

IN THE HIGH COURT OF JUSTICE
OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 17TH DAY OF SEPTEMBER, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
COURT 25.

SUIT NO.: FCT/HC/CV/2823/18

BETWEEN:

PA.LIN.HO GLOBAL SERVICES LIMITED } ----- PLAINTIFF

AND

**1. BENTELL PROPERTIES LIMITED }
2. CHIEF BENARD NWORA } -----DEFENDANTS/APPLICANTS
3. FIRST GENERATION MORTGAGE } ----- DEFENDANT/RESPONDENT
BANK LIMITED**

RULING

On the 18th day of May, 2020 this Court delivered its Ruling on the Preliminary Objection filed by the Defendants challenging the competency and jurisdiction of this Suit in that the Plaintiff have no

Locus Standi and right of action to see the Reliefs sought in the main Suit.

The Court dismissed the Preliminary Objection for lacking in merit and an abuse of Court Process and a waste of time of both the parties and the Court. The Court held that the Plaintiff have the requisite Locus Standi and the right to seek the Reliefs in the Suit. The Court gave its reasons for its decision in dismissing the Preliminary Objection and holding that the Plaintiff has a Locus Standi to institute and maintain this Suit.

On the 22nd of May, 2020 the 1st & 2nd Defendants/Applicants filed a Motion on Notice for leave to appeal the Ruling of this Court delivered on the 18th of May, 2020. They also want an Order for Stay of all Proceeding in this Suit pending the Appeal. The Motion is based on the following grounds:

That the Motion is for leave to appeal the Ruling and for Stay of Proceedings pending the Appeal.

That the subject matter of the Suit is entire property and a state known as Plot 2580 Kagini District, Abuja which comprises of 28 Blocks of different Houses.

Again that the Applicant had challenged the competency of the Suit through the Preliminary Objection which this Court in a reasons decision dismissed. Also that Court dismissed the Motion – Preliminary Objection. That since the Ruling is not

a final decision in this Suit requires the Order or leave of Court sought and obtained. That the Order and consequential Notice of Appeal must be sought, obtained and or filed and decided within fourteen (14) days from the date of the Ruling. That the ground upon which the Preliminary Objection were founded were on grounds of law and facts which will form the grounds of the proposed Appeal in this case. That the requirement for leave to Appeal as expressed in the Reliefs sought is a constitutional requirement. That the whole essence of this application is to enable 1st & 2nd Defendants exercise their right to Appeal.

They attached Certified True Copy (CTC) of the Ruling and the proposed Notice of Appeal. They supported the application with an Affidavit of 5 paragraphs deposed to by K.C. Udokwu the General Manager of the 1st Defendant who also represents the 2nd Defendant. They attached a copy of the proposed Notice of Appeal as an Exhibit.

In the Written Address they raised an Issue for determination which is:

“Whether the Applicants are entitled to the Reliefs sought in this application?”

They submitted that they are bound to seek and obtain the leave of Court before they can Appeal the Ruling of the Court which is an Interlocutory

decision. They referred to **S. 242 (1) 1999 Constitution as amended.**

That the requirement to obtain leave of Court before appealing against the decision of the Court is a Statutory requirement. So their application in this instant case is Statutory. That failure to do so will make the process incompetent. That failure to do so will equally deny the Court the jurisdiction to entertain Suit. They relied on the case of:

**Iwegwu V. Okolocha
(2013) 9 NWLR (PT. 1359) 377 – 378 Para H – A.**

That based on their right to Appeal, they ask for an Order of this Court and submit that this Court has the power to order for Stay of Proceedings in order to preserve the Res pending the Appeal. They referred to the case of:

**Kabo Air Limited V. Inco Bar Limited
(2003) 6 NWLR (PT. 816) 322 @ 339 – 340 Para H – A.**

They submitted that they are entitled to the Reliefs sought in this application and urged the Court to resolve the issue in their favour.

Upon the receipt of this application the Plaintiff filed a Counter Affidavit of 17 paragraphs vehemently opposing and challenging the application.

In their Written Address they raised three (3) Issues for determination which are:

- (1) Whether the proposed Appeal is not a shame, frivolous, irritating, annoying, a ploy to delay the trial of this Suit, vexatious and an abuse of the Court Process with no chance of success.**
- (2) Whether the Applicant are in the circumstance, entitled to an Order for Stay of Proceedings of this Court.**
- (3) Whether the Applicants are not liable to pay cost to Claimants for bringing an application of this nature and whether the same cost should not be paid by Kenneth Anakwe, Counsel to the 1st – 2nd Defendants/Applicants.**

On Issue No.1 the Plaintiff submitted that by the Processes filed by the parties and the several paragraphs of their Statement of Claim as well as the decision of the Court in the Ruling, there is in existence several issues in dispute between the parties. That Defendants have joined issues with them in their Statement of Defence and Counter Claim. They referred to paragraphs 5, 8, 16, 22 & 23 of the 1st & 2nd Defendants' Statement of Defence and on grounds 2, 4 & 8 of the Preliminary Objection which this Court had dismissed. They referred and relied on the case of:

**Daggash V. Bulana
(2004) 14 NWLR (PT. 929) 144 @ 233.**

**A-G Ondo State V. A-G Federation & ors
(1983) NSCC 612**

That by the decision of the Court in the Ruling the Plaintiff had established that the Plaintiff has Locus and that there is a dispute and Plaintiff has a case of action against the Defendants in this Suit. Again that this application can be conveniently taken with a substantial Appeal if the Applicant will need to Appeal at the end of the Suit.

That Applicant need to place before the Court facts on which the application is based but that they failed to do so.

That Order 6 Rule 7 Court of Appeal Rules 2016 provides that an application for Leave to Appeal the decision of a lower Court must contain the Certified True Copy (CTC) of the Decision of the lower Court.

That Defendant/Applicant had not attached the decision they intend to Appeal. That this application is a shame and a ploy to waste the time of the Court. That the proposed Notice of Appeal has no chance of success. They urged the Court to so hold and dismiss the application with cost of Two Hundred and Fifty Thousand Naira (₦250, 000.00) against the Applicants to be paid personally by the Counsel to the Applicants.

On Issue No.2, whether Applicants are entitled to the Relief of Stay of Proceedings of this Suit, they submitted that the Defendants/Applicants are not entitled to such Relief. That the submission of the Applicant in that regard should be discontinued.

That the Defendants/Applicants' position is highly misconceived of the law on the issue of Stay of Proceedings and Interlocutory Appeal. That the right to appeal an Interlocutory cannot be exercised in a way that will affect the right of the Claimant to fair-hearing within a reasonable time going by **S. 336 (1) 1999 Constitution as amended**. They referred to the case of:

Dike Geo Motors & Anor V. Allied Signals Inc. (2006) All FWLR (PT. 329) 901 @ 914 – 5

They submitted that the element of fairness of a trial is speedy disposition of a case which constitute public right that an individual cannot even unilaterally waive. They relied on the case of:

Ariori V. Elemuo (1984) NCLR 22 @ 23

That granting Stay of Proceedings will definitely affect the right of the Claimant to speedy disposition of the Suit.

That it will also amount to an unnecessary punitive measures against the Claimant. They urged the Court to so hold. That the Claimant have suffered grievous set back. That the Plaintiff Contractors had or threatens to drag the Plaintiff and its directors before Security Agencies.

That Applicant had not shown or demonstrated their entitlement to an Order of Stay of Proceedings. They did not show any of the

principles for the grant of Stay of Proceedings in their favour.

That the Applicant have not filed an appeal to be entitled for Stay of Proceedings of the action. That they ought to have first filed the Motion for Leave to Appeal then after obtaining the leave they can then file for Stay of Proceedings after filing the appeal. That as it were they cannot seek for Stay before filing an appeal. That as it were there is no pending Appeal that a Stay cannot therefore be granted. That even if the Applicant had attached Certified True Copy (CTC) of the Ruling, they would not still be entitled to Order of Stay.

They submitted that the Applicants have not demonstrated the principle enunciated in the case of:

**Federal Ministry of Works & Housing V. Tomas Nigeria Limited & ors (No.1)
(2001) All FWLR (PT.47) 1089 @ 1094 – 1095.**

That by their Counter Affidavit the Claimant has demonstrated that the huge possibility that there is a cause of action capable of being sustained and is not an abuse of Court Process. Again that the Applicants will not suffer any hardship if or whether the relief of Stay of Proceedings is refused as they have taken over and are in possession of the Res and had been tampering with the development done by the Claimant on the Res. That it will not be unjust to refuse the grant of the Relief sought which is Stay of Proceedings in this

Suit. That it is the Claimant that is suffering and will continue to suffer if the Stay is granted. That the Claimant is the one who have invested money in the Res and it is their Contractors who were forcefully chased away from the Res. That it is the Claimant who will continue to suffer if Stay of Proceedings is granted. They referred to the case of:

Nyam Co. Limited V. All Motors Nigeria PLC (2009) 17 NWLR (PT. 1169) 135 @ 152 Para C – D.

They urged the Court to so hold. They also urged the Court to dismiss the application with cost of Two Hundred and Fifty Thousand Naira (₦250,000.00). They referred to the case of:

IBORI V. Federal Republic of Nigeria (2009) 3 NWLR (PT. 1127) 94 @ 106 – 107 Para H – A

On Issue No.3 on whether the Applicants are not liable to pay cost to the Claimant for bringing this frivolous application and whether the Counsel of the Applicants should not pay the cost personally, the Claimant submitted that they have established that the application is frivolous and a ploy to delay the case and an abuse of Court Process. That it lacks merit and bonafides.

That Court has discretion to award cost and that a successful party is entitled to cost unless there is any special reason to deprive them that. That by

Rule 24 (2) & (3) Rules of Professional Conduct for Legal Practitioners provides that a lawyer is not absolved from bringing questionable action or arguing questionable defence and giving questionable advice on ground that he is only following client's instructions. That both the dismissed Preliminary Objection and the present application and the proposed Appeal are all questionable as they all border on very elementary issues basically expected to be known by and for all lawyers. They referred to the case of:

African Continental Bank Limited V. Ajugwo (2012) 20 WRN 47 @ 84 and 85 Lines 5 – 10.

That Kenneth Anakwe gave questionable advice to the Applicants in filing this application. That every lawyer knows that breach of contract is actionable. That by the circumstance of this case the Claimant has both Locus Standi and reasonable cause of action as it is evident that there is dispute between the parties in this Suit.

That the Counsel dragging the Claimant to Court in this pandemic time on non-issues is wrong giving the pandemic ravaging the world this time and the exposure of attending Court during the pandemic lockdown. That this application is only a ploy to delay the case and expose the Claimants to risk of health hazard. That award of Two Hundred and Fifty Thousand Naira (₦250, 000.00) against the Counsel personally is the right thing to do. They urged the Court to award the cost personally on

the Counsel Kenneth Anakwe and refuse the application and dismiss same.

COURT

It is the right of a party to apply for leave to file an appeal against any Interlocutory decision of the Court. It is also the right of a party to apply for a Stay of Proceeding in the Suit until appeal is determined.

BUT it is at the discretion of the Court to grant or refuse to grant an application for leave to file an appeal or to appeal against the Interlocutory decision. It is also the exclusive right of the Court to grant or refuse to grant a Stay of Proceeding pending an appeal.

It is imperative to point out and refresh the mind of especially the Defendants/Applicants and their Counsel Kenneth Anakwe that Stay of Proceeding can and is only filed and granted where there is a pending appeal. In that case there must have been a filed Notice of Appeal and such appeal is already entered and the Records of Appeal already transmitted to the Court of Appeal and the Suit given a Number by the Court of Appeal. Unless and until that is done, no Court can grant any application for Stay of its Proceedings in a Suit.

Again before a Court can grant leave to appeal its Interlocutory decision it must ensure that there is a very special circumstance which has occasioned the need to appeal the decision. The drafters of the

law made it mandatory that parties must seek and obtain leave before it can embark on such journey to Court of Appeal.

The same drafters also in their wisdom made it so in order to avoid the tendency to waste the time and resources of both the Court and the parties and to avoid deliberated delays which such appeals can occasion and to also avoid the pain and continuous suffering and losses and hardship which such appeals will cause the Claimants who had come to Court to seek redress from the action and inaction of the Defendant/Applicant. That is why the grant or refusal to grant such application is at the exclusive discretion of the Court. The Court will of course, in taking its reasoned stand ensure that its decision must be judicial and judicious.

In the case of **Dike Geo Motor Limited V. Allied Signal Inc. (Supra)** the Court held that a right to Appeal the decision of the Court whether final or Interlocutory should not override, overshadow and render ineffective the provisions of **S. 36 (1) of the 1999 Constitution as amended** which provides and guarantees the right of a party to fair-hearing. That means that where in the view of the Court, after going through the fact in support of such application for leave to appeal, the grant of the application will occasion delay, the Court will not grant it. In the above case the grant of leave to appeal and Stay of Proceedings caused a 7 years

delay of the Suit. So once the delay will occasion great disruption of the right of the other party to have his case heard and disposed off within a reasonable time, Court will not grant the leave to appeal or Stay of Execution. See the case of:

**Mobile Nigeria PLC V. Kena Energy
(2005) All FWLR (PT. 240) 74 @ 86**

In any application like the one before hand the Court can only consider the following before it will take its decision

- (1) That the action cannot succeed or fail or cannot go on.
- (2) That no cause of action has been disclosed that the Suit is vexatious or an abuse of Court Process. Or that there is need to preserve the Res from being destroyed and prevent undue hardship or that it will be unjust or inequitable to refuse the application for Stay of Proceedings.

Once a party has not through its facts in the Affidavit in support of the application show all or any of the above conditions the Court will not grant the application for Stay or leave to appeal.

In this case this Court has gone through the facts in the Affidavit as well as the submission of the Applicants in this application. The Court has not seen any sign that refusal of this application for leave to appeal its decision will occasion any injustice or hardship on the Applicants. It is clear

that there is a cause of action in this Suit as the Court has eloquently stated in its Ruling of the 18th May, 2020. The Suit is not an abuse of Court Process. It is equally not frivolous or vexatious. The grant of the application will definitely bring delay and more hardship on the Claimant who will have to wait for God-knows how long a time before the outcome of the Appeal will be known and last. Granting this application will occasion hardship on the Claimant and it will be a waste of time of everyone involved. It is very evident that refusal to grant the leave and Stay will not in any way negatively affect the Defendant/Applicant. It can only cause unjust delay. This Court cannot join the Defendant/Applicant in the dance of delay which the grant of the application will tune.

It is very evident that there is no pending appeal in this case even as I deliver this Ruling. No appeal has been filed and no appeal has been entered. It is unless and until an appeal has been entered that the Court can consider any Stay of Proceeding. The Defendant/Applicant only has a “proposed Notice of Appeal.” They have no Notice of Appeal.

That being the case this Court cannot and shall not grant any Order to Stay its Proceedings in this case.

This means that the application to Stay Proceedings in this case is not granted. So the

application to grant Stay of Proceedings is hereby DISMISSED.

Most importantly too, this Court has not seen any good reason and the judicial need to grant leave to Defendants/Applicants to appeal the decision of the Court in the Ruling of 18th May, 2020 dismissing the Preliminary Objection. The Defendants/Applicants have not been able to establish any cogent reason why this Court should grant the leave sought.

This application lacks merit and it is hereby DISMISSED with cost of Twenty Five Thousand Naira (N25, 000.00) against the Defendants/Applicants.

This is the Ruling of this Court.

Delivered today the ___ day of _____ 2020 by me.

**K.N. OGBONNAYA
HON. JUDGE**