

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT NYANYA
ON..... 13TH JULY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE EDWARD OKPE

SUIT NO. FCT/HC/CV/143/2021
MOTION NO: M/3083/2022

BETWEEN:

FREDRICK OLOKPA ----- JUDGMENT DEBTOR/APPLICANT

AND

1. DR. EMMA OCHIBA----- JUDGMENT CREDITOR/RESPONDENT
(Suing through His Lawful Attorney Francis Agada Ochiba)

2. MR. SOLOMON JONAH

3. THE CHIEF REGISTRAR HIGH COURT OF
THE FEDERAL CAPITAL TERRITORY, ABUJA..... RESPONDENTS

RULING

By a Motion on Notice filed on 17/3/2022 Pursuant to Order 43 Rule 1, Order 61 Rule 1, High Court of the FCT (Civil Procedure) Rules, 2018 and under the inherent Jurisdiction of this Honourable Court wherein the Judgment Debtor/Applicant seeks the following reliefs from the court:

- 1 AN ORDER** staying execution of the Judgment of the Honourable Court delivered on 2nd March, 2022 awarding **₦25 Million** as Damages and cost of **₦250, 000** against the Judgment Debtor/Applicant in favour of the Judgment Creditor/Respondent pending the determination of the Appeal.
- 2. AND ORDER** of Injunction restraining the Judgment Creditor/Respondent from levying execution of the judgment of the Honourable court delivered on 2nd March, 2022 in respect of the land and property which is the subject matter of the appeal and also from entering into, alienating, altering and

tampering with the land and property pending the determination of the appeal.

3. **AND FOR SUCH** further order as the Honourable Court may deem fit to make in the circumstances and in the overall interest of justice.

The motion is supported by 10 paragraphs affidavit deposed to by the Judgment Debtor/Applicant himself, Attached to the Application is Exhibit 'A' and 'B'. 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 Judgment Creditor/Respondent on 14/6/22 filed a counter affidavit of 10 paragraphs in opposition to the Applicant/Judgment Debtor's Motion for stay of execution. The said counter affidavit was deposed by Mr. Francis Agada Ochiba Attorney of the Judgment Creditor/Respondent. 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.

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 counter affidavit 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."

On the legal effects of stay of execution and or injunction pending appeal, Onnoghen JCA (as he then was) in **OSHO V. A.G. EKITI STATE (2001) 46 WRN 22 AT 41 LINE 35** stated as follows:

"I will like to say that the legal effect of an order for stay of execution and an injunction pending appeal is the same both of them being aimed at suspending temporarily the legal rights of the judgment creditor or successful litigant pending the outcome of an appeal. It is also trite that the same principles of law apply for an application for either relief."

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 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.**

The Court may grant a prayer for stay of execution on a condition different from that requested by the applicant. **IN PUNCH (NIG) LTD V. JUMSUM (NIG) LTD (2006) 15 NWLR (PT. 1002) 385 CA.**

Part of the judgment of this court sought to be stayed by the applicant is a money judgment. As a general rule, one of the reasons for the grant of 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.**

It is however usual for courts in granting a stay of execution of a money judgment, that the court orders that the money should be paid into an interest yielding account in a reputable bank as a condition for the grant of the stay. **KOPEK CONSTRUCTION LTD V. EKISOLA (1998) 10 NWLR (PT.568) 120; CBN V. IGWILLO (2007) 14 NWLR (PT. 1054) 393.**

In the instant application, both parties supported the above position of the law and since there is no dispute in respect of a conditional stay of execution, I hereby make an order for conditional stay of execution of the judgment of this court delivered on 2/3/22 as following:

1. The Judgment Debtor/Applicant is hereby ordered to pay the judgment sum to the FCT High Court Chief Registrar who shall in turn pay same into an interest yielding account within 30 days from the date of this Ruling.
2. The Judgment Debtor/Applicant having admitted during the trial that he collects **N2, 000, 000.00** as rent annually in respect of the subject matter of the appeal is hereby ordered to pay the said **N2, 000,000.00** or any increased amount collected by him to the Chief Registrar who shall in turn pay same into the interest yielding account commencing from the date of the judgment. The judgment Debtor is also hereby ordered to remit such rent collected or about to be collected annually on or before the 2nd of March of to the Chief Registrar of this court every year until final determination of the appeal.
3. Upon the fulfilment of Orders 1 and 2 above, **an Order** of injunction is hereby made restraining the judgment Creditor/Respondent from levying execution of the judgment of the Honourable Court delivered on 2nd March, 2022 in respect of the land and property which is the subject matter of the appeal and also from entering into, alienating and tampering with the land and property pending the determination of the Appeal.

Appearances:

HON. JUSTICE EDWARD OKPE
(JUDGE)
13/7/2022