

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY-
IN THE APPELLATE DIVISION
HOLDEN AT BAWRI DIVISION ABUJA

SUIT NO: CV/32/18

Appeal No Motion No. M/716/2020

BETWEEN:

EL-GOLD GROUP LIMITED ----- APPELLANT

AND

BANEX INDUSTRIAL LIMITED ----- RESPONDENT

BEFORE THEIR LORDSHIPS

THE HON. JUSTICE O. A. MUSA, (PRESIDING JUDGE)

HON. JUSTICE O.A EBONG (HON JUDGE)

RULING

Before us is a Motion on Notice dated the 9th day of November, 2020 but filed on the 8th day of December, 2020 praying the Court for these three (3) Orders:

1. AN ORDER extending time for the Applicant to appeal the decision of Hon. Nwecheonwu Chinyere, Chief District Judge, Wuse Zone 6, Abuja delivered on 15th day of April, 2019 in SUIT NO: CV/32/2018 BANEX INDUSTRIES LIMITED V. EL-GOLD GROUP LIMITED.

2. AN ORDER granting leave to the Applicant to appeal the decision of Hon. Nwecheonwu Chinyere, Chief District Judge, Wuse Zone 6, Abuja delivered on 15th day of April, 2019 in SUIT NO: CV/32/2018 BANEX INDUSTRIES LIMITED V. EL-GOLD GROUP LIMITED.

3. AN ORDER staying execution of further execution or sale of the Applicant's properties pending the determination of the Applicant's appeal against the decision of Hon. Nwecheonwu Chinyere, Chief District Judge, Wuse Zone 6, Abuja delivered on 15th day of April, 2019 in SUIT NO: CV/32/2018 BANEX INDUSTRIES LIMITED V. EL- GOLD GROUP LIMITED.

The grounds on which the application is rested ate ten. The application is further supported with a thirteen (13) paragraphed affidavit, two exhibits christened EXHIBIT 1 and EXHIBIT 2 respectively found particularly at paragraphs 6 and 7 of the supporting affidavit deposed to by one ENARUERO EKAMA ANIEBET said to be a Director of the Applicant. There is a written address in support, which was un-paginated.

In opposition, the Respondent filed a counter-affidavit of twenty (20) paragraphs attached with Exhibit A1, Exhibit A2 and Exhibit A3. The said affidavit, was deposed to by one Ifeanyi Ugwu said to be working in the office of the Respondent's Counsel. There is also an un-paginated written address in support of the counter-affidavit of the Respondent.

In response to the legal issues raised by the Respondent, the Applicant filed a further affidavit of eight (8) paragraphs together with a reply on points of law.

At paragraph 2.1 of the Applicant's written address, three issues for determination were distilled by the Applicant for the resolution of the issues agitated in the Motion to wit:

1. Whether the Honourable Court ought to extend time within which to appeal for the Applicant in the circumstances of this case.
2. Whether the Applicant ought to be granted leave to appeal considering the circumstances of this case

3. Whether in the circumstances of this case the Court can grant a stay of further execution of the judgment of the lower Court.

On behalf of the Respondent, two issues, at paragraph 2.1. of its brief of argument, were concreted for the resolution of this application thusly:

1. Whether this application is not incompetent and improper as constituted and ought not to be dismissed in limine.
2. Whether considering the facts and circumstances of this case this Honourable? Court ought not to refuse the relief seeking to stay the execution of the Judgment of the trial Court.

When this Motion came up before us on the 30th March, 2021, Counsel appearing for the parties identified and adopted their processes and vigorously advanced arguments in amplification of the divergent positions of the parties in hostility who have each asked us to uphold their divergent positions and grant their conflicting reliefs.

We have studied in great details the differing views expressed by the parties to this forensic contest We have also perused in depth the entirety of the processes filed by the respective parties on which the instant Motion has been fought. The outcome of our intimate examination of the issues canvassed impels us to first consider whether stay of execution of the Judgment of the Court below as supplicated by the Applicant is one that commands the favour of this Court by its own showing. We start by reminding ourselves of that ancient proposition of the law which is that It is also true that an appeal per se does not operate as a stay of execution of a Judgment, ODOGWU v. ODOGWU (1992) 2 NWLR (PT 593) at 539 The principles underpinning the grant or refusal of the grant of stay of execution of the judgment of the Court have been remarkably explicated in

ODOGWU v. ODOGWU (supra). We are reminded in JULIUS BERGER NIGERIA PLC & ANOR v. TOKI RAINBOW COMMUNITY BANK LIMITED (2006) LPELR-7666(CA) of the settled position of the law to the effect that a successful litigant is entitled to the fruit of his judgment, OKAFOR v. NNAIFE (1987) 4 NWLR (PT.64) 129. It is also true that an appeal per se does not operate as a stay o- execution of a judgment, ODOGWU v. ODOGWU (1992) 2 NIWLR (PI 543) at 539. However, in order not to inflict, on the higher Court, t completed act, the practice has been firmly established that a fait accompli will not be imposed on the higher Court when a motion is yet to be heard in the higher Court.

This is done to prevent impugning the jurisdiction of a superior Court Mohammed v. Olawunmi (1990) 2 NWLR (Pt. 133) 458 at 484 - 485 per Nnaemeka-Agu.

In DANIEL OKUNOLA ALAL ADE V. NATIONAL BANK OF NIGERIA LIMITED (NO.2) (1997) LPELR-5540(CA), the Court, Per Uwaifo, J.C.A. (as he then was) aptly re minded us that:

The consideration of an application for a stay of execution of a Judgment or order is an exercise of an equitable Jurisdiction of the Court. A pr aye for such a stay is therefore for an equitable relief: see Okafor v. Nnaife (198 0 4 NWLR (Pt.64) 129 at 138 per Eso, J.S.C. A Court cannot do equity in the right manner unless not only that there are sufficient facts disclosed in support of the type of relief sought but also that those facts are presented with utmost candor. That s the only way the Court can best exercise its discretion to grant or refuse such relief. This is so because an equitable relief is not

granted as a matter of course but is a product of an appeal to the conscience of the Court arrived at upon principles of equity supported by adequate and justifiable facts: see *Okafor v. Nnaife* (supra) at 136 - 137 per Oputa, J.S.C.; *Mohammed v. Olawunmi* 1990) 2 NWLR (Pt. 133) 458 at 484 - 485 per Nnaemcka-Agu, J.S.C.; *Chukwu v. Onyia* (1990) 2 NWLR (Pt. 130) 30 at 84 - 85; *African Continental Bank Ltd. v. Dominico Builder Co. Ltd.* 1992) 2 NWLR (Pt.223) 296 at 302-303.

A very useful guide in disposing of this Motion is found in JOHN AKUJOBI NWABUEZE v. OBIOMA NWOSU (1988) LPELR-2081(SC) where the Apex Court drew the line thus:

I would say that the desire to exercise one's constitutional right of appeal without more plays no such vital consideration in the grant of a stay of execution pending the determination of an appeal as has been expressed. The premises on which such an application is usually made is that there is a pending appeal and the principal consideration that has guided the courts through the ages is the desire to preserve the res and preserve the capacity to execute the judgment of the Appeal Court. Any act that will tend to render the judgment of the Appeal Court nugatory has always been the prime concern of the courts in such applications. This is in consonance with the principle that a judgment creditor is entitled to the fruits of his Judgment. As an appeal does not operate as a stay of execution, the need to preserve the res and restrain any act which will render the Judgment of the Appeal Court nugatory arises when application pending the determination of the appeal lodged arises. There must be an appeal lodged before the application is made.

It is not the law that a stay of execution must be granted to enable an unsuccessful party to appeal. The court has discretion to grant stay of execution on being satisfied that there are exceptional circumstances which warrant the exercise of the court's discretion in the applicant's favour. This is so whether there is an appeal pending or not. But where there is an appeal pending, the special circumstances which have received this court's judicial approval are when execution would:

- (1) Destroy the subject-matter of the proceedings;
- (2) Foist upon the court, especially the Court of Appeal, a situation of complete helplessness or
- (3) Render nugatory any order or orders of the Court of Appeal;
- (4) Paralyse, in one way or the other, the exercise by the litigant of his constitutional right of appeal; or
- (5) 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."

See *Vaswani Trading Co. v. Savalakh & Co.* (1972) 12 SC.77, 81/82 (1972) All NLR (Part 2) 483 at 487; *A. U. Deduwa & 3 Ors. v. E.A. Okorodudu & 13 Ors.* (1974) 6 SC. 21, 24-26 *Kigo (Nigeria) Ltd. v. Holman Brothers (Nigeria) Ltd.* (1980) 5/7 SC. 60 at 70.

Drawing from the above principles, can it be said that the Applicant's application for stay of execution of judgment, when the materials he has placed before us is x-rayed, is entitled to success? The answer is Yes.

Haven satisfied with the prayers sought by the Applicant, the prayers 1, 2 & 3 sought are hereby allowed and granted prayed.

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This shall be our Ruling which we reserved on the 30th day of March,

HON. JUSTICE A. O. EBONG
HON. JUDGE

HON. JUSTICE O. A. MUSA
(PRESIDING JUDGE)

18/06/2021