



**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/129/2018**

**BETWEEN:**

MR. YINKA SONUYI.....APPELLANT/APPLICANT

**AND**

MR. JOHN OLABANJI AKEREDOLU.....RESPONDENT

**RULING**

This Ruling is in respect of an application filed on behalf of the Appellant/Applicant on 1<sup>st</sup> September, 2020 for variation/review of the Order of the Senior District Court, Wuse Zone 2, Abuja, made on 19<sup>th</sup> August, 2020. There is a supporting affidavit of 5-paragraphs deposed to by one Miss Faith Braimoh, a Litigation Secretary with the Law Firm representing the Appellant/Applicant. Photocopy of Counsel's application dated 21<sup>st</sup> August, 2020 for certified true copy of the Ruling of the Lower Court and the release of exhibits tendered was annexed and marked as Exhibit "A". Mr. Kekere-Akpe Esq, of Counsel for the Appellant/Applicant also filed a written address in line with the Rules of the Court.

In opposing the application, the Respondent personally deposed to a counter affidavit of 11-paragraphs and a written address. Upon the receipt of the counter affidavit, the Appellant/Applicant filed a further and better affidavit of 14-paragraphs, which he personally deposed to on the 29<sup>th</sup> September, 2020. The Ruling of the Lower Court which is the subject matter of this application was attached and marked as Exhibit “APP 1”.

From the affidavit of parties and documents put forward, especially Exhibit “APP1,” the facts of this case is simple and straightforward. The Respondent obtained monetary Judgment against the Appellant/Applicant at the Lower Court in the sum of ₦1,095,000.00 (One Million and Ninety Five Thousand Naira) only. Appellant/Applicant sought for an Order for stay of execution, but the Learned Senior District Court Judge made an Order of conditional stay. In specific term, the Lower Court directed as follows:

**“In view of the above, the Judgment Debtor/Applicant shall deposit into an interest yielding account of the High Court in not less than 27 days from today the Judgment sum previously awarded. This action upon being done by the Applicant activates his stay of execution. If on the 28<sup>th</sup> day, said action of depositing the Judgment sum into an**

**interest yielding account of the High Court is not carried out and a teller is brought before the Court to that effect, then the Judgment Creditor is at liberty to activate execution of the said Judgment to enjoy the fruits of his Judgment.”**

The Appellant/Applicant filed a Notice of Appeal to this Court against the above Ruling on 1<sup>st</sup> September, 2020 seeking to set aside the Ruling of the Lower Court.

Now from the facts disclosed in the Applicant’s affidavit, the primary reason for the presentation of this application is financial difficulties. Paragraph 3 (g) to (l) of the affidavit in support states as follows:

**3. (g) That he will not be able to deposit the Judgment debt of N1,095,000.00 (One Million, Ninety-Five Thousand Naira) only in the interest yielding account of the FCT High Court, Abuja, as a result of his financial predicament and domestic commitments.**

**(h) That he is a business man but currently out of business as a result of the harsh economic condition in the Country occasioned by the Corona Virus pandemic and the lockdown by the Federal Government of Nigeria.**

**(i) That he is married with children who are in schools in the Country.**

**(j) That he is solely responsible for the up keep of the children and dependants that are living with him in Abuja.**

**(k) That the execution of the Judgment of the trial Court against him by attachment and sale of his property if he is unable to deposit the Judgment debt within 27 days, as Ordered by the trial Court, would impose untold hardship on him and his family.**

**(l) That the execution of the Judgment by the trial Court, if he is unable to deposit the Judgment sum, would render the decision of the Appellate Court nugatory and foist a situation of complete hopelessness in the event that his appeal succeeds.**

The Respondent in his counter affidavit, states that the Appellant/Applicant is doing well in business but simply did not show any willingness to pay the Judgment debt. The Appellant/Applicant in his further and better affidavit denied doing well in business and contended that the counter affidavit of the Respondent was not sworn to as claimed by the Respondent who is not in the Country.

From the facts and circumstances of this case, the point must be made that the Appellant/Applicant who is asking for an Order of variation did not state the kind of variation he so desired from the Court. It would however appear that he is asking for an Order of unconditional stay of the execution of the Judgment of the Lower Court, pending the determination of his appeal. If that be the case, and taking into account the fact that the sole ground canvassed in support of the application is financial difficulties, the Appellant/Applicant has a duty to make full and frank disclosure of his assets and liabilities which will includes, his Bank statements. Where the Applicant is a Company, the audited accounts of the Company must also be exhibited. This is so, because poverty or impecunious state of an Applicant alone is not enough ground for the grant of stay of execution of monetary Judgment, pending appeal. An Applicant complaining of being impecunious, must disclose all sources of his income and also the magnitude of his liability with utmost candour, before the Court can be convinced to exercise its discretion in favour of the Applicant.

The Applicant in this case did not put forward any material showing his assets and liabilities to enable the Court resolve this application in his favour. I refer to the case of **NWABUEZE Vs NWOSU (1988) 4 NWLR (PT. 88) 257 AT 272**, where Nnamani, JSC (of blessed memory) stated as follows:

**"In my view there were no exceptional circumstances to justify the grant of a stay of execution in this case. The Respondent did not show that he had no resources. In any case, poverty simpliciter has never been accepted as an exceptional circumstance. See P.O.P Martins case (Supra) but if there is a plea that a person cannot prosecute his appeal if he paid his Judgment debt and if it is established that there are indeed no resources, this could be a special circumstance".**

The Court of Appeal in **ABDULKADIR & ANOR Vs ALI (1998) LPELR – 6361 (CA)** while drawing strength for the above decision of the Supreme Court held thus:

**"In my opinion a mere statement that an Applicant is poor and cannot prosecute the appeal if he pays the Judgment debt, without more, will not amount to a special circumstance. The Applicant must go further. He has to supply the Court with all the facts about his income and the source of his income. It is not sufficient to simply state that one is poor. The Applicant must establish that he has indeed no resources. The Applicants have failed to establish that they have no resources. The Applicants should have**

**supplied the Court with more facts to enable the Court exercise its discretion in their favour. This is more so where the Respondent in his Court affidavit claimed "that the 1<sup>st</sup> Applicant is a businessman of high repute in Benue State and in particular Makurdi and has the means of paying the Judgment debt".**

See also the case of **OPARAUGO Vs OPARAUGO (2008) 5 NWLR (PT. 1081) 574 601 PARAS E-G**, where the Court of Appeal held that:

**“Poverty, impecuniosities, inconvenience or sympathy of emotions alone do not constitute special or exceptional circumstances as would warrant the grant of an Order for stay of execution.”**

The bare deposition of the Applicant in this case that he has no money to liquidate the Judgment debt, clearly failed to meet the demand of the Law for the grant of this application. The point must also be made, that the Applicant did not allude to inability to prosecute his appeal if the Judgment debt is paid. He merely stated that his family will suffer and that the payment will foist a situation of helplessness on the Appellate Court. These averments cannot sustain an application for stay of execution. It is also not true that the execution of the Judgment which undoubtedly is monetary in

nature cannot foist a situation of helplessness on the Appellate Court if Applicant's appeal succeeds.

We have also considered the several authorities cited by Mr. Kekere Akpeh to support the right of an Appellant to seek an Order of variation from an Appellate Court, where the terms of stay granted by the Lower Court is onerous and almost unattainable, and we form the view that the Applicant's case does not fall into such category where the Court's discretion may be exercised in his favour, having failed to put any material before the Court to warrant the exercise of Court's discretion in his favour.

We must re-emphasize at the risk of repetition, that the Applicant did not allude to inability to prosecute his Appeal if this application is not granted. Rather, he alleged at paragraph 3(I) of his supporting affidavit as follows:

**“That the execution of the Judgment by the trial Court, if he is unable to deposit the Judgment sum, would render the decision of the Appellate Court nugatory and foist a situation of complete hopelessness on the Appellate Court in the event that his appeal succeeds.”**

In view of the position of the Law that poverty is not a special ground for granting a stay of execution, except where it has the effect of depriving the Applicant of the means of prosecuting the



Appeal, we find no merit in this application which is accordingly refused and dismissed.

**Signed**

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

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

**25/11/2020**