

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON WEDNESDAY, THE 15TH DAY OF SEPTEMBER, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N.
OGBONNAYA
JUDGE
SUIT NO.: FCT/HC/CV/1030/16

BETWEEN:

ABEL BEHORA

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PLAINTIFF

AND

1. JOHN MOMOH
2. OLUWUMI AGUNBIADE
3. J.M. ISA
4. N. EMMANUEL
5. C. OGBONNA
6. A. OLAYINKA
7. USMAN JUBRIL
8. C. OJIYI
9. HENRY OGAR
10. ELOKE OKWECHIME
11. SIMEON ABUH
12. ERIC OKAFOR
13. NASIDI AL-HASSAN
14. ABU YELDU
15. JACOB OLATUNJI
16. DAVID GALA

----- DEFENDANTS

BENCH RULING ON STAY

On the 5th day of May, 2020 this Court delivered a well reasoned and detailed Judgement.

From the evidence in the case file there has been evidence of execution of the Judgement going by what the Judgement Debtor Counsel and Judgement Creditor had told the Court already.

Again and most importantly there is an evidence of transmission of record of Appeal going by the document attached as an Exhibit by the Judgement Debtor. The document which is from the Court of Appeal that the appeal has been entered at the Court of Appeal and the case has already been given a number at the Court. The number is CA/ABJ/CV/674/2020.

In this case also the Judgement Debtor had filed a Motion for Stay of Execution. That Motion was moved this morning by the Counsel to the Judgement Debtor. He filed an Affidavit, Further Affidavit and Reply on Points of Law based on the Counter Affidavit filed and served on them by the Judgement Creditor. The Judgement Creditor had also moved their Counter vehemently challenging the Motion stating that appeal had been entered and that execution has been levied.

The Judgement Debtor had stated severally that they have a right and are duty bound to appeal and that if stay is not granted the Judgement Debtor's constitutional right will be violated.

The Judgement Debtor's Counsel also submitted that notwithstanding that appeal has been entered that the Court still has jurisdiction to entertain this Suit. Meanwhile the Judgement Creditor had hammered that the Court having delivered Judgement in this case is

functus officio, more so when execution has been levied and Appeal entered by the Judgement Debtor.

In this Motion this Court is called upon to stay execution of the Judgement which has already been executed/carried out and the Judgement Debtor had already entered an appeal even before the Motion for stay of Execution was heard. Again on the part of the Judgement Creditor, they are saying that this Court lacks jurisdiction to entertain the Motion for Stay giving the circumstances of the case at this stage.

The question is should the Court damn the consequences and grant the stay as sought by the Judgement Debtor? Does the Court still have jurisdiction after delivering Judgement and appeal entered and Record transmitted to Court of Appeal with a case number already assigned to the matter?

Before I will give answer to these questions, it is important to refresh the minds of the Counsel in Court that once a Court delivers Judgement, it becomes functus officio. It only has jurisdiction to hear Post Judgement proceeding which includes Motion for Stay once Appeal has not been entered.

Again once a Notice of Appeal is filed and records transmitted to Court of Appeal and most importantly the Court of Appeal gives a number to the case, the Court has no hand in the matter again until the Appeal is heard and fully determined. This is so in order not to render the outcome of the Appeal Nugatory.

A Stay can only be heard and Order granted as prayed once there has NOT BEEN AN EXECUTION OF JUDGEMENT and Appeal not entered and pending. This is because any Order made by a Court must be enforceable. Where the issue on which the Order is predicated has been overtaken by event and prevailing circumstances, the Court will not meddle in such filthy mud, because it no longer has jurisdiction to entertain the case.

Be it known that Stay of Execution is not an appeal.

In this case the Judgement Debtor as already stated had transmitted Record of Appeal to Court of Appeal and the Court of Appeal had given the Suit a number CA/ABJ/CV/674/2020. By that action this matter is already pending at the Court of Appeal since the day the Appeal was entered and Record of Appeal transmitted to Court of Appeal. By that there is nothing to stay again.

Most importantly, there is evidence from the document from the Enforcement Unit of the Court which is seized with the execution of Judgement, showing that execution has been levied in this case. That means that the Judgement has been executed as shown in the document attached by the Judgement Creditor. As can be seen in the document so attached from that record there is nothing still in existence to stay. The Judgement has already been executed and Appeal pending. There is already an Record of Appeal transmitted long even before this Court heard this Stay today the 15th day of September, 2020.

This Court from all indications has no powers under the law and no jurisdiction if you may to listen, hear, and or deliberate on issue in this Motion. This is because of the whole prevailing circumstances of the already transmitted record and the execution already carried out.

Based on that the Appeal for Stay which is the right of the Judgement Debtor has been long overtaken by the prevailing circumstances which they as Judgement Debtors are part of principally.

The application lacks merit. It is an abuse of Court Process to seek such application in the circumstance. This Court has NO jurisdiction to entertain it. It is therefore DISMISSED.

This is the Ruling of this Court.

Delivered today the ___ day of _____ 2020 by me.

K.N. OGBONNAYA
HON. JUDGE