

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANYA JUDICIAL DIVISION

HOLDEN AT NYANYA ON THE 4TH DAY OF MARCH, 2021

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/732/2012

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

MR. CHINEDU ILOABACHIE...CLAIMANT/JUDGMENT CREDITOR

AND

HON. ALIYU GEBI.....DEFENDANT/JUDGMENT/APPLICANT

RULING

The Judgment Debtor/Applicant's application against the Judgment Creditor/Respondent dated 28/01/20 is for:

1. An Order granting leave to the Applicant to appeal to the Court of Appeal against the ruling of this Court delivered on 16/07/20 on grounds of mixed law and fact.

2. An Order for stay of execution of the ruling pending the termination of the appeal.

3. And for such Order or further Orders as the Court may deem fit to make in the circumstance.

The grounds for the application is that:

1. Counsel is in doubt as to whether the grounds of appeal are grounds of law alone or that of mixed law and fact.

2. Leave to appeal is necessary to obviate any doubt.

3. That the grounds of appeal are substantial.

4. The requirement for the leave of Court on grounds of fact and or mixed law and fact is statutorily provided in Section 242 of the 1999 Constitution.

5. That the present application is in compliance with the provisions of the 1999 Constitution.

I have also read the Affidavit in support of the application,

The Judgment Creditor/Respondent relied on his Counter Affidavit sworn to by Obuzor Francis Emenike.

He deposed:

1. The Applicant has frustrated the Respondent's attempt to recover the Judgment debt.
2. This Motion is to further frustrate and deprive the Judgment debtor of his fruits.
3. The Respondent has not shown any special circumstance.
4. The Respondent is financially buoyant.

5. The substantive Judgment is not appealed against.

6. That appeal has not entered.

7. That this application is brought in bad faith.

In a Further Affidavit, the Judgment Debtor/Applicant deposed that appeal has entered in the Court of Appeal and that the Appeal No. is CA/ABJ/CV/867/2020.

I have also read the exhibits attached to the Affidavit and Further and Better Affidavit.

Learned Counsel to the Judgment Debtor/Applicant posited two issues for determination which are:

1. Whether the Applicant has satisfied the pre condition to obtain leave of Court to appeal on grounds of mixed law and facts.

2. Whether the Applicant has satisfied the condition for stay of execution.

He argues that an Appellant/Applicant should seek the leave of Court where the Notice of Appeal contains grounds of mixed law and fact. That the leave of Court serves as a pre condition upon which a Notice of Appeal can be filed.

That Applicant has filed its Notice of Appeal and has also shown evidence of payment of receipt. They have therefore satisfied the provisions of Order 61 of the rules of Court.

The Respondent's Counsel on the other and argued that, the Applicant has not made out a case for the grant of a stay of execution of the Judgment pending appeal. He argues that the Applicant's reasons for seeking a stay of

execution of the Judgment is in paragraphs 15, 16 and 17 of the Affidavit in support.

That the Applicant has not disclosed special circumstances to warrant a grant of a stay of execution.

That the subject matter of the Judgment is monetary and same cannot be destroyed,

That Applicant did not attach his Statement of Account or Pay Slip to show his means of income or that the payment of the Judgment sum will make him incapable of prosecuting the appeal or that the appeal will be rendered nugatory. He urges the Court to hold that the Applicant has not shown any special circumstance to warrant the grant of a stay of execution.

He finally urges the Court to dismiss this application.

Judgment was delivered in this case on 16/05/13.

The defendant/Appellant/Applicant did not appeal against the Judgment. Execution was levied and some monies recovered in satisfaction of the Judgment debt.

The Appellant/Applicant brought an application dated 24/01/20 praying for some reliefs.

The Court in a considered ruling delivered on 16/07/20 dismissed the application whereupon the Appellant/Applicant now seeks leave to appeal and an Order for stay of execution of the ruling.

The Court went on annual vacation 20/07/20 and resumed on 7/9/20. The application for CTC of the ruling appealed against Exhibit A is dated 28/07/20 when the Court was on annual vacation.

The Appellant/Applicant filed a Notice of Appeal against the ruling of Court on the same 28/07/20. It is Exhibit B.

The application to appeal against the ruling is dated 28/07/20 but filed on 29/07/20.

The implication is that the Notice of Appeal Exhibit B filed by the Appellant/Applicant was filed without leave of Court.

The law is trite that any Notice of Appeal filed without leave where leave is required as in this case is null and void and of no effect. Such appeals are incurably incompetent and will be struck out.

See ***OJUKWU VS. ONYEADOR (1991) 7 NWLR (PT.203) 200 at 273***

OPUIYO VS. OMONIWARI (2007) AFWLR (PT.378) 1093 at 1114, 2007 6 SC (pt. 1) 35.

In the instant case, no leave was obtained before the Notice of Appeal was filed. Therefore, there is no competent appeal before this Court upon which a stay of execution can be granted.

See ***ORURUO VS UAWAL (2009) 7 NWLR (PT.103) page 255.***

The ruling of this Court dismissed Appellant/Applicant's Motion.

The Court did not grant any reliefs upon which a stay of execution can be maintained.

For the avoidance of doubt, stay of execution means the act of stopping or arresting of execution of a Judgment, of the Judgment Creditor's right to issue execution for a

limited period. In the instant case, there is nothing to enforce as the Court did not grant any relief.

There is no appeal neither was an application for stay filed against the final Judgment.

Reliefs 1, 2 and 3 of the Appellant/Applicant's Motion which was dismissed by this Court on 16/07/20 is declaratory which cannot be enforced even if granted. It is elementary that a Judgment of Court is binding on all parties until set aside by the Court or higher Court. It cannot be varied by consent or a Police Station. I agree with the Learned Counsel to Judgment creditor/Respondent that the Appellant/Applicant is acting in bad faith.

An Applicant seeking for an Order of stay of execution must show special or exceptional circumstances why the Order should be made because the Court will not make an order depriving a successful litigant of the fruit of his success.

UHEMBE VS. AWAV (2006) 7 NWLR (PT.978) 1 C.A.

The Appellant/Applicant did not show any such special or exceptional circumstance.

In the circumstance of this case, the application is brought in bad faith, it is an abuse of Court process. It is intended to derive the Judgment Creditor of the fruits of his Judgment.

There must be an end to litigation.

As I said, the final Judgment was delivered 8 years ago.

This Motion lacks merit, it is frivolous and accordingly dismissed.

Cost of N100,000 is awarded against the Judgment Debtor/Applicant in favour of the Judgment Creditor/Respondent.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
04/03/21

Parties absent.

Francis M. and Hannah Dimgba for the Judgment Debtor/Applicant.

O. Francis with Serah Omogbamhe for the Judgment Creditor.

Ruling delivered.

Signed.

Hon. Judge.

4/3/21