

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU
SUIT NO: FCT/HC/CV/113/2018
MOTION NO. M/4186/2021
ON THE 1ST NOVEMBER, 2021**

BETWEEN:

- 1. SOLOMON .E. NWADIOGBU**
 - 2. EMILINKS LIMITED - APPELLANTS/APPLICANTS**
- AND**
- 1. HAJIYA MARYAM BIBINU**
 - 2. THE DEPUTY SHERIFF/THE CHIEF REGISTRAR
HIGH COURT OF FED. CAP. TERR., ABUJA - RESPONDENTS.**

Appearance:

Kauna Penzin, esq, with Reuben Kinya .T. Miriam Atser and Abdullahi Aforlayan for the Claimant/Judgment Creditor.

Olawole .J. Adesina for the 2nd Respondent.

No Appearance for the Applicant.

RULING

By a motion on notice dated 5/7/2021 the Judgment Debtor/Applicant seek for the following reliefs.

1. An order staying the Execution of the Judgment of this Honourable Court delivered on the 31/3/2021 by His Lordship Justice Danlami .Z. Senchi of Court 12 (as he then was) pending the hearing and determination of the

Appellants/Applicant's appeal filed on the 17th day of June, 2021 against the Judgment of this Honourable Court.

2. And for such Order or further Order(s) as the Honourable Court may deem fit to make in the circumstance of this case.

The grounds upon which the application was sought are as contained on the face of the motion paper.

The application is supported by a 6 paragraph affidavit deposed to by one Miss Medinat Legbeti. The affidavit had two annexures attached to it marked as Exhibit 1&2, the notice of Appeal and application for Certify True Copy (CTC) of Record respectively. Also filed is a written address of Counsel wherein a sole issue for determination was raised, to wit.

Whether this Honourable Court can exercise its discretion in favour of the Appellants/Applicants by granting this application for an Order of stay of Execution of Orders 3, 4, 5, 6, 7, 8 and 9 of the enrolled order in the Judgment entered by this Honourable Court on the 28th day of January, 2019 pending the hearing and determination of the Appeal.

At the hearing of the matter on the 25/10/2021, Counsel for the Appellants/Applicants relied on all the paragraphs of the affidavit in support and a further affidavit dated 15/10/2021 with 4 annexures and adopted the two addresses of Counsel as the Legal argument in support of the Application.

In response, the 1st Respondent filed a Counter affidavit of 8 paragraphs dated 11/10/2021 and deposed to by one Reuben Noah Harbosoon. The 1st

Respondent also filed a written address of Counsel wherein a lone issue for determination was formulated, to wit:

Whether the Appellants/Applicants are entitled to the exercise of discretion warranting the Honourable Court to make an Order depriving the successful Plaintiff of the fruits of her Judgment delivered by this Honourable Court on the 31st day of March, 2021?

On the 25th of October 2021, when the matter came up for hearing Learned Counsel for the 1st Respondent relied on all the paragraphs, of the affidavit and adopted the written address as their Legal argument in support for this Application.

It is pertinent to note at this point that when the matter 1st came up for hearing on the 18 of October 2021, this Court directed that Counsel will address the Court orally on whether or not the application is proper in the light of the pendency of the Appeal which has been duly entered.

In compliance with this direction, Counsel for the Appellants/Applicants submitted that this Court has the power to grant stay of Execution. And that both this Court and the Court of Appeal can be approached for a stay of Execution of a Judgment. Finally, that the exercise of the jurisdiction of the Court will depend on the circumstance of such case. Counsel placed reliance on the authority in P.H.M.B V UTOMI (1999) 13 NWLR PART 636 AT 572.

In response, the Learned Counsel for the 1st Respondent argued that Appeal has been duly entered as indicated on the Applicants further affidavit, thus,

this Court lacks the jurisdiction to entertain this application and urge the Court to strike out the Application. Learned Counsel placed reliance on the authorities in ONNOGEN V FRN (2020) NWLR PART 1738 PAGE 289. Where it was held that the proper Court with jurisdiction is the Court of Appeal. Others are DURU V AGU (2020) LPELR – 51955 PAGE 37 (CA) TSA IND NIG LTD V. FBN (2018) LPELR – 43562 PAGE 8 AT 20 PARAGRAPHS E – F (CA)

The submission of counsel, in line with the direction of the court, borders on the jurisdictional competence of this court, thus i am minded to consider it first.

The issue to be addressed here is

Whether this court can entertain & grant an application for stay of Execution of it judgment, where an appeal against the judgment is duly filed and pending before the court of appeal?

In paragraph 3g of the Appellant/Applicant further and better affidavit the following was averred.

“That the Appellant Applicant’s record of Appeal was received on the 14 day of October, 2021 and entered by the court of Appeal registry on the same date. A letter of acknowledgment of the record of appeal by the court of appeal showing clearly the names of parties and appeal number “CA/ABJ/CV/731/202”dated 14/10/2021 is hereto attached and marked annexure 4”

In the case of IZU & ors Vs. Ikeh & ors (2019) LPELR – 47813 (CA) the court of appeal addressed this question on what instance will an appeal be deemed to have been entered. The court held

“The law is that the court of appeal becomes seized of an appeal when the appeal is entered. And an appeal is entered from the date the record of appeal is transmitted to the court of appeal.

See also LEADERS AND COY LTD VS KUSAMOTU (2008) All FWLR (pt/405)1880.

Having been so guided, I find that the appeal against the judgment of this court against which the Appellant/Applicant seeks a stay of execution has been duly entered in line with paragraph 3g earlier quoted in this ruling.

The question that begs for an answer at this point is, which is the proper court to entertain this matter?

In Okoh & ors V Nwobodo & Anor (2017) LPELR – 42726) (A) the court of appeal held that:

“After an appeal has been entered and until it has been finally disposed of, the court (court of Appeal) shall be seized of the whole of the proceedings as between the parties thereto and except as maybe otherwise provided in this order, every application therein shall be made to the court and not to the court below for transmission to the court”.

It is clear to me, and I hold the firm view, that this court lacks the jurisdiction to entertain this matter given the authority in the above decision. I shall not waste the time of the court or the parties where the position is so clear. The Appellant/Applicant should file this matter at the appropriate court. Application is hereby struck out for lack of courts competence to entertain same.

Signed
Hon. Judge
1/11/2021

Penzin – we are grateful.

Signed
Hon. Judge
1/11/2021.