

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA COURT 4, FCT., ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

MOTION NO. FCT/HC/M/2033/2019

B E T W E E N:

INTERLAND RESOURCES NIG. LTD. } PLAINTIFF
(Suing by the Attorney: KOCH NIG. LTD. }

AND

1. **THE HON. MINISTER**
OF THE FEDERAL CAPITAL TERRITORY } **DEFENDANTS**
2. **FEDERAL CAPITAL DEV. AUTHORITY**
3. **AJAMA VENTURES NIG. LTD.** }

R U L I N G

This Judgment Debtor/Applicant is by a Motion on Notice under reference No. M/2033/2019 praying this Court for an order to stay the execution of the Judgment of this Court delivered on the 4th October, 2019.

In support, the Judgment Debtor filed a 7 paragraph affidavit dated 18th December, 2019 deposed to by Saidu Wodi, a legal Assistant in the litigation Registry of the 2nd Defendant. The facts that are pertinent to the supporting affidavit are that Judgment was delivered in favour of the Judgment Creditor on the 4th October, 2019. It is contended that the

Appeal raises substantial points of law for determination by the Court of Appeal.

Besides, it is contended that a stay of execution is expedient so as not to render the decision of the Court of Appeal nugatory. The Judgment Debtor reasons that in the event this application is not granted the 1st and 2nd Defendants will be ordered to pay damage whilst the issue of damage is being contested at the Appellate Court.

The Applicant also contends that the Appeal will be diligently pursued and all the conditions for allowing this application will be satisfied by the Judgment Debtor.

In reaction, the Judgment Creditor filed a 5 paragraph counter affidavit deposed to by Adekunle Taofeek, an official in the firm of Messrs A. A. Adewoye & Co. Counsel for the Judgment Creditor.

The deponent disclosed that the Applicant did not show any commitment to pursue the appeal diligently and timmeously and no official reason has been given by the Judgment Debtor for seeking for this Court's indulgence for a stay of execution. It is also contended that the Judgment Creditor has a sound and financial footing and standing within and outside this country.

Finally, the Judgment Debtor filed a further affidavit in reaction to the counter affidavit. There, the Judgment Debtor contends that a Notice of Appeal Exhibit A has been filed before the Court of Appeal against this Court's Judgment.

It is amongst other things contended that the Judgment Creditor has not elicited any documentary evidence in proof of its financial standing within and outside the country.

Both Counsel filed and exchanged written addresses in support of their respective position on this application. A reply on points of law dated 29th January, 2020 was also filed by the Judgment Creditor.

Learned Counsel for the Judgment Debtor/Applicant C.J. Oloibi Esq., in his written address dated 18th December, 2019 formulated a lone issue for determination that is, whether this Honourable Court can exercise her discretion in favour of the 1st and 2nd Defendant/Applicant in the circumstances of this case.

Though both Counsel have failed to address the Court on their respective submissions on competence of the Judgment Creditor's process as well as the competence of this Motion on Notice, I find it needful to make a pronouncement on the issue of competence canvassed by either Counsel. Whilst the Judgment Creditor contends that this Motion on Notice is incompetent on account of Order 61 Rule 3

of the Rules of these Court. Adewoye Esq., posits that this Motion was not heard within 28 days after it was filed. Consequently, he reasons that this Motion is incompetent since it is now being heard outside the duration it ought to have been entertained by this Court. I will discountenance this submission as being baseless and a misconception of the purport and intendment of Order 61 Rule 3 of these Court's Rules.

First, I would replicate hereunder Order 61 Rule 3 for emphases it provides:

“An application for stay of execution shall be regarded as an urgent matter and shall be heard within 28 days from the date of filing and where it is not heard the Respondent may apply by Motion on Notice for leave to execute the Judgment”

My take from the foregoing provision is that it is meant to avoid the mischief of Counsel/litigant in filing an application to stay in the Court or the Court's registry and taking no further steps thereafter to move it, with the objective of stalling execution. This provision is to ensure that the Judgment Debtor diligently prosecutes the application for stay within 28 days failing which the Judgment Creditor can apply for leave to proceed to execute the Judgment Debt instead of having to wait endlessly for the Motion for stay of execution to be argued and determined by the Court.

There is nothing in Order 61 Rule 3 of these Court's rules that renders a Motion for stay that has not been heard after 28 days of hearing incompetent. The provision only allows the Judgment Creditor to proceed to execute the Judgment after 28 days of waiting for the Judgment Debtor/Applicant to do the needful.

Another threshold point raised by Counsel is the objection by the Judgment Debtor's Counsel on the competence of the Judgment Creditor's processes filed in reaction to this application. Counsel for the Judgment Debtor has argued that the counter affidavit and address ought to have been filed within 21 days as prescribed by the Court's rules, however, he notes that the counter affidavit and address were filed out of time and leave was not sought by the Judgment Creditor's Counsel for extension of time to regularize the process.

Much as the counter affidavit and address were filed out of time, I find it needful to state that the rules of this Court contemplate the noncompliance with its provisions consequently Order 5 of the High Court of the FCT Rules provides generally for the effect of noncompliance with any of the provisions of these Court's rules.

Order 5 Rule 1 provides that: *"Any proceedings that has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, such failure shall not nullify proceedings.*

Order 2 empowers the Court to give directions as it deems fit to regularize whatever irregularity by reason of noncompliance with the rules of this Court”

However the rules in Order 5 Rule 2 enjoins a party seeking to challenge the competence of any proceedings as in this case, the time for filing a counter affidavit and written address to file a Motion on Notice praying this Court to set aside such process on account of its irregularity. Such party must not be seen to have taken any fresh step before raising the issue of irregularity. In this case, the Judgment Debtor did not file an application to set aside the process as prescribed by Order 5 Rule 2, he also took further steps by proceeding to have the Motion for stay and addressing the Court on the irregularity of filed process.

By the operation of Order 5 Rule 2(2) the objection on competence cannot be entertained by this Court, accordingly it is hereby overruled and discountenanced.

Having cleared the dust on the threshold points, I will now consider the substantive application for stay of execution.

From the onset, I must state here that it has long been settled that the Courts are not inclined to deprive the successful litigant the fruits of his litigation except in exceptional and or special circumstance.

The onus is thus on the Judgment Debtor to establish exceptional or special circumstance(s) why the Judgment Creditor should be denied the fruits of his Judgment. I have carefully examined the affidavit in support of the application for stay of execution and i am unable to find any special circumstance why this Court's Judgment should be stayed.

Though the Judgment Creditor has submitted that the Judgment is declaratory in nature hence it is not one that can be stayed I am unable to allude to his submissions minded that there are other legs of this Court's order that are executory.

The issue for consideration here is whether the Judgment Debtor has been able to elicit credible, plausible and exceptional reasons that ought to warrant the grant of his application for stay.

I find the decision in **OKAFOR v. NRAIFE (1987) 4 N.W.L.R. (PART 64) page 119** further strengthening the position of this Court that an application for stay of execution cannot be granted per se, or as of right, but in the exercise of the Court's discretion having regard to the facts and circumstances surrounding the application. It was held thus:

"It is trite that an unsuccessful litigant applying for a stay of execution must show special or exceptional circumstance and what will qualify as special or exceptional circumstance will certainly depends on the facts and circumstance of each particular case, the onus is always

on the Applicant to satisfy the Court that he is entitled to the exercise of the Court's discretion in his favour"

Having examined the affidavit in support, the only assertion of the Judgment Debtor which seemingly bears a cause for ordering a stay is that the decision of the Court of Appeal may be rendered nugatory in the event that judgment on appeal is given in favour of the Judgment Debtor. He has failed to state how the Judgment will be rendered nugatory. He has asserted that the balance of convenience is in favour of the Judgment Debtor, without supporting this assertion with any fact. He has therefore left this Court to conjecture how the balance of convenience is in its favour.

Indeed, the Judgment Debtor/Applicant's assertions are substantially legal conclusions which are inadmissible in evidence. These conclusions offend against Section 115(2) of the Evidence Act of 2011.

It is not as if the Judgment Debtor/Applicant has given this Court the impression that in the event this application is allowed the Judgment sum or the executory portions of the Judgment ordered will not be recoverable from the Judgment Creditor, that is, that the Judgment Creditor will not be in a financial position to return the Judgment sum in the event the appeal succeeds.

In the light of the foregoing considerations, I am only inclined to allow this application on terms, that is, to the extent that the Judgment sum ordered in this suit SHALL be paid to the Registrar of this Court within 30 - 60 days from the date hereof. The Judgment sum deposited by the Judgment Debtor to this Court shall abide with the final decision of the Court of Appeal.

**O.O. Goodluck,
Hon. Judge.
30th January, 2020.**

APPEARANCES

Parties absent

A. S. Haruna Esq. With me is A. Usman Esq. Holding the brief of

C.J. Oloibi Esq.: For the Judgment Debtor/Applicant.

Ademola Adewoye Esq. with me is my learned colleague Nathaniel

Ejeh Esq.: For the Judgment Creditor.