

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 18TH DAY OF MAY, 2020
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/3784/13

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

QUALITY LINKS NIG. LIMITEDPLAINTIFF

AND

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <ol style="list-style-type: none">1. HON. MINISTER OF THE FEDERAL CAPITAL TERRITORY2. FEDERAL CAPITAL TERRITORY ADMINISTRATION3. THE FEDERAL CAPITAL DEVELOPMENT AUTHORITY4. ABUJA METROPOLITAN MANAGEMENT AGENCY5. MR SAMUEL HARBO6. MR WINSTON OLUWOLE SHOBOYEJO | } DEFENDANTS |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|

RULING

The Claimant/Applicant's Motion dated 16/12/19 but filed on the 17/12/19 against the Defendant/Respondents is for:

1. An order staying further proceedings in this suit (Suit No. FCT/HC/CV/3784/2013 pending the determination of the Claimant/Applicants Appeal at the Court of Appeal challenging the ruling of this Court delivered on 2/12/19.
2. And for such further or other orders as the Court may deem fit to make in the circumstances.

The application is supported by a six paragraph Affidavit sworn to by Tsebo Emmanuel litigation Secretary of No. 34 Kumasi Crescent, Wuse 2, Abuja.

I shall succinctly summarise his deposition.

That Counsel to the Claimant/Applicant has been diligently attending Court.

That the Court struck out the application of the 1st – 4th Defendants seeking to extend time to file Statement of defence on 6/03/17.

That on 7/06/17, the matter could not go on because Claimant's witness was absent from Court.

That on 7/06/17 Counsel to the 1st – 4th Defendants filed a similar application for extension of time and joinder of parties dated 9/05/17.

That service of the said Motion was effected in their office on 14/06/17. That no date was endorsed on the face of the Motion indicating when it would be heard nor was there a hearing Notice.

That Claimant responded to the said Motion by filing a Counter Affidavit and a Written Address dated 25/09/17.

That on 27/09/17, while in Court he was informed by the Court that Defendant applied for and got an earlier date 3/07/17 for the hearing of its Motion dated 9/05/17 and the prayers in the said Motion granted despite the fact that the Claimant was not represented and without proof of a hearing notice.

That the granting of the Motion filed by the 1st – 4th Defendants on a date not originally fixed for hearing without adequate

notice to the Claimant robs the Claimant of her constitutional right to fair hearing.

The Claimant has now consequently filed a Motion dated 20/11/17 to set aside the orders made and the proceedings of the said 3/07/17. The Claimant's Motion was dismissed by the Court.

The Claimant is grossly dissatisfied with the ruling dated 2/12/19 and filed a Notice of Appeal against the said ruling delivered on the 2/12/19.

That the Claimant's Notice of Appeal contains recondite, arguable and substantial grounds of appeal.

That an order of Court staying further proceedings in this suit is necessary.

That Claimant's appeal bothers on her constitutional right to fair hearing which was deprived.

That the records of this Court will be tidier if proceedings are stayed.

That the Defendants/Respondents will not be prejudiced.

That it is in the interest of justice to grant the application.

Learned Counsel to the 1st – 4th Defendants also rely on their Counter Affidavit sworn to by Saidu Wodi of Legal Assistant of Kapital Street, Area 11, Garki Abuja.

He deposes that the 1st to 4th Defendants filed Motion M/1435/16 dated 29/11/16 but filed on 5/12/16 to regularise Statement of Defence and join 5th and 6th Defendants.

That the Motion was duly served on the Claimant. The endorsement and Return copy is in the Court's file.

That Claimant filed a response to the said Motion.

That Applicants were not denied fair hearing.

That the application is frivolous and only intended to waste the Court's time.

That the depositions in the Claimant/Applicant's Affidavit in support of the Motion is misleading.

That the continued hearing of the case will not in any way affect the rights of the Claimant.

The 6th Defendant/Respondent's Counsel also relied on his Affidavit sworn to by Tony Elochi Litigation Secretary of House 1, Flat 3 Wanune Close, Off Kano Street, Area 1 Garki Abuja.

He deposes that the 6th Defendant/Respondent was properly joined as a necessary party by the order of Court.

That the Notice of Appeal has not raised any special or exceptional circumstances to warrant or compel the granting of a stay of proceedings.

That this Appeal cannot dispose off this case pending before this Court.

The Res will not be destroyed.

That it is a ploy to delay the main suit since they are still in possession of the property.

That it is in the interest of justice not to grant the application.

Learned Counsel to the Claimant submits that the Court has a discretionary power to grant the reliefs sought.

That when an application is pending in a higher Court, it behoves on this Court to stay proceedings before it as a mark of respect and await the outcome of the proceedings before the higher Court.

Learned Counsel cited the case of **ACHEBE VS. MBANEFO (2007) 10 NWLR (PT.1043) 490.**

MOHAMMAD VS. OLAWUNMI (1993) 4 NWLR (PT.287) 254.

He finally argues that in order not to engage in an exercise in futility. It will be in the interest of justice if the proceeding is stayed.

The 1st – 4th Respondents' Counsel on the other hand canvassed in his Written Address that for the Court to grant the application, there must be a valid Appeal and that the Applicant must show that there exist special and exceptional circumstances which will compel the Court to grant the relief. He argues that the Claimant did not show the existence of any special and exceptional reason in his Affidavit to justify the grant of the application.

That justice and equity is not in favour of the Claimant who are in possession of the Res and are carrying on business.

There is nothing to show that if they succeed on appeal it will totally dispose off the main Suit to warrant a stay of proceeding.

He finally urges the Court to dismiss the application.

The 6th Respondent's argument contained in his Written Address filed in support of his Counter Affidavit is also on the same line of argument that the Claimant did not show the existence of any special and exceptional reason to justify the granting of this application or how the joinder of parties will have effect on the substantive Suit.

Learned Counsel to the 6th Respondent generally align himself with the 1st – 4th Respondents in his Written Address.

He finally urges the Court to grant the reliefs sought.

It is trite that a Court such as this Court has a discretion to grant or refuse an Order of Stay of Proceeding. However, such discretion must be exercised both judicially and judiciously.

The exercise of such discretion to grant a stay of proceedings will be prompted by the peculiar circumstance in each case in which all the factors for or against the grant would have been weighed.

Some of the factors include:

- a. A competent appeal.

- b. The appeal is arguable.
- c. The Applicant must establish the existence of special and exceptional circumstances to warrant the grant of the application.
- d. The Court must consider the competing rights and convenience of the parties.
- e. The action should not be an abuse of Court process.
- f. Where the grant will unnecessarily prolong the proceedings, it will not be granted.
- g. Where the issue of jurisdiction is raised on the pending Appeal, the Court should grant the stay.

Each of the conditions stated above constitutes a special circumstance.

See ***IGP VS. FAYOSE (2007) 9 NWLR (PT.1039) 263.***

However, where an interlocutory Order does not finally dispose off the case, it could be wrong to stay proceedings simply because of an appeal lodged against it by an aggrieved party, as such, an Order/Ruling could be made subject of appeal, if necessary, after the final judgement.

See ***OKEM ENT (NIG) LTD VS. NDIC (2003) 5 NWLR (PT.814) 495.***

OYERU VS. ELEDO (2005) 12 NWLR (PT.939) 368.

In the instant case, even if the appeal succeeds, it will not automatically put an end to the proceedings in this Court. The Claimant will not be prejudiced if this application is refused.

This case is instituted in 2013. Its about 7 years now yet hearing has not commenced. The Claimant seems not to be in hurry because it is in possession. The Ruling appealed against is an Order for joinder of 5th and 6th Respondents.

In the circumstance of this case, I shall refuse to exercise my discretion in favour of the Claimant.

The application fails and it is accordingly dismissed.

.....

HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

18/05/2020