

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

**HOLDEN AT COURT 4, MAITAMA ABUJA ON THE 18TH DAY OF
JANUARY 2022**

BEFORE HIS LORDSHIP HON: JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/1456/14

COURT CLERK: JOSEPH BALAMI ISHAKU & ORS.

BETWEEN:

PPPRA STAFF MULTI-PURPOSE

CO-OPERATIVE SOCIETY LTDPLAINTIFF

AND

1. UNION HOMES SAVINGS & LOANS PLCDEFENDANT

2. UNION BANK OF NIGERIAN PLC.....GARNISHEE/APPLICANT

RULING

The 2nd Judgment Debtor/Applicant's application prays for:

1. An Order of Stay of Execution of the Judgment of the Court delivered on the 16/02/16 pending the determination of the appeal against the Judgment.

And for such further Order as the Court may deem fit to make in the circumstance.

Learned Counsel relies on the 10 paragraph Affidavit in support.

The deponent Z.T. Akinde, a Legal Practitioner of Plot 2201 Katampe District deposes that the Court made a Garnishee Order Nisi against the Applicant on 19/10/16 attaching the sum standing to the credit of the Judgment Debtor with the Garnishee Bank/Applicant.

That on receiving the Order Nisi, Applicant filed an Affidavit to show cause. The Court however made the Order Absolute.

The Applicant appealed against the Judgment to the Court of Appeal. The Notice of Appeal, receipt of filing are Exhibits 1 and 2. That when the Notice of Appeal was served, the Judgment Creditor's Counsel opened negotiation for settlement.

That at the time the Order was made absolute, the Judgment Debtor has no account with the Bank.

After various meetings, parties agreed that the Applicant should pay N50 Million being the amount kept in trust for the Judgment Debtor by the Garnishee Bank.

That the appeal filed and the accompanying Motion on Notice for Stay of Execution was not moved in view of the amicable resolution of the matter.

That in October 2020, the 2nd Judgment Debtor was served with a Motion for Change of Counsel. The Court granted the application and set down the Motion for stay of execution for hearing.

The Court struck out the Motion for lack of diligent prosecution. Despite the payment of the said sum for settlement, the Judgment Creditor is making subterraneous moves to execute the Judgment against the bank.

That in noticing the actions of the Judgment Creditor, Applicant filed a Suit CV/576/2021 to determine the question whether the payment of N50 Million by the Garnishee Bank does not discharge the Bank of its liability under the garnishee proceedings.

If it is not granted, the Judgment Creditor will take steps to execute the Judgment.

The Judgment Creditor also relied on its Counter Affidavit deposed to by Morrison Onunu of Suite 10, 2nd Floor, Standard Plaza, Plot 1248 Aminu Kano Crescent Wuse 2, Abuja.

That Judgment Debtor did not report that any steps are being taken for amicable settlement until 18/01/21 when the Court struck out the Motion for stay of execution for lack of diligent prosecution.

That it is well over 5 years since the filing of the Notice of Appeal, no records have been transmitted to the Court of Appeal.

No agreement was reached for settlement to compromise the Judgment of this Court.

I have also considered the Addresses of Counsel. The Judgment upon which the Garnishee Order Absolute was hinged was delivered on 30/09/14 more than 7 years ago.

The Garnishee Order Absolute, the subject of the appeal was made 16/02/16 about 5 years ago. The Notice of Appeal and Receipt against the Order Absolute is Exhibit

1 and 2 dated 01/03/16. The law is that an Applicant seeking for stay of execution as in this case must show special and 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 success.

See ***OFORDEME VS. ONYEGBUNA (2006) 5 NWLR (PT.974) 549.***

Generally in an application for stay of execution pending appeal, the guiding principle is that a victorious party must not rightly be deprived of the fruits of his victory unless a special circumstance is advanced to justify stay of execution. Special circumstance includes strong and substantial grounds of appeal which threatens the res and where the res is at the risk of destruction or where it can be altered as to make it irreversible to its original state.

See ***VASWANI TRADING CO. VS. SAVALAKHI & CO. (1972) 1 ANLR 483.***

I have read through Exhibit 1, the Notice of Appeal. I have equally perused the two grounds of appeal which are in fact just 1. They are not strong and substantial.

The Judgment in the instant case is monetary Judgment. There is no deposition in the Judgment Debtor's Affidavit that the Judgment Creditor will not be able to pay the Judgment debt in the event of a successful appeal.

See ***FATOYINBO VS. OSADEYI (2002) 11 NWLR (PT.776) 384.***

That the parties engaged and reached a settlement after Judgment and the conclusion of Garnishee proceedings is not a special circumstance that would make a Court deprive a successful litigant the fruit of its Judgment.

In any case, the existence of such agreement is refuted by Judgment Creditor.

Up till now, there is nothing to show that records have been compiled and transmitted to the Court of Appeal 5 years after.

The Applicant has failed to show special and or exceptional circumstances to warrant the grant of a stay.

The broad basis of the exercise of the Court's discretion in this matter is justice and equity.

It is my view and I so hold that it will not be just and equitable to exercise my discretion in favour of the 2nd Judgment Debtor/Applicant.

The application fails and it is dismissed.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

18/01/22.

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Parties absent.

Morrison Onunu for the Judgement Creditor with Peter O. Abang.

Court: Ruling Delivered.

Signed.

Hon. Judge.

18/01/2022

