

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA-ABUJA

ON 8TH DAY OF FEBRUARY 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/CV/548/18

BETWEEN:

FIRST MULTIPLE MCRIFINANCE BANK LTD PLAINTIFF

AND

CHIMACO TYRES NIGERIA LTD DEFENDANT

PARTIES ABSENT

CLAIMANT'S COUNSEL ABSENT

REBECCA ALHASSAN ADAMU FOR THE DEFENDANT

RULING

This is a ruling on a motion on notice no. M/2042/19 filed on 18th December 2019 seeking the following orders:

“1. An order of the Honourable Court staying the execution or the enforcement of judgment of this court given in part made on the 21st day of November, 2019 by his Lordship, in SUIT NO: CV/548/18 pending the determination and conclusion of the proceedings in this suit.

Further in the alternative:

2. An order of this Honourable Court for stay of execution of the said part judgment pending appeal.
3. And for such further Order(s) as the court may deem fit to make in the circumstances.”

The sole ground for the application is that the judgment in part was given per incuriam.

The application was supported by a 13 paragraph affidavit of Chima Offordile, Managing Director of the Defendant/Applicant to which Exhibit A - Notice of Appeal was attached. Also filed was counsel’s written address, wherein, the court was urged to grant the application to preserve the res, so as not to render the appeal nugatory.

Mr. Linus Okwute for the Claimant/Respondent opposed the application on point of law urging that the appeal was filed more than 8 months ago, and that they had not been served any record of appeal for briefs to be filed. Further that the appeal has no number which means that even if the Applicant has filed an appeal, same has been abandoned.

He urged the court to refuse the application.

Mr. Okoh for the Defendant/Applicant did not respond to Mr. Linus Okwute’s submission.

It is trite that a pending appeal is the foundation upon which a motion for stay of execution of a judgment is built.

In other words, if there is no pending appeal, a motion for stay of execution of judgment if filed, will not be competent.

This application for stay of execution was filed on 18th December 2019 before any notice of appeal was filed.

However the Defendant/Applicant filed a notice of appeal on 8th January 2020 and as at 8th December 2020 when this application for stay was heard, more than 8 months later, no record of appeal had been compiled and served on the Claimant/Respondent, and the appeal had not been entered, it means indeed that the Defendant/Applicant had abandoned its appeal, due to non-compliance with Order 8 Rules 1-10, particularly Rules 4 and 5 of the Court of Appeal Rules 2016. There is therefore no appeal before the Court of Appeal.

However, just in case I am wrong, I shall proceed to consider the application for stay of execution of judgment on its merits.

In the instant case, the judgment, the execution of which is sought to be stayed is a money judgment.

The onus is on the Defendant/Applicant to show that there are special or exceptional circumstances tilting the scale of justice in its favour. This is because the courts do not grant a stay as a matter of course as a successful litigant is not lightly deprived of the fruits of his judgment. See **OKAFOR & ORS V NNAIFE (1987) LPELR-2420 (SC)**.

In **HERITAGE BANKING COMPANY LTD V NUC (2014) LPELR-23311 (CA)** at **PP 17-18 paragraph F-E, Ekanem JCA** held that:-

“In respect of money judgment, as in this case, the terms upon which the court will grant a stay of enforcement 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.” See **PAMOL (NIG) LIMITED V ILAH AGRIC PROJECT LIMITED (2003) 8 NWLR (PT 821) 38, 52.**

I agree with counsel for the Respondent that the bare assertion by the Applicant that the execution of the judgment would destroy the Applicant’s right of appeal and that it will be difficult if not impossible, to recover the judgment debt from the Respondent is not good enough.

The Applicant ought to go further and demonstrate how its right of appeal would be destroyed by exhibiting its audited report showing its assets and liabilities. See **PAMOL NIG. LIMITED V ILAH AGRIC PROJECT LIMITED (SUPRA) 54.** The Applicant in respect of the assertion that it will be impossible to recover the judgment debt from the Respondent, must prove that the Respondent is a person of straw. See **SIRPI ALUSTEEL CONST. NIG. LIMITED (2000) 2 NWLR (PT 64) 229, 239.**

The Applicant has failed to satisfy these requirements.

His application must therefore fail.”

See also **ALHAJI ISHOLA ODEDEYI & ORS V SABITIU LAYINKA ODEDEYI & ANOR (2000) LPELR-2202 (SC) PARAGRAPH B-F.**

In the instant case, I have perused the affidavit in support of the motion for stay of execution of judgment and it is bereft of any relevant facts to aid this court in exercising its discretion in the Defendant/Applicant’s favour.

The Defendant/Applicant neither deposed that it will be unable to prosecute its appeal if a stay is not granted, nor was it deposed that the Claimant/Respondent will not be able to refund the judgment sum if the appeal is successful. The Defendant/Applicant did not disclose its assets and liabilities either. How then will the res be destroyed if the appeal is successful?

I have also looked at the notice of appeal and there is no recondite point of law disclosed therein. The said Exhibit A – approval for a new loan, purportedly attached to their counter affidavit which the Defendant/Applicant mentioned was not attached to its counter affidavit accompanying its Notice of Intention to Defend, nor was it exhibited in the affidavit in support of the motion for stay of execution of judgment. The Applicant has therefore failed to discharge the onus placed on it.

The application, I must hold lacks merit. It is accordingly dismissed in its entirety.

Hon. Judge