

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA-ABUJA

ON THE 18TH DAY OF MARCH 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/CV/636/19

MOTION NO: M/8906/2020

BETWEEN:

**1. ROYAL COCKTAIL LTD
2. MR. SAMUEL ASOMUGHA**

}

APPELLANTS/APPLICANTS

AND

YEATHFO NIG. LTD

.....

RESPONDENT

2ND APPLICANT IN COURT.

MATHEW OYEYEMI, DIRECTOR, REPRESENTING THE RESPONDENT.

S.N. OKONTA ESQ. FOR THE APPLICANT.

C.C. OKEREKE ESQ. FOR THE RESPONDENT.

RULING

This is a ruling on a motion on notice No. M/8906/2020 filed on 29th July 2020 seeking:

“1) AN ORDER OF THIS HONOURABLE court for leave to apply for the stay of the execution of the judgment of this Honourable court entered on 10th June 2020.

2) AN ORDER staying the execution of the judgment of this Honourable court in Suit No. CV/636/19 delivered on the 10th day of June, 2020

pending the hearing and determination of Appeal filed by the Appellants/Applicants pending at Court of Appeal Abuja between the parties herein.”

The application was predicated on 3 grounds stated on the motion paper and supported by a 9 paragraph affidavit of Samuel Asomugha the 2nd Applicant wherein it was deposed inter alia:

That if the appeal filed succeeds the judgment would be nugatory if execution is not stayed pending appeal;

That damages will be irreparable as the Applicants would be rendered helpless and would not be able to recover the judgment sum;

That balance of convenience lies with the Applicants; and

That they undertake to diligently prosecute the appeal and to indemnify the Respondent in the event this appeal turns out to be frivolous.

In the written address in support of the application, Mr S.N. Okonta for the Applicant raised a sole issue for determination thus:-

“Whether this Honourable Court has power to grant the application of this nature?”

Learned counsel answered in the affirmative, placing reliance on Order 61 Rule 1, 3(1) and 4 of the High Court of FCT, Abuja (Civil Procedure) Rules 2018.

He submitted that the court will consider certain conditions for the grant or refusal of a stay of execution of judgment pending appeal. Citing **S.P.D.C.M LTD V. AMADI (2011) 14 NWLR (PT 1266) PAGE 157 AT 203-204; NDABA NIGERIA LTD V. UBN PLC (2007) 9 NWLR (PT 1040) 439; NWOSU V. NNAJUBA (1997) 12 NWLR (PT 531) PG 160.**

He concluded that the Applicants had placed sufficient particulars before the court to warrant the exercise of the court's discretion in their favour.

In opposing the application, on 26th October 2020 the Respondent filed a 7 paragraph counter affidavit deposed to by C. C. Okereke wherein it was deposed inter alia that the judgment of the court is a money judgement which could be paid back by the Respondent in the unlikely event of the Applicants' success at the Court of Appeal or could be paid to the registry of the Court pending the determination of the Appeal.

That to grant the stay of execution will not be in the interest of justice.

In his written address, Mr Femi Adedeji for the Respondent raised a similar issue for determination thus:-

“Whether from the facts and evidence adduced before this Honourable court, the Applicant is entitled to a grant of an order of stay of execution.”

It was learned counsel's submission that the Applicants have failed to show any exceptional circumstances to warrant the exercise of the court's discretion in their favour.

Learned counsel argued that there is no evidence that the Applicants have paid for the transmission of the records of appeal within 14 days of filing their notice of appeal as required by Order 61 Rule 2 of the Rules of this court.

Further, that the Applicants have not shown that if the money is paid to the Respondent, the Respondent will be unable to repay the sum in the event that the appeal succeeds.

Placing reliance on **S.P.D.C. NIG. LTD V. OKEI (2006) 17 NWLR (PT 1007) PG 25 PARAS A-C; MOMOH V. VAB PETROLEUM INC (2002) LPELR – 1905 (SC); NDABA NIGERIA LTD V UBN PLC (2007) 9 NWLR (PT 1040) 439**; he urged the court to hold that the application lacks merit and dismiss same.

The grant of refusal of an application for stay of execution of judgment is at the discretion of the court which must be exercised judicially and judiciously.

The judgement of this court for which the stay of execution is sought is a money judgment.

The law is indeed trite that a stay of execution of a court's judgment can only be granted upon the Applicant showing that there exists special or exceptional circumstances for doing so. See **MOMOH V VAB PETROLEUM** (supra) cited by learned counsel for the Applicants.

In **GUFFANTI NIGERIA PLC V. PIDRELLA INSTALT-VADUZ & ORS (2012) LPELR-8027 CA, PAGE 23-24 PARAS E-C** Danjuma JCA restated the position of the law in **VASWANI V. SAVALAKH** per Coker JSC that:

“A court of appeal will not grant a stay of execution unless there are special and exceptional circumstances for doing so. That it should not be granted unless the non-grant will foist upon the court a situation of hopelessness, especially in the Court of Appeal 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 return to the status quo.

What amounts to special circumstance varies from case to case. That is why a discretion exercised in one case cannot constitute an authority binding for all cases at all times.

See **BALOGUN V BALOGUN (1969) ALL NLR 149; OKAFOR V NNAIFE (1987) 4 NWLR (PT 64) 129; KIGO (NIG) LTD V. HOLMAN BROS (NIG) LTD (1980) 5-7 SC 50."**

I have perused the affidavit of the Applicants, I find that there are no exceptional circumstances therein stated to warrant the exercise of the court's discretion in favour of the Applicants. It is not indicated that the Applicants will be unable to prosecute the appeal if the stay is not granted, or that the Respondent is a person of straw who cannot refund the judgment sum if the appeal is successful.

There was only a bare averment that if the appeal succeeds, it will be rendered nugatory and the Applicants would not be able to recover the judgment sum. How or why would the Applicants not be able to recover the judgment sum was not indicated. Such was left to speculation. The court will not speculate on facts or evidence not placed before it. Indeed the court cannot speculate on anything. See **ELDER DELE AMASE & ORS V. THE CHAIRMAN NATIONAL POPULATION COMMISSION (2014) LPELR-22772 (CA) PAGE 22 PARA A; IKENTA BEST (NIG) LTD V. ATTORNEY GENERAL RIVERS STATE (2008) NWLR (PT 1084) 612.**

The Applicants owed this court the duty to supply the requisite facts to enable the court exercise its discretion in their favour.

Having failed to show special or exceptional circumstances, I hold that this application lacks merit. Same is dismissed accordingly.

As a corollary, Order 61 Rule 2 of the Rules of this court requires an Applicant for stay of execution to pay for the compilation of the records of appeal within 14 days of filing a notice of appeal and where the said costs are not paid, the Respondent may apply to strike out the application.

Indeed, there is nothing before this court to show that the Applicants have paid the said costs. That in itself is sufficient to strike out this application.

However, in case I am wrong, I have considered the application for stay of execution of judgment on its merits and find no merit in it.

Application for stay of execution of the money judgment is dismissed.

Hon. Judge