

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE: HON. JUSTICE O.C. AGBAZA**

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

**SUIT NO: FJ/26/2019
MOTION NO./2695/2022**

BETWEEN:

**VISION KAM JAY INVESTMENT LTD.....JUDGMENT CREDITOR/
RESPONDENT**

AND

- 1. PRESIDENT OF THE COMMISSION**
- 2. ECOWAS COMMISSION.....JUDGMENT DEBTORS/
APPLICANTS**

RULING

By a Motion on Notice dated on 9/3/2022 and filed on the same day, brought pursuant to Order 61 of the FCT High Court (Civil Procedure Rules) 2018 And under the inherent jurisdiction of this Hon. Court, praying for the Court for following:

- (1) **AN ORDER** of this Honourable Court staying on unconditional terms the further execution of the Judgment and Orders made by this Honourable Court, Coram, Honourable Justice O.C. Agbaza, delivered at the High Court of the Federal Capital Territory, Abuja Holden at Jabi, Abuja on the 1st day of December, 2020 in Suit No: FJ/26/2019, for the enforcement of the Judgment ECOWAS

Court of Justice in Suit No: ECW/CCJ/JUD/24/2016 Between the Respondents and Appellants, in the sum of ₦218,440,776.00 (Two Hundred and Eighteen Million, Four Hundred and Forty Thousand, Seven Hundred and Seventy Six Naira), only pending the determination of the Appeal filed by the Applicants to the Supreme Court as well as Motion of Stay of Execution presently pending the Court of Appeal.

(2) **AN ORDER** of this Honourable Court setting aside the Writ of Execution/Attachment of the property belonging to the Applicants and or its Garnishee Bank, Eco Bank Nigeria Limited arising from the Judgment and Orders made by this Honourable Court, Coram, Honourable Justice O.C. Agbaza, delivered at the High Court of the Federal Capital Territory, Abuja Holden at Jabi, Abuja on the 1st day of December, 2020 in Suit No: FJ/26/2019, for the enforcement of the Judgment ECOWAS Court of Justice in Suit No: ECW/CCJ/JUD/24/2016 Between the Respondents and Appellants, in the sum of ₦218,440,776.00 (Two Hundred and Eighteen Million, Four Hundred and Forty Thousand, Seven Hundred and Seventy Six Naira), only pending the determination of the Appeal filed by the Appellants to the Supreme Court as well as Motion of Stay of Execution presently pending the Court of Appeal.

(3) **AN ORDER** directing the Judgment Creditor and Deputy Sheriff of this Honourable Court to return forthwith all the items of property taken away in the execution of its Order made on the

1st day of December, 2020 in Suit No: FJ/26/2019, for the enforcement of the Judgment ECOWAS Court of Justice in Suit No: ECW/CCJ/JUD/24/2016 Between the Respondents and Appellants, in the sum of ₦218,440,776.00 (Two Hundred and Eighteen Million, Four Hundred and Forty Thousand, Seven Hundred and Seventy Six Naira), only.

(4) AND FOR SUCH FURTHER ORDERS that this Hon. Court may deem fit to grant in the circumstances of this case.

The grounds upon which the reliefs are sought are as follows:

- (1) On January 26, 2022 the Applicants timeously filed a Notice of Appeal against the Judgment of the Court of the Appeal together with a Motion for Stay of Execution of the Judgment of this Honourable Court which processes were served on the Judgment Creditor.
- (2) That there is a pending appeal to the Supreme Court against the Judgment of the Court of Appeal delivered in Appeal No: CA/A/1075/2020 on January 26 2022.
- (3) Despite the pendency of the Appeal the Respondent went to levy execution on the Garnishee Bank so as to realize the fruit of the Judgment and the said execution caused irreparable damage to the property of the Applicants.
- (4) In the process of attaching the property of the Applicants', the Respondents forcefully evicted an innocent 3rd Party who is a

sitting tenant in the property and destroyed the moveable property of the Applicants' Bankers.

- (5) The said attachment was unlawfully carried out resulting in the taking away of the moveable properties of the Applicants' Bankers.
- (6) Further compliance to the said orders of the trial Court would lead to the sale/auction of the property of the Applicants' Bankers hence cause irreparable damage to the Applicants' and their Appeal.
- (7) If an Order for further Stay of Execution is not granted to the Applicants, the Judgment debt may be reclaimable from the Respondents in the event that the Supreme Court allows the Appeal.
- (8) The Applicants' Appeal raises recondite, substantial and arguable issues before the Court of Appeal and the chances of the success of the said Appeal are considerable.
- (9) The record of Appeal to Supreme Court would have been compiled and transmitted to the Supreme Court by the time this application is heard.
- (10) A refusal of the Court to stay the further execution of the Judgment will work great hardship on the Appellants/Applicants as the effect will be to compel them to pay monies which the Judgment Debtor/Respondent will not be able repay.

(11) The Respondent will not be able to repay any monies which the Applicants will be compelled to pay them if this Judgment is not stayed.

In support of the Motion is a 25 Paragraph affidavit sworn to by Ndidi Ejimadu with Exhibits annexed and marked "A1", "A2", and "A3 – 5". Filed a Written Address in support. Also filed a Reply to Judgment Creditor's Counter Affidavit on 16/3/2022.

The Motion was served on Judgment Creditor/Respondent and in response filed a Counter-Affidavit of 22 Paragraphs on 11/3/2022 sworn to by Mr. John Uttuh, Managing Director/Chief Executive Officer of Judgment Creditor/Respondent with Exhibits attached and marked 1, 2 and 3. Filed a Written Address in support. Also filed affidavit of facts on 4/4/2022.

In the Written Address of Judgment Debtors/Applicants settled by Mazi Afam Osigwe, SAN, a sole issue was formulated for determination and that is;

"Whether this court can grant the reliefs being sought for by this application"

Arguing this sole issue submitted that the essence of this application is to preserve the res pending the determination of Applicants Appeal to the Supreme Court and this in line with the position that once parties submitted their dispute to court, they should not take any step which may have the effect of foisting a situation of helplessness on the court. He cited *Abiodun Vs C. J Kwara State* (2007) 18 NWLR PT 1065, 109 at 139.

That a Motion for Stay of Execution was filed at Court of Appeal and same was served on Respondent and despite the service of the said Motion, Respondent went ahead to attach the Garnishee Bank's property in order to enforce the Judgment against Applicants and in the process caused irreparable damage to Applicants. He submitted further that the Respondent misled the court by not informing court that there is a Motion for Stay of Execution pending at the Court of Appeal and more so that Appeal has been filed. That the purpose of Stay of Execution is to keep the state of affairs in status quo ante to preserve the res subject matter of litigation, from being destroyed pending the determination of an Appeal in the matter and commended the court to *Alawiye Vs Ogunsanya* (2013) 5 NWLR PT 1348, 597, *FBN Vs Agbara* (2015) 8 NWLR PT 1460, 66. Further that the Applicants affidavit has stated facts which met the conditions a court may consider in granting this application. He cited *Integration (Nig) Ltd Vs Zumaton (Nig) Ltd* 2014 4 NWLR PT 1398, 490.

In the Written Address of Judgment Creditor/Respondent, John Ainetor Esq of Counsel for Judgment Creditor/Respondent, formulated three (3) issues for determination namely;

1. Whether this court has the jurisdiction to determine this application having become functus officio when Appeal was earlier entered at the Court of Appeal.
2. Whether the instant application is an abuse of the process of this court.
3. Whether the Judgment Debtors/Applicants are entitled to the

reliefs sought in this application.

Arguing the issue No1, submitted that this court become functus officio over the subject matter, parties and other issues arising from the suit the very moment Judgment Debtors/Applicants transmitted records to Court of Appeal which was entered as Appeal No. CA/ABJ/CV/1075/2020 and same dismissed and Judgment Debtors/Applicants purports to have filed Notice of Appeal at the Supreme Court. That this court clearly had long become functus officio in the circumstances of this case. He referred to FRN Vs Maishanu (2019) 7 NWLR PT. 1671, 203 and FBN Plc Vs T.S.A. Industries Ltd (2010) 15 NWLR PT 1216, 247 at 296.

On the issue No, 2, submitted that the instant application is an abuse of processes of this court having regards to the processes the same Judgment Debtors/Applicants have alleged to have filed at the Court of Appeal and the Supreme Court simultaneously. That in Para 9 of their affidavit, the Judgment Debtors/Applicant claimed that their Exhibits "A2" is pending at the Court of Appeal and its of note that the prayers in Exhibits "A2" are related to the prayers in the instant application as they are of same effect and substance. In addition, the instant application is filed before this court, a High Court lower in hierarchy to both the Supreme Court and Court of Appeal on same subject matter and between same parties. That its grossly an abuse of the processes of this court. He refer to Nwoso Vs PDP (2018) 14 NWLR PT 1640, 532. That furthermore is Exhibit "A1" annexed to Judgment Debtors/Applicants which is a purported Notice of Appeal to the Supreme Court filed on 9/3/2022 whereas in Exhibits "A3 - A5" mentioned in Para II of their affidavit, they had earlier written several letters to the

Chief Registrar of this Court wherein it was stated that an Appeal was already pending as at 26th, 27th and 31st January, 2022. Therefore, while by the Exhibits "A1" they filed Notice of Appeal on 9/3/2022, they had since January, 2022 been saying that Appeal to Supreme Court was already existing. That this shows their intention and tendency to keep filing multiple Appeals to the Supreme Court without readiness at diligent prosecution of Appeal at the Supreme Court.

With regard to the issue No 3, submitted that Judgment Debtors/Applicants are not entitled to the reliefs sought in this application. That in the instant application, Ecobank Plc is not a party. It is not also a party to any pending processes at the Court of Appeal or the Supreme Court. Further that the instant application also has reliefs against the Deputy Sherriff, the Chief Registrar of this court, who is also not a party to this application. He commended the court to several judicial authorities; Plateau State Vs A.G. Federation (2006) 3 NWLR PT. 967, 346, CBN Vs Interstella Communications Ltd (2018) 7 NWLR PT 1618, 294, Sherriff Vs PDP (2017) 14 NWLR PT 1585, 212, Awoniyi Vs registered Trustees of A.M.O.R.C (2000) 10 NWLR PT 676, 522.

I have given an insightful consideration to the respective submission of both Learned Counsel for the parties, the judicial authorities cited for an against the grant of the instant application and the annexed Exhibits and find that only one (1) issue calls for determination and that is;

Whether this court can entertain and determine this instant application considering the circumstances of this case"

It will be recalled that consequent upon the application of the Judgment Creditor/Respondent herein in a Garnishee proceeding, this court on 11/6/2020 made an order Nisi attaching the sum of ₦218,440,776.00 (Two Hundred and Eighteen Million, Four Hundred and Forty Thousand, Seven Hundred and Seventy Six Naira) with the Garnishee – Eco Bank Plc being the outstanding Judgment debt due to the Judgment Creditor/Respondent from Judgment Debtors /Applicants as per the Judgment of ECOWAS Court which Order Nisi was made absolute on 1/12/2020 in a considered Ruling of this court. Subsequently, a Writ of Execution for enforcement was issued by this court on the application of Judgment Creditor/Respondent consequent upon the dismissal of the Appeal filed at the Court of Appeal by Judgment Debtors/Applicants and the fact that the window of Appeal to the Supreme Court from the court of Appeal had elapsed and moreso that the Supreme Court had by a letter to counsel for Judgment Creditor/Respondent dated 24/2/2022 which copy was forwarded to the Court from the office of the Chief Registrar of this Court to the effect that there is no record of any case involving the parties pending before the Supreme Court.

Now, from the affidavit evidence before this court, execution on the orders of this court made on 1/12/2020 was carried out by the Enforcement Unit of this court. The Judgment Debtors/Applicants by the instant application is seeking the order of court to stay further execution and set aside the Writ of Execution amongst other reliefs. Their contention, in the main, is that the essence of the instant application is to preserve the res pending the determination of their Appeal at the Supreme Court and this they posit in

line with the position that once parties submitted their dispute to court, they should not take any step which may have the effect of foisting a situation of helplessness on the court. On the other hand, Judgment Creditor/Respondent contended that the instant application is an abuse of the process of court having regard to the processes same Judgment Debtors/Applicants filed at the Court of Appeal and the Supreme Court. That by their affidavit they claimed that their Exhibit "A2" is pending at Court of Appeal and its noteworthy that the prayers in Exhibit "A2" are related to the prayers in the instant application as they are of same effect and substance. Further that this court is functus officio in respect of this matter the very moment Judgment Debtors/Applicants transmitted records to Court of Appeal which was entered as Appeal No. CA/ABJ/CV/1075/2020 and same dismissed and Judgment Debtors/Applicants claimed to have filed Notice of Appeal at the Supreme Court

I have looked at the said Exhibit "A2" of Judgment Debtors/Applicants vis-à-vis the instant application and of the firm view that for all intents and purpose it is same application with the instant as both are of same effect and substance. Also of note is the Exhibit "1" of the Judgment Creditor/Respondent annexed to his affidavit of facts which also is of same application by Judgment Debtors/Applicants as in their Exhibit "A2" and the instant application. It is therefore, the view of court that this instant application is incompetent before this court and a gross abuse of the processes of court which the court over time is urge not to encourage.

In any event, this court is functus officio in respect of their matter, Records of Appeal having been transmitted and the matter siesed with the Appellant Courts.

In conclusion, this application filed by the Judgment Debtors/Applicants is hereby struck out.

Signed

HON. JUSTICE O. C. AGBAZA

Presiding Judge

15/7/2022

HANNATU BAHAGO WITH UCHECHUKWU ILOKA ESQ – FOR JUDGMENT DEBTORS/APPLICANTS.

JOHN AINETOR ESQ – FOR JUDGMENT CREDITOR/RESPONDENT.