

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

**COURT CLERKS: UKONU KALU, GODSPOWER EBAHOR & ORS.**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/118/2018  
MOTION NO: M/9229/2022**

**BETWEEN:**

**GIT ENGINEERING LIMITED.....CLAIMANT**

**VS**

**TRANSMISSION COMPANY OF NIGERIA.....DEFENDANT**

**RULING**

By a Motion on Notice with No. M/9229/2022 dated 14/7/2022 and filed same date, brought pursuant to Section 36 (1) of the 1999 Constitution (As Amended) and under the inherent jurisdiction of the Honourable Court, the Defendant/Applicant pray the court for the following:

1. An Order for stay of execution and/or further execution pending determination of the Appeal filed by the Applicant.
2. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

In support of the Motion is a 6 Paragraph affidavit sworn to by Precilla Emmanuel with 2 Exhibits annexed marked "A1" and "A2". Filed a Written Address, adopts the Address, in urging the court to grant the relief as prayed.

In opposition, Judgment Creditor/Respondent filed a Counter-Affidavit of 11 Paragraphs on 21/7/2022 deposed to by Engr. Fred Ogwazu. Also filed a Written Address, in urging the court to refuse the application.

In the Written Address of Applicant, I.H. Nalaraba of Counsel formulated a sole issue for determination;

“Whether or not such an application is tenable in law”

And submitted that the court possesses inherent power to stay execution of its Judgment pending determination of Appeal where it is brought to its knowledge that there is a pending Appeal against its decision. That what Applicant seek is non-execution of its Judgment to enable him ventilate his right of Appeal. That the purpose of stay is to preserve the “res” pending determination of Appeal and this necessary in order not to make a successful Appeal insignificant after it succeeds at Court of Appeal. In all cited several judicial authorities, Nigerian Agricultural and Cooperative Bank Ltd Vs Mr. Lewechi Ozoemelum (2016) 9 NWLR (PT. 1517) 376, Nigerian Breweries Plc Vs Chief Worhi Dumuje & 1 Ors (2016) 8 NWLR (PT. 1515) 536, the Shariff, High Court of Justice, Rivers State and Anor (2017) LPELR – 42509 (CA).

The Respondent in their Written Address settled by J.C Njikonye (SAN) a sole issue was also formulated for determination;

“Whether the Applicant is entitled to the discretion of the Honourable Court granting its application for stay of execution in the absence of a competent Appeal entered at the Court of Appeal?”

And submits that stay of execution is an equitable remedy and Applicant seeking this equitable remedy has to show he merits it by proving that special or exceptional circumstances exist for the court to grant. That in the instant, the Applicant has not made any special or exceptional circumstances to warrant the grant of its application. Cited judicial authorities; A.G Federation Vs Bayawo (2000) 7 NWLR (PT. 665) 351, Okin Biscuits Vs Osha (2001) 6 NWLR (PT. 709) 369.

Submits further that for court to exercise its discretion to grant an application for stay, there must be a valid pending Appeal. Refer to Okoye Vs Okonkwo (2015) 5 NWLR (PT. 1451) 127. That in the instant, the Applicant does not have any valid pending Appeal at Court of Appeal, refer to Order 6 Rule 12 of Court of Appeal Rules 2021. That a look at the Exhibit "A2" of Applicant reveals that it is undated, unsigned and not filed and as such no valid Appeal which the application for stay could be predicated on.

In the reply of Applicant filed on 29/9/2022, Counsel commended the court to AMCO (Nig) Ltd Volkswagen (Nig) Ltd (2012) 11 NWLR (PT. 1312) 405 and submitted that it is important to allow Court of Appeal to hear and determine what is before it, granting the application before Court of Appeal will allow filing of respective brief of argument and proceed to hearing after which it will decide. That where the court's decision is in favour of Applicant and Judgment of this court executed, it will render the Appeal nugatory. Further that executing the Judgment of this court and handing over the Judgment sum to Judgment Creditor will completely destroy the Res.

I have given insightful consideration to the submission of both Learned Counsel and the judicial authorities cited for and against the grant of the instant application and the court finds that only one (1) issue calls for determination and that is;

“Whether the Applicant has made out a case to warrant the grant of this instant application”

The grant or otherwise of an application of this nature is at the discretion of court and in the exercise of that discretion the court must do so judicially and judiciously taking into account, the facts placed before the court. See *Anachebe Vs Ijeoma* (2014) 14 NWLR (PT. 1426) 168 @ 184 Para D – F.

Over the years, the court has laid down some guiding principles that will guide it in proper exercise of its discretion in Plethora of judicial authorities. Before a court can make an Order of stay of execution thereby asking a successful party or victorious litigant to tarry a while before enjoying the fruits of his victory, the Applicant must show;

1. That there are substantial and arguable grounds of appeal.
2. That there are special and exceptional circumstances to warrant the grant of the application.

See *NNPC Vs Famfo Oil Ltd* (2019) 12 NWLR (PT. 1156) 464. See also *Ofordeme Vs Onyegbuna* (2006) 5 NWLR (PT. 974) 549 and *SPDC Nig Ltd Vs Okei* (2006) 17 NWLR (PT. 1007).

In this instant application, the facts relied on by Applicant is that they have filed an Appeal before Court of Appeal against the Judgment of this court and that the Appeal is competent and arguable on its merit and there is likelihood of the appeal succeeding. Further that if this application is not granted it will jeopardize Applicant's Appeal and render it nugatory.

I have carefully considered the affidavit evidence of Applicant in support against the position contended by Respondent and juxtaposed with the position of the law. In the instant, it is noted from records of court that there is no valid Notice of Appeal before the court, what is before court is a Proposal Notice of Appeal to be filed, that is Exhibit "A2" of Applicant. An Appeal can only be valid if initiated by filing the appropriate Notice of Appeal. See Clev Josh Ltd Vs Tokimi (2008) 13 NWLR (PT. 1104) 423 @ 427. This is not the case in the instant. Again, there is nothing before the court to show compliance with the Provision of Order 61 Rule 1 and 2 of the Rules of Court which provides.

"An Applicant for stay of execution of Judgment shall pay for the compilation of the records of Appeal within 14 days from the date of filing a Notice of Appeal and where the cost of compilation of records is not paid, the Respondent may apply to strike out the application or discharge the order if already granted"

A careful perusal to the processes in the records of court does not reveal that the Applicant have complied with this Provisions of the Rules.

It is also of note that this application relates to monetary Judgment and the court has set out the principles that guides it in the exercise of its discretion to include;

- (1) The competing rights of the parties.
- (2) The need to maintain status quo.

See NNPC Vs BCE Construction Engineering (2004) 2 NWLR (PT. 858) 484.

In an application to stay Monetary Judgment, it is law that the only ground to stay Monetary Judgment is where Applicant satisfies court that if the Judgment sum is paid, there is no reasonable probabilities of getting it back if the Appeal succeeds. See Kwara Poly Vs Oyebanjo (2008) 3 NWLR (PT. 1075), 459 @ 461. It is not sufficient for Applicant to assert that Judgment Creditor will not be able to refund the Monetary Judgment should the Appeal succeed, the Applicant must necessity adduce sufficient evidence to show that Judgment Creditor would be unable to refund the Judgment sum if the Appeal Succeed. See Josiah Cornelius Ltd Vs Ezenwa (2000) 8 NWLR (PT. 670) 616 @ 618 Ratio 5. In the instant application, the Applicant in their reply affidavit stated without more, that if the Judgment sum is given to Judgment Creditor it will not be possible to retrieve it without another litigation should the Appeal succeed. Although this piece of evidence was not rebutted or countered by Judgment Creditor, the Applicant have not shown in their affidavit the financial status of Judgment Creditor as enjoined by law. See Josiah Cornelius Ltd Vs Ezenwa (Supra).

In all, therefore, Applicant has not shown good ground, special or exceptional circumstances in its application. This having been said, I shall, however, in the interest of justice and to balance the interest of the parties grant this instant application of the Applicant with the condition that the Applicant pay the Judgment sums to the Chief Registrar of the FCT High Court. The said Judgment sum should be paid by the Chief Registrar into an interest yielding account for preservation pending the determination of the Appeal filed by the Applicant. I so ordered. The Applicant shall immediately comply with this Order and shall not take any step in respect of this matter or order until this order is complied with. Any step taken without complying with this Order shall be void.

This is the Ruling of the Court

**HON. JUSTICE C.O. AGBAZA**

Presiding Judge

3/11/2022

**APPEARANCE:**

I.H. NALARABA ESQ. – FOR THE JUDGMENT DEBTOR/APPLICANT

CHINOSO .L. OBASI ESQ. – FOR THE JUDGMENT CREDITOR/  
RESPONDENT