

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 20TH DAY OF SEPTEMBER, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/1317/18
MOTION NO.:-FCT/HC/M/2715/2022

BETWEEN:

MRS. TORITSEJU MEMUDUAGHAN-ODEY.....**CLAIMANT/**
(Acting as the lawful Administrator/Executrix
the Estate of Daniel UrowinoMemuduaghan) **RESPONDENT**

AND

- 1. CAPT. ABEL OMAMOFE MEMUDUAGHAN:.....DEFENDANT/**
APPLICANT
- 2. GUARANTEE TRUST BANK PLC**
3. CARDINALSTONE REGISTRARS LIMITED
4. AFRICA PRUDENTIAL REGISTRARS LIMITED
5. FIRST REGISTRARS LIMITED
6. VERITAS REGISTRARS LIMITED
7. MERISTEM REGISTRARS LIMITED
8. GTL REGISTRARS LIMITED
- :...DEFENDANTS/**
RESPONDENTS

Helen Dickson for the Claimant.
Dominic Anyiador for the 1st Defendant.
Faith Igbinoghene for the 2nd Defendant.
Oluwasile Oluwatuyi for the 3rd Defendant.
All other not represented.

RULING.

By a Motion on Notice dated the 8th day of March, 2022, and filed the 10th day of March, 2022, the 1st Defendant/Applicant brought this application praying the Court for the following orders:

1. An Order staying the proceedings in the within suit pending the hearing and determination of the Applicant's

Motion on Notice in CA/ABJ/PRE/ROA/CV/197M1/2022 pending in the Court of Appeal.

2. Any further or other order(s) as may be deemed necessary.

The grounds for this application, as deposed to by one Joseph Ade, in the supporting affidavit, is that the Applicant has filed an application at the Court of Appeal in Motion No. CA/ABJ/PRE/ROA/CV/197M1/2022, seeking leave to appeal the interlocutory decision of this Court.

In his written address in support of the Motion on Notice, learned 1st Defendant/Applicant's counsel, Dominic Anyiador, Esq, raised a lone issue for determination, to wit;

“Whether this Court has the jurisdiction and the vires to continue with the proceedings in the within suit?”

Arguing the issue so raised, learned counsel relied on **Orizu v. Ofomata (2007) 27 WRN 161 at 171** to posit that it is the law that once an application is pending before a superior Court and a lower Court is aware of that application, the later should stay its proceedings.

He argued that by annexure 'A' to the Applicant's affidavit, this Court is fully aware of the pendency of a Motion on Notice No. CA/ABJ/PRE/ROA/CV/197M1/2022 pending in the Court of Appeal.

He contended that this Court is obligated to respect the Court of Appeal which is duly seised with an application for leave to appeal the interlocutory decision of this Court.

Arguing that this application is founded on the relevant sections and orders of the Court of Appeal Act and the Court of Appeal Rules respectively, learned counsel referred to **Kalu v.**

Odili(1992)5 NWLR (Pt.240)130 at 173 and Orakul Resources Limited v. Nigeria Communications Limited (2007) 18 WRN 87 at 166 on the validity and enforceability of the Court of Appeal Rules.

He urged the Court to grant the prayers of the Applicant as contained in the Motion paper and stay all proceedings in this suit pending the hearing of the Motion on Notice at the Appellate Court.

In opposition to the application, the Claimant/Respondent filed a 14 paragraphs counter affidavit deposed to by one John Danjuma, the litigation clerk in the law firm of the Claimant's Solicitors.

The Claimant/Respondent averred that this application does not disclose a valid arguable ground of appeal pending before the Court of Appeal and that there is no competent appeal pending before the Court of Appeal she further averred that the 1st Defendant/Applicant has not shown any special or exceptional circumstances warranting the grant of stay of proceedings and that the application is incompetent, frivolous and an abuse of the process of Court.

The learned Claimant/Respondent's counsel, Helen Ndubunma Dickson, Esq, in his written address in support of the counter affidavit, raised a sole issue for determination, to wit;

“Whether from the totality of the facts as put forward by the 1st Defendant/Applicant, the 1st Defendant/Applicant has placed before the Court sufficient facts to warrant the grant of the reliefs sought in this application?”

Proffering arguments on the issue so raised, learned counsel posited that an application for stay of proceedings pending

appeal is not granted as a matter of course. That the grant or otherwise of same, is discretionary exercise by the Court, which discretion, the Court is expected to exercise judicially and judiciously. He referred to **Metu v. FRN (2017) 11 NWLR (Pt.1575) 157** and submitted that the discretionary power of the Court must not be exercised in vacuum but in relation to the existing facts of the particular case.

Relying on **I.G.P. v. Fayose (2007)9 NWLR (Pt.1039) 263 and FRN v. Abacha (2008)5 NWLR (Pt.1081) 634 at 650-651**, he posited that the guiding principles for the grant of an application for stay of proceedings are:

- a. There must be a competent appeal.
- b. The pending appeal must be arguable.
- c. The Applicant must establish special and exceptional circumstance.
- d. Court must consider the competing rights and conveniences of the parties.
- e. Where the grant of the stay of proceedings will necessitate a delay, it should not be granted.
- f. Where a genuine issue of jurisdiction is raised, the Court should grant a stay.

Learned counsel contended that the 1st Defendant/Applicant has no competent appeal lying before the Court of Appeal. He argued that an application for leave to appeal, exhibiting a proposed notice of appeal, does not automatically translate to a competent appeal.

He contended that no proper appeal has been filed by the Applicant and that as such, there is no pending appeal on the basis of which this application could be validly made. He posited that an appeal can only be said to be competent when same has been duly filed and entered.

Learned counsel submitted that the case of **Orizu v. Ofomata (2007) 27 WRN 161** cited by the 1st Defendant/Applicant is irrelevant and not applicable to the instant case.

He further argued that the facts relied on by the 1st Defendant/Applicant in his supporting affidavit do not disclose or establish special and exceptional circumstances warranting that the stay of proceedings must be granted. He referred to **Okeke v. FRN (2008)9 NWLR (Pt.1145)106-107.**

He contended that the balance of convenience is not on the side of the 1st Defendant/Applicant as he failed both in his affidavit and written address, to establish ***“and extra ordinary and unique state of affairs that will serve better justice than allowing the proceedings”*** as stated by the Court in **Mobile Production Nig Ltd v. Afeni(2008) 1 NWLR (Pt.1073)185.**

Learned counsel urged the Court to refuse the application and dismiss same with substantial cost against the 1st Defendant/Applicant.

In the determination of this application, the issue to consider is whether there is a valid reason for the grant of same.

The principles guiding the grant of stay of proceedings have been laid down in a plethora of cases. The basic and fundamental of such principles is that there must be a pending appeal. In this regard, the Apex Court, in **Nika Fishing Co. Ltd v. Lavina Corporation (2018) LPELR-2035(SC)**, held, per Tobi, J.S.C that:

“In order to consider an application for stay of proceedings, there should be a pending appeal and the pending appeal must be valid.”

In the instant application, the basis for seeking for an order for stay of proceedings is that the 1st Defendant/Applicant has filed a Motion at the Court of Appeal for the leave of the Appellate Court to appeal against the ruling of this Court.

Generally, any application seeking a court's restraint continuation of the proceedings in a suit is incompetent and cannot succeed in the absence of an appeal already filed before a court of appeal. The right of appeal is constitutionally created subject to conditions.

Two situations exist in staying execution and staying proceedings pending appeal. To stay proceedings pending an interlocutory appeal, the applicant is expected to do more in constraining the court beyond the filing of mere leave to appeal. The appellant must ensure that the hearing and determination of his motion or application for leave to appeal at the Court of Appeal is concluded and successful.

Thus, obtaining the leave to appeal before requesting for restraint on the proceedings of the court, is sine qua non. I therefore consider this application premature and incompetent because no leave to appeal has been obtained by the Applicant to enable counsel file and enter appeal at the Court of Appeal.

I agree with the learned counsel for the Claimant/Respondent that an application for leave to appeal does not automatically translate to a competent appeal.

The 1st Defendant/Applicant cannot presume that by mere filing of motion for leave to appeal, the Court of Appeal will grant the leave as a matter of course. An order for stay of proceedings cannot be made unless and until a valid appeal has been duly entered at the Court of Appeal.

There being no valid appeal duly entered at the Court of Appeal against the ruling of this Court, there is no valid or justifiable basis for the grant of this application stalling proceedings in this case.

This application therefore fails for being grossly incompetent and same is accordingly dismissed with cost of N200,000.00 against the 1st Defendant/Applicant.

HON. JUSTICE A.O. OTALUKA
20/09/2022