

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT COURT No. 7, APO, ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA**

**SUIT NO: FCT/HC/CV/2435/2021**

**BETWEEN:**

ABEH SIGNATURE LIMITED                      ----                      CLAIMANT

**AND**

ASABE WAZIRI                                      ----                      DEFENDANT

**RULING**

**DELIVERED ON THE 14<sup>TH</sup> MARCH, 2022**

This instant application was filed by the Applicant on the 17<sup>th</sup> of February 2022. This instant application prays for the following reliefs:

- a. An order of this Honourable Court to stay the execution of the judgment of this Court delivered on the 17<sup>th</sup> Day of February, 2022 sitting as Court No. 7 Apo, Abuja in suit No. CV/2435/2021 Between Abeh Signature Limited V. Asabe Waziri.
- b. AND for such further or other orders as this Honourable Court may deem fit to grant in the circumstances.

The application is supported by a 4 paragraph affidavit deposed on the 18<sup>th</sup> February 2022 by Justina Igiri. Two exhibits were attached to the affidavit. I have also seen and read the written address filed alongside in support of the application. In opposition to the application, the Claimant filed 13 paragraphs counter affidavit on the 21<sup>st</sup> February 2022. The Claimant also filed a written address in compliance with the rules.

The Defendant/Applicant further filed a further affidavit with her reply on points of law on the 28<sup>th</sup> of February 2022. The said further affidavit of 18 paragraphs was deposed to by the Applicant herself. I have listened to the arguments of the counsel for the respective parties and I have carefully considered the application before me filed by the Defendant/Applicant which seeks to stay the execution of the judgment delivered by this court on the 17<sup>th</sup> February 2022.

I must state here that the grant or otherwise of application of this nature is at the discretion of the Court. The court's discretion must however be exercised judiciously and judicially on sufficient materials. See *Okafor V. Nnaife* (1987) 4 NWLR (Pt. 64) 129. No doubt, the provision of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (section 6) donates to this court the inherent jurisdiction to grant or refuse an application for stay of execution. The Defendant/Applicant hinged her application on the fact that notice of appeal has been filed to the Court of Appeal and evinced the said notice of appeal as Exhibit AW1. She further stated that the appeal raised germane issue of law bordering on the jurisdiction of this Court. According to the Applicant, unless there is stay of execution, the outcome of the appeal will be rendered nugatory.

On the other hand, the Respondent to the application argued that the application is devoid of any special or exceptional circumstances to warrant this court to grant this application. The Respondent also argued that the notice of appeal filed by the Applicant raises no arguable or substantial issues. That as a result, the Applicant has not fulfilled the requirement of the law to justify the grant of this application.

It is the position of our law that in determining application of this sort, the exercise of discretionary power of the court must take into consideration the competing rights of the parties. The onus is on the Applicant to show special or exceptional circumstances entitling him to the equitable relief. The Applicant, by law, must plead that the balance of justice weights in his favour. Finally, he must show that the balance of convenience is in favour of the grant of the application for stay of execution. The law is now firmly established that an applicant must plead special circumstances in his affidavit to sway the mind of the court to exercise its discretion in favour of the grant of the application. In other words, stay of execution will only be granted if the court is convinced that there exist special and exceptional circumstances to justify the grant of such order. See *Olojede V Olaleye (2010) All FWLR (pt. 551) 1503 at 1532.*

I have carefully considered the affidavit of the Applicant and I cannot but agree with the Respondent that the affidavit is hollow and devoid of any exceptional circumstance by the Applicant to warrant the grant of this application. The application is bereft of any credible or tangible ground to warrant the court to exercise its judicial discretion in favour of the grant of this application. The sole ground proffered by the Applicant is that an appeal has been filed against the judgment. I made bold to state that an appeal simpliciter does not operate as a stay of execution. It is now that law that lodging an appeal does not operate as a stay. There is no appeal number nor receipt of payment of the process at the Court of Appeal Abuja shown by the Applicant to warrant the grant of this application.

See Zenith International Bank Ltd. V Alobu (2017) 4NWLR (pt. 1554)135 at 146 and A.P.C. V Karfi (2018) 6NWLR (pt. 1616)479 at 519-520.

In the absence of any cogent, convincing and credible factor to be considered, I hold that the Applicant has not fulfilled the condition to warrant the grant of this application. The court will not make it a habit to deprive successful litigants of the fruit of their judgment. I therefore hold that this application is unmeritorious and same is accordingly dismissed.

**APPEARANCE**

Musa Etubi Esq. for the Judgment/Credit Respondent.

B. A. Oyefeso Esq. with me

M. B. Oluleye Esq.

M. Q. Nkeru Esq. for the Defendant/Applicant.

Sign

Hon. Judge

14/03/2022