

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT NYANYA
ON TUESDAY 21ST JUNE, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE EDWARD OKPE

SUIT NO. FCT/HC/CV/273/2021
MOTION NO: M/5147/22

BETWEEN:

D. I. GEAR LIMITED ----- JUDGMENT CREDITOR/RESPONDENT
AND

ACCESS BANK PLC ----- JUDGMENT DEBTOR/APPLICANT

RULING

By a Motion on Notice filed on 5/5/2022 Pursuant to Order 43 Rule 1, High Court of the FCT (Civil Procedure) Rules, 2018 and under the inherent Jurisdiction of this Honourable Court wherein the Applicant seeks the following reliefs from the court:

1. **AN ORDER** staying execution of the judgment and orders made by the Honourable Court in its judgment of 28th April, 2022.
2. **AND FOR SUCH FURTHER** and or other orders as the court may deem fit to make in the circumstance.

The motion is supported by 18 paragraphs affidavit deposed to by one Ndidi Ejimadu, a litigation Clerk/Secretary in M/S LAW FORTE, Counsel to the Appellant/Judgment Debtor/Applicant. Attached to the Application is Exhibit A. Also filed alongside is a written Address which the counsel to the applicant adopted during the hearing in urging the court to grant their application as prayed.

The Respondent/Judgment Creditor on 18/5/22 filed a counter affidavit of 19 paragraphs in opposition to the Applicant/Judgment Debtor's Motion for stay of

execution. The said counter affidavit was deposed to by one Ezekiel Nandom God bless, the Secretary/litigation clerk in P.T. Gbande Law Practice, Counsel to the Respondent in this application. The Respondent also filed a written address alongside the counter affidavit which his counsel adopted at the hearing of the motion and urged the court to dismiss the applicant's application.

Upon being served with the counter affidavit of the Respondent, the Judgment Debtor/Applicant on 14/6/22 filed a Reply on points of law which the respondent's counsel adopted at the hearing of the motion and urged the court to dismiss the application.

I have carefully read and digested the written addresses filed in support of the motion and against the motion by the counsels for the respective parties and all the processes filed in connection with this motion. Reference will be made to them as the need arises. The case on either side may be gleaned from the salient paragraphs of their affidavit and reply on points of law respectively filed in this regard.

The issue for determination herein is:

"Whether it would serve the interest of justice for this Honourable court to allow the Applicant's application by virtue of the facts and circumstances of this case."

The fundamental principle guiding the grant or refusal of an application for stay of execution pending appeal is the existence of special and exceptional circumstances which involves the consideration of some collateral circumstances and in some cases inherent matters which may, unless the order for stay is granted, destroy the 'Res' or 'subject matter' of the proceedings and foist upon the court, complete helplessness or generally provide a situation in which if the case succeeds in the court of appeal, there can be no return to status quo ante. **A. M. Co (NIG) LTD V. VOLKSWAGEN NIG LTD (2012) LCN/5338 CA; VASWANI TRADING COMPANY V. SAVALKH & CO. (1972) 12 SC 77.**

The applicant in this application has not placed before the court the 'res' or 'subject matter' of the proceedings that would be destroyed if this application is not granted. More so, that the main purpose of the granting of an order for stay is the preservation of an identified res or subject matter in the suit and to ensure that at the end of the day, the appeal is not rendered nugatory. **UBN LTD V. ODUSOTE BOOKSTORES LTD (1994) 3 NWLR (PT.331) 129.**

Further, the purpose of grant of a stay of execution is not to deprive a victorious party of the fruits of his victory. The court will however, make such an order on equitable ground if by executory of the judgment the res or subject matter of the litigation will be destroyed before determination of the appeal or where the victorious party in the appeal would not be able to be returned to status quo ante because of the execution. **UZO V. NNALIMO (2000) 11 NWLR (PT. 678) 237 @ 240; DIAMOND BANK LTD V. P. I. CO. LTD (2001) 4 NWLR (PT.703) P.259 AT 260-261 and CBN V. AHMED (2001) 11 NWLR (PT.724) PG 369.**

The big question is 'what is the status quo or 'res' to be protected in an application for stay of execution? The res or status quo to be protected is the actual, peaceable and un-contested status quo preceding the pending controversy which led to the judgment sought to be stayed. **GOVERNOR OF LAGOS STATE & ORS V. CHIEF ODUMEGWU OJUKWU & ANOR (1986) 1 NWLR (PT.18) 621. See also the case of AKAPO V. HAKEEM HABEEB (1992) 6 NWLR (PT.247) PG.266 @ 303 F.** the Supreme Court per Nnaemeka Agu JSC stated as follows:

"To begin with the literally meaning of status quo ante bellum is the state of affairs that existed before the beginning of the hostility. so, the status quo that ought to be maintained in this case is the state of affairs that existed before the defendants forceful takeover of the management and control of the family property which constitutes the wrongful act complained of in the application and the status quo remains the same whether the case is on appeal either to the court of appeal or to the supreme court."

This goes to say that a party cannot by his own wrong doing create a status quo for the court to maintain. In **AMACHREE V. ISOKARIARI (1995) 5 NWLR (PT. 396) PG.457** where the court held:

"The applicant having constructed the cantilevers during the pendency of the action in the face of strong opposition by the respondent, the applicant cannot now complain about its removal.this application is clearly without substance. The court will not allow any person to take advantage of his own wrong."

The inherent power of the court in granting stay of execution must be exercised judicially and judiciously on sufficient materials placed before it by taking into account of the competing rights and interest of the parties. **OKAFOR V. NNAIFE (1987) 4 NWLR (PT.64) PG.129.**

This only means that the party applying for a stay of execution has the onus of showing or placing before the court sufficient materials whether special or exceptional entitling him to the relief. The affidavit must state clearly the subject matter that would be destroyed if the application is not granted. See **OLUNLOYE V. ADENIRAN (1991) 5 NWLR (PT.191) 266 AT 291 SC.**

Paragraphs 8, 9, 10, 11 and 12 of the applicant's affidavit in support of the motion for stay of execution did not state the res or subject matter that would be destroyed if this application is not granted or how exactly a state of hopelessness will be foisted on the court of appeal if this application is not granted.

Part of the judgment of the court sought to be stayed is a declaratory judgment. A declaratory judgment cannot be stayed, in that, it is no more than an invitation to the court to make a pronouncement on the legal position of a state of affairs and therefore not executory in nature capable of being stayed. It does not carry with it any 'res' which can in law be stayed. **TUKUR V. GOV. OF GONGOLA STATE (1989) 4 NWLR (PT.117) 592; AKIBU V. ODUNTAN (1991) 1 NWLR 9PT.171) and FAWEHINMI V. 16P (2000) 7 NWLR (PT. 665) 481.**

A declaratory order merely declares the rights of the parties and is dormant. Beyond that it has no force of execution. The position was eloquently stated by Tobi JCA in **ALBIAN CONST. LTD V. RAO INVESTMENT PRO LTD (1992) 1 NWLR (PT. 219) 583** thus

"A declaratory order has not the force of execution. It is like a toothless dog which can only bark in his restricted home of the manager angrily and aggressively but cannot bite to vindicate his overt anger and aggression..... In my view, a declaratory order merely declares the rights of the parties and it is dormant beyond that without much ado, if I may say so, in the same sense that there is in contradiction

distinction no further enforcement by the way of execution as the case in some other orders of the court."

The other part of the judgment sought to be stayed by the applicant is a money judgment. As a general rule, one of the reasons for a stay of execution of a money judgment is an affidavit showing that if judgment debt is paid there is no reasonable probability of getting it back if the appeal succeeds. See the case of **GUINEA INSURANCE PLC V. MONARCH HOLDINGS LTD (1996) 3 NWLR PT. 436, 365 AT 370.**

The applicant in paragraph 12 of its supporting affidavit deployed the generalization that the respondent would not be able to repay the judgment sum in the event of its success at the court of appeal without adducing evidence to support this accretion. In other words, the applicant has not placed anything before the court to show how refund would be difficult should the appeal succeed.

The respondent in paragraph 13 of its counter affidavit stated that he is well able and capable to repay the judgment sum and cost awarded if the appeal succeeds.

Furthermore, this Court must take into account the competing interests of the judgment creditor and that of the judgment debtor in the grant or refusal of the application. See the case of **INTEGRATION (NIG) LTD VS. ZUMAFON (NIG) LTD (2004) 2SCM 187 AT 199** Per Ariwoola JSC who said:

".... It is settled law that a stay of execution of a judgment will only be granted by the court if it is satisfied that there are special and exceptional circumstances to warrant doing so. The reason being that a judgment of a court of law is presumed to be correct and rightly given until the contrary is prove or established a court, a litigant would not be deprived of the fruits of his success in court."

See **MARTINS VS. VICANNAR FOOD CO. LTD (1888) SC 429; SHODEINDE VS. TRUSTEES IN ISLAM (1989) 2 SC 165; VASWANI TRADING CO. LTD VS. SAVALKH & ORS (1972) 12 SC 77**

I have perused the Applicant's affidavit in support I do not see any special or exceptional circumstances justifying the grant of stay of execution. Consequently, I am of the firm view that it will not in any way serve the interest of justice to grant this application for stay of a declaratory and money judgment, this motion No. M/5147/22 praying for stay of execution of the judgment of this Honourable

court delivered on the 28th day of April, 2022 is hereby dismissed for lacking in merit.

Appearances:

HON. JUSTICE EDWARD OKPE
(JUDGE)
17/3/2022