

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT HIGH COURT 21 GUDU – ABUJA**  
**DELIVERED ON TUESDAY THE 13<sup>TH</sup> DAY OF JULY 2021.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**SUIT NO.CV/556/2019**

**MOTION NO. M/83/2021**

**SAMBIL KADAMA NIGERIA LIMITED-----PLAINTIFF**  
**(Suing through his Lawful Attorney**  
**ANTHONY BIOSE ESQ)**

**AND**

**ESKOM PLC----- DEFENDANT**

**RULING**

Judgment Debtor/Applicant filed a motion on notice M/831/2021 dated 1/02/2021 seeking for the following;

1. An order staying the execution of the Judgment of Hon. Justice M. Osho-Adebiyi of the High Court of the FCT dated 27<sup>th</sup> day of January, 2021 with respect to Suit No: CV/556/2019 pending the determination of the applicant's appeal to the Court of Appeal challenging the said judgment.
2. An order of injunction restraining the Respondent from enforcing or taking any steps to enforce the judgment of the Hon. Justice M. Osho-Adebiyi of the High Court of the FCT dated 27<sup>th</sup> day of January, 2021 with respect to Suit No: CV/556/2019 pending the determination of the applicant's appeal to the Court of Appeal challenging the said judgment.

And for such further or other orders as this Honourable Court may deem fit to make in the circumstance.

Attached is an 11 paragraph affidavit in support deposed by Gerald Umunna Nwaneri, legal practitioner in the firm of Applicant's counsel, also attached is a notice of appeal and a written address. Judgment creditor filed a counter affidavit of 23 paragraphs deposed to by Gbaa Simeon Terkura and also attached a written address. Counsel to the Applicant in his written address formulated an issue for determination;

“whether under the circumstances the Applicant has exhibited sufficient materials before this court for it to grant it a stay of execution”.

Learned counsel to the Respondent on the other hand also formulated one issue for determination: -

“whether having regard to the circumstance of this case and facts disclosed in the Judgment Debtor's affidavit, she has shown enough reasons to be entitled to the grant of this application”.

Learned counsel to the Judgment Debtor/Applicant attached a single exhibit to his application which is a notice of Appeal which was received, stamped and signed with the stamp and signature of the officer at the Appeal unit of the FCT High Court.

Having read processes and written address of both learned counsel I will adopt the issue for determination of the Judgment Debtor/Applicant :-

“whether under the circumstances the Applicant has exhibited sufficient materials before this court for it to grant it a stay of execution”.

Judgment Debtor has approached this Court seeking for an order to stay execution of this Court's judgment on the grounds that it has filed a notice of Appeal against the Court's judgment. Counsel has also attached the notice of appeal as exhibit. It is trite that the grant of a stay is not automatic upon filing an appeal. An appeal is deemed to be brought when the notice of appeal has been filed in the registry of the court below and the Appeal Court has received the records of appeal. **See UBA V. TAAN (1993) 4 NWLR (Pt. 287) Pg. 368 @ Pg. 379 para G Per Tobi JCA (as he then was).** Hence there is a great difference between filing an appeal and entering of appeal as an appeal is only entered in the Court of Appeal from the High Court. It is when Appeal is entered that an appellate Court assumes jurisdiction. Hence it is when Appeal is entered that the lower court ceases to have jurisdiction over the matter. **See NWDM LTD V. UFT ENGR LTD (2011) 8 NWLR (Pt. 1249) Pg. 308 @ 326 para F per Msheila JCA.**

From the processes before me, Judgment Debtor/Applicant has not stated that it has entered its appeal at the appellate court and it is my view and I so hold that the mere filing of a notice of Appeal without taking further steps as highlighted above will not sway the court into granting a stay of execution neither will the court grant an injunction restraining the judgment creditor from reaping the fruits of its judgment.

Consequently, motion on notice filed on 1/02/2021, Motion No: M/831/2021 is hereby struck out.

**Parties:**Absent

**Appearances:**S. T. Gbaa for the Judgment Creditor. Judgment Debtor is not represented.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**JUDGE**  
**13<sup>TH</sup> JULY, 2021**