

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA-ABUJA**

**ON THE 11<sup>TH</sup> DAY OF MARCH 2021**

**BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI**

**PRESIDING JUDGE**

**SUIT NO: FCT/HC/CV/1322/2013**

**MOTION NO: M/5516/2019**

**BETWEEN:**

1. MURSEL GULSEN  
(Suing through his attorney Mohammed  
Bawa Gummi)
2. AK-AY ELECTRIK NIGERIA LIMITED



**PLAINTIFFS/APPLICANTS**

**AND**

**BONIFACE IKECHUKWU IFESIE**

.....

**DEFENDANT/RESPONDENT**

***GODWIN SUNDAY OGBOJI ESQ WITH Z.E. BASHI ESQ FOR THE  
PLAINTIFFS/APPLICANTS***

***S.C. PETER ESQ WITH DIVINE DAVIES ESQ FOR THE DEFENDANT.***

**RULING**

By a motion on notice No. M/5516/19 filed on 24<sup>th</sup> April 2019, the Plaintiffs/Applicants seek an order staying further proceedings in this suit pending the determination of their appeal filed herein.

The application is predicated on the 4 grounds stated on the motion paper and supported by a 4 paragraph affidavit of one Vivian Ovie-Whiskey with two Exhibits attached and marked Exhibits A and B.

Also filed was counsel's written address wherein Mr. Godwin S. Ogboji for the Plaintiffs/Applicants urged the court to grant the application in view of the appeal already filed wherein special circumstances were established to warrant a favourable ruling from this court.

Reliance was placed on several authorities including **NIZO (NIG) LTD V ALIYU (2006) ALL FWLR (PT 294) 540 AT 541 RATIO 1; NIGERCHIN INDUSTRIES LTD V OLADECHIN (2006) ALL FWLR (PT 327) 559 RATIO 2; OMOLALU-THOMAS V ADENIROKUN (2003) ALL FWLR (PT 181) 1712 RATIO 1; NIGERIAN BREWERIES PLC V OSHO (2001) 8 NWLR (PT 716) 746 AT 761; F.C.M.B V ABIOLA & SONS LTD (1999) 1 NWLR (PT 165).**

Mr. S.C. Peters for the Defendant opposed the application by a 5 paragraph Counter Affidavit of Bernard Adindu filed on 29<sup>th</sup> April 2019. Therein it was deposed inter alia that this case had reached the stage of adoption of final addresses. That Applicants have brought their notice of appeal in bad faith and to cause delay in the proceedings. That the Applicants can file their Notice of Appeal; together with their final appeal.

In learned counsel's written address it was urged that this application is curious as there is no res to be preserved by this application neither has any special or exceptional circumstances been shown to warrant the grant of the application.

Further it has not been shown that the appeal will finally dispose of the substantive case.

Reliance was placed on the following authorities:-

**DINGYADI V INEC (NO 1) 2010 18 NWLR (PT 1224) PG 97 PARAGRAPH A; LATISCO PET (NIG) LTD V U.B.N PLC (2009) 3 NWLR (PT 1127) PG 22 AT PG 48-49 PARAGRAPHS G-C; AGU V COP (2017) 2 NWLR (PT 1549) PG 254 AT PG 279 PARAGRAPH A; FANI-KAYODE V FRN (2011) 4 NWLR (PT 1237) PG 340 AT PG 355-356 PARAGRAPHS F-H.**

The court was urged to dismiss the application with punitive costs.

The Plaintiffs/Applicants filed a 5 paragraph Reply/Further and Better Affidavit deposed to by one Paul Timothy.

Also filed was a written reply on points of law wherein it was urged that a stay of proceedings is imperative as it is the primary duty of the court to preserve the res. That the appeal seeks the interpretation of a novel provision of Order 34 Rules 1 and 2 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018 as to whether this court can validly reject the certified true copies of documents tendered from the bar in the course of proceedings. **AGU V COP (2018) ALL FWLR (PT 937) 1659-1660 PARAGRAPH C-A** was relied upon amongst others.

Finally it was urged that once an appeal is entered in the appellate court, it has total jurisdiction over the matter to the exclusion of the lower court. See **EZEOKAFOR V EZEILO (1994) 9 NWLR (PT 619); AGU V ANYALOGU (2001) FWLR (PT 68) PG 1249 RATIO 3.**

I have considered the application and the written and oral submissions of learned counsel on both sides.

The appeal filed by the Plaintiffs/Applicants in this case is an interlocutory appeal against the court's ruling on 12<sup>th</sup> April 2019 (not 2011 as indicated on the face of the motion paper) wherein the court rejected some documents sought to be tendered by the Plaintiffs/Applicants' counsel from the bar, after the close of the Plaintiffs' case and during the cross examination of the DW1.

I think the question to be asked in this application is whether the court can stay its proceedings in the circumstances of this application.

In **CHIEF JONAS AGU & ANOR V COMMISSIONER OF POLICE (2016) LPELR-40026 (CA), PAGE 23-24 PARAGRAPHS D TO D** the court per Ogunwumiju JCA had this to say:-

“The grant of a stay of proceedings is a serious, grave and fundamental interruption on the right of a party to conduct his litigation to its logical conclusion on the basis of the substantive merit of his case. Therefore the general practice of the courts is that a stay of proceedings should not be granted, unless the proceedings in the interest of justice ought not to be allowed to continue. See **OBI V ELENWOKE (1998) 6 NWLR (PT 554) PAGE 436 AT 437.**

Where an interlocutory order does not finally dispose of the case, it would be wrong to stay proceedings because of an aggrieved party. This is so because such an order could be made the subject of appeal. It is the duty of every court to eliminate situations which may unnecessarily cause delay in the administration of justice.

However if a successful appeal will put an end to the proceedings in the trial court and prudence dictates that a stay of proceedings be granted. See **ODOGWU V ODOGWU (1990) 4 NWLR (PT 143) PAGE 224 AT 235.....** In granting an order for stay of proceedings, the court should be guided primarily by the necessity to be fair to both parties..... A stay of proceedings can only be granted by the court where there is no other option open to it.” (Emphasis mine)

In that case the trial magistrate had overruled a no case submission and called on the Appellants to enter their defense. The appellate court was of the view that the Appellants could have made a defense and if the ultimate verdict was unfavourable, have appealed against that decision.

The court held it was proper to refuse to grant a stay of proceedings.

The court also defined a recondite point of law as one that is not settled, is obscure, little known or difficult to understand.

See also **DANGOTE INTEGRATED STEEL PLC V OYENIYI & ORS (2016) LPELR 4133 (CA).**

In **DINGYADI & ANOR V INEC & ORS (2010) LPELR-40142 (SC) PAGES 207-208 PARAS F-A Adekeye JSC** concurred that:-

“The courts had decided that where an interlocutory appeal will finally dispose of the case pending before a lower court, a stay of proceedings will be granted. **AROJOYE V UBA (1986) 2 NWLR PT 20 PG 101; OBINYIRIUKA V ALICHE (1991) 4 NWLR PT 183 PG 87.”**

In **FRN V DAIRO & ORS (2015) LPELR-24303 (SC) AT PAGES 50-51 PARAGRAPH F-E PER CHIMA CENTUS NWEZE JSC** on the attitude of the appellate courts to the practice of filing interlocutory appeal when the substantive case is still pending.

The learned jurist held that such:-

“Should no longer be condoned or brooked....They scandalize the integrity of the judicial processes.”

The law relating to admissibility of documents is not new to the courts even if the provisions of Order 34 Rules 1 and 2 Rules of this court are new.

In the instant case, I have perused the affidavits of the Applicants and I do not find any exceptional circumstances disclosed why this application for stay of proceedings should be granted, particularly as the Applicants could have exercised patience and waited for the court’s judgment and thereafter appealed if it was unfavourable to them.

The appeal even if successful will not bring an end to the proceedings before this court.

I therefore find no merit in this application. Same is accordingly dismissed.

S.C Peters: We ask for costs of ₦100,000. We filed processes and we have been appearing in court on this application.

Ogboji: We do not concede to costs. The Plaintiffs/Applicants believe they had a good right to file an appeal.

Court: No costs awarded

**Hon. Judge**