

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT: 28**

**DATE: 4<sup>th</sup> July, 2022**

**FCT/HC/CV/1418/2021  
FCT/HC/M/2231/2022**

**BETWEEN:-**

1. BRIGHT OWIE
2. PETER OBI
3. OLIKO CHINEDU NWACHUKWU
4. ADEGOKE LAMIDI
5. BOLAJI BELLO ABRAHAM
6. WANKA BABAYO JUBRIL
7. IBRAHIM ALKALI
8. BLESSING JAMES UMUNADI
9. MUSTAPHA BASHIR ISMAIL
10. ENOHUOMA CLINTON
11. RAYVAN IBRAHIM YAJAJI
12. ADEYANJU TUNJI
13. ORAJIAKU VICTOR
14. NSEOBONG UMANA
15. IBRAHIM OLAIFA
16. KIKIOWO ILEOWO OLAMIDE

**CLAIMANTS/RESPONDENTS**

**AND**

**RICHYGOLD HOMES AND ESTATE LIMITED ..... DEFENDANT/APPLICANT**

## **RULING**

The Appellant filed a motion on notice with motion no. M/7488/2022 dated 3<sup>rd</sup> June, 2022, same is brought pursuant to order 61 Rule 1 of the FCT High Court Rules, section 36 of the constitution of the Federal Republic of Nigeria 1999 (as amended) and under the inherent jurisdiction of this Honourable Court. The Applicant is praying for the following orders:-

1. An order of this Honourable Court, granting a stay of proceedings in this suit, pending the determination of the appeal filed by the Defendants/Applicants against the ruling of this Honourable Court, delivered on the 19<sup>th</sup> day of May,2022.
2. And for such further orders or other orders that this Honourable Court may deem fit to make in the circumstances of this case.

In support of the application is a 13 paragraph affidavit deposed to by Bright Owie one of the Plaintiffs in this suit the affidavit contained the following:-

1. I am the 1<sup>st</sup> Plaintiff in the substantive suit.
2. That by virtue of my position, I am conversant with the facts of this case.
3. That I have the authority of all the other Plaintiffs to depose to this affidavit.
4. That the facts deposed to in this affidavit are facts within my personal knowledge except as otherwise expressly stated.

5. That I know as a fact that the Respondent, as Plaintiff in the substantive suit, filed an application before this Honourable Court.
6. That I know as a fact my lawyers filed a counter affidavit in opposition to the application of the Respondent.
7. I also know as a fact that this Honourable Court delivered a ruling on the application filed by the Respondent on the 19<sup>th</sup> day of May, 2022.
8. That I was shown a certified true copy of the ruling of this Honourable Court dated the 19<sup>th</sup> day of May, 2022 which was certified on the 1<sup>st</sup> day of June, 2022 in respect of the application filed by the Respondent by Peter Ugwueke Esq, Counsel handling the matter in the course of his briefing in his office at Suite 5 Naowa Plaza Lungi Barracks Abuja on the 1<sup>st</sup> day of June, 2022 at about 2:00pm.
9. That Peter Ugwueke Esq, also informed me in the course of his briefing at the place, dated and time indicated in paragraph 8 above of the following facts and I believe him to be true and correct as follows:-
  - a. That the respondents did not depose to an undertaking to be liable for damages in the event that the application proves to be frivolous or that the Court was misled into granting the application.

- b. That the failure of the respondent to depose to an undertaking for damages ought to have been fatal to the application filed by the respondent for interlocutory injunction.
- c. That the balance of convenience was in favour of the Plaintiffs, of whom I am one.
- d. That the Plaintiffs had the right to appeal against the ruling of the Honourable Court if the Plaintiffs are dissatisfied with the ruling delivered by this Honourable Court.
- e. That there is a need to apply that proceedings in the substantive suit be stayed if and when the Plaintiffs decide to appeal against the ruling of this Honourable Court.
- f. That based on the information given to me by my Counsel, I and all the other Plaintiffs in the substantive suit agreed to appeal against the ruling of this Honourable Court.
10. That based on the information give to me by Counsel, I and all the other Plaintiffs in the substantive suit agreed to appeal against the ruling of this Honourable Court.
11. That it is in the interest of justice to grant this application.
12. That the respondent will not be prejudiced by the grant of this application.
13. That I make this oath conscientiously believing same to be true and correct and in accordance with the provisions of the Oaths Act, LFN 2004.

In compliance with the rule of this Court the Applicant filed a written address dated 3<sup>rd</sup> June, 2022.

## **ISSUES FOR DETERMINATION**

The Applicant has distilled a sole issue for determination to wit:-

Whether the Applicant, on the strength of the affidavit evidence brought before this Honourable Court, is entitled to the reliefs sought in the instant application

It is trite that the integrity and impact of decision of a Court have to and ought to be preserved. That is more true of the decisions of appellate Court that sit on appeal over decisions of the lower Courts. Once a party is aggrieved with the decision of a Court, such a party, especially if good cause is shown, can move the lower Court to defer action on its decision until the Appellate Court evaluates the evidence upon which the decision of the lower Court is reached and either upholds or sets aside the judgment of the lower Court See ***TAJ AJOMALE V YAUDAT AND ANOR (1991) NGSC 4.***

Stay of proceedings is not granted as a matter of course.

Before a stay is granted, the Applicant has to show that his appeal has a reasonable chance of success and the continuation of the proceedings of the lower Court would render the success of the Applicant at appeal nugatory and unenforceable. We respectfully submit that the Applicant has provided sufficient evidence to satisfy the Court that an appeal has been filed and since an appeal does not function as a stay, advance evidence to move the Court to grant a stay of execution see ***ZAMFARA STATE GOVERNMENT OF NIGERIA AND ORS V ECOBANK***

**NIGERIA LTD AND ORS (2016)NGCA 40 AND WE URGE** this Honourable Court to so hold and resolve the sole issue for determination in favour of the Applicant.

On reply on point of law T.P Tochukwu relied on the record of the case. The ruling was delivered on 19<sup>th</sup> May, 2022 and the motion was filed on the 3<sup>rd</sup> June, 2022 by the provision of section 24(1) of the CAR. Any party shall file his written address within 14 days this appeal was outside 14 days leave was not obtained and no notice of appeal see **FALALE CONCEPT LTD VS A.G AKWA IBOM (2018)8 NWLR (PT437)** . Conditions that must in all circumstances be complied with are:-

1. There must be a competent notice of appeal in this case there is no competent notice of appeal.
2. The appeal must raised no arguable and noble issues see paragraph 1, this is the only ground of appeal.
3. The appeal must be of such nature that the appeal would affect the proceedings at the trial.
4. There must be an understanding.

counsel urged the Court to dismiss the application and award a cost of N1,000,000.00 see **ODUBA VS CV SLEP & ANOR (1997) 6 NWLR (pt 108) PAGE 188**. While reply on point of law Counsel to the Applicant also relied on the case of **FALALA CONCEPT VS A.G AKWA IBOM (supra)**.

Having reproduced the position of both Counsel substantially for and against. It is necessary taking in to consideration the earlier

application as can be seen aforesaid whether same is proper to be granted. In an application for stay of proceedings a balance must be maintained between the right of a party to have the substantive suit heard timeously and the desire of his opponent to be given adequate time to prepare for his defence or prosecute his appeal. The nature of an order of stay of proceedings and the principles which should guard a Court in exercising its discretion to grant or refuse an application for stay have been adequately stated by the Court of Appeal in ***NNPC ANOR VS ODUDIRI ENTERPRICE NIG. LTD (2008)8 NWLR (Pt 1080) 583 at 616 – 618.***

*"Stay of proceedings is a series of grace and fundamental interpretation on the right of a party to conduct his litigation towards the trial on the basis of the substantive merit of his case, and therefore the general principles 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."*

***Also In OBI VS ELER WORSK (1989)6 NWLR (PT 554) page 436-437.***

where an interlocutory order does not fully dispose of the case it would be wrong to stay proceedings because of an aggrieved party

This is so because such an order could be made the subject of appeal if it ultimately becomes necessary following the time of judgment. It saves time and expenses to proceed with the case. It is the duty of every Court to eliminate situation which may unnecessary cause delay in the administration of justice. However if a simple appeal will put an end to the proceeding in the trial Court prudence dictate that a stay of proceedings be granted see **ODOGUN VS ODOP (1980) 4 NWLR (pt 143) 224 at 2335. AROJOYE VS UBA (1986) 2 NWLR (pt 20) 101 at 112.** In granting an order of stay of proceedings the necessity to be fair to both parties see **OKAFOR VS NNAFE (1987) 4 NWLR (pt 64)page 129 -137.** A stay of proceedings can only be granted by the Court when there is no other option open to it see **CARRIBBIN TRADINGS AND FIDELITY COMPANY VS NNPC (1991) 6 NWLR (pt 197) page 352,** I have also looked at the response made by the Respondent in this appeal. I can relied based on the application filed by the Appellant t it will not be just to grant this application. The Applicant has stated that the rent payable was ₦900,000.00 and that the only issue is the increase and he went further to state that how the terms run. This can be seen from the ruling delivered by this Court and the counter affidavit filed by the Claimant Counsel.

On the otherhand I have looked at the entire application filed by the Applicant it is my view that this application should not be granted. I therefore refused to grant same reason can be seen



from the judicial authorities cited above. More importantly the counter affidavit of the Applicant have not shown any substantial facts that this Court can grant the application. I so hold, I also ordered that the Applicant shall pay the sum of ₦100,000.00 as cost.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**

Appearance

F.A Ekuohorobwe:- For the Defendant