

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO.4, MAITAMA-ABUJA ON THE 28TH DAY OF
FEBRUARY, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE. U.P KEKEMEKE

SUIT NO. FCT/HC/CV2852/21

COURTCLERKS: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

GOOD HOMES DEVELOPMENT COMPANY LIMITED.....APPLICANT

AND

DR. MUSTAPHA SAKI BELLO.....RESPONDENT

RULING

This application is for an Order of stay of execution of the Judgment of this Court delivered on 16/12/2020 pending the hearing and determination of the appeal pending at the Court of Appeal.

Learned Counsel rely on the 19 paragraph Affidavit filed in support deposed to by Chidinma I. Obilor.

She deposes that Judgment was entered against the Defendant/Applicant in this Court on 16/12/2020.

That the Defendant being dissatisfied appealed to the Court of Appeal. That he applied for Records of Appeal. That Notice of Appeal and receipt of payment is Exhibit A.

That records will soon be transmitted to the Court of Appeal.

That the Judgment is monetary Judgment.

That it will be difficult to recover the money from the Respondent.

That the Respondent will not be prejudiced. The Respondent's Counsel contends that the Motion is incompetent.

That it was not filed in compliance with Order 62 (1) (2) and (3) of the rules of Court.

That it does not contain grounds for the application.

That no fees for compilation were paid.

Order 61(1) of the rules of Court states:

“Where any application is made to the Court for stay of execution or proceedings under any Judgment or decision appealed against, such application shall be made by Motion on Notice supported by Affidavit stating the grounds upon which a stay of execution or proceedings is brought.”

Learned Counsel to the Applicant's contention is that the grounds are contained in the Affidavit filed in support.

The law is trite, equity does not look at the form but the substance.

I have read the Affidavit of the Applicant, the grounds for the application are contained therein even though they are not stated on the face of the Motion paper. Rule 2 of Order 61 states that an application for stay of execution of a Judgment shall pay for compilation of the records of appeal within 14 days from the date of filing the Notice of Appeal.

The Notice of Appeal is dated 11/01/21 but filed on 22/01/21. There is no evidence of payment for compilation of records even though it is said to be marked Exhibit A.

The law is that where the cost of compilation is not paid, the application for stay of execution is incompetent and should be struck out.

It is my view and I so hold that the Defendant/Applicant has not satisfied Order 61(2) of the rules of Court. The application is therefore incompetent and it is accordingly struck out.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

28/02/22.

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BELLO.....RESPONDENT

Parties absent.

J.D. Musa For the Appellant/Applicant.

Danjuma G. Ayeye with Edet Akpan for the Respondent.

Signed.

Hon. Judge

28/02/22