

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO. FCT/HC/CV/376/2021

BETWEEN:

PRINCE ARTHUR EZE CLAIMANT

AND

1. MGSL MORTGAGE BANK PLC

2. DR. MRS. VIRGINIA ANOHU DEFENDANTS

RULING

DELIVERED ON THE 30TH NOVEMBER, 2021

Counsel for the Defendant has applied for a stay of proceedings in this matter on the ground of an interlocutory appeal challenging the ruling delivered by this court dismissing the preliminary objection raised by the Defendants challenging the jurisdiction of this court to hear and entertain this matter before me and counsel cited court of Appeal rules 2021 Order 4 Rule 10 and 11.

On the other hand, the claimant counsel vehemently opposed the Defendant application and cited a judicial authorities and also rely on Order 8 Rules 7 (a), 10 (1) (b) (2) and Order 4 Rule 10 of court of Appeal and argued that the Appeal filed by the Defendant has not been entered at the court of Appeal that may necessitate the stay of proceeding of this matter also submitted that the Defendant did not complied with the guide provided in form 8

pursuant to Order 8 Rule 10 (1) of Court of Appeal Rules. i.e. Acknowledgment letter from the registrar of Court of Appeal and urged the court to discountenance with the Defendant application.

Having carefully perused and listened attentively from both counsels argument canvassed, without been much labored from my understanding of crux of this application from the learned SAN had show to court that appeal had been entered at the court of Appeal that this Court has seized jurisdiction to entertain this matter and all proceeding to be staying. At this point, I want to avert the mine of learned SAN to the case of Dr. Okezie Ikpeazu Vs Dr. Sampson Ogah (2016) LPELR-40845 (CA) Per Philomena Ekpe JCA Held thus:-

“I am indeed not enthused by that decision of the trial court. It appears that the lower court had made a somer sault of the law and his decision to continue until the application based on a final decision of a lower court is indeed most appropriate. In an application against a final decision, once the appeal is entered in the appellate court, there is indeed nothing before the court to be heard or determined as the records would have left the court below having been transmitted to the appellate court. I do not agree with the

learned senior that there is no distinction between interlocutory appeal and final decisions as envisaged in the rules. It merely stands to reason that the lower court could have jurisdiction to continue with the substantive suit even when and interlocutory appeal is pending in the appellate court.”

Abubakar Datti Yahaya JCA also held thus:-

“Once an appeal is entered in his court, all court below should hands off. When a court makes a ruling in the course of hearing a substantive suit, a party dissatisfied may appeal it. The record in respect of ruling is then transmitted to the court of appeal for determination once that is done the court will cease to have the jurisdiction in respect of the subject matter of ruling but would have jurisdiction to continue with the substantive suit as the record of it has not been transmitted to the court of appeal.”

Also Order 10 Rule 11 (2) court of Appeal Rules 2021 provided thus:-

“The entering of appeal does not affect, proceeding in relation to matters in the lower court not impacted by the appeal to the court appeal.”

From the above authorities cited, case law and Rules of Appeal court 2021 incline to stay proceeding in this matter the appeal is interlocutory in nature and by the above diction of my learned Justice of the court above, I adopt same and this court have the requisite jurisdiction to proceed with the substantive suite. I so hold.

The Applicant/Defendant application has no merit and same is struck out.

I will now proceed with the substantive suit. The claimant has filed it writ of summon and also the Defendants had file a notice of intention to defend on merit.

This is my ruling.

APPEARANCE:

C. P. Oli, Esq. for the Claimant

Asiwaju Awomolo, SAN with Akinyosoye Arosanyin, Esq., Kelvin Ugiagbe, Esq. and Adeboyin Oloruniyi, Esq. for the Defendant.

Sign

Hon. Judge

30/11/2021