

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/1252/2018

MOTION: M/9382/19

BETWEEN:

- 1. HERITAGEBANK LTD**
- 2. DEPUTY CHIEF SHERIFF, FCT HIGH COURT
MAITAMA.....CLAIMANT/RESPONDENTS**

VS

JOBON INTERNATIONAL LIMITED.....APPELLANT/APPLICANT

RULING

By a Motion on Notice with No. M/9382/19 dated 7/10/19 and filed same day, brought under the inherent jurisdiction of this Hon. Court, the Applicant prays for the following;

- (1) An Order of the Hon. Court staying Execution of the Judgment delivered by the High Court sitting at Jabi High Court FCT Abuja on 16th of September, 2019 pending hearing and determination of the Appeal already filed against the said Judgment.
- (2) And the Omnibus relief.

In support of the Motion is an 8 paragraph affidavit deposed to by John Chukwudi with one (1) Exhibit attached. Also filed a Written Address and adopts the Address. Also filed a further/better affidavit of 3 paragraph with Five (5) Exhibits annexed and marked "A - E ". Also filed a Written Address in support. Urge the court to grant the application.

The Motion was duly served on the Respondents and in reaction Claimants/Respondents filed a counter-affidavit of 5 paragraph deposed to by Philip Yaor. Also filed a Written Address in opposition, adopts the said Address, in urging the court to dismiss the application with substantial cost.

E.O. Iheke, Applicant's counsel in his written submission in support of the Motion did not raise any issue for determination by the court, but submits there are some considerations for stay of execution as stipulated by court and are (1) that stay should not be refused if the effect of such refusal would render the Appeal nugatory, if it should eventually succeed (2) If the request for stay and subject matter of the Appeal have the same subtraction so that the grant of one would be granted, refer to Vaswani Trading Co Ltd Vs Savalakh Co. (2002) 29 WRN, 129. That the principle behind stay of execution of Judgment lies in the recognition of court to preserve the Res. That executing the Judgment is to dispossess Appellant the subject matter on Appeal and render the Appeal nugatory. Further that Appeal is constitutional right and its prosecution must not be stultified by court or litigant. That for court to grant a stay must take into consideration the balance of convenience. In all commend the court to the following cases, Unilorin Vs Rashidaat Adesina (2007) 49 WRN 69 at 7,

Julius Berger Nig Plc Vs T.R. Comm (2007) 1NWLR PT 1016 at 544, ACB Vs Awogboro (1901) NWCR CPT 176 711 at 719.

On the other hand, Christabel Ayuak, Counsel for Respondent, in the Written Address of Respondent settled by I.E. Ezuegbe raised a sole issue for determination;

“Whether the Judgment Debtor/Applicants is entitled to the grant of the reliefs contained in the Motion on Notice for stay of Execution”

And submits court have held in several cases that for an application for stay to be granted, Applicant must show the existence of special and exceptional circumstances and also prove there is a valid Appeal pending to warrant the grant to avoid, a situation where the court will make an order depriving a successful litigant from reaping the fruits of his success and commend the court to Clev Josh Ltd Vs Tokimi (2008) 13 NWLR PT 1104, Amadi Vs Chukwu (2013) ALL FWLR PT 703 at 1945 and 1946. That in this instant, Applicant has not shown the existence of any special circumstance to warrant the grant. That at nowhere in the affidavit did Applicant state any special reason why the court discretion should be exercise in his favour. That the law is clear he ought to shown existence of special circumstance before the court can grant the stay he seek but have failed to do so. Further that its trite law that in deciding whether or not to grant application of this nature, court should have regard to the overriding principle of justice of the cases. That if the stay, by the nature of the case, will stifle the case and cause great inconveniences or loss to person who wishes to proceed, the court should not grant the stay unless ordered by

superior court, refer to *Oduba Vs Houfmangracht* (1997) 6 NWLR PT 508 at 185.

I have carefully considered the depositions in the affidavits of Applicant and that of Respondent, the submission of both counsel, the judicial authorities cited as well as the annexed exhibits and find that only one (1) issue calls for determination and that is;

“Whether or not the Applicant has successfully shown good grounds warranting the grant of this application”.

The law is settled that the grant or otherwise of an application for Stay of Execution is at the discretion of court and in exercise of that discretion, the court must do so judicially and judiciously taking into account the facts placed before it. See *Anachebe Vs Ijeoma* (2014) 14 NWLR PT 1426 168 at 184 Paras D – F. Overtime the courts have laid down some guiding principles that will guide the court in the proper exercise of its discretion in Plethora of cases. Before a court can make an order of Stay of Execution thereby asking a successful party or victorious litigant to tarry a while before enjoying the fruits of his victory, the Applicant must show:-

- (1) There is a substantial and arguable ground of Appeal.
- (2) That there are special or exceptional circumstance to warrant the grant of the application.

See *NNPC Vs Famfo Oil Ltd* (2009) 12 NWLR PT. 1156, 462 at 468. See also *Ofordeme Vs Onyegbuna* (2006) 5 NWLR PT 1074 549 at 552, *SPDC (Nig) Ltd Vs Okei* (2006) 17 NWLR PT 1007 1 at 5.

In this instant application, the facts relied on by Applicant, as constituting special and exceptional circumstances as gleaned from the affidavit in support is that Applicant is dissatisfied with the Judgment of court delivered on 16/9/2019 and has filed Appeal and since there is pending Appeal, there is need to stay execution which will help maintain status quo pending the determination of the Appeal. See Para 3 – 4, 6 -7 of the supporting affidavit.

The law, however, is that the filing of Notice of Appeal, as shown by the Exhibit "A" of Applicant, does not operate as Stay of Execution. See *Olori Motors Co Ltd Vs UBN Plc* (2006) 10 NWLR PT 989 586 at 594 (SC). See also *TSA Industries Ltd Vs Kema Investments Ltd* (2006) 2 NWLR PT 964 300 at 305 (SC). Therefore the fact that Applicant has filed Notice of Appeal does not ipso facto mean a stay must be granted. For a stay to be granted, Applicant must show from the affidavit, special or exceptional circumstances to warrant the grant in line with laid down guidelines and principles. See *NNPC Vs Famfo Oil Ltd* (Supra), *Ofordeme Vs Onyebuna* (Supra), *SPDC (Nig) Ltd Vs Okei* (Supra).

I have carefully considered the affidavit of Applicant before me in line with the guidelines and principles stated for the exercise of the discretion of court to grant or refuse an application of the nature and find that Applicant failed to show to the satisfaction of court, any special or exceptional circumstances to cause the court to exercise its discretion in favour of Applicant.

What's more, granted Applicant has filed Notice of Appeal at the Court of Appeal, there is nothing before court to show compliance with the provisions of Order 61 Rule 2 & 3 of the Rules, which provides;

"An Applicant for Stay of Execution of a Judgment shall pay for the compilation of the records of Appeal within 14 days from the Defendants of filing of the Notice of Appeal and where cost of compilation is not paid; the Respondent may apply to strike out the application"

A careful perusal of the processes in the records of court does not reveal this other than application made for compilation and transmission of records, the Exhibit "C" annexed to Applicant's further & better affidavit and acknowledgement of receipt of money to be paid for compilation and transmission of records, the Exhibit "D" also annexed to Applicant's further & better affidavit.

In any events, this application relates to monetary judgment. In NNPC Vs BCE Construction Engineering (2004) 2 NWLR PT 858 484, the Court set out the principles to guide the court in exercise of that discretion;

- (1) The competing rights of the parties.
- (2) The need to maintain the status quo

In application for Stay of Monetary Judgment, the law is that the only grounds for Stay of Execution of Monetary Judgment is where an Applicant satisfies the court that if the judgment debt is paid, there is no reasonable probabilities of getting it back if the Appeal succeeds. See Kwara Poly Vs

Oyebanjo (2008) 3 NWLR PT 1075 459 at 461. In this instant application, Applicant did not state that if the Judgment sum is paid, there is reasonable probabilities of getting it back from Respondent if the Appeal succeeds neither did Applicant show in their affidavit the financial status of the Respondent.

In all having carefully considered the affidavit evidence, I cannot find any good grounds as enunciated in Plethora of cases to warrant the grant of the application. Accordingly, I am unable to exercise that discretion in favour of the Applicant. Consequently this application for Stay of Execution of the Judgment of this court delivered on 16/9/2019 fails and is hereby refused.

HON JUSTICE O.C AGBAZA

Judge

15/5/2020

E.I.O. IHEKE – FOR DEFENDANT/APPLICANT

IKECHUKWU UZUEGBU – FOR CLAIMANT/RESPONDENT