

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT JABI ABUJA**

DATE: 23<sup>RD</sup> DAY OF JANUARY, 2020

BEFORE: HON. JUSTICE M. A. NASIR

COURT NO: 10

SUIT NO: CV/825/2015

M/7912/2017

**BETWEEN:**

ECO BANK NIGERIA LIMITED

----- 1<sup>ST</sup> GARNISHEE/APPLICANT

**AND**

1. ALHAJI HARUNA GARBA

}-----

2. ALH. MUHAMMAD ABDULRAHMAN

----- JUDGMENT CREDITORS/RESPONDENTS

**RULING**

The 1<sup>st</sup> Garnishee/applicant (Eco Bank Nigeria Ltd.) filed the instant motion on Notice praying this Court for the following orders:

- a) An order staying the execution of the Garnishee order Absolute made on the 20<sup>th</sup> March, 2017 pending the determination of an Appeal filed by the applicant. And

b) Any further or other orders or directions as the Honourable Court may deem fit to make in the circumstances of the suit in the interest of justice.

The grounds relied upon by the applicant are as contained on the face of the motion on notice.

The motion on Notice is supported by an affidavit of 19 paragraphs sworn to by one Providence Oriarewo Osimen, a Counsel in the Chambers of Castlegate Legal Consult, the law firm representing the 1<sup>st</sup> Garnishee/Applicant. Also, in support of the application are exhibits marked A and B respectively. Counsel also filed a written address duly adopted before the Court.

In opposition, the Judgment Creditors/Respondents filed a five paragraphs Counter – affidavit duly sworn to by one Dawam Cornelia, a Litigation Secretary in the law firm of Hezdeking & Co. Counsel to the Respondents. The

Learned Counsel also filed a written address and same was adopted in opposition to the grant of the application.

In the written address of the 1st Garnishee/applicant, a sole issue was raised for determination as follows:

*“Has the defendant/applicant shown its entitlement for the grant of an order for stay of execution of the Garnishee order absolute pending an Appeal.”*

Learned Counsel submitted in the affirmative and urged this Court to so hold based on the following grounds:

- a. That there is an Appeal already filed by the Applicant showing cogent and recondite grounds for setting aside this Honourable Court's Garnishee order absolute.

- b. That a judgment may be set aside on the grounds that fresh evidence has been discovered which, if tendered at trial, will have an opposite effect on judgment.
- c. That the execution of this judgment at this time will not meet the justice of the cases, where the Applicant is compelled to satisfy the judgment debt instead of the judgment debtors against the principle of NEMO DAT QUOD NON HABET.

Learned Counsel cited and referred this Court to Plethora of Judicial authorities including but not limited to the following:

1. Anotogu vs. Iweka II (1995)9 SCNJ 1 at 33 – 34,
2. Vaswani Trading Co. vs. Sawalakh (1972)12 SC 77, 81 – 83.
3. Olunloyo vs. Adediran (2001) FWLR (Part 73) page 41,

**4. Obeya Specialist Hospital vs. A.G. Federation  
(1987)3 NWLR (Part 60) 325.**

Finally, Counsel urged this Court to exercise its discretion in favour of the applicant and grant the Applicant's prayers.

Learned Counsel for the Judgment Creditor/Respondent formulated two issues for determination. The issues are:

1. Whether the Applicant has shown cause for the grant of this application.
2. Whether enforcement on Garnishee order absolute can be stayed.

On the first issue, counsel submitted that monetary judgment is not like any other judgment where an application for stay of execution can operate without limitations. He went on to submit that the applicant must show special and exceptional circumstances why an

application for stay of monetary judgment can be granted. Counsel further submitted that the affidavit in support of the applicant's motion for stay did not disclose any special circumstance to warrant the grant of their prayers. Counsel referred this Court to the cases of: Union Bank Plc. vs. Aminu Ishola (Unreported) suit No. (A/1L/N97/99), Odedeyi vs. Odedeyi (2000)3 NWLR Part 650 – page 655, Vaswani Trading Co. vs. Savalakh & Co. (1972)7 NSCC 692 (1972) Part 2 ALL NR 483.

On the second issue, Counsel submitted and urged this Court to hold that the existence of an application seeking for an order for stay of execution of a judgment does not preclude a judgment creditor from using Garnishee proceeding to enforce the judgment.

Now from the totality of affidavit evidence before this Court and submissions of Learned Counsel across the divide, the only issue germane for determination is

*“whether stay of execution can be granted in the circumstance of this case.”*

The guiding principles for the grant or refusal of an application for stay of execution are well defined and have been enunciated in plethora of judicial decisions.

An applicant seeking an order for stay of execution pending Appeal must furnish the Court with special and exceptional reasons why a successful party should be deprived, though temporarily, of the enjoyment of the fruits of his judgment. The applicant has to also show that the balance of justice tilts in his favour and that there are cogent and arguable grounds of Appeal which are not frivolous, upon which the application is predicated. This is because Courts of justice are not desirous of depriving a successful litigant of the fruits of his judgment or locking up funds to which a successful litigant is entitled. See Olojede vs. Olaleye (2010)4 NWLR (Part 1183) page 1;

Martins vs. Nicannar Foods Co. Ltd. (1988)2 NWLR (Part 74) page 75; Shodeinde vs. Trustee in Islam (1981)2 SC 165; Amadi & ors. vs. Chukwu & ors. (Part 12) 12 SCM 18.

It is also trite that the grant or refusal of stay of execution of judgment by the Court is purely discretionary, though the discretion must be exercised both judicially and judiciously but certainly not arbitrarily. See Okafor & ors. vs. Nnaife (1987) 4 NWLR (Part 64) 129.

It is pertinent to state that the garnishee in this suit is competent to seek for an order of stay of execution. This Court has made the order nisi absolute, and being a final order, it is appealable by any aggrieved party to the proceedings. In U.B.A. vs. Hon. Iboru Ekenem (MD Paragon Engr. Ltd.) & Anor (2009) LPELR 8428, the Court held that:

*“It is the garnishee that has the power to challenge the order absolute.”*



Now one of the conditions to be satisfied by the applicant is to depose to facts showing that the Respondent would not be able to refund the Judgment sum if the Appeal succeeds. It has been held that where there is apprehension as to the inability of the Respondent to secure a refund of the Judgment debt, the practice of the Court is to exercise its discretion of granting a conditional stay upon the payment of the Judgment debt into the Court. This discretionary power is exercised judicially and judiciously depending very much on the peculiar fact and circumstance of each case. See Kwarapoly vs. Oyebamiji (2008) 3 NWLR (part 1075) page 459, Kopek Construction Ltd vs. Ekisola (1998) 10 NWLR (part 568) page 120.

After due consideration of the facts in this case and the submission of Learned Counsel for the Respondents/Judgment Creditors who is not averse to the grant of a conditional stay, this Court holds the considered

view that to meet the justice of this application, a conditional stay of execution should be granted.

Accordingly, and in accordance with the provision of Order 45 of the Rules of this Court, the Garnishee/Applicant is hereby ordered to pay the Judgment debt as per the Certificate of Judgment of His Lordship Inyang J, (as he then was) delivered on the 25/7/2011 against the judgment debtor, into an interest yielding account in the name of the Chief Registrar of this Court pending the determination of the appeal filed by the Garnishee/Applicant.

SIGNED

HONOURABLE JUDGE

**Appearances:**

Abubakar Muktar Esq, holding the brief of Ezekiah Iboke Esq – for the judgment creditor/respondent

Applicant absent and not represented

Judgment debtor absent and not represented