

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT KUBWA, ABUJA**  
**ON TUESDAY THE 21<sup>ST</sup> DAY OF SEPTEMBER, 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE K. N.OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/CV/2702/20**

**BETWEEN:**

**PASTOR IGBADI DAVID OGUH**

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**PLAINTIFF**

**AND**

**CHIEF CLETUS IBETO**

**MR. IKECHUKWU E. IBETO**

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**DEFENDANTS**

**BENCH RULING**

It is the right of a party who has filed an application to withdraw same anytime. The Court has no reason to listen unless there is clear evidence that it is going to overreach the party on the other side of the aisle. In that case, the Court can suo motu award a cost.

The Judgment Debtor had filed two (2) Motions for Setting Aside the Judgment of this Court delivered on the 17<sup>th</sup> day of June, 2021. He served this Court Notice of Appeal. But there is no evidence to show that the Record of Appeal has been transmitted to the Court of Appeal.

This Court does not believe that there has been transmission of Record to Court of Appeal because the case file is still here. Moreover, the Exhibits are also here.

The Judgment Debtor applied for withdrawal.

The Judgment Creditor had responded to the Motion but had also withdrawn their Counter. It means that there is no pending Motion to Set Aside or Stay Execution of this Judgment.

This Court grants the said application and then holds that the two (2) applications are hereby STRUCK OUT.

The Judgment Creditor applied that since there is no Motion to Stay and the Judgment is not Set Aside based on the withdrawal of the two (2) applications by Judgment Debtor, he applied that the Court gives an Order that the Judgment Sum be placed in an interest yielding Account of the FCT High Court pending the determination of the Appeal. The Judgment Debtor vehemently opposed that. The Judgment Creditor's reason is that while the parties journey to the higher Court, there will not be any reason to come for execution later if they win. That if the Judgment Debtor wins, he will collect the Judgment Sum at the end of the day. That doing so will be in the interest of justice and fairness.

This Court, having not seen any evidence of transmission of Record of Appeal in this case, cannot base its decision on speculation, unfounded and unsubstantiated rumor of a pending Appeal. Merely filing a Notice of Appeal is not Transmission of Record of Appeal. The Judgment

Debtor's challenge of the application by Judgment Creditor is not strong.

The application is apt and will be in the best interest of both parties. This Court therefore grants same to wit:

That the Judgment Sum in the Judgment of this Court delivered on 17<sup>th</sup> June, 2021 in Suit No.: FCT/HC/CV/2702/2020 being of One Hundred and Sixty One Million Naira (₦161, 000,000.00), be paid into an Interest Yielding Account of the FCT High Court – Deputy Sheriff, pending the determination of any pending Appeal and until the final determination of same.

It is imperative to state that the Suit Number cited by the Judgment Debtor as the Suit pending at Court of Appeal Abuja Division is not the same as this Suit. The Suit Number he quoted is FCT/HC/CV/2303/2020. This Suit is FCT/HC/CV/2702/2020.

**This is the Ruling of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2021 by me.**

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**K.N. OGBONNAYA**  
**HON. JUDGE**