

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 34
CASE NUMBER: SUIT NO. FCT/HC/CV/827/19
DATE: 26TH FEBRUARY, 2020

BETWEEN:

RICHCONT LIMITEDAPPLICANT

AND

PETER OKOLO & COMPANY.....RESPONDENT

APPEARANCE

O. S. Owezim Esq for the Applicant with Esther Bassay Esq.

Applicant is in Court. Is in court.

Ikechukwu Madike Esq for the Respondent.

RULING

By a motion on notice dated 12th day of November 2019 and filed on the 14th day of November, 2019 the Respondent/Applicant herein prayed the court for the following order:-

- (1) An order staying further proceedings in this Motion with NO. FCT/HC/CV/M/4911/19 pending the determination of the interlocutory Appeal filed by the Respondent/Appellant/Applicant against the ruling decision of this Honourable Court Delivered on 18-10-2019.

- (2) And for such further order(s) as this Honourable Court may deem fit to make in the circumstances

The Application which is brought pursuant to Section 2(2) (b) of the Arbitration and conciliation Act, CAP A 18 LFN, 2004, and Articles 6 (3) & 26 (3) of first schedule to the Arbitration and conciliation Act; order 19 Rule 12 (b) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court, is supported by an affidavit of 22 paragraphs deposed by one Amaka Emeka (Mrs.), an Associate counsel in the law firm of Okey Uzohu & Co, the firm “representing the Respondent/Appellant Applicant Exhibits marked A, B, C, D AND D1 as well a written address dated 12/12/2019.

On the other hand, the Respondent Applicant has filing a counter Affidavit of 24 paragraphs deposed by one Ahmed Tunde Adenusi Managing Director of the applicant as well as a written address dated 6th day of February, 2020.

While addressing the court on the 11-2-2020, the learned Respondent/Appellant/Applicant’s counsel informed the court that the Record of Appeal has been compiled and transmitted to the court of appeal. That the appeal having been entered, this court is no longer seized with the jurisdiction to proceed with this matter. That in view of this development, all the Applications that are pending are to be referred to the court of Appeal. Learned counsel cited the cases of EZE OKAFOR VS EZEKO (1999) 6 SC (PT. 11); NGIGE VS ACHOKWU (2004) 8 NWLR (PT. 875) at 362.

In his response to the above submission, learned Applicant/Respondent’s counsel submitted that there is a big difference between compilation of record of Appeal and an appeal being entered which requires an appeal number.

That in the instant case, no appeal number was submitted or shown beyond the oral submissions of counsel. That in the absence of that, this court cannot sit and speculate that the appeal has been entered.

Learned counsel further submitted that the Applicants herein are out of time within which to file their brief of arguments before the court of Appeal and

that same has not been done, and since they've not come with a motion for extension of time before the court of Appeal. Counsel therefore urged the court to discountenance counsel's submission and to proceed with hearing of the main application.

I have carefully considered the Application for stay of proceedings, the Affidavit in support, the Exhibits and the written address filed in support of same I've equally considered the Counter-Affidavit of the Applicant/Respondent as well as the written address in support of the said counter Affidavit.

First of all let me begin by considering whether or not an appeal has been entered in this case.

On when an appeal is deemed to have been entered, the court of Appeal held in the case of ABRAHAM ADELEKE & ORS VS OYO STATE HOUSE OF ASSEMBLY & ORS (2006) LPELR 7655, that an appeal is deemed as having been duly entered as soon as all salient records are transmitted to the Registry of the Appellate court which cannot be heard to be competing with the lower court over any application in respect of the appeal.

Likewise, in the case of ALOR & OR VS REGISTERED TRUSTEES OF ENUGU NORTH DIOCESE ANGLICAN COMMUNION & ANOR (2017) LPELR-43441 (CA) held **thus:-**

".....An appeal is entered when the record of appeal is transmitted to the appellate court and the matter is given an appeal number and entered in the cause list....."

See also the cases of ERISI VS IDIKA (1987) 4 NWLR (PT. 66) PAGE 503; OLORUNYOLEMI VS AKHAGBE (2010) 8 NWLR (PT. 1195) 48; SPDC VS OJOWHOR AMADI & ORS (2011) LPELR-3204 (SC).

Furthermore in ALOR & ORS VS REGISTERED TRUSTEES OF ENUGU NORTH DIOCESE ANGLICAN COMMUNION & ANOR (Supra) the court of appeal cited order 4 Rules 10 & 11 of the court of Appeal Rules 2016, and also held that.

After an appeal has been entered and until it has been seized of the whole of proceedings as between the parties thereto, and except as may be otherwise provided in these rules, every application therein shall be made to the court and not to the court below, but any application may be filed in the court below for transmission to the court of appeal. Held further that the lower court would cease to have jurisdiction and total jurisdiction would vest in the appellate court, please see the verdict of OGUNWUNMI JCA, at page 7-8, paragraphs F-E thereof.

In the instant case, I've taken judicial notice of not only the Notice of Appeal filed on 31/10/19 before this court, but a compiled record of appeal from F. C. T High Court to court of Appeal with Appeal No. CA/A/1154/2019 stamped and dated 10/12/2019 in respect of this present suit.

In the circumstances therefore, I find that this present application (which has been overtaken by events) ought to be granted in the interest of justice since the court now lacks jurisdiction to proceed with hearing of the main suit.

Consequently:- further proceedings in this suit with suit NO. FCT/HC/m/4911/19 be and is hereby stayed pending the hearing and determination of an interlocutory Appeal filed by the Respondent/Appellant/Applicant against the ruling of this Honourable Court delivered on the 18th of October 2019.

Signed

Hon. Justice Samirah Umar Bature.

26/2/2020.