

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA ON THE 14<sup>TH</sup> DAY OF MARCH, 2022**  
**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO.FCT/HC/CV/2547/19**

**COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.**

**BETWEEN:**

**MR. CHARLES OSIYABIA.....APPLICANT**

**AND**

- 1. INSPECTOR GENERAL OF POLICE.....RESPONDENTS**  
**2. MR. MICHAEL OKPARA**

**RULING**

I have read the Motion and Affidavit. I have equally considered the Written Address of Counsel. The Applicant's deposition is that this Court delivered a final judgment in this suit on 23/11/21. That 2<sup>nd</sup> Defendant/Applicant is aggrieved. He filed a Notice of Appeal dated 20/12/21. He undertakes to indemnify the Respondent by way of cost. That it is in the interest of justice to grant the application.

An Order for Stay of Execution pending appeal is made to prevent the successful party from reaping the fruits of his success at the trial.

Thus, a Stay of Execution being a grave interruption of the interest of the successful party in a legal duel, any person who seeks such equitable remedy must have strong facts.

The grant or refusal of an application such as this is at the discretion of the Court. The Applicant must show special or exceptional circumstances why the order should be made because the Court will not make an order depriving a successful litigant of the fruits of his judgment.

See ***UHEMBE VS. AWAV (2006) 7 NWLR (PT. 978) 1.***

The special circumstances earlier referred to include:

- (1) Strong and substantial grounds of appeal which threatens the res.
- (2) If it is monetary as in this case and the victorious party is poor and may not be able to redeem the money should the substantive appeal be decided against him.

See ***OFORDEMEN VS. ONYEGBUNAM (2006) 5 NWLR (PT. 974) 549 CA.***

In the instance case, there is nothing to suggest that the Respondents are poor and will not be able to pay back the judgment debt should the appeal succeeds. The law is that where the res of an action is a quantified amount, an Applicant may obtain a stay of execution

pending appeal if he can show that the Respondent will be unable to repay the money.

See ***IGWE VS AMUCHENWA (2005) 10 NWLR (PT. 933) 420.***

There is no such deposition in the Applicant's Affidavit.

By Order 61(2) of the Rules of Court, an Applicant for stay of execution of a judgment shall pay for the compilation of records of appeal within 14 days from the date of filling a Notice of Appeal and where the cost of compilation of records is not paid, the Respondent may apply to strike out the application.

In the instant case, there is nothing to show that Applicant applied for compilation of records of appeal neither is there evidence that there is payment for same. In the circumstance of this case, this application lacks merit and it is dismissed.

.....  
**HON. JUSTICE U.P. KEKEMEKE**  
**(HOH. JUDGE)**  
**14/03/22**