

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**(APPEAL DIVISION)**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA**  
**BEFORE THEIR LORDSHIPS:**

**HON. JUSTICE Y. HALILU                    -                    PRESIDING**  
**HON. JUSTICE A.O EBONG                -                    MEMBER**  
**APPEAL NO.:CVA/190/2017**  
**SUIT NO.: CV/136/2015**

**BETWEEN:**

**HUSSAINI USMAN AHMED ..... RESPONDENT**

**AND**

**1. CHIEF KENNETH ANENE**  
**(Suing through His Lawful Attorney } APPELLANT/**  
**Ezechigbo, Ogbaisi & Associates) } APPLICANT**

**2. THE DEPUTY SHERIFF, } RESPONDENT**  
**FCT HIGH COURT                }**

## **RULING**

The Respondent approached this Honourable Court for an Order staying the execution of the final Judgment of this Court delivered on 30<sup>th</sup> October, 2019 in Appeal No. **CVA/190/17** between the above stated parties pending the hearing and determination of the Applicant's Appeal at Court of Appeal, Abuja Division, already filed.

(2) And for such further or other Order as this Honourable Court may deem fit to make in the circumstance.

The grounds upon which the application was brought is that the Judgment was against the interest of justice as the Applicant has jurisdictional issues in his Notice of Appeal.

In support of the application, affidavit of 12 paragraph deposed to by EjikemeObiefunaEsq.Counsel in the law firm of the Applicant.

It is the deposition of the Applicant that this Honourable Court delivered its Judgment on the 30<sup>th</sup> day of October, 2019 and that the Judgment was against the interest of justice as the Applicant has jurisdictional issues.

Applicant avers that an appeal has been lodged against the Judgment of this Honourable Court vide Exhibit 'A' & 'B' respectively.

That non stay of the execution of the Judgement will prevent a return to status quo before trial if the Applicant succeeds on appeal.

In line with law a written address was filed wherein learned counsel argued that it is trite that court before granting a stay of execution, the court will consider a lot of factors, among which include a special circumstance.

***BROLLO NIG. LTD. VS NKWOCHA (2001) FWLR at 1102 Ratio 2.***

Learned counsel submit that an error in law is an issue of law which is recondite and amounts to a special circumstance to warrant the grant of stay of execution. ***AJOMALE VS YADUAT (No.2) (1991)5 NWLR (Pt. 191) at Page 291.***

Upon service, the Respondent filed a counter affidavit of 14 paragraph deposed to by HussainiUsman Ahmed the Respondent in this case.

It is the averment of the Respondent that the Appellant's Notice of Appeal dated 19<sup>th</sup> November, 2019 is incompetent and an abuse of court process.

That this Honourable Court lacks jurisdiction to sit on Appeal over a matter it has dispensed with.

In line with law a written address was filed wherein a sole issue was formulated for determination to wit;

***Whether the Honourable Court ought not to dismiss the application of the Appellant/Applicant in the circumstances of this case.***

Arguing on the above, learned counsel submit that it is trite law that the grant of stay of execution is a matter of exercise of the Court's discretion, and the court will be discreet in ensuring that the discretion is exercised judicially and judiciously, considering the fact that the Judgment Creditor is entitled to the full benefit and fruits of his Judgment. ***F.B.N PLC. VS AGBARA (2015)8 NWLR (Pt. 1460) P. 47 at 66.***

Learned counsel argued that it is the law that for the Applicant to succeed in the application for stay of execution, the following principles must be satisfied to wit;

- a. That the Applicant who comes to equity must come with clean hands, as equity acts in personam

b. That the Judgment Creditor is entitle to the fruits of his Judgment. *FBN PLC. VS AGBARA (Supra)*.

Court was urged to dismiss this application in the interest of justice.

Upon service, a further and better affidavit was filed by the Appellant wherein it stated that the Notice of Appeal is not incompetent as same was amended vide Exhibit 'C'.

That the 1<sup>st</sup> Respondent has failed to state how non stay of the execution of the Judgment would affect him. The Judgment is annexed as Exhibit 'D'.

A written address was filed wherein learned counsel submit that for an Applicant to succeed in an application for stay of execution the court must consider the following:-

a. The existence or otherwise of a competent Notice of Appeal.

- b. Whether or not the subject matter of litigation will be destroyed if a stay is not granted.
- c. Whether or not the execution will foist the Appellate Court a situation of helplessness should the Appeal succeed.
- d. Whether or not the execution will render nugatory an Order of the Appellate Court.
- e. Whether or not the execution will paralyze the exercise by the Applicant.
- f. Whether or not the status quo cannot be returned to should the Appeal succeed.
- g. The competing right of the parties to justice.

***JOSIAH CORNELIUS LTD. VS EZENWA (2008)8  
NWLR Pt. 670 Page 616.***

Court was finally urged to grant the application in the interest of justice.

Briefly, this application is brought to stay the execution of this Court's Judgment delivered on the 30<sup>th</sup> October, 2019 in favour of the Respondent.

1<sup>st</sup> Appellant, being dissatisfied with the Judgment, filed a Notice of Appeal against the Judgment of this Honourable Court, and a Motion for Stay of Execution after filing Notice of Appeal.

The law at the moment is that a successful litigant must not be deprived of the fruit of his victory for having won their case; they are entitled to be allowed to enjoy the fruits of their success. Execution of the Judgment should and ought not to be stayed unless and until special circumstances exist to justify the stay of same.

***OKAFOR VS NNAIFE (1987) 4 NWLR (Pt. 64) page 129.***

All authorities are to the effect that what constitute special or exceptional circumstance to warrant a grant of stay



of execution is dependent upon the circumstance and peculiarities of the facts governing each case.

Before an applicant can succeed in an application for stay of execution, he must satisfy the following conditions;

- (1) The chances of the applicant on appeal. If there are no chances of his succeeding on the appeal, then the application may be refused.
- (2) The Subject matter in dispute must be one which can be preserved whether in maintaining the status quo, until the determination of the appeal, the Justice of the matter will be met.
- (3) Where the Judgment is in respect of money and costs, whether there is a reasonable probability of recovering the money from the respondent if the appeal succeeds.

(4) The applicant must show special or exceptional circumstances so that the balance of Justice is weight in favour of granting the stay

***VASWANI TRADING CO. VS SALALKH & CO. (1972)  
12 SC 77.***

Now, taken the conditions enumerated above, has Appellant/Applicant met the requirement for a stay of execution of the Judgment of this court?

An appeal shall be deemed to have been brought when the Notice of appeal has been filed at the registry of the court below. In order to kick-start the process of appeal it is a necessary prerequisite to the hearing of an appeal. It is the Notice of the appeal that gives an appellate court the necessary jurisdiction to hear appeal.

***The NIGERIA NAVY & ORS VS LABINJO (2012)  
LPELR 7868 (SC).***

The Appellant stated that it had filed a Notice of Appeal and that where stay of execution is not granted, it would lead to the situation of helplessness. Whereas the Respondent maintained that the Notice of Appeal was incompetent and therefore, Court cannot grant this application.

The Appellant filed further and better affidavit to show that the incompetent Appeal has been amended.

For all intents and purposes, a successful party must always be helped by court to reap the fruits of his labour.

It is trite that once a matter is on Appeal, the court has jurisdiction to preserve the 'Res' to avoid foisting hopelessness and futility on both Court and successful party.

We are fortified and indeed swayed by the facts and evidence before us to stay execution of the Judgment in issue.

On the whole, the execution of Judgment of this Honourable Court delivered on the 30<sup>th</sup> day of October, 2019 is hereby stayed, pending the hearing and determination of the Appeal filed by the Appellant.

*Hon. Justice Y. Halilu    Hon. Justice A.O Ebong*  
*Presiding Judge Hon. Judge*  
*17<sup>th</sup> December, 2020                      17<sup>th</sup> December, 2020*