

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 27 GUDU - ABUJA
DELIVERED ON THURSDAY THE 24TH DAY OF JUNE 2021.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

SUIT NO. PET/413/2018

BETWEEN

IDAYAT BOLANLE SULEIMAN -----APPLICANT

AND

DR. NTADOM GODWIN NWANKAMA-----RESPONDENT

RULING

This Court delivered judgment in this case on 16th day of July 2020 and the Applicant has now filed a motion pursuant to Order 61 Rule (1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 praying the Court for the following;

1. An Order of this Honourable Court staying execution of the judgment of this Court delivered in Pet/413/2018 by Honourable Justice Modupe R. Osho-Adebiyi on the 16th day of July 2020, pending the hearing and final determination of the appeal already filed against the said judgment.
2. And for such further orders as this Honourable Court may deem fit to make in the circumstance of this case.

Also filed is an affidavit of 12 paragraphs and a written address. Applicant's Counsel in the written address filed, raised a sole issue for determination, to wit; whether the Applicant is entitled to an order for stay of execution of the judgment of this Honourable Court

delivered on 16th July 2020 pending the hearing and determination of the appeal filed by the Applicant against the said judgment. Counsel relying on an array of authorities, submitted that from the facts of this case including the affidavit deposed to by the Applicant and the notice of appeal attached, it shows all the mandatory condition precedence for granting an application for stay of execution has been established and urged the Court to grant the application for stay of execution.

In opposing the application, the Respondent filed a counter affidavit of 17 paragraphs and a written address wherein Counsel to the Respondent adopted the Applicant's issue for determination. Counsel submitted that the Applicant has not met any of the laid down requirements for the grant of stay of execution. It is also Counsel's submission that the justice of this case demands that the Applicant's application for stay of execution be refused as it amounts to delay in meeting the demands, upkeep and maintenance of the children of the marriage. Counsel submitted finally that the Applicant has not shown a special circumstance as required by law for the grant of stay of execution and urged the Court to hold that the application lacks merit and refused the application.

I have read the Applicant's application and the accompanying affidavit and written address. I have also examined the Respondent's counter affidavit and written address and this court will adopt the issue so raised by the Applicant, which is, **whether the Applicant is entitled to an order for stay of execution of the judgment of this Honourable Court delivered on 16th July 2020 pending the hearing**

and determination of the appeal filed by the Applicant against the said judgment.

The law is trite that an application for stay of execution is granted at the discretion of the Court and for an Applicant to succeed in an application for stay of execution, applicant must show special and exceptional circumstances why the judgment creditor should not immediately harvest the fruit of his judgment.

The Applicant in this case is urging on this Court to stay execution of the judgment delivered in favour of the Respondent wherein the Court ordered the Applicant to pay a monthly sum of N160,000 for the upkeep and maintenance of the children, custody being granted to the Respondent. Contrary to paragraph 3 of the Applicant's affidavit in support of the application, this Court did not deliver judgment in favour of the Respondent. Rather, the judgment of this Court was a split between both parties as the Petitioner also got an award of N10,000,000.00 (ten million Naira) to be paid to her by the Respondent, which Applicant's Counsel informed the Court orally that the money has already been paid by the Respondent. It is also worthy to note that the Respondent's prayers 4, 5, 6 and 7 of the cross-petition were not granted which included the Respondent's prayer for the return of the Kia Rio Car. Hence, the said prayers 4, 5, 6 and 7 were in favour of the Applicant in the Court's judgment.

Be that as it may, the Applicant is urging on this court to stay execution as a notice of appeal has been filed, the Respondent on the other hand is urging the Court to refuse the application as the records of this Court are yet to be transmitted and the mere filing of

a notice of appeal cannot operate as a stay. The question to be answered at this point is at what instance will an appeal be deemed to have been entered? In **PDP & ORS V. BADAIRE & ORS (2019) LPELR-47063 (CA)** it was held thus;

"With regards to the second ground of the preliminary objection, the records of appeal show that upon the delivery of judgment by the lower Court on the 4th of July 2018, the Appellants caused a notice of appeal to be filed on the 5th of July, 2018 and the records of appeal were compiled and transmitted to this Court on the 25th of July, 2018. The records of appeal were accepted by the Registry of this Court and the appeal was given an appeal number on the said 25th of July, 2018. By the provisions of Order 4 Rules 10 and 11 of the Court of Appeal Rules, the appeal was deemed entered in this Court on that day and from thence onwards, this Court became seised of everything to do with the matter and every application thereafter was to be made to this Court."

Hence, an appeal would be said to have been entered where the records of appeal has been compiled and transmitted to the Court of Appeal, same accepted by the Registry of the Court of Appeal and the appeal given an appeal number. Once it is so entered, an appeal is then said to be pending. The only document in the Court's file is the Notice of Appeal with no Appeal No which goes to say that Appeal has not been entered at the Court of Appeal.

I must state at this point that upon a careful examination of the applicant's application, the affidavit in support of the motion for stay

of execution was not sworn to before the Commissioner for oaths, which makes all “supposed” averments therein as “mere statements” and not depositions as it did not comply with the provisions of the Oath Act. From processes filed before this court, Applicant’s deposition not made under oath is liable to be struck out and the law is trite that every motion must be supported by an affidavit and the applicant’s motion being without an affidavit renders same bare and without support. See the case of **Mobil Producing Nig. Unlimited v. Monokpo (2003) 18 NWLR (Pt. 852) 346**. Also, in the absence of any evidence that an appeal has been filed or deemed filed in the proper registry within the stipulated time, it follows necessarily that no appeal was lodged. In the circumstances, the Applicant’s affidavit not properly before this Court, along with the purported notice of appeal, which in fact has no appeal number, for failure to comply with the provisions of the Oaths Act, there are no special facts or exceptional circumstances upon which this Court can rely on in the grant of the Applicant’s application.

Be that as it may, Applicant in this suit is seeking to stay execution of monetary judgment awarded in favour of her children.

Section 1 and 2 of the Child Rights Act, 2003 enjoins the Court to prioritize the interest of the child as utmost in any action involving a child particularly as regards protection and necessary care for the child’s wellbeing.

Section 1 of the Child Rights 2003 provides;

“In every action concerning a child, whether undertaken by an individual, public or private body,

institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.”

Section 2 (1) provides;

“A child shall be given such protection and care as is necessary for the well-being of the child, taking into account the rights and duties of the child’s parents, legal guardians, or other individuals, institutions, services, agencies, organisations or bodies legally responsible for the child.”

Section 2 (2) provides;

“Every person, institution, service, agency, organization and body responsible for the care or protection of children shall conform with the standards established by the appropriate authorities, particularly in the areas of safety, health, welfare, number and suitability of their staff and competent supervision.”

In essence, the Child Rights Act enjoins the Court to make the interest of the child paramount in every action involving children particularly as to the protection, care, maintenance and general wellbeing of a child. Principally, the Child rights Act has expanded the human rights of citizens of Nigeria as contained in **Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria** to incorporate children. The application before me primarily affects the wellbeing, care, maintenance and general upkeep of the Nigerian

Child as provided under the Child Rights Act, which in essence, touches on the fundamental human rights of the child and it is on this premise that notwithstanding the flaws in the application before me, particularly the unsworn affidavit and the mere filing of a notice of appeal without entering the said appeal, this Court would nevertheless proceed in considering this application. The said judgment is for the upkeep of children born of both Petitioner and Respondent. In granting the stay of execution of monetary judgment, the Court is obliged to consider the following factors in granting and refusing stay:

1. whether by satisfying the monetary judgement would render the financial position of the applicant such that applicant would not be able to prosecute the appeal
2. whether by satisfying the Court judgment would make it difficult to secure the refund of the judgment debt and cost from the Respondent if the appeal succeeds.

See **IKERE LOCAL GOVT. VS. OLUMUYIWA ADELUSI (2008) AFWLR (PT.404) PG 1434 para F.A Per MuntakaCoomasie JCA (as he then was).**

It is trite that the Courts will not deny a successful litigant from reaping from the fruits of his judgment, however where serious and recondite issues are raised by the appellant, the court ought to consider granting a stay of execution. Generally, the nature of the stay of execution of a Court's judgment would largely depend on the facts of each case. It is necessary for me to re-iterate that orders contained in the judgment in this case was split between both

parties; while the Respondent was awarded custody of the children of the marriage, Respondent was also ordered to pay the sum of N10,000,000.00 (ten million Naira) to the Applicant. Applicant on her part was ordered to pay the sum of N160,000.00 (One hundred and sixty thousand Naira) monthly for the upkeep and maintenance of all the children of the marriage till they attain maturity. Learned Counsel to the Applicant in moving his application for stay stated in open Court that:-

“... Part of the orders of the Court has been executed as the order of the Court ordering the Respondent to pay the sum of N10,000,000.00 to the Petitioner has been effected.”

From the above, the Respondent promptly made sure he obeyed the orders of the court and eventually paid the sum of N10,000,000.00 (Ten Million Naira) to the Applicant in satisfying his part of the judgment delivered by this Court. The Applicant is seeking for stay of execution of her own part of the judgment which mandates Applicant to pay the sum of N160,000.00 (One Hundred and Sixty Thousand Naira) to the Respondent monthly as upkeep for the children born of the marriage, which custody was awarded to the Respondent. Petitioner is in essence, asking this Court to halt the fundamental rights of the children as bestowed on them and equally enshrined under the Constitution of the Federal Republic of Nigeria (1999) (as amended). It is trite that Courts are to enforce the rights of a child/citizens of Nigeria and not to asphyxiate their rights as the said judgment sum which Applicant seeks to stay its execution is for the

maintenance, care and upkeep of children as provided under **Section 1 and 2(1) of the Child Rights Act 2003**. Consequently, this court will not stay execution of the said sum of N160,000.00 (one sixty thousand Naira) monthly upkeep of the children for reasons adduced above and this Court has also considered the fact that Respondent upon being ordered by the Court in the said Judgment to pay Applicant the sum of N10,000,000.00 (Ten million Naira) promptly obeyed the court's order and paid the sum of N10,000,000.00 (Ten million Naira) to the Applicant. It is my considered view that if Applicant proceeds to pay the sum of N160,000.00 per month to the Respondent for the upkeep/maintenance of their children, it would certainly not be a herculean task for the Respondent to refund same to the Applicant peradventure Applicant succeeds on appeal as Respondent by this singular move of promptly paying the sum of N10,000,000.00 (Ten million Naira) to the Applicant in satisfaction of his part of the judgment depicts his diligence in obeying Court orders which I am convinced would play out peradventure Respondent is required to refund same if appeal succeeds. Moreover, Applicant has not placed anything tangible before the Court to suggest that she cannot afford to pay the sum of N160,000.00 (One Hundred and Sixty Thousand Naira) monthly for the maintenance/upkeep of her children nor has applicant shown to the Court that paying the said amount would render Applicant's financial position such that she would not be able to prosecute this appeal. This court has also taken judicial notice of the fact that applicant has just been paid a healthy sum of N10,000,000.00 (Ten million Naira) by the Respondent in satisfaction

of this Court's judgment prior to filing this application for stay of the sum of N160,000.00 for the upkeep and maintenance of her children. In all, apart from the fact that Applicant has merely filed a notice of appeal without entering the appeal, applicant failed to depose to the affidavit in support of her application for stay of execution which makes her application for stay of execution sterile.

Nevertheless, this Court still went ahead to consider Applicant's grounds of application but same lacks merit, failed to raise any serious and recondite issues, failed to raise any special circumstances and also failed to raise any substantial issues to deserve a stay of execution. I therefore hold that issues raised by the Applicant are frivolous and not capable of grounding the execution of this Court's judgment.

Consequently, the Applicant's application for stay of execution is hereby refused.

Parties: Parties absent.

Appearances: S. U. Garba for the Applicant. Chukwuma Ozougwu for the Judgment/Creditor/Respondent.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

24TH JUNE, 2021