

**HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/M/7206/2019
DATE: 29TH MAY, 2020**

BETWEEN:

HON. JUSTICE MWADA BALAMI - PLAINTIFF/JUDGMENT DEBTOR/APPLICANT

AND

CHIEF JOHN OGWU - PLAINTIFF/JUDGMENT DEBTOR/RESPONDENT

AND

- 1. ENGR. GOODNEWS GOODMAN AGBI - RESPONDENTS
2. MR. PIUS ACHILIKE**

1st Judgment Creditor/Applicant in court while other parties absent.

A.U. Agboi appearing with M.C. Ifeajakuwu for the 1st Respondent. 1st Judgment Creditor/Applicant's Counsel – My lawyer Ekecukwu Obidike Esq. travelled to his home town in Anambra State before the lockdown and he is unable to return since then, he ask for another date.

1st Respondent's Counsel – I have no objection to the application for adjournment after the court delivered its ruling and adjourned the matter for hearing of the 1st Judgment Creditor's application for joinder.

Court – After hearing the application for adjournment by the 1st Judgment Creditor and reply by the 1st Respondent's counsel that he has no objection to the application for adjournment but urged

the court to deliver its ruling slated for today, I am in one with the 1st Respondent's counsel that the court should deliver its ruling and thereafter adjourned the matter.

This is the ruling of the court.

R U L I N G

This is a Motion on Notice No. M/7206/2019 dated 27/9/2019 filed by the Judgment Creditors/Applicants. The motion is brought pursuant to Section 6(6), 241 of the 1999 Constitution of Federal Republic of Nigeria (as amended) and under the inherent jurisdiction of this Honourable Court.

In the application, the Applicant seeks for the following:

1. An Order for stay of proceeding of the Honourable Court in the above suit pending the hearing and determination of the Appeal on the Ruling delivered by the Honourable Court on the 12th Day of September 2019.
2. And for such orders or other order(s) as the Honourable Court may deem fit to make in this circumstance.

The grounds upon which the application is brought are as follows:

- (a) That the Judgment Creditors/Applicants have appealed against the ruling of the Honourable Court of 12th September 2019 on the jurisdiction of the Honourable Court to entertain the entire suit.
- (b) That the issue of jurisdiction which cloths the Honourable Court with the power to entertain this suit has to determined first.

- (c) That the failure of Honourable Court to stay proceedings in this suit will render nugatory the outcome of the appeal of the Judgment Creditors/Applicants.
- (d) That failure to stay proceedings in this suit will jeopardize the interest of the Judgment Creditors/Applicants in this suit.
- (e) That the above appeal is in accordance with Section 241 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- (f) That the Judgment Creditors/Applicants is entitled to the right of appeal by virtue of Sections 241 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and this Honourable Court is empowered by law to protect this right.
- (g) That the order of stay of proceeding of the said suit would preserve the res.
- (h) That the Judgment Creditors/Applicants undertake to pay damages to the Respondents if this application is found to have been brought mala fide.
- (i) That the interest of justice will be best served if this application is granted.
- (j) That the Respondent shall not be prejudiced if this application is granted.

In support of this application is a 4-paragraph affidavit deposed to by Promise Edem dated 30/9/2019. Attached thereto are documents marked Exhibits A, B and C respectively. Also filed is a 4-paragraph Further Affidavit dated 7/2/2020 deposed to by

Promised Edem. Attached thereto is a document marked Exhibit D. Reliance is placed on all the said paragraphs of the affidavit.

Learned counsel to the Applicant Ikechukwu Obidike Esq. filed a written address dated 27/9/2019 wherein counsel raised an issued for determination to wit:

“Whether from the facts of the case, the Defendant/Applicant has made out a case to warrant the grant of a stay of proceeding”

On this issue, it is the submission of counsel that the aim of motion for stay of proceeding pending appeal is basically to protect and preserve the Res. That the court is always in trespass to preserve the res to ensure that at the end of the day appeal is not rendered nugatory. See *UBN LTD v ODUSOTE BOOKSTORE LTD* (1994) 3 NWLR (Pt 331) 129.

It is the contention of the Judgment Creditors/Applicant that the affidavits in support of this application have disclosed sufficient and cogent materials for the grant of this application. That there exist a valid and pending appeal and there is the need to preserve the res so as not to render the outcome of the appeal nugatory.

It is submitted that the appeal has raised the issue of jurisdiction which is recondite. See *AJOMALE v YADUAT* (No. 2) (1991) 5 NWLR (Pt 191) 266 at 291. Court is urged to grant the application.

The 1st Plaintiff/Judgment Debtor/Respondent's counsel did not file any counter affidavit, however elected to place reliance on

the submission of the 2nd Plaintiff/Judgment Debtor/Respondent in urging this court to discountenance the application for stay of proceedings.

The 2nd Plaintiff/Judgment Debtor/Respondent filed a 5-paragraph counter affidavit dated 16/12/2019 deposed to by Abbey Hari Ibitoru, a Legal Practitioner in the Jubilee Chambers.

Learned counsel to the 2nd Judgment Debtor/Applicant A.U.E Ogboi Esq. filed a written address dated 16/12/2019 wherein counsel formulated a sole issue for determination to wit:

“Whether upon a calm consideration of the facts and circumstances of this matter, the Applicants deserve a grant of stay of this proceeding”

On this sole issue, it is the submission of counsel that there is nothing in the affidavit and address to suggest that the Applicant is entitled to a grant of this application. In an application for stay of proceedings as in the instant case, the Applicant is duty bound to place before this court all material facts to enable this Honourable Court to consider and exercise its discretion in his favour. This is because, the discretionary power must not be exercised in vacuum but in relation to the facts of the particular case. See *CARIBBEAN TRADING & FEDELITY CORP v NNPC* (1991) 6 NWLR (Pt 197) 365 at 530 Paras A – E.

It is the submission that where the court as in this case has powers to hear application to set aside its own order, an appeal against the ruling of the court assuming jurisdiction, is not a real issue of

jurisdiction. A real issue of jurisdiction will only be said to be involved where ab initio the trial court has no jurisdiction. Whether or not this Honourable Court has the inherent power to set aside its own previous order is settled in a number of cases. See ADEYEMI BERO v L.S.D.P.C. (2013) 8 NWLR (Pt 356) 238 at 304 Paras C – F; A.G. KWARA v LAWAL (2018) 3 NWLR (Pt 1606) 266 at 291 Paras F – G.

It is the contention by counsel that the Applicant attempted to raise the issue of the res. It is submitted that in the circumstances of this matter the Applicants took possession of the res fraudulently, he cannot be talking of the preservation of the res in his favour for the grant of this application. He cannot also rely on hardship because he has put tenants on the premises when he had no order of any court varying the stay issued by Hon. Justice Y. Halilu of this court before entering unto the property. The law is that a party claiming a right must do what is right. See APAMADARI v STATE (1997) 3 NWLR (Pt 493) at 301 Para E, HAMIDU v SAHAR VENTURES LTD (2004) 7 NWLR (Pt 373). Court is urged not to grant this application to pave way for the court to determine whether indeed the order for execution of writ of possession was obtained by fraud.

By way of reply on points of law, the Applicant's counsel submitted that the 1st Plaintiff/Judgment Debtor/Respondent did not file any counter affidavit before this court and the position of the law is that they have accepted the position of the Judgment Creditors/Applicants.

It is further submitted that the counter affidavit of the 2nd Plaintiff/Judgment Debtor/Respondent did not address any issue of fact as the averments are legal conclusion which offends Section 74 of the Evidence Act. Court is urged to grant the application.

I have carefully considered the processes filed and the submission of learned counsel on both sides, it is trite that a person dissatisfied with the decision of a court has a right of appeal as guaranteed in the Constitution of Federal Republic of Nigeria. It is also the law that the order for stay of proceedings pending an appeal is not granted lightly because it is a serious aberration and gross impediment to the right of the Plaintiff to conduct his case. See SHACKLETON v SWIFT (1913) kb 304 AT 312. In the case of MOBILE OIL NIG. PLC v KEMA ENERGY INTERNATIONAL LTD (2005) All FWLR (Pt 240) 74 at 86 the Court of Appeal held inter alia:

“It is such a serious grave and fundamental disruption of the right of the other parties to have his case heard and disposed of within a reasonable time. In other words, stay of proceedings is the antithesis to a speedy hearing of the case; and connotes a punitive element on the Plaintiff, the hearing of whose claim will be delayed by the order of stay. It is therefore not to be granted until the pros and the cons are properly weighed”

It is settled law that an application for a stay of proceedings can only be granted where special and exceptional circumstances exist, particularly a genuine issue of jurisdiction raised in the

pending appeal. However, the issue of jurisdiction should not be used as a camouflage, neither should it be seen as a magic wand to conjure a stay of proceedings. See I.G.P. v FAYOSE (2007) 9 NWLR (Pt 1039) 263; P.D.P. v ABUBAKAR (2007) 2 NWLR (Pt 1018) 303.

In the instant case, I have carefully considered the averments in both the affidavit in support of this application and the further affidavit, it reveals that there is nothing cogent being relied on in this application aside from the kite of jurisdiction. The law is settled that the mere use of the word jurisdiction is not enough for the grant of a stay of proceedings. The court must be satisfied that a genuine issue of jurisdiction is involved. See the case of CARIBBEAN TRADING & FIDELITY CORP. v N.N.P.C. (Supra).

As rightly stated by the 2nd Judgment Debtor/Respondent in paragraph 4.10 of his written address, that where the court as in this case has powers to hear application to set aside its own order, an appeal against the ruling of the court assuming jurisdiction is not real issue of jurisdiction. In the case of ADEYEMI-BERO v L.S.D.P.C. (Supra) the court held inter alia:

“A person affected by the judgment which is nullity is entitled to have the same court set it aside ex debito justitiae. The court in its inherent jurisdiction has the power to set aside its own judgment or made without jurisdiction or if same has been fraudulently obtained. In such circumstance an appeal for the purpose of setting aside the null judgment or order is not necessary”

In the instant case, the 2nd Judgment Debtor/Respondent have alleged fraud as a cover to obtaining the order under question made by this court to evict the 2nd Judgment Debtor/Respondent. This court has the powers to set same aside without requiring the 2nd Judgment Debtor/Respondent to approach the Appellant Court.

As stated earlier to gain a grant for stay of proceedings, special circumstances must be shown. After a carefully consideration of the affidavits in support of this application, I find it difficult to come to terms with the Judgment Creditors/Applicants that there exist special and exception circumstances to warrant this court from hearing and determining the 2nd Judgment Debtors/Respondent's application seeking to set aside the order of this court that was alleged was obtained by fraud.

It is alleged in doubt that there is an existing order for stay of execution by my learned Brother Hon. Justice Y. Halilu and the Judgment Creditors/Applicants still went ahead to execute against the said order. It is settled that a person who offend against the law cannot seek the help of the law. See the Supreme Court's case of ARCHIBONG v STATE (2006) All FWLR (Pt 323) 1747 at 1788 Para E.

The Applicant raised the issue of preservation of the res in his favour. It is clear the res in the instant case is a building. Accordingly I hold that the res cannot be destroyed and cannot be rendered the outcome of their appeal nugatory; more so, it is alleged by the Respondents that the Applicant took possession of

the res fraudulently and therefore cannot be talking of preservation of the res in his favour for the grant of this application.

Also the Applicants cannot rely on hardship because he has put tenants on the premises as shown in their additional affidavit in support of Motion No. M/7701/19, when they had no order of any court varying the stay issued by my learned Brother Y. Halilu J. before entering unto the property.

In conclusion, I hold the considered view that no attempt was made by the Applicants herein to demonstrate any special circumstances to warrant the grant of this application. They have not been able to show that the res which is a building built by the Respondent will disappear and also unable to show which law ousts the jurisdiction of this court to set aside its order allegedly obtained by fraud. Accordingly, this application is hereby dismissed for lacking in merit.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
29/05/2020

2nd Judgment Debtor/Respondent's Counsel – We thank the court for the ruling.

There are still 2 pending applications. Our application is seeking for an order of court to set aside the writ of execution and the 2nd Judgment Creditor's motion for joinder.

We think the 2nd Judgment Creditor's application for adjournment should come first.

We ask for a date.

2nd Judgment Creditor – I have nothing to say.

Court – Suit adjourned to 13/7/2020 for hearing of the 2nd Judgment Creditor's Motion of Joinder. I order that hearing notices be served on the 1st Judgment Debtor and 3rd Judgment Debtors.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
29/05/2020