

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT NYANYA
ON..... 7TH JULY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE EDWARD OKPE

SUIT NO. FCT/HC/CV/1271/2021
MOTION NO: M/5075/22

BETWEEN:

MR. CONNIE ASHEBE ----- JUDGMENT DEBTOR/APPLICANT
AND

- 1. MR. JOSEPH ABBA ----- JUDGMENT CREDITOR/RESPONDENT**
- 3. DEPUTY SHERIFF, HIGH COURT, FCT, ABUJA RESPONDENT**

RULING

By a Motion on Notice filed on 29/4/2022 Pursuant to Order 43 Rules 1 and 2, 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** for stay of execution pending the hearing and determination of the Appeal lodged by the Judgment Debtor/Applicant against the Judgment of this Honourable Court delivered on the 14th of April, 2022.
- 2. AND** for such other Order(s) as the Honourable Court may deem fit to make in the circumstances.

The motion is supported by 12 paragraphs affidavit deposed to by the Judgment Debtor/Applicant himself, Attached to the Affidavit are Exhibits 'AP1' and 'AP2'. 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 11/3/22 filed a counter affidavit of 5 paragraphs in opposition to the Applicant/Judgment Debtor's Motion for stay of execution. The said counter affidavit was deposed by the Judgment Creditor/Respondent himself. 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."

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 execution 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 the 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, the applicant has not shown any special or exceptional circumstances to be entitled to the relief sought herein. However, since the Respondent has conceded to the grant of a conditional stay of execution, I hereby make an order for conditional stay of execution of the judgment of this court delivered on 14/4/22 in the following terms:

The Judgment Debtor/Applicant is hereby ordered within 30 days from the date of this ruling to deposit the judgment debt with the Chief Registrar of this court who shall in turn pay same into an interest yielding account.

Appearances:

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