IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON THURSDAY, THE 09TH DAY OF DECEMBER, 2021
BEFORE THEIR LORDSHIPS:
HON. JUSTICE A. I. AKOBI (PRESIDING JUDGE)
HON. JUSTICE ABUBAKAR HUSSAINI MUSA (HON. JUSTICE)

APPEAL NO: CVA/937/2021
SUIT NO.: CV/76/2021
MOTION NO.: M/268/2021

BETWEEN:

ABDULMAJEED ABDULSALAM — **APPELLANT/RESPONDENT**

AND

AKINOLA KAZEEM AKINJIDE — **RESPONDENT/APPLICANT**

RULING DELIVERED BY HON. JUSTICE A. H. MUSA

This Ruling is in respect of an application brought by the Respondent/Applicant.

By way of a Motion on Notice with Motion Number M/268/21 dated the 29th of October, 2021 and filed on the 1st of November, 2021, the Respondent/Applicant brought this application seeking for the following reliefs:

1. *An Order directing the Appellant/Respondent to pay into the registry of this Honourable Court or into an interest yielding account with a reputable bank, the sum of ₦4,000,000.00 (Four Million Naira) being the proceed of the judgment delivered by His Worship Mabel T. Segun Bello on 20th August, 2021 in Plaint No. CV/76/2021 between Akinola Kazeem Akinjide v. Abdulmajeed Abdulsalam, pending the determination of this appeal.*

2. *A Declaration that the party who succeeds in this appeal shall be entitled to the ₦4,000,000.00 (Four Million Naira) deposited in the Court's registry or in the interest yielding account, along with the accrued interest.*
3. *An Order for security or the seizure and attachment of the Appellant/Respondent's property of commensurate value to the judgment sum of ₦4,000,000.00 (Four Million Naira) only, upon failure to pay the security into the registry of the Court or into an interest yielding account with a reputable bank.*
4. *And for such further order or orders that this Honourable Court may deem fit to make in the circumstances.*

The grounds for the application, as evinced in the motion papers, are as follows:-

1. *The Appellant/Respondent is indebted to the Respondent/Applicant to the tune of ₦4,000,000.00 (Four Million Naira) only as at 20th August, 2021, pursuant to the Judgment of His Worship Mabel T. Segun Bello delivered on 20th August, 2021 in Plaint No. CV/76/2021 between Akinola Kazeem Akinjide v. Abdulmajeed Abdulsalam.*
2. *The Appellant/Respondent currently has the means to pay the Judgment sum and he has not refuted same at any point at the trial Court.*
3. *That the attitude and disposition of the Appellant/Respondent has shown his determination to evade the payment of the Judgment sum through any possible means.*

4. *Failure of the Court to make an Order for preservation of the* res *of this case can render the judgment of this Court nugatory.*
5. *It is in the interest of justice for the Appellant/Respondent to pay the judgment sum into the Court's registry or an interest yielding account, pending the outcome of the appeal.*

The Motion on Notice was supported by a 13-paragraph affidavit deposed to by one Oche Samuel Alechenu, a Litigation Secretary in the law firm of ALAN ATTORNEYS, Counsel to the Respondent/Applicant in this appeal and a written address which embodies the legal argument of the Respondent/Applicant in support of the application. The Respondent/Applicant also attached one documentary exhibit in support of the application, to wit, a Motion *Ex Parte* for a Garnishee Order Nisi and all the accompanying documents and exhibits.

In the affidavit in support of the application, the deponent on behalf of the Respondent/Applicant swore that the Respondent/Applicant got Judgment in the suit with Plaint Number CV/76/2021 between Akinola Kazeem Akinjide v. Abdulmajeed Abdulsalam which was heard and determined by the Chief District Court I *coram* His Worship Mabel T. Segun Bello and Judgment delivered on the 20th of August, 2021. He further averred that a subsequent application by the Appellant/Respondent to the Court to set aside its Judgment was dismissed by the Court.

The deponent stated that the attitude of the Appellant/Respondent disclosed an intention to frustrate the Respondent/Applicant from enjoying the fruits of his

successful litigation at the Chief District Court I. He further revealed that the Respondent/Applicant had already commenced Garnishee proceedings to enforce the Judgment of the trial Court. He swore that the Appellant/Respondent had the means to pay the Judgment sum and had never disputed this fact at any point during the trial of the suit. He stated also that since the Judgment of the trial Court remained valid until it was set aside, it would be apposite if the Judgment sum was preserved until the determination of the appeal.

In the written address in support of the application, the Respondent/Applicant distilled one issue for determination, to wit: "*Whether in the circumstances of this case, this Honourable Court can grant the reliefs sought by the Judgment Creditor/Respondent/Applicant?*"

In his argument on this sole issue, learned Counsel submitted that the position of the law had been established that the duty of every Court was to ensure that its adjudicatory time was not expended on the resolution of mere academic issues. To this end, therefore, it was pertinent to preserve the subject matter of any dispute before the Court. In support of this assertion, learned Counsel cited the provisions of Order 50 Rule 24(1)(a) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. He also quoted with approval the dicta in ***Ofoma v. Ofoma & Anor (2013) LPELR-20166(CA); Kigo (Nig.) Ltd v. Holman Bros (1980) 5 – 7 S.C. 60*** and ***United Spinners (Nig.) Ltd v. Chartered Bank Ltd (2001) LPELR-3410 (SC)***. In all these cases, the Court

held that the primary duty of the Courts was to preserve the *res* so that at the end of the adjudicatory process, the decision reached would not be rendered nugatory.

Learned Counsel further contended that since the Appellant/Respondent had failed to obey the Order of the trial Court with regards to the payment of the judgment sum, it was within the powers of this Court, pursuant to the provisions of Order 50 Rule 24(1)(d) of the Rules of this Court, to seize and attach the property of the Appellant that was equivalent to the Judgment sum of ₦4,000,000.00 (Four Million Naira) only.

Considering that the Order sought in the application was for the Judgment sum to be paid into the registry of this Court or, in the alternative, to an interest yielding account pending the resolution of the appeal brought by the Appellant/Respondent herein, learned Counsel for the Respondent/Applicant contended that this application would not occasion any injustice to the Appellant/Respondent; since any party in whose favour the appeal is determined could access the monies so deposited. He urged this Court to grant the prayers as contained in the Motion papers.

The Appellant/Respondent did not file any process in opposition to this application. However, when this appeal came up on the 25th of November, 2021, learned Counsel for the Appellant/Respondent informed this Court that he would respond orally on point of law. Counsel for the Respondent/Applicant stiffly opposed the application, predicating his opposition on Order 43 Rules 1

and 3 of the Rules of this Court. This Court agreed with learned Counsel for the Respondent/Applicant when it held thus:

> "***We totally agree with the Respondent/Applicant that reply on point of law must be made in writing and not orally. As such, the Appellant/Respondent reply on point of law orally is hereby refused***."

I have considered this application and hereby adopt the sole issue formulated by the Respondent/Applicant herein, namely: "***Whether, considering the circumstances of this case, this Honourable Court cannot grant the reliefs sought by the Respondent/Applicant herein?***"

In resolving this issue, the appropriate *fons et erigo* is the provision of Order 50 Rule 24(1)(a) which provides that:

> "***(1) On application being made for stay of execution under any enactment establishing the lower Court, the lower Court or the Court may impose one or more of the following conditions:***
>
> (a) ***That the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property affected by the decision or judgment appealed from, or give security to the satisfaction of the Court for the said sum.***"

The mischief that this provision seeks to remedy is a situation where the judgment debtor foists a *fait accompli*, or a state of helplessness and hopelessness on the Court with regards to the *res* of the case.

The issue in this application is quite straightforward. There is a Judgment against the Appellant/Respondent wherein he was ordered to pay the sum of ₦4,000,000.00 (Four Million Naira) only to the Respondent/Applicant. The Appellant/Respondent has appealed against that Judgment. The Respondent/Applicant has brought this application to preserve the *res*, that is the ₦4,000,000.00 (Four Million Naira) only pending the determination of the appeal. Is this application meritorious? This question can be answered through the lens of judicial extrapolation of the above-quoted Rule of this Court.

In the case of ***Ofoma v. Ofoma & Anor (2013) LPELR-20166 (CA)*** cited by Counsel for the Respondent/Applicant, the Court held that "***The law is that the Court from which an appeal lies as well as the Court to which an appeal lies have a duty to preserve the* res *for the purpose of ensuring that the Appeal, if successful, is not nugatory. The power to preserve the* res *has always been inherent though in certain cases it is statutory.***" In ***United Spinners (Nig.) Ltd v. Chartered Bank Ltd (2001) LPELR-3401 (SC)***, again, quoted by Counsel for the Respondent/Applicant, the apex Court held that "***The primary duty of all Courts (both trial and appellate) is to preserve the* res *(subject matter of litigation) so that at the end of the exercise, whatever decision is reached is not rendered nugatory***."

I have studied the application and reliefs contained therein. The reliefs are tailored towards preventing a state of *fait accompli* being foisted upon the Court or the successful party upon the determination of the appeal. In ***Yusuf v. Omokanye & Anor, (2012) LPELR-15340 (CA)***, it was held at ***pp. 8 paras A – A*** that "***Where there is a competent appeal in the circumstances, parties are not ordinarily permitted to take steps that will render the decision of the appellate court nugatory, even though an appeal in itself does not amount to a stay of execution. See Olori Motors & Company Ltd & 2 Ors v. Union Bank of Nigeria Plc (2006) All FWLR (Pt. 318) 732, (2006) 26 NSCQLR 168***." See also ***Vaswani Trading Co v. Savalakh & Co (1972) LPELR-3460 (SC) at pp. 11 – 12, paras B***.

In the case of ***Sani v. Kogi State House of Assembly &Ors (2021) LPELR-53067 (SC)***, the Supreme Court quoted with approval its decision in ***S.P.D.C. (Nig.) Ltd & Anor v. Amadi & Ors (2011) LPELR-3204 SC*** per Muntaka-Coomassie JSC where he held *inter alia* that,

> "***The Court has a duty to ensure that the* res *is intact, not necessarily for posterity, but for the immediate benefit and pleasure of the party who is finally in victory in the litigation process. This is necessary because if the* res *is destroyed in the course of litigation before the party gets Judgment, then he has no property to make use of in the way he wants as the owner and the direct result in such a circumstance is that the victor has on***

his hand a barren victory, a victory without a difference, an empty victory. He leaves the Court empty handed. In real fact he leaves the Court in victory without victory. If the* res *is destroyed, annihilated or demolished before the matter is heard on appeal, then this Court will be reduced to a state of hopelessness and that will be bad, very bad indeed. This Court, like every other Court cannot give an order in vain. The Court will then be reduced to a situation where it can bark by the use of its judicial powers under section 6(6) of the 1979 Constitution but cannot bite."

I agree with the decision of Their Lordships. For the purpose of clarity and immediacy these are the reliefs the Respondent/Applicant seeks in this application:

1. **An Order directing the Appellant/Respondent to pay into the registry of this Honourable Court or into an interest yielding account with a reputable bank, the sum of ₦4,000,000.00 (Four Million Naira) being the proceed of the Judgment delivered by His Worship Mabel T. Segun Bello on 20th August, 2021 in Plaint No. CV/76/2021 between Akinola Kazeem Akinjide v. Abdulmajeed Abdulsalam, pending the determination of this appeal.**
2. **A Declaration that the party who succeeds in this appeal shall be entitled to the ₦4,000,000.00 (Four Million Naira) deposited in the**

Court's registry or in the interest yielding account, along with the accrued interest.

3. **An Order for security or the seizure and attachment of the Appellant/Respondent's property of commensurate value to the Judgment sum of ₦4,000,000.00 (Four Million Naira) only, upon failure to pay the security into the registry of the Court or into an interest yielding account with a reputable bank.**
4. **And for such further order or orders that this Honourable Court may deem fit to make in the circumstances.**

All the reliefs sought above are hereby granted as prayed. In addition to the above, it is hereby ordered that the Judgment sum of ₦4,000,000.00 (Four Million Naira) only be paid into an interest-yielding account pending the determination of this appeal.

This is the Ruling of this Court delivered today, the 09th day of December, 2021.

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HON. JUSTICE A. I. AKOBI
PRESIDING JUDGE
09/12/2021

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HON. JUSTICE A. H. MUSA
HON. JUDGE
09/12/2021