

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE JUDICIAL DIVISION ABUJA
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF
DELIVERED THE 20th DAY OF FEBRUARY, 2020
FCT/HC/CV/2848/2019**

BETWEEN:

- 1. MR HILARY UCHECHUKWU**
- 2. MRS UCHECHUKWUCLAIMANT**

AND

- 1. MRS ELIZABETH BINCAN**
- 2. THE CHIEF REGISTRAR,HIGH COURT OF
FEDERAL CAPITAL TERRITORY, ABUJA**
- 3. THE DEPUTY SHERIFF,HIGH COURT
OF FEDERAL CAPITAL TERRITORY, ABUJADEFENDANT**

JUDGMENT

This is an originating summons dated the 9th September, 2019 and filed the 10th day of September, 2019. The application is supported by a 12 paragraphed affidavit deposed to by one *Hilary Uchechukwu, the 1st claimant in this matter*. Attached to the affidavit are some annexure namely

1. Notice of appeal dated the 10th April, 2019 and filed at the supreme court
2. Notice of motion for stay of execution of judgment of court of appeal dated the 11th April, 2019.
3. A plain paper that has the Chief Registrar's office Stamp and the name Muogbo Rachel, designation time and date.
4. Affidavits of service headed the Court of Appeal, Abuja Judicial Division with suit no CA/A/315/M/2019 and CA/A/190/2016, dated the 24th may, 2019 and 30th May, 2019 respectively.
5. A copy of the application for enforcement of Judgment by the Respondent's solicitors to the Registrar Court 21, dated April 10, 2019.
6. A copy of the writ of attachment and sale of goods dated 1st July, 2019.
7. A copy of the warrant for possession of premises dated the 1st July. 2019.

In response to the application, the 1st defendant filed a 12 paragraphed counter affidavit deposed to by the 1st defendant himself, attached to the counter affidavit are two exhibits

marked as exhibits CA1 and CA 2. Exh.CA 1 is the letter of instruction written by the 1st defendant to her Solicitor, while Exh CA2 is the plaintiff's witness statement on oath. The 2nd and 3rd defendants also filed a 19 paragraphed affidavit deposed to by one *Edna Shuaib, a Litigation secretary in the Legal Unit of the FCT, High Court*. All parties in compliance with the Rules of this Hon. Court filed a written address. The Applicant raised three issues for determination, that is:

1. Considering the combined provisions of section 233(1), (2) (a)-(c);241(1) of third schedule, as well as other relevant provisions to the Constitution of the Federal Republic of Nigeria,1999(as amended), Section 23 of the Sheriff and Civil Process act, Cap S6, Laws of the Federation of Nigeria, 2004, Order III (I) of Judgment Enforcement Rules, Order 2 Rule 30 of the Supreme Court Rules, 2008 (as amended), Order 4 Rules 6 of the Court of Appeal Rules, 2016 and paragraph 7 of the Practice Direction of High Court of Federal Capital territory ,Abuja, whether the Writ of Attachment and warrant of possession for Enforcement of the Judgment of the Court of Appeal affirming the Judgment of the High Court of FCT ought

to be issued on 1st July, 2019 notwithstanding the service of the Notice of Appeal and Motion for Stay Execution on the Chief Registrar, deputy sheriff of the High Court of the FCT on 24th May, 2019 and Registrar of Court 21, Apo Division, Abuja FCT on 30th May, 2019 where Order of enforcement was issued, other than as mandatorily provided by the combined effect of the afore- stated provisions of the constitution, Sheriff and Civil Process act and Judgment Enforcement Rules, Supreme Court Rules, Court of Appeal Rules and the practice Direction of High Court of FCT.

2. In view of the combined provision of Sections 233 (1), (a)-(c); 241 (I) of Third schedule, as well as other relevant provisions to the Constitution of Federal Republic of Nigeria, 1999 (as amended), Section 23 of the Sheriff and Civil Process Act, Cap. S6, Laws of the Federation of Nigeria, 2004, order III (I) of Judgment Enforcement Rules, Order 2 Rule 30 of the Supreme Court Rule, 2008. Order 4 Rules 6 of the Court of Appeal Rules, 2016 and Paragraph 7 of the Practice Direction of the High Court of Federal Capital Territory, Abuja, whether the High court of FCT can issue or has the power to issue Writ of

Attachment and Warrant for Possession for Enforcement of Judgment of the court of Appeal affirming the Judgment of the High Court of FCT after service of the Notice of appeal and Motion for Stay execution on the Chief Registrar, Deputy Sheriff of the High Court of FCT and registrar of High Court of FCT contrary to the mandatory provisions of decided cases of the appellate Court and Rules of Court of Appeal and Supreme Court.

3. Having regards to the combined provisions of Section 233 (1), (2) (a)-(c); 241 (1) of Third Schedule, as well as other relevant provisions to the Constitution of Federal Republic of Nigeria, 1999 (as amended), Section 23 of the Sheriff and Civil Process Act, Cap. S6, Law of the federation of Nigeria, 2004, Order III (1) of Judgment Enforcement Rules, Order 2 Rule 30 of the Supreme Court Rules, 2008 (as amended), Order 4 Rule 6 of the Court of Appeal Rules, 2016 and Paragraph 7 of the Practice Direction of high Court of Federal Capital Territory, Abuja. Whether the issuance of the Writ of Attachment and Warrant for Possession for Enforcement of the judgment of the Court of Appeal affirming the Judgment of the High Court of

FCT after service of the Notice of Appeal and Motion for Stay Execution on the Chief Registrar, Deputy Sherriff of the High Court of FCT and Registrar of High Court Abuja, FCT by relying on the practice direction of the High Court of FCT will not render the decision of the Supreme Court nugatory.

The 1st defendant formulated one issue for determination which is; whether the claimants are entitled to the reliefs sought despite their failure to effect service of the Notice of Appeal and the Application for stay of Execution on the 1st defendant. The 2nd and 3rd defendants formulated a sole issue for determination: whether the mere filing and service of the Notice of Appeal and a Motion for Stay of Execution on the 2nd and 3rd defendants without a Court Order serves/operate as Stay of Execution.

I shall adopt the issue formulated by the 1st defendant as same will answer the questions of the Claimants, that is; “*Whether the claimants are entitled to the reliefs sought despite their failure to effect service of the Notice of Appeal and the Application for Stay of Execution on the 1st defendant.*”

The background fact of this application is that the 1st Respondent sued the claimant in ***SUIT NO FCT/CV/855/2012*** and Judgment was granted in her favour. The Claimant being dissatisfied with the Judgment of this court presided over by *Otaluka. J* appealed to the Court of Appeal, Abuja division, wherein the decision of the trial court was affirmed on the 9th day of April, 2019. Thus the defendant in this present suit via a letter dated the April 10, 2019 applied for the execution of the Judgment of this Hon. Court. (The said letter is attached to the claimants originating process). The writ of attachment and sale of goods as well as warrant of possession of premises were issued the 1st July, 2019. The Execution was carried out on the 6/9/2019. (*See Para 7d of the affidavit in support*) The Execution carried out on the 6th day of September, 2019 is the basis of the claimant's claim before this court. The claimants argued that the defendants lacked the powers to have applied or carried out execution while there is a Notice of Appeal at the Supreme Court and a Motion for Stay of Execution at the Court of Appeal against the Judgment. That the 2nd and 3rd defendants were served with the Notice of Appeal and Motion for stay of execution before the issuance of writ of attachment and warrant of possession for enforcement of the Judgment of the court of appeal.

The Claimants claims against the defendants, jointly and severally as follows:

1. **A DECLARATION** that the defendants lacks the power and the vires to apply for the issuance of Writ of Attachment and Warrant for Possession for Enforcement of the Judgment of Court of Appeal affirming the Judgment of the High court of FCT after service of the Notice of Appeal and Motion for Stay Execution on the Chief Registrar, Deputy Sheriff of the High Court of FCT and Registrar of High Court Abuja, FCT by relying on the mandatorily provided for by the relevant provisions of the constitution of the Federal Republic of Nigeria, 1999 (as amended), Sheriff and Civil Process Act, Judgment Enforcement Rules, Supreme Court Rules as well as Court of Appeal Rules.
2. **A DECLARATION** that the claimants having filed their Notice of Appeal and Motion for Stay Execution within time and served same on the Chief Registrar, Deputy Sherriff and also further served same on the Registrar of the High Court before issuance of writ of attachment of the Court of Appeal affirming the Judgment of the High court of FCT is entitled to an order stay of execution pending appeal mandatorily provide by the relevant provision of the Constitution of the

Federal republic of Nigeria, 1999 (,as amended) Sheriff and Civil Process Act, Judgment Enforcement Rules, Supreme Court Rules as well as Court of Appeal Rules.

3. **A DECLARATION** that the issuance of issuance of Writ of Attachment and Warrant for Possession for Enforcement of the Judgment of the Court of Appeal affirming the Judgment of the High Court of FCT against the Claimant notwithstanding the filling the service of the Notice of Appeal and Motion for Stay of Execution within time and serving same on the Chief Registrar, Deputy Sheriff and also further serving on the Registrar of the High Court is unconstitutional, Illegal, ultra vires, oppressive, arbitrary, null and void and of no effect.

4. **AN ORDER** setting aside the Writ of attachment and warrant for Possession for enforcement of the judgment of the Court of Appeal affirming the judgment of the High of the FCT against the claimant issued on the 1st July 2019 notwithstanding the filling and service of their Notice of Appeal and Motion for Stay of Execution within time and serving same on the chief Registrar, Deputy Sheriff and also further serving on the Registrar of the High Court.

5. AN ORDER of perpetual injunction restraining:

1.The 1st defendant, whether by herself, her Agents, Servants, Privies, or any person acting for her on her behalf for applying for Order of Enforcement of the Judgment pending the valid Appeal entered at the Supreme Court.

2.The 2nd and 3rd defendants causing to be issued and order for enforcement of the judgment of the Court of Appeal affirming the judgment of the High Court of FCT in Suit No: CV/855/2012 and Appeal No: CA/A/195/2015 pending the determination of the Appeal to the Supreme Court by the Claimants.

3.The defendants whether by themselves, their officers, agents, privies or through any person or persons however, from entering or in any way disturbing the possession of the Claimant/Applicants property at Plot No:279 cadastral Zone 07-07,Lugbe 1, layout Lugbe Extension 1, Lugbe, Abuja pending the determination of the valid Appeal filed at Supreme Court.

4. The defendants, their agents servants or privies from entering, taking over or any other way interfering with the property(s) of the Claimants in property at Plot No: 279, Cadastral Zone 07-07, Lugbe 1, Layout, Lugbe Extension 1, Lugbe, Abuja pending the determination of the valid appeal at the supreme Court.

The grouse of the claimants is that, why should the execution of the judgment be carried out, when there are pending applications before the appellate courts. Learned counsel to the claimants argued that the claimants are entitled to right of appeal as guaranteed by the constitution and same cannot be negotiated once the claimants has taken steps to ensure that no part of the Judgment of the court of appeal or the trial court is enforced after the filing the notice of appeal and motion for stay of execution, and same processes served on the Chief Registrar and the Deputy Sheriff of the High Court. By the averments contained in the affidavit in support, the 1st claimant states;

PARAS 5: that 1st defendant sued myself and my wife at the High Court FCT, Abuja sometimes in 2011 claiming ownership of the land I validly bought from my predecessor in title and judgment of the high court was delivered in 2015 against me and I appealed against the judgment to the court of appeal who affirmed the judgment of the trial court and dissatisfied with the judgment of the court of appeal, I also appealed to the Supreme Court by filing a notice of appeal and notice of motion for stay of execution and served same on the 2nd and 3rd defendants herein on the 24th May, 2019 and the registrar of high court 21, Apo Abuja, the trial court that delivered the Judgment at the first instance on 30th

May, 2019. (Copies of the processes were attached to this application). It is contained in the affidavit that all efforts to serve the 1st defendant and her counsel proved abortive. Counsel supported his arguments with several authorities. The 2nd and 3rd defendants stated in their counter affidavit that;

PARA 10 that the mere filing of a Notice of Appeal and a Motion for Stay of Execution does not serve as a Stay of Execution of the Judgment of the trial court.

PARA 11; that execution of a court judgment can only be stayed if a court of competent jurisdiction makes an order to that effect.

PARA 12; that there is no order of any competent court directing the Enforcement Unit of the High Court of FCT to stay execution of the judgment in *SUIT FCT/HC/CV/855/2012*.

The 2nd and 3rd defendants argued that the application of the claimants is basically challenging the constitutionality of the practice direction issued by the Hon. Chief Judge of the FCT. There is no doubt that the principle of law is settled as to the fact that a mere filing of Notice of Appeal does not automatically translates to Stay of EXECUTION. **SEE OLORI MOTOR COMPANY LTD & ORS V UNION BANK NIGERIA PLC (2006) LPELR SC. 278/2001, SECTION 24 SUPREME COURT ACT AND SECTION 17 COURT OF**

APPEAL ACT. However, the principle of law isn't settled on service of motion for stay of execution, it largely depends on the facts and circumstances of each case. In **VASWANI TRADING CO. SAVALAKH (1972) LCN/0918 SC**, the Supreme Court deprecated the conduct of the lower court for not Staying Execution of a Judgment when an application for Stay of Execution was already pending before the Appeal Court to the knowledge of the plaintiff, but later on in **OLORI MOTORS COMPANY LTD V UNION BANK NIGERIA (SUPRA)** the Supreme Court had cause to depart from the principle established in the *vaswani's case* due to the non – service of the Motion for Stay of Execution on the plaintiff. It is interesting to note that the fact of the latter case is similar with the case at hand. For the sake of clarity, let me give a summary of what transpired in **OLORI MOTORS CO. V UBN** as follows: Judgment was entered in favour of the plaintiff against the defendants in the sum of #7,949,273.00 and #84,710.00 with interest by the Benin High Court. The defendants without delay filed a Notice of Appeal simultaneously with a Motion for Stay of Execution. The plaintiff was never served. Meanwhile, the plaintiff levied execution by selling some of the defendant's mortgaged properties. On becoming aware of the development, the defendants applied to the High Court to set aside the Execution. The application was granted and the execution was set aside. Dissatisfied with the ruling setting aside

the execution, the plaintiff appealed to the Supreme Court. The court while dismissing the appeal held inter alia

“... Indeed, it cannot be otherwise stated that in a matter of this nature, prudence dictates that the party to be affected adversely if nothing is done should have endeavored to cause service to be made by going to the registry to alert them. It is no point waving the decision of this court in vaswani trading co. savalakh (supra) as though it is a magic wand which possesses great powers and can solve all problems when the facts are not the same” (underlined mine for emphasis) PER; PAT – ACHOLONU JSC

The above dictum of the Apex court greatly emphasizes the importance of service of the application for Stay of Execution on the plaintiff which has been observed in breach in the instant case. This is because the claimant himself confirmed the non-service of the Motion on the 1st defendant. See **Para 7a** of the Affidavit in Support of the Originating Summons and this was averred by the 1st defendant in Para 6b, c & d of the counter affidavit and there is no further affidavit to challenge the averment

in the Counter affidavit. Furthermore, to underscore the distinctive features of this case with *vaswani v savalakh (supra)* is the existence of Practice Direction for the Enforcement Unit of the High Court of the FCT which the 2nd and 3rd defendants relied on in carrying out the Execution. The said Practice Direction wasn't in contemplation at the time the decision in *vaswani's case* was made. For the avoidance of doubt, part of the Practice direction reads thus:

“Upon receipt of a writ of execution duly signed by a High Court Judge/Magistrate, the Execution Unit shall promptly carry out the execution unless same is recalled or formally stayed by a Judge/Magistrate or Court of Appeal or Supreme Court.”

There is nowhere in the argument of the claimant where it is stated that the 2nd and 3rd defendants were served with an Order of a Court formally staying or stopping them from carrying out any Execution as required in the above quoted direction. The claimant who had filed a Motion for Stay of Execution at the Court of Appeal as well as a Notice of Appeal at the Supreme Court, but failed to serve a successful litigant the processes will not expect

the successful litigant to fold it arms. The successful litigant waited 5 months or thereabout before executing the Judgment and in between those months the claimants in this case never thought it wise to effect service on the 1st defendant and also they have not denied the fact of not having her phone number or address as stated in her counter affidavit. See Paras 6b, c & d of the 1st defendant counter affidavit.

“Rules of Court must be obeyed; they constitute *PRACTICE DIRECTION*, which has the force of law. To treat them with levity would be calamitous to the entire Administration of Justice System. Particularly where the provisions of the Rule carry mandatory compliance, it should be strictly adhered to. In *AUDU v WADA (2016) 12 NWLR (Pt 1527) pages 382 @ 394* the Apex Court held that the Practice Direction, a factious Rule of Court are special provision and must be given the effect they clearly set out to achieve. They have the force of law, and parties must adhere strictly to it *NWANKWO V YAR'ADUA (2010) 12 NWLR (Pt 1209) 578; ANPP V GONI (2012) 3 NWLR (Pt. 1298) 147.*” **SEE EKWEOZOR & ANOR V SAVANNAH BANK & ANOR (2016) LPELR – 42128.**

SECTION 259 OF THE CFRN, 1999 (as amended) read thus:

“Subject to the provisions of any Act of the National Assembly, the Chief Judge of the High Court of the Federal Capital Territory, Abuja may make rules for regulating the Practice and Procedure of the High Court of the Federal Capital Territory, Abuja.”

Standing on the foregoing pedestal, it will be safe and convenient to hold that the practice direction relied upon by the 2nd and 3rd defendants to levy execution on the property of the defendants pending the hearing and determination of the appeal and motion for stay of execution was valid, legal and constitutional. Therefore the mere service of the notice of appeal and motion for stay of execution on the 2nd and 3rd defendants without a valid Order of a court to that effect does not *ipso facto* operate as stay of execution of the court judgment. It will also be safe to hold that the failure on the part of the claimants to serve the processes (notice of appeal and motion for stay of execution) on the 1st defendant gave her the power to apply for the issuance of writ of attachment and warrant for possession.

On the prayer for perpetual injunction, it is trite that injunction is an equitable relief issued or granted by a Court at the suit of a party- the claimant and directed to the other party – the defendant in an action, forbidding the latter to do some act, or to permit his agents, privies or through any person or persons to do some act.

**SEE GOLDMARK (NIG) LTD & ORS V IBAFON CO LTD & ORS (2012)
LPELR 9349 (SC)**

“The grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by Court. The essence of granting a perpetual injunction on a final determination of the rights of the parties is to prevent permanently the infringement of those rights and to obviate the necessity of bringing multiplicity of suits in respect of every repeated infringement.”

Having not granted the declaratory reliefs sought by the claimant, there is no basis for the grant of perpetual injunction in the

circumstance of this case. I therefore resolve the sole issue formulated by the 1st defendant in her favour. The application of the claimant is dismissed accordingly.

ASMAU AKANBI – YUSUF

HON JUDGE

APPEARANCES:

Parties absent.

Johnny Agim Esq, Uchenna Uzukwu Esq. For the claimants.

Phillip Agi Esq. For the 1st defendant.

Alawo Adah Esq. For the 2nd & 3rd defendants.