITED.....DEFENDANT/APPLICANT
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
3. MINISTER OF FEDERAL CAPITAL TERRITORY } .DEFENDANTS/RESPONDENTS

RULING

The Claimant alleges that he applied for and was granted a Statutory Right of Occupancy over plot 813, Cadastral Zone **B03**, Wuye District, Abuja measuring **1,271.24sq2** on the 27th November, 2003. That since the grant of Statutory Right of Occupancy over the said land, he has been in possession and has never developed his interest in the land or relinquished same to anybody.

The Claimant avers that on 20/02/2019 the High Court of FCT, Coram: **Hon. Justice A. O. Ebong**, delivered a Judgment affirming the Claimant's title over the subject matter of litigation. And that after the Judgment, the 1st Defendant trespassed thereupon the land by surreptitiously and illegally erecting a building and fence on the land. The Claimant now brought this action and sought for various reliefs as endorsed on the face of the Writ of Summons and Statement of Claim.

Upon service, the 1st Defendant filed a motion with No. **M/6595/2025** seeking for the following reliefs:

- (1) *An Order of this Hon. Court granting the 1st Defendant/Applicant extension of time to file a Memorandum of appearance. The time allowed by the Rules of this Hon. Court having expired.*
- (2) *An Order of this Hon. Court deeming as properly filed and served, the Memorandum of Appearance, all filing fees having been paid.*
- (3) *An Order staying proceeding in this suit pending the hearing and determination of Appeal filed against the Judgment delivered in suit No. **CV/1208/2025** (Ikechukwu Ogbo Vs. The Hon. Minister of the FCT & 3 Ors.) Delivered on the 20/02/2019.*
- (4) *And for such order or further order as this Hon. Court may deem fit to make in the circumstances.*

The grounds upon which the application was brought was set out on the face of the motion paper and a supporting affidavit of 42 paragraphs deposed to by Nnamdi Offor, a Managing Director and Chief Executive Officer of the Defendant/Applicant was filed in support of the application. In the affidavit in support of the motion, the Applicant avers that the processes of this suit were served on the 1st Defendant/Applicant, but the Managing Director travelled to his home town in Anambra State for burial and only returned on the 15/04/2025. And that the files of the subject matter were domiciled in his office and most of the facts of this case were only known to him, hence this application.

The 1st Defendant/Applicant aver further that following the letter written and served on the 1st Defendant/Applicant by the Claimant/Respondent

sometime in 2024, it became known to him that the Hon. Justice A. O. Ebong sitting at the High Court of the FCT has delivered Judgment in suit No. **CV/1208/2015** and the letter written to the 1st Defendant was annexed and relied upon by the 1st Defendant.

That the Claimant initiated this action against the Applicant and that Messrs S. A. Ifabiyi, the 4th Defendant in the earlier case is the original allottee of the land in dispute since the year 1993. And that by a board resolution, a Power of Attorney and Deed of Assignment was executed in favour of Femi Olaosebiken Davies in 2005 and Femi Olaosebiken Davies executed a Memorandum of Understanding with Alhaji Abubakar Aliyu for the assignment of his interest for a consideration of **₦49,000,000.00** and upon payment, a Sale Agreement was executed.

That in 2011, the sister Companies of the 1st Defendant Encee Business Support Services Limited commenced development on the property and by 2014 it had started supermarket.

The Applicant avers further that in 2008, Femi Olaosebiken Davies Plot **3439** in Wuye District was subdivided into plots 813 and 827 and wrote a letter to the Director of Lands on 21/11/2008 and same was restored and that at all material to the institution of the suit up till the delivery of the Judgment, there was no existing plot in relation to the subject matter that is known as plot **813** and/or **827** Wuye District, Abuja but plot **1032** Wuye District, Abuja as the true identity of the property with AGIS.

A written address was filed wherein, the issue *whether the 1st Defendant/Applicant has not placed sufficient materials deserving of the exercise of this Hon. Court's discretion in granting the reliefs sought* was formulated for determination.

Learned Counsel submitted that there was a valid appeal against the Judgment of this Court delivered by Hon. Justice A. O. Ebong and therefore the proceeding of this Court ought to be stay.

Reacting to the application, the Claimant filed a counter affidavit of 32 paragraphs deposed to by Ogar Agbo Ogah, the Attorney of the Claimant. It is the deposition of the Claimant/Respondent that both the time for the 1st Defendant/Applicant to enter his appearance and to file his statement of defence has expired.

That at no time during the prosecution of suit No. **CV/1208/2015** did Messrs S. A. Ifabiyi & Co. Ltd raise the issue of either an assignment or donation of a Power of Attorney in respect of the Res. That the Res which is plot **813** was never known as plot **3439** as being alleged by the 1st Defendant. That the Claimant who had no notice of the purported plot **3439** allegedly measuring **2,388.53m²** which the 1st Defendant has admitted have been cancelled, cannot be put in a disadvantage position regarding rights granted to the Claimant by the 2nd and 3rd Defendants.

That the 1st Defendant predecessor in title were fully aware of the existence of plot **813** well before suit No. **CV/1208/2015** was instituted and also participated in the case. And that it will be in the interest of Justice to dismissed this application as there is no pending Appeal in respect of suit No. **CV/1208/2015** as the 1st Defendant Notice of Appeal is incompetent.

A written address was filed wherein two issues were formulated for determination to wit;

- (1) *Whether having regard to the circumstances of this suit an exercise of the discretion of this Hon. Court, granting extension of time to file the Memorandum of Appearance is unnecessary.*

- (2) *Whether the necessary conditions required for the grant of a Stay of proceedings is absent in this suit.*
- (3) *Whether the Plaintiff/Applicant has made out a case to be entitled to the grant of this application.*

Learned Counsel argued the above issues in urging the Court to dismissed this application.

The 1st Defendant filed a further affidavit that, there is pending appeal as the appeal.

On the part of Court, I have gone through the application of the 1st Defendant/Applicant and the annexures and the written address therein on one part, I have equally gone through the counter affidavit of the Claimant/Respondent and the written address on the other part, I shall be brief but succinctly in addressing the issues before the Court in the interest of justice.

I need to state here that the power of the Court either to grant the Defendant an extension of time within which he may file his statement of Defence is discretionary and not mandatory and such discretion, must at all times be exercised in the interest of justice. The practice has always been to give priority to hearing motion seeking to regularize a process. That is the hallmark of a proper exercise of discretion of Court. See **AHMAD DAMZOMO VS. MUSA & ANOR (2013) LPELR 20761 (CA)**.

Where no Statement of Defence has been filed, the Court, in its discretion, has the power under order II to extend the time in order to enable a Defendant to file his statement of defence.

The Defendant in paragraphs 5 – 12 of the affidavit in support of the application under consideration, has copiously stated the reasons for the delay in filing the memorandum of appearance and that the failure to file the necessary processes in this suit was not deliberate and same was due to the unavoidable absence of the MD/CEO of the 1st Defendant.

In an application for extension of time within which to do an act, the Applicant is invoking the discretionary powers of the Court. He must therefore place before the Court all the facts and materials necessary to enable the Court exercise its discretion judicially and judiciously. See **IBODO VS. ENAROFIA (1980) 5 – 7 SC 42 at 57 – 58.**

In the instant case not only has the time within which the 1st Defendant is to enter appearance expired, the time within which it is to file its defence has also expired. Armed with the above, it will be in the interest of justice to grant this application and with further order that the 1st Defendant/Applicant filed its statement of defence forthwith.

Having determined prayers 1 and 2 on the motion paper, I shall now consider prayer 3 which has to do with stay of proceedings pending the determination of Appeal filed against the Judgment delivered in suit No. **CV/1208/2025** (Ikechukwu Ogbo Vs. The Hon. Minister of FCT & 3 Ors. Delivered on the 20/02/2019).

The law is trite that application for stay of proceedings may be brought where there is an interlocutory appeal or an appeal against a final Judgment in an action between parties. It may also be brought where there is a concurrent action between the parties in respect of the same subject matter. Application may also be brought in cross action between the same parties in action in respect of the same or substantially similar subject matter. In all the cases, the rationale is that the action ought, in the interest of justice, to be stayed to enable the preservation of the res,

the subject matter of the dispute. See **ONOGHEN VS. F.R.N (2020) 12 NWLR (PT. 1738) 289 at 322.**

The conditions necessary for the grant or refusal of stay of further proceedings are aptly stated in a plethora of decided cases of the Supreme Court and Court of Appeal. Thus, factors the Court will consider before the grant of such application include but not limited to:

- (a) Whether the appeal is competent and arguable on the merit
- (b) Whether the *res* will be preserved
- (c) Whether the jurisdiction or competence of the Court is challenged including the ouster of Court's jurisdiction.
- (d) Whether the action is an abuse of the process of the Court or is frivolous or vexatious.
- (e) Whether the granting of the application will finally dispose of the entire case.

See **REGISTERED TRUSTEES OF ASSEMBLIES OF GOD MISSION VS. JULIET EKPO TORT (2017) LPELR 42069 (CA) and FCMB VS. A.I.B (NIG) PLC (2010) 8 NWLR (PT. 667) 42.**

On whether there is a competent pending appeal to warrant the grant of the application, I have seen **Exhibit R** annexed by the 1st Defendant/Applicant affidavit to this motion. The said **Exhibit R** is a Notice of Appeal in suit No. **CV/128/2015**. The said Notice of Appeal was filed by the 1st Defendant/Applicant challenging the Judgment of my learned brother **Hon. Justice A. O. Ebong** delivered on the 20/02/2019. I have seen the Judgment of my learned brother annexed as **Exhibit 'A'** the parties in the said Judgment are as follows:

- (1) Ikechukwu Ogbo (suing by his Attorney Ogar Agbo Ogah) Vs.
(1) The Hon. Minister of FCT, (2) Federal Capital Territory Administration (3) Federal Capital Development Authority (4) Messrs S. A. Ifabiyi & Co. Ltd.

The Applicant before me was not a party to the said suit. However, the Applicant stated copiously in the affidavit in support of this application that it derived its title from the 4th Defendanti. e. Messrs. S. A. Ifabiyi & Co. Nig. Ltd.

The 1st Defendant/Applicant filed **Exhibit ‘P’** which is a motion seeking leave to appeal against the Judgment of My Learned brother **Hon. Justice A. O. Ebong** as interested parties.

The position of the law is that once an appeal has been entered in the appellate Court, the lower Court ceases to have jurisdiction to hear any application in respect of the matter. An appeal is said to be entered when all the records of Appeal is transmitted to the appellate Court and the matter is entered in the cause list. See **DOKUBO & ORS. VS. MOBIL PRODUCING NIG. UNLTD & ANOR (2013) LPELR 21951 (CA)**.

I have seen the Notice of Appeal annexed by the Applicant, from the face of it, the appeal has no appeal No. and there is no evidence that the record of appeal has been transmitted.

I wish say at this point, that, stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merit of his case, and therefore the Court’s general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue. See **OBI VS. ELENWORE (1998) 6 NWLR (PT. 554) P. 436 at 442 – 443**.

It is my ruling that the appeal not yet been competent, this Court cannot be asked to stay proceedings, more so that the Applicant who is trying to

appeal as interested party was not a party in the said Judgment and his application to so appeal was not granted by the Court of Appeal.

On whether the res will be destroyed, from the affidavit evidence before the Court, the 4th Defendant S. A. Ifabiyi in suit No. **CV/1208/2015** was the original allottee of the subject matter in dispute and the 1st Defendant/Applicant alleged that by board resolution, the 4th Defendant wrote to Wema Bank for the release of the title documents on the said plot to Femi Davies who in turn executed Deed of Sale in its favour.

From the above revelation, the 1st Defendant/Applicant having gotten its title from the said 4th Defendant who was represented in Court before my learned brother and Judgment duly enter cannot talk of destroying of the res if this case is not stayed. The Applicant grouse is that, it was not made a party in suit No. **CV/1208/15**, and that was the basis of the appeal, now that he has joined as party, there is ardent need for him to file his Statement of Defence to ascertain whether the suit in Court of Appeal and the present one has the same facts or not.

Consequently, Motion No. **M/6595/2025** partly succeeds, the prayer for stay of proceedings is hereby dismissed.

SIGNED:
HON.JUDGE
01/12/2025

APPEARANCE:

Fidelis Adamu, Esq, with Sumaiya I. Babayo, Esq, for the Claimant/respondent

B. V. Inedia, Esq, with T. A. Salami, Esq, for the 1st Defendant/Applicant

Chioma Nnokam, Esq, with F. H. Shuaibu, Esq, for the 2nd & 3rd Defendant/Respondent