



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



SUIT NO: FCT/HC/CV/2382/17
MOTION NO.: M/347/18
BETWEEN:

VICTORY TRUST PROPERTIES LTD...JUDGMENT DEBTOR/RESPONDENT

AND

- 1. THE DEPUTY SHERIFF OF THE FCT HIGH COURT.....) RESPONDENT**
- 2. MORENO GROUP PLC.....JUDGMENT DEBTOR/APPLICANT**

RULING

This Court entered monetary Judgment in favour of the Judgment Creditor/Respondent and against the Judgment Debtor/Applicant on the 9th day of October, 2018. The Judgment Debtor/Applicant who is aggrieved with the judgment lodged an appeal against the Judgment at the Court of Appeal, Abuja Division.

Meanwhile the Judgment Debtor/Applicant presented an application pursuant to Order 61 Rule 1 of the Rules of this Court 2018 seeking the following reliefs:

- 1. An Order of this Honourable Court staying the execution of its judgment delivered on the 3rd October, 2018 in Suit No.CV/2382/17 pending the determination of the appeal**

against the judgment pending before the Court of Appeal, Abuja Division.

2. And for such other order(s) or further orders as this Hounourable Court may deem fit to make in the circumstances.

Three grounds were listed in support. The grounds on the face of the application are as set out hereunder:

- 1. There is a valid notice of appeal pending before the Court of Appeal, Abuja Division.**
- 2. The judgment was delivered against the 1st Defendant/Applicant/Judgment Debtor on record.**
- 3. It is in the interest of justice that this application be granted.**

One Oriade Adedapo, an employee of the Judgment Debtor/Applicant deposed to a 5-paragraph affidavit in support to which a copy of the Notice of Appeal and a Certified True Copy of the judgment in dispute were annexed and marked as exhibits 'A' and 'B' respectively. Learned Counsel to the Judgment Debtor/Applicant also filed a written address in support of this application.

In opposing this application the Judgment Creditor/Respondent with leave of Court filed a Counter Affidavit of 14-paragraphs deposed to M.I. Arikewuyo, Esq of Counsel for the Judgment Creditor/Respondent. There is also a written address filed in support of the opposition to the grant of

this application. The Judgment Debtor/Applicant also filed a better and further affidavit deposed to by the selfsame Oriade Adedapo who deposed to the main affidavit in support.

The Deputy Sheriff of this Court joined as a party in this application for stay of execution did not file any process in opposition.

I have read all the respective processes filed by parties in this application and the point must be made that Courts of Law are not in the habit of denying successful Litigants the fruits of their labour except where the Applicant is able to show exceptional circumstances to warrant the exercise of the Court's discretion in its favour. See **MOMAH V. VAB PETROLEUM INC (2000) 4 NWLR (PT.654) 534** where ACHIKE, JSC stated the law in a most eloquent manner as follows:

“This court is familiar with the guiding principle upon which it grants or refuses to grant a stay of execution of an order, ruling or judgment of a court. It is not a relief that is granted as a matter of course, being essentially an equitable remedy that must take into consideration the right of a successful party to harvest the fruits of its success in the suit, on the one hand, and the necessity not to impede the appellant's right to appeal as well as preserving the res so that if the appeal is successful the proceedings are not

rendered futile. It is only granted where the court's discretion has been made in favour of the applicant judicially and judiciously on the basis of established principle.”

The Court then went further to say that:

“The principle has long crystallized that a stay of execution can only be granted upon the applicant showing that there exist special or exceptional or strong circumstances for doing so, bearing in mind always that the compelling reason for granting a stay is to preserve the res from destruction and thereby maintain the status quo at all material time so that if the appeal is successful, at the end of the day, as we have earlier stated, the proceedings in respect thereof would not be rendered nugatory”.

See also the following cases on this well established principle of Law:

- 1. VASWANI TRADING CO. V. SAVALAKH (1972) 1 ALL NLR (PT.2) 483 AT 487;**
- 2. AJOMALE V. YADU'AT (NO.2)(1991) 5 NWLR (PT.191) 266 AT 289; AND**

3. DEDUWA V. OKORODUDU (1974) 6 S.C 21 AT 24-26.

Where the judgment sought to be stayed is a monetary Judgment as in this case the conditions recognized as exceptional circumstances are as follows:

- 1. Whether or not the Judgment Debtor has resources to pay the judgment debt and be able to prosecute the appeal; and**
- 2. Whether the Judgment Creditor would be financially in a position to refund the judgment debt if the Defendant/Judgment Debtor is successful at the Court of Appeal.**

See the case of **GOVERNOR, OYO STATE & ANOR V. AKINYEMI (2003) 1 NWLR (PT.800) 1.**

Flowing from the clear position of the Law as set out above I have carefully scrutinized the affidavit in support of this application and it is my view that it's either learned Counsel for the Judgment Debtor/Applicant is ignorant of the applicable Law or he presented this application *mala fide* to spite the Judgment Creditor/Respondent and by extension subject the Court to a baseless and unfruitful inquiry. This is so because there is nothing in the affidavits of the Applicant to support this application.

For the avoidance of doubt, the totality of the affidavit in support of this application is reproduced below:

“I, Oriade Adedapo, male, adult, Nigerian citizen of No.16, Nairobi Street, Wuse 11, Abuja do make oath and state as follows:

- 1. That I am an employee of the Defendant/Applicant/Judgment Debtor by virtue of which position I am conversant with the facts of this case.**
- 2. I have the consent and authority of the Defendant/Applicant/Judgment Debtor to depose to this affidavit.**
- 3. That I depose to the counter affidavit (sic) in this matter and I know our lawyer has filed a notice of appeal at the Court of Appeal, Abuja Division. The said notice of appeal is hereby attached and marked as exhibit “A”.**
- 4. That it is in the interest of justice that this application be granted.**
- 5. I make this statement on Oath solemnly and consciously believing the contents to be true and correct, and in accordance with the Oaths Act.**

Looking at the above deposition I have no difficulty in holding that the Judgment Debtor/Applicant has not disclosed any special and exceptional ground to warrant the grant of this application. The further and better affidavit did not fare any better as all that the Applicant stated

therein is that execution was levied during the pendency of this application. Learned counsel has, therefore, urged upon the Court to treat Judgment Creditor/Respondent's conduct as an abuse of Court process and grant this application.

Arising from the submission of the learned Counsel to the Applicant I must say that from the record of the Court the writ of execution complained against was issued before the presentation of this application for stay of execution. This point is well corroborated by paragraph 7 of the Judgment Creditor/Respondent's counter affidavit where it was stated thus:

“That I know as a fact that the writ of attachment and sale of goods for the execution of the judgment of this Hon. Court delivered on 09/10/2018 was signed for execution by His Lordship Hon. Justice H.B Yusuf on 31/10/2018”

The point must also be made that if indeed the judgment in dispute has been executed this application would have become a mere academic exercise. Why seek to stay the execution of a judgment which the Applicant claimed had already been executed? It is clear that from whichever angle this application is view the inevitable conclusion I must reach is that it is devoid of merit.

Learned Counsel to the Applicant place heavy reliance on the notice of appeal and submitted that the Applicant has exercised its constitutional right of appeal and this Court in the exercise of its discretion must

ensure that the subject matter of appeal is preserved to avoid foisting on the Court of Appeal a situation of complete helplessness which will render the finding of the said Court nugatory.

This submission with all due respect to the learned Counsel to the Applicant is also off target. This is so because it is trite Law that the mere filing of an appeal without showing exceptional circumstance to warrant the grant of a stay cannot be a ground to sustain this application. But as it were the only deposition in support of this application is that the Applicant has appealed the judgment sought to be stayed and nothing more!

What the Law would recognize as special or exceptional circumstances in monetary judgment cannot be left to speculation and conjecture. As set out above the Law is clear that for the Applicant to succeed either of the following grounds must established to the satisfaction of the Court, to wit:

- 1. Whether or not the Judgment Debtor has resources to pay the judgment debt and be able to prosecute the appeal; and**
- 2. Whether the Judgment Creditor would be financially in a position to refund the judgment debt if the Defendant/Judgment Debtor is successful at the Court of Appeal.**

It is instructive that the Applicant did not allude to any of the above grounds in the affidavits in support of this application. If that be the case

it is clear that the application is conclusively lacking in merit. Therefore I must conclude that this application is frivolous and bereft of the required evidence to support applications of this nature. It is nothing but a needless waste of the precious time of the Court. It is liable to be and is hereby dismissed for want of merit.

Signed
Hon. Justice H. Y. Baba
(Presiding Judge)
03/06/2020