IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 13TH DAY OF MARCH, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO: FCT/HC/CV/…./19
MOTION NO: FCT/HC/M/6143/2020

BETWEEN:

ZEDICI CAPITAL LIMITED:.....APPLICANT/RESPONDENT

AND

1) GOVERNMENT OF CROSS RIVER STATE OF NIGERIA.
2) ATTORNEY GENERAL OF CROSS RIVER STATE. **:....RESPONDENTS/APPLICANTS**

KelechiNnamdi with EdedenAni, Victor Umah, Vivian Udora (Mrs), Precious Uchendu for the Applicant/Respondent.
Respondents/Applicants not represented.

RULING.

On the 9th March, 2020, the learned silk, Tawo E. Tawo defending the Defendants, moved a motion on notice dated and filed on 6th March, 2020. The reliefs sought were as follows;

1. An order of this Honourable Court staying further proceedings in this Suit No. FCT/HC/263/08ZEDICI CAPITAL LIMITEDVS.GOVERNMENT OF CROSS RIVER STATE OF NIGERIA& ANOR. Pending the hearing and determination of Suit No. FHC/CA/CS/97/2019 THE GOVT. OF CRS OR NIGERIA AND ANOR VS. ZEDICI CAPITAL LIMITED currently pending before the Federal High Court, Abuja Division.

2. And for such order or further orders as this Honourable Court may deem fit to make in the circumstances.

The application is supported by 5 grounds and a 20 paragraph affidavit deposed to by one Paul S. Akande. The learned SAN relied on the 5 grounds and affidavit in support and adopted a written address as his oral submission.

The gravamen of this application from the affidavit evidence particularly paragraph 8-13.

Paragraph 13 specifically stated;

> ***"That I know as a fact that unless further proceeding in this suit is stayed by this Honourable Court pending the hearing of the suit to set aside the award at Federal High Court the outcome of the application will most likely be rendered nugatory and the Court be put into a state of complete helplessness, if the application succeeds".***

In arguing the application the learned SAN, formulated one issue for argument;

> ***"Whether by the circumstances of this case, this Honourable Court can grant the stay of proceedings sought by the Respondents/Applicants pending the determination of the suit before the Federal High Court".***

Placing reliance on Section 29 of the Arbitration and Conciliation Act, learned SAN argued and submitted that it is not in doubt that the Respondents/Applicants have a right to apply for arbitral award to be set aside or varied within stipulated time frame. Also the other party can apply to the

Court to stay proceedings to allow the party aggrieved to be heard.

Thus he relied on the case of **Akilu v. Fawehinmi (No 2) (1989) NWLR Pt 102 P.166.**

That in the Applicant is seeking the equitable order of stay of proceedings has established as follows;

i. That the parties before this honourable court are the same parties before the Federal High Court, on the same subject matter;
ii. That the application of the Respondents/Applicants to the Federal High Court are right and within the scope of the law; Nitel v. Okeke(supra).
iii. That the application for stay of proceeding is necessary pending the determination of the matter before theFederal High Court, Abuja Division.

The Applicant's learned counsel (SAN) submitted that the Applicant has substantially complied with the necessary conditions for this Court to make the order of stay of proceeding. Thus he relied on **Harrison v. Harrison (1989) 5 NWLR (Pt 119) 6.**

It is the submission of the learned counsel for the Applicant that the Resbe preserved by way of this application and also sequel to the refusal of this application would render nugatory the decision of the Federal High Court.

In response to the application, Awa Kalu (SAN) for the Respondent decried that the learned Defence counsel served him the motion on notice about three days ago and in order not to aid the delay of this matter he waived his right of 7 day to reply and settled to reply on point of law with leave of Court.

In his response, he argued that the authority of **Akilu (supra)** cited by the Applicant's learned counsel was inapplicable because there is no concurrent action between the parties. That it is the rule of practice that once an application is brought to enforce an award particularly where the application is first in time as in the present main application, that an application to set aside must be in the same Court.

That it was after filing the main application in High Court Federal Capital Territory, that the Applicant's learned counsel went ahead to file an application to set aside the arbitral award in Federal High Court, upon which he returned the High Court Federal Capital Territory to file an equitable relief of stay of proceedings of the main application for purposes of his case in Federal High Court to be heard.

Learned counsel (SAN) relied on the Supreme Court decision in the case of **Uwazurike v. A.G. Fed. (2013) 10 NWLR (Pt 1361) 105** to state that orders of a Court of concurrent jurisdiction will not bind this Court and vice versa. He further relied on the case of **Shell Trustees Nig Ltd v. Iman& Sons Ltd (2000) 6 NWLR (Pt 662)639.**

He submitted that the above case is on all fours with the present application in Court. That this application ought not to be made in this Court. He submitted that the application is contrary to public policy for a party to await the outcome of a matter in another Court before it is binding on that party.He urged the Court to refuse the said application.

Generally, the principles governing the grant or refusal of stay of proceedings have been enunciated in plethora of cases. Thus in the case of **TSA Ind. (Nig) Ltd v. FBN PLC (No2) (2012) 14 NWLR;** and also these principles are cited in the

cases referred to by Karibi Whyte in **Akilu v. Fawehinmi (supra).**

The principles for grant or refusal of stay of proceedings are established as follows;

1. There must be a pending appeal.
2. That the Applicant must show that if the appeal succeeds, the success will not be in vain;
3. That is the circumstance of the case, a refusal to stay proceedings would be unjust and inequitable,
4. That the Res of the matter would be destroyed and the judgment of the Court rendered nugatory if the application is refused.
5. That there exist special and exceptional circumstances justifying the grant of the application for example where the notice and grounds of appeal raise substantial issues as to the jurisdiction of the lower court.

The purpose of granting or suspending further proceedings in a suit is to preserve the res, the subject matter of litigation so that at the end of the determination of the pending appeal, the decision reached will not negate the appeal. The circumstances to grant stay of proceedings depend on the facts of the case. Also the primary duty of every Court in application of stay of proceedings is to ensure the preservation of the res.

The questions calling for an answer are;

1) Whether this Court can stay proceedings of a suit before it, not on appeal for the purposes of a pending counter action in theFederal High Court? Put in another way can the High Court, Federal Capital Territory make an order staying its proceedings and binding itself pending the

determination of the suit in Federal High Court which is a Court of coordinate jurisdiction?

2) Can order of Court of coordinate jurisdiction bind each other?

It is not in doubt by paragraph 13 of the affidavit in support of this application which states;

> ***"That I know as a fact that unless further proceeding in this suit is stayed by this Honourable Court pending the hearing of the suit to set aside the award at the Federal High Court, the outcome of the application will most likely be rendered nugatory and the court be put into a state of complete helplessness, if the application succeeds."***

The Respondents/Applicants in his affidavit in paragraph 7 admitted that Applicant/Respondent had filed the application for enforcement of the award on 6th August, 2019 long before he filed the cross action in theFederal High Court based on the same parties, same subject matter but seeking that the arbitration award be set aside.

Learned counsel (SAN) for the Applicant in this application had laid heavy weather on the case of **Akilu v. Fawehinmi (supra)**.

I have painstakingly reproduced the eloquent decision of Karibi-Whyte, JSC in **Akilu v. Fawehinmi (supra);**

> ***"… Thus in summary, (1)The application for stay of proceedings may be brought where there is an interlocutory appeal or final judgment in an action between parties. (2) It mayalso be brought where there is a concurrent action between the parties in respect of the same or substantially the same subject matter. (3) Application may also be brought in counter actions***

between same parties in an action in respect of 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 … As I have already pointed out whether the application for stay of proceedings was brought in respect of concurrent or counter action, the important consideration is that the parties in the two actions must be the same and subject matter in the two actions sought to be stayed, must be either the same or substantially similar to that of the action already pending between the parties. In all these case, the application for stay must establish, firstly, that there is duplication between the two sets of proceedings between the parties.

Secondly, absence of any other consideration against the relief sought, such as unreasonable delay or acquiescence, and thirdly, oppression, vexation or abuse of the process of the Court resulting from the continuation of the proceedings sought to be stayed. ... It is conceded that in the cross actions,there is no hard and fast rule that the action last commenced is the one to be stayed."

The case of **Akilu (supra)** had laid, downhow a stay of proceedings can succeed pending appeal –**Obeya v. Memorial Specialist Hosp. v. A.G. Federation (1987) LPELR 2163 (SC).**

It further expanded the exceptional circumstances whereby the Court can still exercise its discretion in favour of the application, where there is concurrent action between the parties in respect

of the same parties, same subject matters or substantially same subject matter.

Parties agreed in the instant case beforeHigh Court, Federal Capital Territory, that the matter in the Federal High Court is a duplication of the same subject matter, same parties in this Court.In other words, it is not in doubt that there isa counter action between the parties, one inHigh Court, Federal Capital Territoryand another in Federal High Court, Abuja on same issues by same parties.

The Supreme Court in **Akilu(supra)**in my opinion approved of a stay of proceedings of one action where there exists a counter actionfor the purpose of preservation of the reswhere the Applicant has shown exceptional circumstances why a successful party should be deprived of the fruits of its victory temporarily pending the determination of the concurrent suit. Such circumstance must be special and exceptional. The onus lies on the Applicant to convincingly establish the special and exceptional circumstances of his case to warrant a stay of the proceedings.It is also my understanding that such concurrent or cross actions must exist in the same Court.

Still on the special and exceptional circumstances, the Applicant's special circumstances for this application was that the Applicant has another counter action in the Federal High Court filed much later than this present action in this Court.

Reference is made to paragraph 7 of the affidavit in support of the motion of the Applicant. Can paragraph 7 of the affidavit in support be regarded as a special circumstance to forestall the hearing of an earlier matter filed in this Court which is of the same nature. I doubt it could be a special and exceptional circumstance for the success of this application.

However, assuming without conceding that there are special and exceptional circumstances to allow this application, the Applicant had sought the indulgence and discretion of this Court to grant this application by seeking the following reliefs which if I may interpret in a simple language, as requesting an order of this High Court, Federal Capital Territory, toput a stop to the hearing of Suit No. **FCT/HC/263/08,Zedici Capital Ltd v. Govt of Cross River State of Nig.&anor**, to allow the Federal High Courthear and determine, Suit No. **FHC/CA/CS/97/2019.The Govt of CRS of Nigeria &anor v. Zedici Capital Ltd**.

In the first place there is no suit before the Court bearing **FCT/HC/263/08 - Zedici Capital Ltd v. Govt of Cross River State of Nig&anor**. Rather what is pending in this Court for determination is a motion with **motion number M/8255/19**, dated and filed on 6th August, 2019.

In another way, this applicant's relief I,has no bearing or relationship with the existing and subsisting motion before this Court. Therefore, I consider relief Ito be incompetent because the Court cannot make an order on a non-existingsuit or matter. The order of the Court would be in vain and Court's do not make vain orders.In **University of Jos v. Dr. M.C. Ikegwuoha (2013) LPELR-20233 (SC).** The Supreme Court reiterated that an order in vain is an order which is incapable of enforcement.

Again, can the order of this Court staying its proceedings to allow a later proceedings in a counter action in a Court of coordinate jurisdiction be effective.

However, in **Akilu (supra),** the Supreme Court jurist had conceded that there is no hard and fast rule that the action last commenced is the one to be stayed. In other words, the discretionary powers of the Court should be exercised judicially

and judiciously to show case substantial justice. However, each matter that desires the discretion of the Court is considered on the circumstance surrounding it. No matter how well couched the order of this Court may be, the igniting fire and power of the order is within the purview or jurisdiction of the maker or the Court that made it.

It will only havepersuasive reflexes on any other coordinate or concurrent Court as the Section 6(6) of the Constitution has put all State High Courts and Federal High Courts on same pedestal in wearing the cloak of jurisdiction.

Consequently, no order of a coordinate Court can hinder another coordinate Court.

I consider itmisconception of the course of law on the part of the Applicant to seek for such an order in the circumstances surrounding this case because the Courts of concurrent jurisdiction are not bound to follow the decisions of each other.

The reliefs sought are unreasonable and a ploy to delay this matter which is first in time and this application cannot be granted.

It fails and is hereby dismissed.

HON. JUSTICE A. O. OTALUKA
13/3/2020.