

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 5TH DAY OF FEBRUARY, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 10
SUIT NO: CV/1418/2017

BETWEEN:

USMAN IDRIS AMEHJE ----- PLAINTIFF

AND

FIRST BANK OF NIGERIA LTD. ----- DEFENDANT

RULING

The Defendant/Applicant filed this application on the 19th June, 2019 praying this Court for the following orders:

- “1. An order of this Honourable Court staying the execution of the Judgment of the High Court of the Federal Capital Territory in this suit delivered on the 30th day of April, 2019 pending the final determination of the Appeal filed by the Defendant/Applicant.
2. An order restraining the 2nd Respondent from taking any steps, or further steps in executing the Judgment

of the High Court of the FCT in this suit delivered on the 30th day of April, 2019 pending the final determination of Appeal filed by the Defendant/Applicant.

3. And for such further order which this Honourable Court may deem fit to make in the circumstance.”

The application is premised on two grounds as follows:

1. Judgment Debtor/Applicant was dissatisfied with the Judgment of the trial Court which was delivered on the 30th April, 2019 and has there upon filed an Appeal to the Court of Appeal.
2. If the execution of this Judgment is not stayed, it will render nugatory, the likely success of the Applicant's Appeal and the orders of the Court of Appeal.

The motion on Notice was brought pursuant to Order 43 Rules 1 and 2, Order 61 Rule 1, of the Rules of this Court, and under the inherent jurisdiction of this Court. In support is an affidavit of 18 paragraphs duly sworn to by

one Anita Ovuakporie-Uvo, a Legal Practitioner in Perazim Chambers, firm representing the Defendant/Applicant. Attached to the application are two exhibits marked 1 and 2 respectively. Victor Emenike Esq. for the Applicant, filed a written address duly adopted before the Court.

Then on the 25th June, 2019 the Plaintiff/Respondent filed a counter affidavit of 13 paragraphs. The counter affidavit was deposed to by one Abioye Damilola, a legal Practitioner in the law firm of Efegov and Associates, Counsel to the Judgment Creditors/Respondent. Efekemaraye G. Daniel Esq. also filed a written address on behalf of the Respondent.

In the written address of the Defendant/Applicant, a sole issue was formulated for determination as follows:

“Whether based on the peculiar facts of this case, the Court ought to grant the Application for stay of execution of the Judgment pending the determination of the Appeal.”

Counsel submitted that ordinarily the Court does not make a practice of depriving a successful litigant of the fruits of his litigation. The exception, however is where there is a need to maintain the status quo pending the occurrence of an incident such as the final determination of a pending Appeal. He referred to the cases of Amadi vs. Chukwu (2013)5 NWLR (Part 1347) 301 at 310, Alawiye vs. Ogunsanya (2013)5 NWLR (Part 1348) 570 at 597.

Counsel further submitted that the grant of this application is a matter of discretion which the Court ought to exercise judiciously and judicially, taking into consideration the circumstances of the case. He finally urged this Court to grant all the reliefs in this application.

Learned Counsel for the respondent equally raised a sole issue for determination as follows:

“Whether the Applicant/Judgment Debtor in the extant suit is entitled to the grant of a stay of execution of a monetary Judgment.”

Counsel submitted that an application for stay of execution is not grantable as matter of course, the applicant must satisfy certain fundamental conditions to be entitled to the grant of such relief. He cited the case of NNPC vs. Famfa Oil Ltd. (2009) ALL FWLR (Part 480) 604 where the Court held as follows:

“Courts are not in the practice of granting an application for stay of execution as a matter of course. It is an equitable remedy granted at the discretion of Court exercised judiciously and judicially. Before a Court can grant an order of stay of execution thereby asking a successful or victorious litigant to tarry a while before enjoying the fruit of the victory, the applicant must show:

- a) Exceptional circumstance eloquently pleaded,*
- b) Substantial and arguable grounds of appeal which must be recondite.”*

Counsel went on to submit that in the extant case, the Applicant's affidavit in support of the application, has not shown any special circumstances for the application for stay of execution to be granted. He further referred to the case of Abiodun vs. Chief Judge, Kwara State (2008) ALL FWLR (Part 419) 539 at page 551, Umar vs. APC (2018)18 NWLR (Part 1650) page 154. He finally urged the Court to dismiss the application.

Now, from the affidavit evidence of the respective parties and written submissions of Counsel across the divide, the only issue germane for determination is;

“whether the Applicant has satisfied the conditions/requirements for the grant of the motion for stay of execution.”

Generally, 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 predicted. This is because Courts of Justice are not desirous of depriving a successful party of the fruits of his Judgment or locking up fund to which a successful litigant is entitled. See Olojede vs. Olaleye (2010)4 NWLR (Part 1183 page 1, NNPC vs. FAMFA OIL LTD (supra).

In the instant case, the Applicant sought to stay the execution of the Judgment delivered by this Court on the 30th April, 2019. It should, however be noted that the judgment sought to be stayed comprised declaratory reliefs and monetary awards.

Where the Judgment of the Court appealed against is monetary in nature, the following factors are specifically considered by the Courts in the exercise of the discretion:

- i. Whether or not the Respondent is in a position to refund the Judgment sum should the appeal succeed and the appellate Court so orders.
- ii. The competing rights of the parties
- iii. The need to maintain the status quo by paying the judgment sum into Court pending the determination of the appeal. See NNPC vs. BPE Consulting Engineers (2004) 2 NWLR (part 858) page 484, Olatunji vs. Owena Bank Plc (2002) 5 NWLR (part 760) page 325, Facel Services Ltd vs. NPA (2001) 11 NWLR (part 723) page 35

In this case, a perusal of the judgment of the Court shows that it is monetary in nature, the Court having awarded the sum of N2,050,000.00 (Two Million, Fifty Thousand Naira) against the applicants in its judgment

delivered on 30/4/2019. It is the execution of the judgment in the term of the above judgment sum that the applicant seek to stay vide this application pending the determination of their appeal against it by the Court of Appeal.

As aforesaid, the general principle of the law in an application for stay of execution as espoused by the Supreme Court in Vaswani Trading Co. Ltd vs. Savalakh & Co. (1972) 7 NSCC 692 is that the Courts do not make it a practice to deprive a successful litigant of enjoyment of his/her fruit of victory in litigation except upon special or exceptional circumstance shown. The principle which guide existence of special or exceptional circumstance in a monetary judgment has been set out above.

In this instance, there is no averment in the Applicant's supporting affidavit showing that the Respondent would not be able to refund the Judgment debt if the Appeal succeeds. In fact, the entire supporting affidavit attached to

the motion for stay of execution did not disclose any special and exceptional circumstance to warrant the exercise of this Court's discretion in granting the application for stay.

However, the respondent/judgment creditor at paragraph 12 of his counter affidavit deposed to the effect that the judgment debtor/applicant be ordered to pay the judgment sum into an interest yielding account in the name of the Chief Registrar of this Court. This shows that the judgment creditor is not averse to the grant of conditional stay of execution.

Thus, I hereby make an order for conditional stay of execution and the judgment debtor/applicant has two weeks within which to pay the judgment sum into an interest yielding account to be opened in the name of the Chief Registrar of this Court. Failure to do the needful, this order for conditional stay shall abate.

SIGNED

HONOURABLE JUDGE

Appearances:

Efe G. Daniel E sq - for the judgment creditor/respondent, with him Marshall Collins and Damilola Abioye

Victor Emenike Esq - for the defendant judgment debtor/applicant, with Anita Ovuakporie - Uvo.