



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
BEFORE THEIR LORDSHIP:
HON. JUSTICE H. B. YUSUF (PRESIDING JUDGE) AND HON.
JUSTICE A. A. YUSUF (HON. JUDGE)**



**SUIT NO: FCT/HC/CV/39/2018
APPEAL NO: FCT/HC/CVA/520/20
MOTION NO: FCT/HC/M/406/2020**

BETWEEN:

CLIVE IGUNBOR IBHAGHMEN.....APPELLANT/APPLICANT

AND

**1. INTERNATIONAL CARPETS INDUSTRIES LTD)
2. DEPUTY SHERIFF (HIGH COURT OF FCT)).....RESPONDENTS**

RULING

By a Motion on Notice filed on 7th July, 2020 the Appellant/Applicant seeks the following reliefs:

- 1. An Order staying further execution of the Judgment of this Honourable Court delivered on the 6th of May 2020 pending the hearing and determination of the Notice of Appeal filed in this Suit.**
- 2. An Order restraining the Respondents from taking any steps whatsoever in furtherance of the Judgment in Suit No: CV/39/2018 delivered on 6th May 2020 by this**

Honourable Court pending the hearing and determination of the Notice of Appeal filed in this Suit.

- 3. An Order restraining the Respondents, their servants, privies, agents or anyone acting whatsoever on the instruction of the Respondents from tampering, leasing, selling, altering, mortgaging, disposing off, or alienating the subject matter of the suit which is a warehouse with two stores situated at Plot 113 Kugbo Furniture Market, Kugbo Abuja-FCT pending the determination of the Notice of Appeal filed in this Suit.**
- 4. An Order restoring the Appellant back into the subject matter of this suit pending the hearing and determination of the Appellant's Notice of Appeal.**
- 5. And for such further Order or Orders as this Honourable Court may deem fit to make in the circumstances.**

Three grounds were listed in support of the application. The grounds are:

- 1. The Appellant had filed a Notice of Appeal challenging the decision of the Lower Trial Court which gave Judgment in favour of the 1st Respondent in a tenancy matter.**
- 2. While the said Notice of Appeal and a motion for stay of execution was still pending without any date of the motion**

being communicated to either the Appellant or his Counsel, the officials of the 2nd Respondent came to the subject matter of this Suit being occupied by the Appellant and ejected him and his family out of the premises.

3. The 1st and 2nd Respondent did not follow due process of law before carrying out the said execution.

Facts in support of the application are contained in a 17-paragraphs Affidavit, personally deposed to by the Appellant/Applicant, to which documents marked as Exhibits C1 to C7 were attached. There is also a written address in line with the Rules of the Court.

For the records, the Respondents were served with notice of this application, but none filed Processes in opposition to this application.

We have read the affidavit in support of this application and the documents in support, and the gist of this application is simply that on the 6th day of May 2020, the Senior District Court sitting at Karu delivered Judgment in Respondent's Suit and Ordered the Appellant/Applicant to yield vacant possession of the demised premises, which he occupied in official capacity and known as Plot 113, Kugbo, Furniture Market, Kugbo, Abuja-FCT. The Appellant/Applicant, who was dissatisfied with the decision, promptly filed a Notice of Appeal (Exhibit C2) against the Judgment and Motion on

Notice dated and filed on the 8th May, 2020. In view of the lockdown occasioned by the Covid-19 Global Pandemic, which is a matter of judicial notice, the Appellant/Applicant could not readily get a date to move the application, but he was in touch with the Registrar of the Court on phone, through short messages services (sms) on the status of his application.

To Appellant/Applicant's greatest surprise, and while waiting for a date to move his application for stay of execution pending appeal, execution was levied against him for recovery of possession and his properties attached. The Appellant/Applicant upon inquiry was informed that his motion for stay was struck out by the Senior District Court before the execution in dispute was carried out.

There is nothing on the part of the Respondents to disprove the story of the Appellant/Applicant. If that be the case, the Court is under a legal duty to act on such uncontroverted evidence, except it is manifestly perverse and unreliable. See the case of **THE NIGERIAN ARMY Vs W/O BANNI YAKUBU (2013) LPELR-20085 SC**, where the Apex Court (per Fabiyi, JSC) stated thus:

“It is basic that unchallenged evidence stands. The Court should accept same and act on it. The Court below was on firm ground in the stand taken by it.”

See also: **OMOREGBE Vs LAWANI (1980) 3-4 S.C 108; and FASORO V. BEYIOKU (1988) 2 NWLR (PT.76) 263.**

In our view, the Court below was wrong in dealing with the application for stay of execution, without putting the Appellant/Applicant on notice. We take judicial notice of the Covid-19 pandemic and its impact on judicial activities in the Country, and we do not think application for stay of execution falls within the category of special cases which enjoyed priority of audience at that time. Exhibits C4 and C5 revealed that the Appellant/Applicant indeed made efforts to get the Court to set down his motion for hearing, but was not successful in that regard. It is therefore a breach of the Appellant/Applicant's right to fair hearing to set down the application for hearing without notice on the Applicant. If the Court is disposed to hearing Applicant's application, it ought to have satisfied itself that parties are aware of the date for the exercise.

See the case of **CHITRA KNITTING & WEAVING MANUFACTURING CO. LTD Vs AKINGBADE (2016) LPELR- 40437 (SC)**, where Ogunbiyi, JAC, in his contributory Judgment stated the Law thus:

“The breach of constitutional right to fair hearing is so fundamental that same cannot be watered down. The consequential effect is to render any proceeding conducted a nullity and of no effect.”

In this case, the Appellant/Applicant is *ex debito justitia*, entitled to have the Order striking out his application before the Court below set aside, and the attendant execution is also hereby set aside, and we so Ordered.

As a consequence, we also Order that the Appellant/Applicant be restored to the premises, pending appeal.

Signed

Hon. Justice H. B. Yusuf (Presiding Judge), and

Hon. Justice A. A. Yusuf (Hon. Judge)

17/12/2020