

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA APPEAL JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**BEFORE HIS LORDSHIPS: HON. JUSTICE B.KAWU (PRESIDING JUDGE)**

**HON. JUSTICE M.S IDRIS (JUDGE)**

**DATED:-27<sup>th</sup> JUNE/2022**

**SUIT NO. CV/326/2020**

**APPEAL NO.CVA/832/2021**

**BEWTEEN:**

**HENRY ONUKWUGHA-----**

**APPELLANT**

**AND**

**JOCO JAMES INTL AGENCY LIMITED-----**

**RESPONDENT**

## **RULING**

**(DELIVERED BY HON. JUSTICE M.S IDRIS)**

This is a motion on notice filed by the Applicant respondent dated the 10<sup>th</sup> June, 2022 same has a motion No. M/7811/2022 additionally the motion is brought pursuant to order 50 Rule 10 (1) High Court Civil Procedure Rules 2018 and under the inherent jurisdiction of this Honourable Court.

The Applicant is praying the Court for the following orders:-

1. An order of this Honourable Court dismissing the appeal No. CVA/832/2021 between Henry Onkwugha and James International Agency Limited filed by the Applicant/Respondent for want of prosecution.

2. And for such further order orders as this Court may deem fit to make in the circumstances.

The grounds upon which the application is brought are as follows:-

- a. The Appellant in this appeal filed their notice of appeal on 23<sup>rd</sup> July, 2021 at the Appeal Registry of the High Court FCT Abuja.
- b. The record of appeal in the appeal stated above was transmitted to the registry and served on the respondent on the 14<sup>th</sup> April, 2022.
- c. The Appellant has 21 days from the date the record of appeal was transmitted to the Registry to file brief of argument in the Registry of this Court, and they have failed and neglected to do so till date. In support of the motion on notice is a 7 paragraph affidavit deposed by one Joy Amadi a litigation secretary in the chamber of Ogbulafor and Co. same is dated the 19<sup>th</sup> June, 2022. The gist of the application can be seen from paragraph 4A- 4(f) particularly in paragraph 4(b) it was stated that the Appellant on 23<sup>rd</sup> July, 2021 at the Registry of the trial Court the said notice of Appeal is hereby attached and marked as exhibit A.

4c. The record of appeal in the appeal above was transmitted to the Registry of the Court and served on the Respondent on 6<sup>th</sup> April, 2022.

4d. That after the transmission of the record of appeal the Appellant have 21 days to file and serve them brief of argument. Falling which the Respondent can apply to Court for the appeal to be dismissed.

4e. That it is now over 21 days that the Appellant has not filed and served them brief of argument on the Respondent/Applicant.

4f. That this failure is a clear indication that the Appellant is no longer interested in prosecuting the appeal here the Appellant is praying the Court to dismiss the application of the Appellant. In support of the Application the Appellant filed a written address dated 10<sup>th</sup> June, 2022. Where same formulated a sole issue for determination this "*whether the Court should dismiss the instant application for failure of the Appellant to file his Appellant brief – within time*". In support of his position applicant cited the case of ***GODWIN EMEKA & ORS VS CBN & ORS (2014) LPELR 24121 CA.*** when there is a clear provision. In the rules of Court on the manner a certain step should be taken it become a condition precedent to the hearing of the application and such must be followed and obeyed as it does not give room for the exercise of discretion by the Court nor choice of method by the parties". Also in ***OGBU & ORS VS URUN & ORS (1981) LPELR 2290 SC.*** Held the effect of failure to file briefs by the appellant within times extended can be linked to an abandonment of their appeal. There must be an end to litigation so a party ought to litigate his claim diligently and consciously see ***PAN ATLANTIC SHIPPING & TRANSPORT AGENCIES VS BABATUNDE(2007) LPELR.*** In opposing the Appellants application for stay of proceedings dated 19<sup>th</sup> May, 2022 and filed on 24<sup>th</sup> May, 2022. The Respondent filed a counter affidavit of 4 paragraph affidavit deposed to by Florence O.Abu a litigation secretary in the Chamber of Ogbulafor & co same is dated the 10<sup>th</sup> June, 2022 particularly in paragraph 4 to 4H extensively

shade lights why the respondent urge the Court not to grant the application. Also in support the Respondent filed a written address dated the 10<sup>th</sup> June, 2022 issue for determination. Whether in the overall circumstances of this case from the lower Court to this Court, and upon the facts disclosed in the affidavit Appellant and mode of payment of rent made to enable the Court determine that "

Court are usually reluctant to grant a stay of proceeding pending the determination of an interlocutory appeal where time is of the essence and or where interest of justice would be better served if the issue is taken up at the conclusion of the case along with an appeal against the final decision see ***SAIPEM SPA VS TEFA (2002)16 NWLR (PT 793)410 at 430 paragraph A-B INTERNATIONAL AGRICULTURAL INDUSTRY VS CHIKA BROS (1990)1 NWLR (pt 124) Pg 70 -81 paragraph D*** . also in the case of ***ISAAC VS CBN (2021) 45 NSQOR (pt.1) page 51 at 81***. Having reproduced partly the argument for and against the present application brought before the Court it is pertinent to note that from the entire application filed by the Applicant I have not seen any reason why such application should be granted by this Court reason being that a person who has been in occupation and whose rent has expired and same is still in occupation such application ought not to be granted in the spirit of substantial justice as emphasized by the Supreme Court. I don't have to take the affidavit in support of paragraph by paragraph it is enough if you look at the application same is not meritorious. It is imperative to note that issue of this matter is entirely at the discretion of the Court even though the Applicant

has the right to bring this application however the interest of both parties in the case must be considered in all circumstances. The Supreme Court in the cases of **PILLARS NIG. VS DESBONSE (2021) 12 NWLR (PT 1789) 12 -144 paragraph C-H** has provided the legal remedy to the issues of notices /notices served irregularly.

I am of view that the Appellant should allow the trial to continue thereafter same may decide to proceed on appeal at conclusion of the matter. It is trite that technical justice is not justice at all. Gone are the days when Court of law are tied down based on the Application of technicality fundamentally in an application for stay of proceedings a balance must be maintained between the right of a party to have the substantive suit heard timeously and the desire of his application to be given adequate time to prepare for his defence or prosecute his appeal. stay of proceeding s is a serious grave and fundamental interpretation on the right of a party to conduct his litigation towards the trial on the basis of the substantive merit of his case, and therefore the general procedure of Court is that stay of proceeding should not be granted, unless the proceeding is beyond all reasonable doubt ought not be allowed to continued see **NNPC & ANORS VS ODIDERE ENTERPRISES (2008)8 NWLR (PT1090) 583 at 616**. Where an interlocutory order does not finally dispose despite the case it would be wrong to stay proceeding because of an aggrieved party **OBI VS ELENWEL—(1998) 6 NWLR |(PT 554) page 436-437**.

Finally in view of the judicial authorities cited above couple with the application brought before this Court. Its necessary to refuse

this application because same is lacking in merit and similarly the Application has not shown substantial grounds why the Application should be granted I so hold. The application is hereby refused.

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**HON. JUSTICE M.S IDRIS**  
**(HON. JUDGE)**

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**HON. JUSTICE B.KAWU**  
**(PRESIDING JUDGE)**

Appearance

Chibike E Soronnadi :- For the Applicant