

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA APPEAL JUDICIAL DIVISION  
HOLDEN AT JABI COURT NO. 12  
BEFORE HIS LORDSHIPS: HON. JUSTICE D.Z. SENCHI (PRESIDING JUDGE)  
HON. JUSTICE M.B IDRIS (JUDGE)  
DATED:-16/12/2020**

BETWEEN APPEAL NO. FCT/HC/CVA/362/2018

KEYSTONE BANK LIMITED ... APPELLANT/APPLICANT

AND

1. COSCHARIS MOTORS LIMITED
  2. ADEAPO O. ABIODUN
- } RESPONDENTS/RESPONDENTS

**RULING**

**(DELIVERED BY HON. JUSTICE D.Z. SENCHI PRESIDING JUDGE)**

The instant appeal against the lower court's decision was brought before this Court by the Appellant against the Respondents. The appeal was heard and, accordingly, Judgment of this Court was delivered on 8<sup>th</sup> September, 2020 dismissing the appeal.

The Appellant has now filed the instant application vide Motion on Notice No. M/438/2020 dated and filed on 14<sup>th</sup> September, 2020 brought pursuant to Order 61 Rule 1 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018 and under its inherent jurisdiction, seeking the following reliefs:-

1. An Order of injunction restraining the Respondent whether by herself, her agents/servants, or otherwise howsoever and however described, from carrying out any acts pursuant to or enforcing any part of the judgment of the High Court of the Federal Capital Territory, Abuja delivered on the 8<sup>th</sup> day of September, 2020 in Appeal No.: CVA/362/2018, pending the hearing and determination of this Appeal.
2. An Order of this Honourable Court staying unconditionally, the execution of any order(s) contained in the judgment of the High Court of the Federal Capital Territory, Abuja delivered on the 8<sup>th</sup> day of September,

2020, in Appeal No.: CVA/362/2018 pending the hearing and determination of this appeal filed against (sic) the Appellant/Applicant.

3. And for such further or other order(s) as this Honourable Court may deem fit to make in the circumstances of this appeal.”

The grounds for the application are set out on the face of the motion as follows:-

- a. The Appellant/Applicant is dissatisfied with the judgment of the Appellant Court delivered on the 8<sup>th</sup> day of September, 2020, in appeal No. CVA/362/2018 per coram Honourable Justice C.O .Agbaza and Honourable Justice B. Hassan.
- b. The Appellant/Applicant has filed an Appeal before the Appellant court against the said judgment of this Honourable Court.
- c. Amidst the grounds of appeal raised in the notice of appeal filed by the Appellant/Applicant are jurisdictional issues, pertaining on the competency of the suit and other recondite points of law.
- d. There are serious issues that are raised for determination in this appeal filed by the Appellant/Applicant and there are good chances that this Appeal will succeed.
- e. The balance of convenience is in favour of the Appellant/Applicant and they have indicated their preparedness to give an undertaking as to damages should the granting of this appeal be later abused.
- f. There are special circumstances warranting the grant of this application, including but not limited to:-
  - i. By this application, the Appellant/Applicant has properly exercised her constitutional right of appeal guaranteed by section 6(6)(b) and 241(1)(a) of the 1999 Constitution to vent her real grievance against the Respondents.
  - ii. If the execution of the judgment of this Court in appeal no:- CVA/362/2018 is not staying, the Appellant/Applicant’s appeal will be rendered academic or nugatory.
  - iii. Unless the judgment of the trial Court in appeal No:- CVA/362/2018 is stayed, there would be no return to status quo where then this appeal succeeds.

In support of the application, the Appellant filed an affidavit of 6 main paragraphs with one Exhibit marked KB1 attached. The Appellant also filed a

further affidavit of 6 main paragraphs. Appellant's Counsel did not file any written address in support of the application.

The 1<sup>st</sup> Respondent in opposition to the application of the Appellant filed (with leave of this Court) an 11-paragraph counter-affidavit with one exhibit annexed. Counsel to the 1<sup>st</sup> Respondent also filed a written address dated 26<sup>th</sup> October, 2020.

The 2<sup>nd</sup> Respondent, on the other hand, did not file any response to the application.

Parties adopted their various processes and the application was adjourned for Ruling by this Honourable Court.

### **ISSUES FOR DETERMINATION:**

The Appellant's Counsel, who did not file a written address, did not distil any issue for the determination of his application.

In his written address, learned Counsel to the 1<sup>st</sup> Respondent formulated a sole issue for the determination of the instant application, to wit:-

*"Whether from the circumstances of this case, this is a proper case where interlocutory injunction can be granted."*

This is the only issue before this Court and I shall therefore adopt same as mine, and that is to say:-

***"Whether from the circumstances of this case, this is a proper case where interlocutory injunction can be granted."***

The averments upon which the Appellant relies on the instant application are particularly contained in paragraphs 5(a) – (k) of the Appellant's affidavit in support. The Appellant/Applicant further relies on paragraphs 5(a)- (g) of its further affidavit deposed to by one Jacob Akawo Sampson, a litigation secretary in the law firm of the 1<sup>st</sup> Defendant.

For its part, the 1<sup>st</sup> Respondent averred in its counter-affidavit that the Judgment of this Court which the Appellant is seeking to stay has been fully executed through the execution unit of the FCT High Court. The 1<sup>st</sup> Respondent denied that there is any issue of jurisdiction involved in the Appellant's appeal and further averred that the grounds of appeal do not raise substantial or recondite issues. The 1<sup>st</sup> Respondent denied that the balance of convenience is in the Appellant's favour but rather averred that it is in its own favour as its premises was occupied for many years without payment. That the Appellant refused to obey court orders and damages cannot be adequate compensation for the 1<sup>st</sup> Respondent if the Appellant loses the case at the end. A CTC of the Judgment of this Honourable Court delivered in the instant appeal is attached to the 1<sup>st</sup> Respondent's counter-affidavit.

Arguing his sole issue for determination, learned Counsel to the 1<sup>st</sup> Respondent made submissions on principles of interlocutory injunction particularly the issues to be considered by the court such as legal right, balance of convenience etc. He relied on the case of **NWANNEWUIHE V. NWANNEWUIHE (2007) 16 NWLR (PT. 1059) P. 1** and a plethora of other judicial decisions. Counsel submitted that the Appellant's legal right had been extinguished in the Judgment delivered by this Court (coram Agbaza and Hassan JJ.) in September 2020. It is his position that the Appellant did not show that the balance of convenience is in its favour nor has it deposed to inadequacy of damages. He finally submitted that the Appellant has not shown special circumstances to compel this Court exercise its discretion in its favour and urged this Court to dismiss the application in the interest of justice.

Now in the resolution of the sole issue at hand, it is not in dispute that the Appellant has further filed an appeal to the Court of Appeal against the Judgment of this Court delivered on 8<sup>th</sup> September, 2020 (in its appellate jurisdiction) dismissing the Appellant's appeal against a decision of the District Court of the FCT. A copy of the Appellant's notice of appeal to the Court of Appeal is attached to its affidavit as Exhibit KB1 while a Certified True Copy of this Court's Judgment appealed from is annexed to the 1<sup>st</sup> Respondent's counter-affidavit.

It is pertinent to note that the Appellant, by the instant application, seeks an order of this court staying the execution of the orders contained in this

Court's Judgment of 8<sup>th</sup> September,2020 pending the Appellant's further appeal to the Court of Appeal. I have carefully perused the Judgment of this Court (coramAgbaza and Hassan JJ.) delivered on 8<sup>th</sup> September,2020. The question I am constrained to ask myself is 'what orders exactly is the Appellant seeking to stay the execution of?'

In the Judgment of 8<sup>th</sup> September,2020, after making its findings that the lower district court was correct to have assumed jurisdiction in the matter before it, this Court simply concluded by dismissing the Appellant's appeal before it and awarding the sum of N50,000 as cost of the appeal against the Appellant and in favour of the 1<sup>st</sup> Respondent. There were no executory orders made by this Court in its Judgment of 8<sup>th</sup> September,2020which are, *strictosensu*, capable of being stayed. The position of the law is that a stay of execution can only be granted in respect of an executory judgment. See the case of **CARRENA V. AKINLASE (2008) LPELR-833(SC)**.

The case of **UKWUOMA V. OKAFOR (2017) LPELR-42880(CA)** is on all fours with the instant case and very relevant. In that case, the Court of Appeal held as follows:-

*"The instant motion for stay of execution of judgment is however not one directed at the judgment of the lower Court. This much is clear from the manner the relief sought by the Applicant has been couched. What the Applicant is seeking from this Court is for this Court to stay the execution of the judgment it delivered in the appeal against the judgment of the lower Court. This is an appeal which the Applicant lost; in that this Court in its leading judgment delivered by Mbaba, JCA; stated clearly thus: -*

*"I resolve the issue against the Appellant and dismiss the appeal, affirming the decision of the trial Court. Consequentially, the mesne profit ordered by the trial Court remains valid and running as long as the Appellant refused to heed the order of the Court by yielding up possession of the property to the Respondent. Appellant shall pay the cost of this appeal assessed at Fifty Thousand Naira only (N50,000.00)."*

*It is definitely trite law (which does not require the citing of authorities) that a superior Court of record can only stay the execution of an executory judgment; but all the same see the case of **CARRENA V.***

**AROWOLO (2008) LPELR - 833(SC), (2008) 14 NWLR (Pt.1107) 262** amongst many others.

*Granted, that this Court can in appropriate cases or situations grant stay of the execution of its own judgment, the pertinent question is what is the executory judgment/order of this Court that the Applicant has appealed against? There is obviously no executory order made by this Court in its judgment that the Applicant has appealed against in or by Exhibit 'B'. The only aspect of the judgment delivered by this Court that might be said to be executory in nature is the order in relation to cost and which by any stretch of imagination is obviously not the subject of the sole ground of appeal in Exhibit 'B'. This Court never did more than affirm the judgment of the lower Court in Exhibit 'A'. In my considered view, it cannot be argued with any seriousness that this Court by affirming the judgment of the lower Court in Exhibit 'A' has thereby made the judgment of the lower Court its own judgment. It would have been a different case or situation if this Court substituted the judgment of the lower Court with some other order(s) of its own directing the lower Court to act in any particular way. The bottom line is that there is no executory order made by this Court as it relates to the merit of the case between the Respondent and the Appellant entertained by the lower Court the execution of which can be stayed pending the outcome of the appeal the Appellant has lodged to the Supreme Court by Exhibit 'B'. This being the case or situation, the motion brought by the Applicant for an order of this Court staying the execution of its judgment in Exhibit 'A' in my considered view must necessarily fail.*

*It is therefore my considered view that inasmuch as all that this Court did in respect of the appeal before it in its judgment appealed against (i.e. Exhibit 'A') was to declare the impropriety or worthlessness of the said appeal, there is nothing therein the execution of which this Court can stay."*

Perhaps what the Appellant ought to have sought is an order staying the execution of the judgment of the lower court pending the further appeal to the Court of Appeal against the Judgment of this Court dismissing the appeal against the said judgment of the lower court. The Judgment of this

Court sought to be stayed however contains no executory judgment which can be stayed. The relief for stay of execution is incompetent.

Be that as it may, the position of the law is that an order for stay of execution and one for injunction pending appeal amounts to the same end and are guided by the same principles. See the case of **AKEEM V. UNIVERSITY OF IBADAN (2001) 15 NWLR (PT. 736) P. 352** where the Court of Appeal held as follows:-

*"An order for stay of execution and an order for injunction pending appeal amounts to the same end and there are some similar and vital conditions to satisfy before granting the order. Such conditions are as follows:-*

- a) There must be special circumstances*
- b) The grounds of appeal must raise substantial and triable legal issues to be determined either way*
- c) The nature of the subject-matter in dispute whether maintaining **status quo** or preservation of the **res** until final determination of the appeal will meet the justice in the case."*

See also the case of **CLEV JOSH LTD. V. TOKIMI (2008) 13 NWLR (PT. 1104) P. 422** where the Court of Appeal held as follows:-

*"Suffice it to say that in deciding whether or not to grant an application for stay of execution, a court must at least consider and answer some key questions. These include:-*

- 1. Whether there is a valid and competent pending appeal;*
- 2. Whether the applicant has shown by credible evidence that there are special or exceptional circumstances to warrant the grant of the application; and*
- 3. Which of the competing rights and balance of convenience of the rights of the parties would support the grant etc."*

Now the question whether there is a pending, valid and competent appeal must be answered from a notice of appeal which must raise arguable grounds of appeal. In the case of **ONUORA V. ONUORA (2000) 1 NWLR (PT. 641) P. 386** the Court of Appeal held that grounds of appeal must contain substantial and arguable points of law which need to be recondite points of law in texture.

In the instant case, I cannot readily come to the conclusion that the Appellant's Notice of Appeal to the Court of Appeal (Exhibit KB1) against the Judgment of this Court of 8<sup>th</sup> September, 2020 is frivolous (lest I determine substantive issues as at interlocutory stage). There is nothing on the face of the notice of appeal that gives it away as being manifestly incompetent.

It is however trite position of the law that an arguable appeal cannot by itself constitute sufficient ground to grant a stay of execution of the judgment of a court of law which is deemed sacrosanct; unless and until special and exceptional circumstances have been furnished by the applicant. See **UNIVERSITY OF ILORIN TEACHING HOSPITAL V. DR. DELE ABEGUNDE (2012) LPELR-14329(CA)**.

The grant of stay of execution is not as a matter of course nor is it automatic as the courts do not ordinarily deprive a successful litigant from the enjoyment of the fruits of his success unless upon proof of 'special and exceptional circumstances' showing that the balance of justice weighs in favour of the grant of such a stay. See the cases of **REG. TRUSTEES, A.A.C. V. FATUNDE (2009) 8 NWLR (PT. 1144) P. 513** and **KWARAPOLY V. OYEBAMIJI (2008) 3 NWLR (PT. 1075) P. 459**.

What would constitute special circumstances has been said to vary from case to case. However, such circumstances must involve "a consideration of some collateral circumstances" and perhaps in some cases inherent matters which may, unless the order for stay is granted, destroy the subject matter of the proceedings or foist upon the appellate court, especially the Court of Appeal, a situation of complete helplessness or render nugatory any order or orders of the Court of Appeal or paralyse, in one way or the other, the exercise by the litigant of his constitutional right of appeal or generally provide a situation in which whatever happens to the case, and in particular even if the appellant succeeds in the Court of Appeal there could be no *status quo*. See the cases of **U.B.N. LTD. V. ODUSOTE BOOKSTORE LTD. (1994) 3 NWLR (PT. 331) P. 129** and **REG. TRUSTEES, A.A.C. V. FATUNDE (supra)**. By and large, special circumstances could mean a situation where to refuse to grant the application would deprive the appellant of the means of prosecuting the appeal or where recovery of the judgment sum from a judgment creditor might be impossible should a

judgment debtor succeed on appeal. However, the onus is on the party applying for a stay/injunction pending appeal to satisfy the court that in the 'peculiar circumstances' of his case a refusal of stay would be unjust and inequitable. See again the cases of **U.B.N. LTD. V. ODUSOTE BOOKSTORE LTD. (supra)** and **REG. TRUSTEES, A.A.C. V. FATUNDE (supra)**.

In the instant case, the Appellant has averred in its affidavit in support of its instant application for stay and injunction that its appeal to the Court of Appeal raises issues of jurisdictional importance and recondite issues. It is trite law that the existence of arguable grounds of appeal especially on fundamental issues like jurisdiction may also constitute such special circumstance as would warrant a stay. – see the case of **F.I.B. PLC V. CITY EXPRESS BANK LTD (2004) 6 NWLR (PT. 869) P. 236**.

The position has however also been held that it is not in every case where an issue of jurisdiction is raised that special circumstances for the grant of stay must be presumed and the issue must be considered in conjunction with other factors. See **N.I.P.S.S. V. OSIGWE (2008) 6 NWLR (PT. 1083) P. 239**. Thus, the issue of jurisdiction may be of persuasive influence upon which the court can rely to grant a stay but does not by itself constitute the reason (special circumstances) for granting the stay of execution. See the case of **GOV. OF OYO STATE V. AKINYEMI (2003) 1 NWLR (PT. 800) P. 22**.

Also, a recondite point of law is that point of law which, if a stay is not granted and the case is eventually decided in favour of the appellant, the resultant circumstances would have made it wiser that a stay should have been granted. See the case of **IJAODOLA V. REGT. T.C. & S.C.M. (2008) 15 NWLR (PT. 1110) P. 387**. Thus, in order to determine its recondity, a point of law is not considered in isolation but against the backdrop of the consequences if the stay is not granted. See the case of **AJOMALI V. YADUAT (NO.2) (1991) 5 NWLR (PT. 191) P. 266** and **IJAODOLA V. REGT. T.C. & S.C.M. (supra)**. Even where a recondite point of law is established, it must co-exist with special circumstances. See the case of **NNPC V. FAMFA OIL LTD. (2009) 12 NWLR (PT. 1156) P. 462**.

Aside of the allegation that the Appellant's appeal raises jurisdictional issues and recondite issues, there seems to be nothing else in the affidavit in support of the Appellant's application to convince this Court why the injunction sought ought to be granted. Issue of jurisdiction and recondite issues of law, even where competently raised, are not by themselves sufficient to automatically grant a stay or injunction pending an appeal.

I have adverted my mind to the fact that the judgment of this Court of 8/9/20 contains only an order as to cost. In other words, it is a money judgment at best. The *resthat* came to this Court vide this appeal also happens to be a sum of money which the Appellant was adjudged to pay via garnishee proceedings by the lower court and the crux of which is the Appellant's complaint that it exceeded the lower court's monetary jurisdiction. The Appellant's further affidavit further affirms that the *res* is the money judgment of the lower court.

As a general rule, the only ground for a stay of execution of money judgment is where an applicant *satisfies* the court that if the judgment debt is paid, there is no reasonable probability of getting it back if the appeal succeeds. See the cases of **KWARAPOLY V. OYEBAMIJI (SUPRA)** and **S.P.D.C (NIG.)LTD. V. OKEI (2006) 17 NWLR PT. 1007 P. 1** on the aforementioned principle.

In the case of **GOV., OYO STATE V. AKINYEMI (SUPRA)** the Court of Appeal held as follows:-

*"In a judgment involving money, the terms upon which the court would grant a stay of execution are easier to determine than in other judgments where the "res" is perishable or prone to alteration. The terms are:-*

- (a) Whether making the applicant to satisfy the judgment would make his financial position such that he could not prosecute the appeal
- (b) Whether it would be difficult to secure the refund of the judgment debt and costs from the respondent, if the appeal succeeds for which purpose the financial ability of the respondent is taken into account."

See also the cases of **UNIVERSITY OF ILORIN V. ADESINA (NO. 1) (2008) ALL FWLR (PT. 400) P. 709** and **IKERE LOCAL GOVT. V. ADELUSI (2008) ALL FWLR (PT. 404) P. 1534**.

I also find the decision of the Court of Appeal in the case of **DAILY TIMES V. KUSAMOTU (2002) LPELR-10993(CA)** very relevant. It was held as follows in that case:-

*"As a general rule, in a money judgment, the only ground for a stay of execution is an affidavit showing that of the damages and costs were paid there would be no reasonable probability of getting them back if the appeal succeeds. This raises a substantial ground and it can be considered as a special circumstance. In the case at hand the applicant has not shown that the respondent will be unable to refund the judgment debt if the appeal succeeds in her counter-affidavit, the respondent has shown conclusively that she is credit worthy. This deposition is not controverted by the applicant. The reason given by the applicant in their affidavit can hardly support any special circumstance. Bare assertion of poverty simpliciter or impecuniosity of an applicant has never been considered as an exceptional circumstance to warrant the grant of stay of execution of a judgment. See **NWABUEZE V. NWOSU(1988) 4 NWLR (Pt. 88) 257**.*

*But if there is a plea that the Applicant cannot prosecute an appeal, if the judgment debt is paid, and it is established that there are no resources, this could be taken as a special circumstance. It has not been shown in the present application that the Applicant has no resources from which they can meet their obligations in the appeal. It is not sufficient to depose simply that the Applicant has no resources or they have not "made profit since 1993" as done in paragraph 8 of the affidavit in support of this application. The burden is on them to establish this. They must make a full disclosure of their assets and liabilities: See **CHRIS CHUKWU V. R. ONYIA (1990) 2 NWLR (Pt. 130) 80**. This is the only way the Court can best exercise its discretion to grant or refuse the stay. It is not the duty of the judgment creditor to show that the judgment debtor has means to pay the debt. He is entitled only to his fruits of his litigation. The burden is on the judgment debtor to satisfy the Court that placing his liabilities and obligations against his income and all his assets, he*

*deserves to be granted some equitable relief in regard to his indebtedness. That is why the applicant must not suppress or misrepresent facts. Affidavit of the applicant must present detailed facts with every candour."*

The Appellant, in the instant application for stay of execution and injunction pending appeal, never averred that it would not be able to prosecute its appeal at the Court of Appeal if made to pay the judgment sum. In fact, regarding its means, it averred to quite the contrary at paragraph 5(f) of its affidavit in support that it is a going concern and quite capable of paying the judgment sum. The Appellant also did not aver anywhere in its affidavits that the probability of securing a refund of the judgment sum from the 1<sup>st</sup> Respondent, if paid to it, is unlikely.

The Appellant averred in its affidavits that the Judgment Sum of N13,420,000.00 is currently in the possession of the Registrar of the FCT High Court in an interest yielding account pursuant to an Order of the FCT High Court made on 11<sup>th</sup> February, 2019 in a Suit No. FCT/HC/CV/978/2019. I however fail to see the relevance of this averment to the issue before **THIS** Court as to whether to grant stay of execution and injunction pending appeal. For whatever reason that may have informed the Court in Suit No. FCT/HC/CV/978/2019 to make the order, the mere fact that the order was made in **THAT** suit does not automatically entitle the Appellant to the orders of stay of execution and injunction pending appeal being sought in the instant appeal.

The Appellant did not depose to necessary facts required to constitute special circumstances for staying the execution of the monetary judgment in this case. It has thus failed to establish special or exceptional circumstances to warrant the grant of the orders of stay of execution and injunction pending appeal sought in the instant case.

Thus, after a careful perusal of the affidavit and the further affidavit of the Appellant/Applicant, the facts averred therein are grossly inadequate to support the grant of the instant application.

In sum, the issue for determination must and it is hereby resolved against the Appellant/Applicant and in favour of the 1<sup>st</sup> Respondent. Accordingly, the instant application for stay of execution and injunction pending appeal

fails and it is dismissed with assessed cost at N50,000.00 in favour of the 1<sup>st</sup> Respondent.

-----  
**HON. JUSTICE M.B IDRIS**  
**(HON. JUDGE)**  
**16/12/2020**

-----  
**HON. JUSTICE D.Z. SENCHI**  
**(PRESIDING JUDGE)**  
**16/12/2020**

Parties:- Absent.

J.O Anetekhai:- For the Appellant.

Chief Hon. T.O.S Nwokolo:-For the Respondent.

**Sign**  
**Judge**  
**16/12/2020**