

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA
ON 29TH DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE

SUIT NO: FCT/HC/CV/2026/2016
MOTION NO: M/6830/2020

BETWEEN:

**ECO BANK NIGERIA LIMITED PLAINTIFF/JUDGMENT
CREDITOR/RESPONDENT**

AND

**1.BARNES AND TUBBIES LIMITED } DEFENDANTS/JUDGMENT
2.OBONG (DR) JIMMY E. NTUEN } DEBTORS/APPLICANTS**

PARTIES ABSENT. NO APPEARANCES

RULING

The Judgment Debtors/Applicants (hereinafter referred to as the Applicant) filed a motion on notice no M/6830/2020 seeking:-

“(a) Stay of execution of the judgment of this Honourable Court delivered on 19th March 2020 in Suit No. FCT/HC/CV/2026/2016 pending the hearing and determination of the Appeal filed on 23rd March 2020 against same.

(b) An order of interlocutory injunction restraining the Respondents, their servants, officers, agents, assigns, or anybody or authority acting for them or on their behalf from executing the order(s) contained in the judgment of this court delivered on 19th March 2020, pending the hearing and determination of the Appeal filed against same.”

The motion was supported by a 15 paragraph affidavit deposed to by Godday Matthew Kubile, a staff of the 1st Applicant and Assistant to the 2nd Applicant, to which is attached a copy of the Notice of Appeal marked as Exhibit A and a copy of the Application for compilation of records – marked as Exhibit B.

Also filed was a 5 paragraph further and better affidavit deposed to by Obiorah Onyinye, Litigation Secretary in Maji Emmanuel & Co, solicitors to the Applicants.

In the written address of Omale O.B. Esq in support of the application, argued by E. Maji Esq., it was submitted that the application for stay of execution of judgment will be granted where the applicant shows exceptional circumstances. See **VASWANI TRADING CO. V SAVALAKH (1972) 12 SC AT 82.**

It was submitted that the Applicants have shown by affidavit evidence that the execution of the judgement, if not stayed, will foist on the appellate court a state of complete hopelessness should the appeal succeed.

That the Grounds of Appeal filed in Exhibit A attached to the supporting affidavit raise substantial and arguable grounds of appeal.

The court was urged to exercise its discretion in favour of the Applicants in the interest of substantial justice.

See also **THE REGISTERED TRUSTEES OF F.G.C. NIG. & 2 ORS V DR KOLA ADEYINKA & 2 ORS (2010) 8 NWLR (PART 1195) 33 AT 38.**

The Judgment Creditor/Respondent (hereinafter referred to as the Respondent) filed a 5 paragraph counter affidavit of Hannah Hamo, a litigation staff in the law firm of Messrs The Light House, Solicitors to the Respondent to which are attached several documents marked as follows:

- Calculation of total judgment sum as at 20th May 2020 – Exhibit CA 1

- Copies of Caveat Emptor Notice – Exhibit CA 2, 2A and 2B respectively
- Copy of Notice to Quit – Exhibit CA 3

In the written address of IK Anyalewechi Esq. for the Respondent, argued by H. S. Atojoko Esq, two issues were raised for the determination of the court thus:-

“1) Whether considering the provisions of the extant rules of this court and the law, this Motion on Notice as constituted is competent.

2) Whether the Applicants have made out their case as required by the law to entitle them to the reliefs they are seeking in this application.”

ON ISSUE 1

It was conceded that an application seeking the exercise of the court’s discretion is not granted as a matter of course but upon special and exceptional circumstances shown by the Applicant to warrant the court to rule in his favour. The reason being that a successful litigant is not to be denied the fruits of his labour except in exceptional circumstances.

It was submitted that the Applicant failed to comply with the mandatory requirement of Order 61 Rule 2 of the Rules of this court, that is, that the Applicant failed to pay for compilation of the records of appeal within 14 days from the date of filing the Notice of Appeal, which makes the application incompetent.

Learned counsel urged that all the Applicants have is a letter requesting for compilation of the records of appeal, Exhibit A, which is not what the Rules require.

He urged that the Notice of Appeal was filed on 20th March 2020, barely a day after judgment was delivered. The motion for stay was filed on 26th March 2020 whereas the court resumed from the Covid-19 lockdown on

23rd May, 2020, which was ample time for the Applicant to pay for the compilation of records.

ON ISSUE 2

In the event that the court finds that the Applicants' application is competent, it was argued that the Applicants have failed to show exceptional circumstances, bearing in mind that this is a money judgement. That the Applicants need to show that:-

- a) Making them pay the judgment sum will make it impossible for them to prosecute the appeal,
- b) That it would be impossible to secure a refund of the judgment debt and cost from the Respondent should the appeal succeed.

See **PAMOL NIG LTD V IILAH AGRIC PROJECT LTD (2005) FWLR (PT 243) PG 787 AT 799 PARA F-H; 802 PARA F.**

It was urged that while the Respondent has shown that it is in the position to refund the judgment sum in the unlikely event that the intended appeal succeeds, same cannot be said of the Applicants who have made efforts to dispose of the mortgaged property.

Finally it was urged that if the court is minded to grant the application that it be granted on condition that the Applicants deposit the judgment sum, as shown in Exhibit A, in an interest yielding account in the name of the Chief Registrar of the court within 14 days from the date of the court's ruling, or secure the delivery to the Registrar of this court, a bank bond/guarantee from either United Bank for Africa Plc, Zenith Bank or First Bank within 14 days of the ruling of this court failing which the stay, if granted be vacated. See **MOBIL PRODUCING (NIG) UNLIMITED V UDO (2008) ALL FWLR (PART 421) PG 951 AT 959 PARA C; PG 963, PARAS A & D -E.**

The Applicants filed a 5 paragraph further and better affidavit on 7th July 2020, deposed to by ObiorahOnyinye Jane, Litigation Secretary in the law office of Maji Emmanuel & Co, solicitors to the Applicants.

RESOLUTION

I have considered the application, the affidavitson both sides and written and oral submissions of learned counsel for the parties.

The issue before this Honourable court is whether the Applicants have demonstrated that they merit the grant of this application in their favour.

Order 61 Rules of this court which provide:-

“An applicant for stay of execution of a judgment shall pay for the compilation of the records of appeal within 14 days from the date of filing a notice of appeal and where the costs of compilation of records is not paid, the Respondent may apply to strike out the application or discharge the order if already granted.”

There is nothing before this court to show that the Applicants complied with Order 61(2). Mr Maji in his argument admitted their non-compliance but blamed it on Covid period.

I have deliberately chosen to give the Applicants the benefit of the doubt that the Covid restrictions hampered their compliance with Order 61 (2) Rules of this Court to enable the court hear their application for stay of execution of judgment and interlocutory injunction on its merits.

The law is indeed trite that it is not the practice of the courts to deprive a successful litigant of the fruit of his success by ordering a stay of execution of its judgment pending appeal, except in special or exceptional circumstances. See**VASWANI TRADING CO. V SAVALAKH (Supra); MOMAH V VAB PETROLEUM INC. (2000) 1 SC 142.**

It is the duty of the Applicants to place before the court the facts upon which the court can exercise its discretion in their favour in their affidavit in support of the application.

I have perused the affidavit and further affidavit in support of this application and I must say that I do not find any exceptional circumstances disclosed therein.

I have looked at the Notice of Appeal filed by the Applicants and the grounds of appeal raised therein. I do not find them substantial or recondite.

It is trite law that even where the grounds of appeal are substantial, that alone is not sufficient to grant a stay of execution. See **MOMOH V VAB PETROLEUM (supra)**.

The Applicants' affidavits have disclosed little or no facts to sustain this application. They have not demonstrated how a refusal of this application will foist on the Court of Appeal a state of complete hopelessness should the appeal succeed or render nugatory the judgment of the Court of Appeal if their appeal is successful.

The judgment of this court is a monetary judgment.

Generally the only ground for a stay of execution of a money judgment is an affidavit showing that if the judgment debt is paid, there is no reasonable probability of getting back the money if the appeal succeeds. See **GUINEA INSURANCE PLC V MONARCH HOLDINGS LTD (1996) 3 NWLR (PT 436) 365 AT 370**; And this is not the case here, neither have the Applicant pleaded that they cannot prosecute the appeal if they pay the judgment debt. See **DAILY TIMES V KUSAMOTU (2002) LPELR-10993 CA**.

On the other hand, the Respondent has deposed in paragraph 3 (n) of the counter affidavit thus:-

“That the Judgement Creditor is a thriving and financially sound commercial bank and has diverse properties and assets all over Nigeria and in a position to refund the judgment sum in unlikely event that the judgment succeeds in the Court of Appeal.”

This averment was not denied in the Applicants’ further affidavit. The courts have held that where the ‘res’ to be stayed is money, the fact that the Judgment Creditor is affluent and substantially financial may be a consideration in favour of a refusal rather than a grant of the application for stay. See **OGINNI V IMB LTD (1994) 3 NWLR (PT 130) 89 AT 105; FAGBOHUN V OGUNLEYE 2012 LPELR- 14804 (CA) PARA B per Uwa JCA.**

There is therefore nothing that has been placed before this Honourable court to warrant the exercise of its discretion in the Judgment Applicants’ favour.

Accordingly, I hold that this application for stay of execution of judgment and interlocutory injunction pending appeal lacks merit.

Same is hereby dismissed in its entirety.

Hon. Judge