

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 32**

**CASE NUMBER: SUIT NO. FCT/HC/CV/1313/17**

**DATE: 9<sup>TH</sup> FEBRUARY, 2021**

**BETWEEN:**

(1). MR. AUGUSTINE AGORUA }  
(2). DAHMOS NIGERIA LTD } .....PLAINTIFFS

**AND**

(1). MR. DAVIS OKORO }  
(2). MR. CHRIS EMOLA } .....DEFENDANTS

**APPEARANCES:**

L. C. Onyekwere Esq for the Defendant.

**RULING**

By a Motion on Notice dated 17<sup>th</sup> day of September 2020 and filed same day, brought pursuant to Order 43 Rule 1, Order 61 and Section 6(1) of the 1999 Constitution (as amended).

The Claimants/Applicants herein prayed this Honourable Court for the following Orders:

***“(i). An Order of the Honourable Court staying proceedings in Suit No. FCT/HC/CV/1313/2017 pending the determination of the Interlocutory Appeal by the Court of Appeal, Abuja Judicial Division.*”**

***(ii). And any further or other Order or Orders which the Honourable Court may deem fit to make in the circumstances”.***

The grounds upon which the application was based are contained on the motion paper.

Filed in support of the application is a 13 paragraphed affidavit deposed to by Moses Jiyah Dangana a legal practitioner and Counsel to the Claimants/Applicants. Attached to the supporting affidavit are annexures marked as Exhibits A & B.

Equally filed in support of the Motion is a Written Address dated 17<sup>th</sup> day of September 2020.

In the said Written Address, learned counsel to the Claimants/Applicants, Moses Jiyah Dangana who moved the motion formulated two issues for determination to wit:

- (1). Whether having regard to the fact that this suit is being heard expeditiously under fast track proceedings, the substantive suit now before the trial Court will be heard and determined before the actual determination of the appeal itself by the Court of Appeal? And if so, whether staying proceedings in the substantive suit pending determination of the Appeal by the appellate Court of Appeal would not be just proper, fair and equitable in the circumstance?
- (2). Whether the 2(two) chequered grounds of Appeal contained in the Claimants/Applicants’ original Notice of Appeal (ie Exhibit A herein) have raised the serious issue of jurisdiction incompetence of the trial Court to adjudicate on suit No. FCT/HC/CV/1313/2917? And if so, whether it is legally safe, proper and/or fair in the circumstances for the trial Court to continue hearing the substantive suit without determination of the appellate Court of Appeal which is now seized with determination in a future date, on the competency of the trial Court, Maitama, to adjudicate on the suit given the radical nature or purport of jurisdiction.

In analysing the issues, Counsel submitted that granting or refusing this motion to stay proceedings, is at the discretion of the Court which must be exercised judicially and judiciously. Reliance was placed on the

cases of ***PROF. Y. O. BEREDUGO V THE COLLEGE OF SCIENCE & TECHNOLOGY (1991) 4 NWLR (Pt. 1871) 051 at 661, paras F – G.***

In his further submission on the two issues jointly, Counsel urged the Court to stay further proceeding in the substantive suit until the issue of jurisdiction is resolved by the Court of Appeal. Counsel referred the Court to ground two of the appeal in Exhibit A and Order 55 Rules 1 and 2 of the FCT High court (Civil Procedure) Rules 2018.

The learned Counsel further submitted that it is unsafe to proceed to the hearing of the substantive suit without first and foremost staying the entire substantive suit to allow the Court of Appeal to pronounce on whether or not Mr. S. I. Emokhe of Counsel could represent the Defendants/Respondents as counsel in Suit No. FCT/HC/CV/1313/2017 without the prior withdrawal of the former Counsel Mr. Olaniyi Oyinloye.

On issue of jurisdiction, Counsel referred the Court to the case of ***EGBAREVA V ERIBO (2010) 9 NWLR (Pt. 1199) 411 AT Pages 434-435, paras G – D.***

It was the submission of the learned Applicants' Counsel referring the Court to the grounds of appeal that the motion for stay of proceedings pending the determination of the interlocutory appeal is meritorious and urged the Court to grant it in the overriding interest of justice. Counsel referred the Court to paragraph 9 of the Claimants/Applicants' affidavit in support.

The learned Counsel informed the Court that the Claimants/Applicants have diligently compiled the record of appeal within a short period of time and this prima facie shows that they are serious appellants. Reference was made to paragraph 11 of the Claimants/Applicants affidavit in support.

Finally, Counsel urged this Honourable Court to grant this application for a stay of proceedings in Suit No: FCT/HC/CV/1313/2017 pending the determination of the Appellants' interlocutory appeal by the Court of Appeal.

In opposing the application, Defendants/Respondents filed a 7 paragraphed Counter Affidavit deposed to by one David Okoror, 1<sup>st</sup> Defendant in this suit. Equally filed in opposition to the Motion on Notice is a Written Address dated and filed 22<sup>nd</sup> September 2020.

In the said Written Address, learned Counsel to the Defendants/ Respondents, S. I. Imokhe Esq formulated a lone issue for determination which is whether the Applicant had fulfilled the condition precedent to warrant the Court in exercising its discretionary powers in favour of the Plaintiffs/Applicants.

In arguing the issue, Counsel submitted that stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation in the trial on the basis of the merits of his case. That the grant of an Order for stay of proceedings is a discretionary power vested in the Judge. Reliance was placed on the case of ***ODOGWU V ODOGWU (1990) 4 NWLR (Pt. 143) 224 on the principles for the grant or refusal of stay of proceedings, Counsel referred the Court to the cases of AGU V C.O.P (2017) 2 NWLR (Pt. 1549) P. 254 at 279; ISA IND. (NIG) LTD V FBN PLC (NO.2) (2012) 14 NWLR (Pt. 1320) 372.***

Consequently, Counsel submitted that the Applicant in this case has not qualified for a grant of proceedings in this matter.

It was also submitted that the grounds of appeal are not challenging the jurisdiction of this Court but rather they are non-compliance to the rules of Court on the part of the Defendants which are mere irregularities. Reliance was placed on the case of ***ALHAJI ATIKU ABUBAKAR GCON & OTHERS V. ALHAJI UMARU MUSA YAR-ADUA & OTHERS (2008) LPELR – 51 SC.*** Also reliance was placed on Order 5 Rules 1 and 2 of the FCT High Court Civil Procedure Rules, 2018.

Finally, Counsel submitted that the Applicants has not shown any cogent and tangible reason to warrant this Honourable Court to exercise the discretionary power of granting a stay of proceedings pending appeal in their favour. As such Counsel urged the Court to dismiss this application as same is frivolous and lacks merit.

I have equally carefully gone through the Motion on Notice, the reliefs sought, the grounds upon which same was predicated, the supporting affidavit together with the annexures attached therewith and the Written Address. I equally perused the Counter Affidavit in opposition to the Motion on Notice and the Written Address in support.

Therefore, in my humble view, the issue for determination is whether the Claimants/Applicants have made out a case for the grant of this application.

It should be noted at the onset that the grant and/or refusal of an application of this nature is entirely at the discretion of the Court which of course must be exercised judicially and judiciously. In this respect, see the case of **NZEKWE V ANAEKWENEGBU (2019) 8 NWLR (Pt. 1674) 235 at 247, para B** where the Supreme Court has this to say on principle guiding exercise of discretion thus:

***“...Discretion must be exercised not only judicially but judiciously as well...”***

Having said this, it is equally important to note that applications such as an Order for stay is generally not one that the Court likes to grant unless in special and compelling circumstances. The jurisprudence behind this is simply to avoid any delays or interruptions to a party seeking judicial redress. In this regard, I refer to the case of **NNPC & ANOR V. ODIDERE ENT. ENTERPRISES (NIG) LTD (2007) LPELR-8173 (CA)** where **ABDU ABOKI JCA** stated at **P. 36 – 42, para E** that:

***“...Stay of proceedings is a serious, grave and fundamental interruption on the right of a party to conduct his litigation towards the trial 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 beyond all reasonable doubt ought not to be allowed to continue...”***

In a similar vein, it is evident that the Court is cautious and sometimes reluctant in granting an application for stay of proceedings except in very special circumstance. In support of this, see the case of **MOBILE PRODUCING (NIG) UNLIMITED V AYENI & ORS (2007) LPELR – 8121 (CA)** where his Lordship **MUKHTAR JCA** stated at pages 21 – 27, paras C – B thus:

***“The common denominator in an application for stay of proceedings is that special and exceptional circumstances must be shown to exist and compelling enough for the Court to grant an Order for stay. A special or exceptional circumstance is such an extra ordinary unique state of affairs dictating that stay will better serve the interest of justice than allowing the proceedings in the trial Court to continue. It does not follow the filing of an interlocutory appeal as a matter of course. As my learned brother Niki Tobi, JCA (as he***

***then was) commented in the case of EZE V OKOLOLLJI, (supra) P. 529 where the learned jurist said: An application for stay of proceedings can only be granted where special and exceptional circumstances exist. A special and exceptional circumstance is a peculiar or unique circumstance which is additional to the ordinary state affairs. The application is not granted as a matter of notice as it is not a mechanical relief slavishly following the filing of an appeal. It is a matter of law and facts and a very hard one in their combined content. The Court in considering whether to grant or refuse an application for stay must consider the competing rights of the parties to justice and equity based on the available affidavit evidence...”***

At this juncture, it is settled law that matters bordering on jurisdiction of a Court in a Notice of Appeal fall under special and exceptional circumstances for granting an application for stay of proceedings. This was re-echoed in the case of ***NNPC & ANOR V ODIDERE ENTERPRISES (NIG) LTD (SUPRA) at Page 19 -22, Paras E – B*** where it was held inter alia thus:

***“...It is therefore definitely the law that where a genuine issue of jurisdiction is raised by an Applicant on the grounds of appeal contained in his Notice of Appeal, the Applicant is taken to have satisfied a special or exceptional circumstance to justify granting him relief of stay of further proceedings pending the determination of an appeal...”***

In the instant case therefore, I have gone through the supporting affidavit and the annexures attached therewith particularly Exhibit A which is a Notice of Appeal and the grounds continued therein, the appeal in my opinion is valid and the Applicants have raised issues bordering on jurisdiction.

Having said this, it is my humble view that the Applicants herein have shown a special and exceptional circumstance to warrant the grant of this application. I so hold.

To this end, I believe in order not to overreach the Court of Appeal and not to render any Order or decision of the Court of Appeal nugatory, further proceedings in this suit ought to be stayed in view of Exhibits A and B attached to the supporting affidavit.

Finally and without much ado, I hereby resolve the issue for determination in favour of the Claimants/Applicants against the Defendants/Respondents and hold that this application is meritorious and is hereby granted as prayed.

Consequently, further proceedings in this suit with Suit No: FCT/HC/CV/1313/2017 is hereby stayed pending the hearing and determination of the Applicants' interlocutory appeal by the Court of Appeal.

**Signed:**

**Hon. Justice Samirah Umar Bature**