

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT NO. 4, MAITAMA ON THE**  
**13<sup>TH</sup> DAY OF JULY, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO. FCT/HC/CV/2909/2019**

**COURT CLERKS:** *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

**DAVID I. AJABA ..... CLAIMANT**

**AND**

**1. GUARANTY TRUST BANK PLC } ..... DEFENDANTS**  
**2. WEMA BANK PLC }**

**RULING**

The Judgment Debtor/Applicant's application is dated 22<sup>nd</sup> of November 2021 i.e M/259/2021. It is brought pursuant to Order 61 Rules 1, 2 & 3 of the Rules of Court. It prays for:

- (1) An Order of Stay of Execution of the Judgment of this Court delivered on 18/11/2021 pending the hearing and determination of the 1<sup>st</sup> Defendant/Judgment Debtor/Applicant's Appeal at the Court of Appeal.
- (2) And for such Orders as the Court may deem fit to make in the circumstance.

Learned Counsel to the 1<sup>st</sup> Defendant/Judgment Debtor/Applicant relied on the 4 grounds upon which the reliefs are sought. He also relied on the 10 Paragraph Affidavit filed in support.

The 1<sup>st</sup> Defendant/Judgment Debtor deposed through Aliyu M. Abdulhameed that the 1<sup>st</sup> Defendant/Judgment Debtor is not satisfied with the Judgment of this Court. It has filed a Notice of Appeal. That the Notice of Appeal raises recondite issues of law. That the Claimant is eager to levy execution of the Judgment. That status quo should be maintained. That it has applied for the records of appeal for prompt compilation of records of appeal for transmission to the Court of Appeal. That 1<sup>st</sup> Defendant/Judgment Debtor is ready to diligently prosecute the Appeal. That if Judgment is executed the Judgment Creditor may not be able to repay the Judgment sum.

It undertakes to indemnify the Claimant if the application ought not to be granted. The 2<sup>nd</sup> Defendant/Judgment Debtor/Applicant's application M/9298/21 is dated 15<sup>th</sup> day of December 2021. It prays the Court for the same Order as prayed for by the 1<sup>st</sup> Judgment Debtor.

In support is a 10 paragraph Affidavit which the 2<sup>nd</sup> Judgment Debtor relies upon amongst others, it deposed that:

- (1) That the 2<sup>nd</sup> Judgment Debtor is dissatisfied.
- (2) That the reason the appeal will be destroyed and the Judgment rendered nugatory if the judgment is not stayed.

That it undertakes to issue a bank guarantee to pay the Judgment Debtor. The balance of convenience is on the side of the Applicant. That it will facilitate quick compilation of records.

The Judgment Creditor's Counter Affidavit to the 1<sup>st</sup> Judgment Debtors application was deposed to on 18/03/22. He relied on same. He deposed that most of the depositions are not correct. He confirms that a Notice of Appeal was filed. That Judgment Creditor will be prejudiced. The Judgment Creditor also relied on his Counter Affidavit to the 2<sup>nd</sup> Judgment Debtor's application. It is of 10 paragraphs. He said parties attempted settlement in with a promise for briefs which never materialized. He rejected the said N500,000cheque paid as full and final settlement.

That on 10/11/2020, the Court was informed that settlement had broken down. The appeal is geared towards frustrating the Claimant of the fruits of his judgment. That the Judgment Creditor will be prejudiced.

I have also considered the Written Addresses of Counsel. The issue for determination is whether the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors/Applicants have made out a case to be entitled to the reliefs sought.

An application for stay of execution presupposes that there is a valid pending Appeal. No Court will consider an application for stay of execution in respect of an invalid Appeal.

***ORURUO VS. UGWU (2007) 7NWLR (PT. 1033) 225.***

A grant of stay of execution pending appeal as in this case is undoubtedly and clearly at the discretion of the Court to be exercised judicially and judiciously.

See ***UMENZEKWE VS. AZIKE (2003) 4NWLR (PT. 809) 66.***

I have looked at the Notice of Appeal allegedly filed. The 1<sup>st</sup> Defendant/Judgment Debtor's Notice of Appeal is not stamped and signed by the Registrar. In the circumstance it is not filed.

The 2<sup>nd</sup> Judgment Debtor's Notice of Appeal is stamped dated and signed by the Registrar in the Appeal Unit. The 1<sup>st</sup> Judgment Debtor has no Notice of Appeal upon which a stay of execution can be based.

An Applicant seeking for an Order of Stay of Execution must show special or exceptional circumstances why the order should be made because the Court will not make an order depriving a successful Litigant of the fruit of his success. The Judgment which the Applicant wishes to stay its execution is a monetary judgment.

In a Judgment involving money, the terms upon which the Court would grant a stay of execution are easier to determine than in other

judgments were the res is perishable or prone to alteration. The terms are:

- (1) Whether making the Applicant to satisfy the judgment would make his financial standing such that he could not prosecute the appeal.
- (2) Whether it would be difficult to secure the refund of the judgment debt and costs from the Respondent, if the Appeal succeeds, for which purpose the financial ability of the Respondent is taken into account.

See ***GOVERNOR OF OYO STATE VS. AKINYEMI (2003) 1 NWLR (PT. 800) LP 16***

***FAWEHINMI VS. AKILU (1990) 1 NWLR (PT. 127) 450.***

The Applicant have not put materials before the Court to show that when the judgment sum is paid, they will not be able to prosecute the appeal. The Applicants are big financial institutions. There is also no evidence to suggest that the Respondent who is a lawyer will not be able to refund the judgment sum if the appeal succeeds. There is no Affidavit evidence suggesting that there is no reasonable probability of getting back the funds if the appeal succeeds.

See ***D. T. N. VS. KUSAMOTU (2002) 15 NWLR (PT. 790) 401.***

In the circumstance, the Applicants have not shown any special circumstance warranting the Court to grant the reliefs sought. The Applications fail and they are dismissed.

**HON. JUSTICE U. P. KEKEMEKE**

(HON. JUDGE)

13/07/2022

Parties absent.

A. M. Aliu, Esq. for the 1<sup>st</sup> Defendant.

Monday Okpe, Esq. for the 2<sup>nd</sup> Defendant.

David I. Ajaba, Esq. for the Claimant.

**COURT:** Judgment delivered.

(Signed)

**HON. JUDGE**

13/07/2022