

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 5TH DAY OF APRIL 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/M/111467/2020
MOTION NO. M/6786/2021

BETWEEN:

**COURAGE ALLIANCE & FIDELITY MULTI-PURPOSE
CO-OPERATIVE SOCIETY LTD ZUBA FCT**

RESPONDENT

AND

EVANGELIST AUGUSTINE CHIDIEBERE

APPLICANT

RULING

This Ruling is on the application of the Applicant for restraining orders against the Respondent.

By way of Motion on Notice brought pursuant to Order 43 Rule 1 and Order 61 Rule 1 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honorable Court, the Applicant seeks the following reliefs from this Honorable Court:

- 1) An Order staying the enforcement and execution of the Judgement in Suit No FCT/HC/M/11467/2020, Courage Alliance & Fidelity Multi-Purpose Cooperative Society Ltd Zuba v. Evangelist Augustine Chidiebere, delivered on the 15th day of February 2021**

by Hon Justice A. H. Musa of High Court of the FCT holden at Apo Abuja, pending the hearing and determination of the Applicant's Appeal against the Arbitration Award to the Hon Minister of the Federal Capital Territory.

- 2) An Order of Injunction restraining the Respondent and her agents from taking any further steps towards the enforcement and execution of the said judgement in this case delivered on the 15th of February 2021 pending the hearing and determination of the Applicant's Appeal against the Arbitration Award to the Honourable Minister of the FCT.
- 3) Such further Orders as the Honourable Court may deem fit to make.

In support of the motion is a 10-paragraph affidavit deposed to by the Applicant himself, Mr Chidiebere Augustine, which had two exhibits attached and marked as **Exhibits A and B**, which are the Judgement given in favor of the Respondent on the 15th day of February 2021 and a copy of the said Appeal.

Briefly, the Applicant as the deponent averred that the decisions and findings contained in the Arbitration Award delivered on the 10-12-2019 by the FCT Co-operative Arbitration Committee is not a true reflection of what actually

happened at the arbitration, as the said arbitration Committee, for reasons best known to them took sides against the Applicant from the onset and did everything possible to frustrate and deny the Applicant every opportunity to present his case. He further claimed that he was only served with hearing notices or invitation letter two or three times which he duly acknowledged, but the Arbitration Committee held sitting for over 7 times in the Applicant's absence without inviting or giving him hearing notices.

The Applicant further swore that he became aware of the Arbitration Award in March 2020 when he was served with same, adding that he immediately instructed his lawyer, Segun Amosu Esq., to appeal against it as he was completely dissatisfied and aggrieved by the Award. He asserted that he did not know that the lawyer delayed in filing the said appeal until August 2021 when the Respondents came to his house with a Bailiff from High Court No. 1 Suleja Niger State and impounded the Applicant's car and generator based on the Judgement of this Honorable Court which was delivered on the 15th of February 2021 giving effect to the Arbitration Award.

The Applicant further averred that his lawyer has presently appealed against the said Arbitration Award and that his appeal has raised very cogent and serious issues and meritorious grounds. He added that his Counsel, J. T. Ndubizu Esq. also informed him at his Chambers on the 20th of August 2021

at about 10am that his appeal would be rendered useless, worthless, and nugatory if this application is refused and the appeal eventually succeeds. In addition to this, the Applicant further averred that the Respondent could continue with the enforcement of the Judgement if his appeal fails as they will not in any way be prejudiced if this application is granted pending the hearing and determination of the appeal.

In the Written Address in support of the application, the Applicant through his Counsel formulated this sole issue for the Court to determine:

“Whether it is in the best interest of justice to grant an order of stay of execution and injunction in this case pending the hearing and determination of the Applicant’s appeal against the Arbitration Award?”

In his argument on this sole issue, Learned Counsel submitted that the facts and circumstances of this case is one that deserves the grant of this application and that it is clear from the affidavit that the Applicant clearly instructed his lawyer to appeal against the said Arbitration Award timeously but that the said lawyer to his surprise and dismay defaulted in doing so. According to him, the Applicant, has in the circumstance done what he ought to do as a lay man by engaging a professional, adding that this Honourable

court should not visit the lapses, default and mistake of the said Counsel on the applicant. Counsel relied on the cases of ***A.-G. Federation v. Bi-Courtney Ltd (2012) 14 NWLR 467***, and the case of ***Bowaje v. Adediwura (1976) 6 SC 143***.

Learned Counsel for the Applicant further submitted that the affidavit in support has disclosed credible grounds of appeal which bothers on bias and denial of right to fair hearing and these are special circumstances. Furthermore, it was argued by Counsel that it is very important to consider the effect of not granting this application should the Applicant's appeal against the award later succeeds. He maintained that it is better to err on the part of caution and grant the application than to do otherwise in this case.

It was further submitted by Counsel that the arbitral award in this case was based entirely on hearing only the Respondent's case as the Applicant was not given ample opportunity to present his case and in fact he did not. He added that justice demands that both parties should be ordered to maintain *status quo* pending the hearing and determination of their cases before the Arbitration Committee on merits and thereafter whosoever wins will go ahead and enforce whatever Award that is made in his favor.

Counsel further pointed out that it is therefore very crucial that this application is granted in order to stop the Respondent from taking any further steps in the enforcement and the execution of the judgement which will be highly prejudicial and detrimental to the appeal. He urged the Court to grant this application and maintain *status quo* pending the hearing of appeal to avoid the ugly situation of the Respondent selling off the Applicant's properties while his appeal is yet to be decided.

In concluding his submissions, Counsel stated that the balance of convenience in this case is very much in favor of granting the application. He added that the respondent has nothing to lose if the application is granted. He added that it is in the best interest of both parties in the circumstances that this application be granted. Learned Counsel relied on the case of ***UBN Ltd v. Odusote Bookstore Ltd (1994) 3 NWLR (Pt 331) 129***, and the case of ***Uzo v. Nnalimo (2000) 11 NWLR (Pt 678) 237 at 240*** and ***Ajomale v. Yaduat (No. 2) (1991) 5 NWLR (Pt 191) 266 at 291***.

Finally, Counsel urged the court to answer the issue raised in the affirmative and grant the application.

The Respondent, in the Motion with Motion Number M/6057/2021 dated the 21st of September, 2021 and filed on the 22nd of September, 2021 sought for

leave to file her Counter-Affidavit and Written Address to the Applicant's Motion for Stay of Execution of the Judgment, an Order deeming as properly filed and served the said Counter-Affidavit and Written Address, filing fees having been separately paid as well as the omnibus prayer. The Motion was moved and granted on the 22nd of February, 2022.

In the 5-paragraph Counter-Affidavit, the deponent, one Goodness Marcus, a Litigation Secretary in the Law Firm representing the Respondent in this application, after denying paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the affidavit in support of the application, averred that the Applicant had not shown good grounds for this Honourable Court to stay its Judgment, adding that the application was brought to frustrate the Respondent, as the Judgment Creditor in the substantive suit, from reaping the fruit of his labour. The deponent further swore that the Applicant had not fulfilled the condition of the appeal.

The Respondent through the deponent further asserted that contrary to his claims, the Applicant was aware of the proceedings at the Arbitration Committee and its days of sitting but chose to ignore it, adding that he aware of the Arbitral Award, having been served with same since March, 2020, but chose to ignore it.

It was further stated that no appeal was pending, thereby necessitating the execution and Arbitral Award with the consequence that this Honourable Court on the 15th of February, 2021 made an order recognizing the Arbitral Award. She also drew the attention of the Court to the fact that the Notice of Appeal was filed on the 1st of September, 2021 after the execution of the Arbitral Award. She swore that the Applicant had registered his own Cooperative Society Ltd with the name Champion Alliance Friends Thrift and Loans Cooperative Society Ltd with its office at No. 9 Shema Plaza Gwazunu Junction, Abuja – Kaduna Expressway, Suleja, Niger State. Stating that the Applicant filed and the present motion on the 30th of August, 2021 and a Further Affidavit dated 8th of September with an undated Notice of Appeal addressed to the Honourable Minister, FCT, she concluded that there was no valid appeal and urged this Honourable Court to dismiss the application.

In the Written Address in support of the application, learned Counsel formulated two issues for determination: *“(1) Whether in view of the documents filed, there is a competent Appeal in this matter. (2) Whether in the circumstances of the case, the Court can exercise its discretion to grant the application a stay of execution.”*

In his argument on the first issue, learned Counsel submitted that there is no competent appeal in this case upon which the Court would be called upon to grant the reliefs sought in the application. He noted that the said appeal was filed on the 1st day of September, 2021 while the Motion was filed on the 30th of August, 2021. In view of this, he contended that the Applicant could not place something on nothing and expect it to stand. He further contended that the appeal was addressed to the Minister for FCT and that the appeal was filed over 18 months after the arbitral award was issued.

Learned Counsel referred to section 21(12) and (13) of the Cooperative Societies Regulations made pursuant to the Cooperative Societies Act CAP 488 Laws of the FCT as well as the following cases: ***Intercontinental Bank Plc v. Mungadi (2014) All FWLR (Pt. 728) 1026 paras D – E, Integration (Nig) Ltd v. Zumafon (Nig) Ltd (2014) Vol 228 LRCN 1 R4.***

On Issue Two, learned Counsel reminded the Court that the major reason the Applicant adduced for his inability to challenge the arbitral award was contained in paragraphs 5 and 6 of the affidavit in support of the Motion. He contended that the Applicant did not adduce any evidence to show that he indeed briefed his lawyer to challenge the arbitral award or that he indeed followed up on his lawyer to be sure he had executed his brief. Urging the Court to discountenance those averments because equity does not aid the

indolent, learned Counsel, relying on ***Nigerian Laboratory Corporation v. Pacific Merchant Bank Ltd (2012) 15 NWLR (Pt. 1324) 505, Intercontinental Bank Plc v. Mungadi (2014) supra, University of Ilorin v. Akinola (2007) All FWLR (Pt. 3782) p. 1852 para E – G and Zenith Bank Plc v. John (2016) All FWLR (Pt. 827) 633 at 658 para B***, learned Counsel urged this Court to refuse the application as the applicant has not established any special or exceptional circumstances why the prayer should be granted, the application is not founded on a proper or competent Notice of Appeal, the Execution sought to be stayed has been completed and the application is deliberately designed to prevent the Judgment Creditor from enjoying the fruit of its hard-earned Judgment.

On the 22nd of February, 2022, the Applicant filed his Reply on Points of Law. In the said Reply on Points of Law, Counsel submitted that the issue of competence of the appeal filed by the Applicant was misguided since same is not before this Court to determine. He added that the FCT Cooperatives Arbitration Appeal Panel is an administration panel which is not constrained by the requirement of a rigorous format of notice of appeal or any rule of technicality and, as such, all the authorities cited by Counsel for the Respondent were inapplicable. He also contended that the execution had not been completed as the Applicant's vehicle impounded was still at the

premises of the High Court in Suleja. Noting that paragraphs 3(b), (c), (d), (e), (f), (i), (q) and 4 of the Respondent's Counter-Affidavit violates the provisions of section 115 of the Evidence Act, 2011, he urged this Court to grant the application of the Applicant.

Both parties argued their respective positions on the 22nd of February, 2022 and the Court thereafter adjourned to today for Ruling on the said application.

The issue before this Honourable Court is really straightforward and that is the issue I believe this Court is being called upon to resolve. The question is this: ***“Whether this Honourable Court cannot exercise its discretion in granting the relief sought by the Applicant?”***

The above summary captures the facts the parties before me in this application hope would sway the mind of the Court to either grant or refuse to grant the application. Principally, the relief sought in this application is an order for stay of execution of the Judgment of this Court in the suit FCT/HC/M/11467/2020 between Courage Alliance and Fidelity Multi-Purpose Cooperative Society Ltd Zuba, FCT v. Evangelist Augustine Chidiebere delivered by this Court on the 15th day of February, 2021. The second relief the Applicant seeks in this application is actually superfluous,

since it is more or less the same as an Order for Stay of Execution. I shall embark on a voyage round the jurisprudence of stay of execution to determine what the law says in this regard before returning to the facts before me.

In ***Sani v. Kogi State House Assembly & 6 Others (2021) 6 NWLR (Pt. 1773) 422 at p. 456, paras. F-H***, the Supreme Court per Aboki, JSC held that

“The Appellant in an appeal against a judgment has a right to protect the appeal from being rendered nugatory and therefore has the right to employ the appropriate legal and equitable process to protect the appeal from being negated. One such process is an application for an order of court staying the execution of the judgment, pending the determination of the appeal. It is part of the compendium of the appellant's right of appeal to be able to protect the exercise of that right from being rendered illusory. It is equally the duty of the court to protect the appeal from being rendered nugatory. In this case, it was incumbent on the Supreme Court, to protect the res, pending the determination of the appeal at the Court of Appeal.”

See also the case of **S.P.D.C. (Nig.) Ltd. v. Amadi (2011) 14 NWLR (Pt. 1266) 157.**

On the principles guiding the stay of execution, the Court per Omoleye, JCA, in **National Coordinator/CE National Programme on Immunization v. Mabol & Associates Ltd. (2009) 4 NWLR (Pt. 1131) 267 at p. 286, paras. A-C** held that **“An Applicant who can show special or exceptional circumstances may be granted a stay of execution. For example, where the ground of appeal raises a substantial issue of law in an area where the law is to some extent recondite and where either party could have judgment in his favour, a stay of execution must be granted.”** See also **Martins v. Nicannar Food Co. Ltd. (1988) 2 NWLR (Pt.74) 75.**

It must be noted that the stay of execution is within the discretionary powers of the Court to grant or not to grant. In **National Coordinator/CE National Programme on Immunization v. Mabol & Associates Ltd (2009) supra at Pp. 286-287, paras. C-G** the Court held thus

“The grant or refusal of an order staying execution of judgment pending the determination of an appeal against the judgment is discretionary. The discretion like any other discretion must be exercised judicially and judiciously having regard to the

peculiar circumstances of each case, the applicable laws and the interest of justice. Therefore, any action or conduct capable of stifling the exercise of discretion is usually frowned at by the court. In the instant case, the various affidavits and counter-affidavit from the competing parties are relevant. The grounds of appeal raised substantial issues of law. Thus, the applicants deserved to have the discretion of the Court of Appeal exercised in their favour.”

See also ***Imani & Sons Ltd. v. Bil. Const. Co. Ltd. (1999) 7 NWLR (Pt.609) 135.***

A party who seeks the intervention of the Court by way of an Order for Stay of Execution must show that he is entitled to the Court's exercise of its discretion in his favour. This the party must do by adducing cogent facts which the Court must be enough to sway the mind of the Court. Besides, the facts so adduced must be consistent with the principles established by the Court in this regard.

I have studied the affidavit in support of this application. There is no contention that the Arbitral Award of the FCT Co-Operative Arbitration Committee was delivered on the 16th day of December, 2019. Equally, there

is no doubt that the Judgment of this Honourable Court recognizing the Arbitral Award was delivered on the 15th of February, 2021. This is consistent with the provisions of section 44(9) of the FCT Cooperative Societies Act CAP 488 Laws of the Federal Capital Territory, Abuja which provides that ***“The decision shall, on the application of the party in whose favour it is given, be enforced by a court which would have jurisdiction in civil matters between the parties to the dispute, to give a judgment for the payment of the amount awarded or, where the decision does not relate to the payment of money, to give a similar decision, in the same manner as if the decision had been a judgment of decision of the Court.”*** By virtue of section 21(12) of the Cooperative Societies Regulations made pursuant to the Cooperative Societies Act, it is provided that ***“A party aggrieved by an award of an arbitrator may appeal to the registrar in person or by an agent within one month of the date of the award.”***

In praying this Honourable Court for an order for Stay of Execution, did the Applicant comply with the provisions of the Cooperative Societies Act CAP 488 Laws of the Federal Capital Territory, Abuja and the Cooperatives Societies Regulations made thereunder? To answer this question, I must consider the affidavits before me. According to the Applicant, in paragraph 2

of his affidavit in support of his application, “... *the decisions and findings contained in the Arbitration Award delivered on the 10-12-2019 (sic) by the FCT Co-operative Arbitration Committee is not a true reflection of what actually happened at the arbitration.*”

Did he take any step to challenge this award? In paragraph 5, he claimed he became aware of the award in March, 2020 when he was served with the said award. According to him, “*I immediately instructed my lawyer, Segun Amosu Esq., to appeal against it as I was completely dissatisfied and aggrieved by the award.*” He claimed he did not know that his lawyer did not follow up on his brief and that he got to know of this fact on the 15th of February, 2021 when the Enforcement Unit of the High Court of Niger State impounded his car and his generator. He further claimed that his lawyer has appealed against the arbitral award. The said appeal, according to paragraph 7 of the affidavit, is marked **Exhibit B**. I have examined the said Exhibit B. it is dated the 26th of August, 2021 and addressed to the Minister of the Federal Capital Territory. It was received in the office of the Minister on the 27th of August, 2021.

I find the statement of facts of the Applicant highly implausible. He was aware that there was a proceeding against him before the Arbitration Committee yet, he never bothered to follow up on the proceedings that

culminated in the arbitral award on the 16th of December, 2019. He became aware of the arbitral award in March, 2020 when, as he claimed, it was served on him and he briefed. He did not adduce any fact to support his claim that he indeed briefed a lawyer. Between March, 2020 to August, 2021 when enforcement was levied against the property of the Applicant pursuant to the Judgment of this Court delivered on 15th of February, 2021 – a period of over seventeen months – the Applicant never bothered to check on the progress his lawyer has made in respect of his appeal if, indeed, he briefed a lawyer. On the 26th of August, 2021, the Applicant through his lawyer scabbled together what they claim is an appeal. This is rather fantastic!

Contrary to the argument of learned Counsel for the Applicant in his Reply on Points of Law that the competency of the appeal is not for this Court to determine, since same is pending before the FCT Co-Operative Societies Arbitration Committee, this Court has been invited to make an Order for stay of execution of its Judgment of 15th of February, 2021. It is only appropriate that this Court consider all the facts in this suit in order to deliver a fair, just and balanced Ruling. Besides, the said appeal was annexed o the Applicant's application as an exhibit. This Court has a bounden duty to examine all documents before it in arriving at its decision.

An examination of the said **Exhibit B** attached to the applicant's supporting affidavit reveals that the appeal was made to the Minister of the Federal Capital Territory and not to the Registrar of Cooperatives contrary to the express provision of Section 21(12) of the Co-operatives Societies Regulations made pursuant to the Co-operative Societies Act CAP 488 Laws of the Federal Capital Territory. This is wrong. Secondly, the appeal was made more than six (6) months after the Judgment of this Court recognizing the arbitral award delivered on the 15th of February, 2021 and more than one year and eight months after the arbitral award delivered on the 16th of December, 2019. This is grossly against the express stipulation of section 21(12) of the Regulations which clearly laid down one month as the period within which an appeal must be lodged. There is nothing in the documents attached that showed that the Applicant sought and obtained the leave of the Arbitration Committee to appeal out of time. Equity aids the vigilant and not the indolent. As the apex Court held in the case of ***Nigerian Laboratory Corporation v. Pacific Merchant Bank Ltd (20120 15 NWLR (Pt 1324) 505*** per I. T. Mohammed JSC (as he then was), "***He who comes to equity must come with clean hands. And delay they say defeats equity... The law helps the vigilant and not the one who sleeps on his right, vigilantibus et non dormientibus jura subveniunt.***" On these grounds, I

have no hesitation in holding that there is no appeal before the appropriate body mandated by the statute governing co-operative societies to hear such appeal, to wit, the Registrar of Co-operative Societies.

In addition to the above, the appeal was written on the 26th of August, 2021 and filed on the 27th of August, 2021. The Motion for an order for stay of execution was filed on the 30th of August, 2021. How convenient! Section 83(3) of the Evidence Act, 2011 as amended provides that **“nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.”** For a documentary evidence to be caught within the web of section 83(3), such document (1) must have been made by a person interested; (2) must have been made at a time when proceedings were pending or anticipated; and (3) must have been made regarding a dispute as to any fact which the statement might tend to establish. See **Skye Bank Plc v. Perone (Nig.) Ltd (2016) LPELR-41443 (CA) at 50-53 paras F.**

Exhibit B attached to the Applicant’s affidavit in support of his application checks all the indices for its inadmissibility. There is no doubt that the Applicant is a person interested in this suit. He was the Respondent in the substantive suit and the Judgment Debtor therein. He is also the Applicant in

this application. He is therefore a person interested within the contemplation of that section of the Evidence Act. The exhibit obviously was made in anticipation of this suit, having being made just four days to the filing of this application and served on the Minister of the Federal Capital Territory three days to the filing of this application. It was made regarding a dispute wherein the Applicant's liability to the Respondent is in issue and seeks to establish the fact that an appeal against the arbitral award was pending – which is, interestingly, the major ground upon which this application is predicated. The said **Exhibit B** is therefore inadmissible and is accordingly discountenanced by this Court. In effect, there is no valid appeal upon which this Court can be invited to exercise its discretion in respect of the reliefs sought in this application in favour of the Applicant.

In view of the foregoing, therefore, I find this application wholly unmeritorious, utterly vexatious and totally frivolous. The application is nothing but an attempt by the Applicant to frustrate the Respondent from reaping the fruit of its successful litigation. The application is accordingly dismissed. I hereby award a cost of ₦50,000.00 (Fifty Thousand Naira) only against the Applicant and in favour of the Respondent.

This is the Ruling of this Honourable Court delivered today, the 5th day of April, 2022.

HON. JUSTICE A. H. MUSA
JUDGE
05/04/2022