

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

13TH DAY OF DECEMBER, 2022

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

SUIT NO. FCT/HC/NY/CV/22/2021

MOTION NO. M/3922/2022

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

1. ALUSHIE OIL NIGERIA LIMITED } CLAIMANTS/RESPONDENTS
2. F & B VENTURES }

AND

1. FILNAN NIGERIA LIMITED DEFENDANT/RESPONDENT
2. SILVERRAY RESOURCES LIMITED DEFENDANT/APPLICANT
3. HON. MINISTER, FEDERAL CAPITAL TERRITORY } DEFENDANTS/
4. FEDERAL CAPITAL DEVELOPMENT AUTHORITY } RESPONDENTS

RULING

The 2nd Defendant's Motion M/3922/22 dated 29/03/2022 is brought pursuant to Order 43 (1) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of the Court.

It prays the Court for:

- (a) An Order staying/suspending compliance with the enforcement of the Orders of Court made in the Ruling dated 8/03/2022 pending the hearing and determination of the Applicant's appeal at the Court of Appeal.
- (b) An Order staying further proceedings in this suit pending the determination of the appeal against the said Ruling.

The grounds for the application are on the face of the motion paper. The kernel of the Affidavit is contained in paragraph 4 of the Affidavit. The deponent deposes as follows:

- (1) The Court delivered its Ruling on 8/03/2022 against the 2nd Defendant/Applicant and in favour of the Claimants.
- (2) The 2nd Defendant is dissatisfied with the Ruling and has appealed to the Court of Appeal. The Notice of Appeal is Exhibit B.

- (3) That Applicant has made proper arrangement for the compilation and transmission of the record to the Court of Appeal.
- (4) The case is adjourned to 30/05/2022 to enable Claimant to amend its processes and serve same on the Defendants.
- (5) The grounds of appeal raises issues of jurisdiction which are capable of being resolved in favour of the Defendants.
- (6) That it is important that stay is granted otherwise appeal will be rendered nugatory.
- (7) That it is in the interest of justice to grant the application.

The application was served on the Claimants and the 1st, 3rd and 4th Defendants. They failed to react to the said application.

Learned Counsel to the 2nd Defendant/applicant canvasses that the essence of stay of execution/

proceedings is to maintain the status quo until the final determination of the appeal.

That 2nd Defendant has placed substantial reasons and exceptional circumstances that require a careful and considerate exercise of the Court's discretion.

That the grounds of appeal are substantial and arguable. That refusal to stay further proceedings in this suit will be unjust and inequitable. He urges the Court to grant the reliefs sought.

An application such as this must succeed or fail on its merit. It is therefore the duty of the Applicant to prove its case on its merit despite the absence of the Claimants or 1st and 3rd Defendants.

The application prays for stay of execution and proceedings. The grant or refusal to grant a stay of proceedings or execution is at the discretion of the Court to be exercised judicially and judiciously.

It is also trite that an application for a stay of proceedings can only be granted where special and

exceptional circumstances exist, particularly where a genuine issue of jurisdiction is raised in the pending appeal.

I have read the Notice of Appeal. The issue of jurisdiction raised is not genuine. It is a camouflage. It is being conjured as a magic wand to attract a stay of proceedings and execution.

The Order granted was for the amendment of the claim. The grounds of appeal in my view do not disclose that they are arguable and substantial.

In the circumstance, I refuse to exercise my discretion in favour of the 2nd Defendant.

The application fails and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
13/12/2022

Parties absent.

No legal representation.

COURT: Ruling delivered.

(Signed)

HON. JUDGE

13/12/2022