

**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: UKONUKALU, GODSPOWEREBAHOR&ORS.**

**COURT NO: 6**

**SUIT NO: FCT/HC/BW/CV/44/2016**

**BETWEEN:**

**MR. ARTHUR EKOKIGHO.....JUDGMENT CREDITOR/RESPONDENT**

**VS**

- 1. INSPECTOR GENERAL OF POLICE**
- 2. NIGERIA POLICE FORCE**
- 3. COMMISSIONER OF POLICE, FCT POLICE COMMAND**
- 4. CPLUSMAN MOHAMMED**
- 5. CPL MOSES ABRAHAM**
- 6. CPL SAMUEL MEMAKO....JUDGMENT DEBTORS/RESPONDENTS**

**VS**

- 1. GUARANTY TRUST BANK PLC.....1<sup>st</sup> GARNISHEE/RESPONDENT**
- 2. POLICE HEALTH MAINTENANCE LTD..... 2<sup>ND</sup> GARNISHEE/APPLICANT**

**RULING**

Before this court are two applications. The first is dated 22/4/2022 and filed same date with Motion on Notice M/4742/2022 by the 2<sup>nd</sup> Garnishee and the second a Motion on Notice M.4743/2022 dated and filed 22/4/2022, also by the 2<sup>nd</sup> Garnishee. The court will Rule on both application in this instant.

The 2<sup>nd</sup> Garnishee/Applicant Motion on Notice dated and filed 22/4/2022 with No. M/4742/2022, brought pursuant to Section 6 of the 1999 of the federal Republic of Nigeria (As Amended); Order 43 Rule 1, Order 61 Rule 1, 2 of the FCT High Court (Civil Procedure) Rules, 2018 and under the inherent jurisdiction, praying for the reliefs set out, to wit:

- (1) An Order of this Honourable Court staying the execution of the Order absolute against the 1<sup>st</sup>/2<sup>nd</sup> Garnishee in this court made on 22/3/2022 by His Lordship, Hon. Justice C.O. Agbaza sitting at Court 6, of the High Court, Abuja, pending the final determination of the Appeal lodged against the said Order.
- (2) The Omnibus Relief.

The grounds upon which the application is predicated are as contained in the Motion paper.

In support of the application, is 17 Paragraphs affidavit sworn to by Linus Ameh with 5 Exhibits attached marked "A1" – "A5". Also filed is a Written Address and adopts same, in urging this court to grant the reliefs as prayed.

In opposition, the Judgment Creditor/Respondent, filed a 17 Paragraph Counter-Affidavit on 17/5/2022 sworn to by Ruth Aleke, with one Exhibit "JC 1". Also filed is a Written Address, adopts same, in urging the court to refuse the application.

In the Written Address of the Applicant settled by Uche Benson EgbuchiweEsq, only one (1) sole issue for formulated for determination to wit:

“Whether the Reliefs sought bythe Applicant should be granted”

And contend taking the court through the legal position of the lawfor consideration of a grant ofthis nature, with judicial authorities and Paragraph ofthe supporting affidavit to show not only exceptional circumstance, good reason to assuage this court to grant this instant application. In particular Paras 12, 13, 14, 15 and 16 of the supporting affidavit in urging the court to grant. Reference was made to the case of OlanloyoVsAdeniran (2001) 24 NWLR (PT. 734) 699 @ 709 – 710 Para H – C.

The Judgment Creditor/Respondent, in their Written Address settled by U.V. EgelambaEsq only one (1) issue was formulated for determination, to wit:

“Whether the relief sought by the Applicants should not be granted”?

And submit, while conceding that the court indeed has discretionary powers to consider the grant of the reliefs sought, judicially and judiciously, however, submits that in this instant, the Applicant has failed to show good grounds to warrant that exercise in their favour bythe court, in particular, the non-compliance with Order 61 Rules 1 & 2 ofthe Rules of Court, and the fact that there is no valid appeal filed, therefore, urge the court to refuse the application.

In the Reply on points of law, the 2<sup>nd</sup> Garnishee Counsel, contend that the Counter-Affidavit of the Respondent is incompetent, for lacking in the affixing of the NBA seal on it.

I have given insightful consideration to the submission of both counsel and the judicial statutory authorities cited, and the court finds that only one sole issue calls for determination to wit:

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

It is indeed an exercise of the court discretion in the consideration of an application of this nature that comes into play. And that exercise shall be done judicially and judiciously; taking into account the facts placed before it. See *AnachebeVsIjeoma* (2014) 14 NWLR (PT. 1426) 168 @ 184 Para D -F.

Overtime the court has laid down some guiding principles that will guide the court in the proper exercise of its discretion in Plethora of cases. 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 fruit of his victory, the Applicant must show;

- (1) That there are substantial and arguable grounds of Appeal.
- (2) That there are special and exceptional circumstance to warrant the grant of the application. See *NNPCVsFAMFA Oil Ltd* (2009) 12 NWLR (PT.1156) 464 @ 468.

It is true that an Applicant has a Constitutional Right to appeal against the decision of the court. In this instant application, the facts relied on by the Applicant is that the Appeal raises substantial issues of law that are triable and arguable and stands a high chance of success. The position of the law, however, is that the fact that an appeal presents arguable grounds cannot by itself be a ground for stay. In *Odebiyi Vs Odebiyi* (2000) 3 NWLR (PT. 659) @ 659 – 660 Para A (SC) stated thus;

“Special circumstance though may include strong and substantial ground of Appeal; this alone may not be enough. A strong and substantial of Appeal does not necessarily means the appeal may succeed.”

See also *Umerjuru Vs Odota* (2009) ALL FWLR (PT. 494) PT. 494 Pg 1605 @ 1608 – 1609; *TSA Industries Ltd Vs Koma Investment Ltd* (2006) 2 NWLR (PT. 964) 300 @ 305 (SC)

The Applicant also place reliance on Para 12, 13, 14, 15 and 16 of their support as special circumstances strong enough to assuage the court to grant.

I have carefully considered the affidavit evidence of the Applicant in support against the position contended by the Respondent and juxtaposed with the position of the law. It must be noted that in this instance, there is no valid Notice of Appeal before the court from the records, what is before the court is a Proposed Notice of Appeal to be filed, that is Exhibit “A3”. 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 this instant. Further there is nothing before the court to show compliance with the Provisions Order 61 Rules 1 and 2 of Rules of Court, which provides;

- (2) "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 of the Applicant's processes does not reveal this, what is before the court vide Exhibit "A4" is receipt for payment of Motion Exparte and receipt for payment for compilation of records while the Exhibit "A5" is an application to court for Certified True Copy of the Order, records of proceedings and processes in the file without more.

This clearly is not in conformity with the Provision of the Order 61 Rule 1 & 2 of the Rules. Assuming that the grounds relied on as sufficient to ground special circumstance for court to consider, question, can the non-compliance with the Rules of Court make it possible for the court to grant this reliefs. It thinks not.

In all having considered the affidavit evidence of the Applicant, I cannot find any good grounds as enunciate in Plethora of judicial authorities to warrant the grant of the relief sought. Accordingly, I am unable to exercise that discretion in favour of the Applicant.

Consequently, the application of the Applicant for stay of execution of the Ruling of this court delivered 22<sup>nd</sup> March, 2022 fails and is hereby refused.

Now to the second application Motion on Notice No. M/4743/2022 dated and filed on 22/4/2022 by the 2<sup>nd</sup> Garnishee/Applicant brought pursuant to Section 242 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).

Now to the second Motion on Notice No. M/4743/2022 dated and filed on 22/4/2022 by the 2<sup>nd</sup> Garnishee/Applicant brought pursuant to Section 242 of the 1999 Constitution of Federal Republic of Nigeria (As Amended); Order 43 Rule 1 of the High Court of the Federal Capital Territory, 2018 and under the inherent jurisdiction of this court, is seeking for the following reliefs to wit;

- (1) An Order of this Honourable Court granting leave to the 2<sup>nd</sup> Garnishee/Applicant to appeal against the Order Absolute against the 1<sup>st</sup>/2<sup>nd</sup> Garnishee on 22/3/2022 by His Lordship, the Honourable Justice C.O.Agbaza of FCT High Court, sitting at Court No. 6, Maitama, Abuja.
- (2) And for such further Order or Orders as this Hon. Court may deem fit to make in the circumstance.

The ground upon which the application is predicated are as set out on the face of the Motion.

In support of this application is an affidavit of 18 Paragraphs sworn to by Linus Ameh with five (5) Exhibits attached marked "A1 –A5". Also filed is a

Written Address and is adopted in urging the court to grant the reliefs sought.

Responding, the Judgment/Respondent, filed a 15 Paragraph Counter-Affidavit sworn to by Ruth Aleke, with one (1) Exhibit "JC1" attached. Also filed a Written Address, adopts same, in urging the court to refuse the application.

Replying on point of law, 2<sup>nd</sup> Garnishee Counsel, submits that the Counter-Affidavit is incompetent, for the failure of affixing NBA stamp on it.

Further on the claim by Judgment Creditor that there is no Notice of Appeal attached, submits that the position of the law is that it is to be attached when leave is granted. That in any event the Proposed Notice is attached. And that they have taken steps applying for Records of Proceedings and Order to enable it do the needful as to the appeal.

In the Written Address of the Applicant, settled by Uche Benson Egbuchwe Esq, only one (1) issue calls for determination to wit:

"Whether the reliefs sought by the Applicant should not be granted".

And submits and contend that the grant or otherwise is at the discretion of the court and in line with the set guidelines for the grant of an application of this nature, and the fact that they have shown special circumstance to warrant the grant of this application. Referred to case of Olunloye Vs Adeniran (2001) 24 NWLR (PT. 734) 699 @ 709 – 710. Para H – C and Paras 12, 13, 14, 15 and 16 of the supporting affidavit in, urging the court to grant the relief sought.



In the Written Address of the Respondent settled by U.V. Egelemgba Esq, and one (1) issue was formulated for determination, to wit:

“Whether the reliefs sought by the Applicant should not be granted”

And submits, while conceding that the grant is at the discretion of the court, to be exercised judicially and judiciously, but that in this instance, the Applicant has failed to show sufficiently facts to assuage this court to grant. That the reference by the Applicant to Paras 12, 13, 14, 15 and 16 of their supporting affidavit is an afterthought and cannot be relied upon by the court, in view of their Exhibit “JC1” attached. Further that there is no Notice of Appeal and that no proof of application to court for records, rather what is attached – Exhibits 5 to the supporting affidavit is merely application for Order of Court and receipt in proof is for Motion Ex parte. In all urge the court to refuse the application.

I have carefully considered this instant application, the submission of both counsel, the judicial authorities and statutory and find that only one (1) issue calls for determination to wit:

“Whether the Applicant has made out a case to warrant the grant of the relief sought”.

In this instant application, the Applicant is seeking the leave of court to appeal the Order Absolute granted on 20/3/2022, although it is a Constitutional Provision, but leave of court is not granted as a matter of course hence an Applicant must satisfy the court with cogent grounds and must bring the application within approved guidelines. Section 14 of the

Court of Appeal Act prescribes that Appeals on Interlocutory Order or decision shall be by leave of the court making the order or decision in observance of that law. Applicant seek leave of court to Appeal its decision on the order of Court made on 22/3/2022. Applicant relies on the facts set out in Paras 12, 13, 14, 15 and 16 of their supporting affidavit, in assuaging the court to grant as it bothers on fundamental issues of jurisdiction of court. On the other hand, the Defendant/Respondent's case is that the Applicant have failed to make out special circumstances and reliance of Paras 12, 13, 14, 15 and 16 of the Applicant's supporting affidavit is an afterthought.

I have earlier stated that an application of this nature must comply to certain guidelines prescribed by law and it is in the light of this, I shall consider this application in line with section 24 (2) of the Court of Appeal Act, which provides;

"The periods for the giving of Notice of Appeal or Notice of application for leave to are:-

- (a) In an Appeal in a Civil Cause or matter is fourteen (14) days where the appeal is against an Interlocutory decision and three months where the appeal is against a final decision;

The application is against a civil case where the court made a final Order Absolute in Garnishee proceedings. A careful computation of the period against this application, 22/3/2022 to 22/4/2022 is still within three months, therefore the application is competent before the court. The question to determine is whether the application is competent and whether

the Applicant has shown special circumstance to warrant the grant of the relief sought.

I am not unmindful of the issues raised by the Respondent, such as no evidence of no appeal filed and/or that no application for compilation has been made. I have carefully looked at the process, and find that it is when leave has been granted that processes will be attached and further the Exhibit 5 of the Applicant clearly shown that they made application for the Records of Proceedings along with the Order.

Having so found and more importantly, the fact that the application bothers on issues touching on the jurisdiction of the court, it would be proper to allow this application. In all, it is the finding of court to allow this instant application of the Applicant.

According, the application has merit and should be allowed in the interest of justice. I so order.

This is the Ruling of court.

Signed

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

Presiding Judge

7/10/2022

**APPEARANCE**

U.V. EGELAMBAESQ, WITH K.U. ANYAMAESQ FOR THE - FOR JUDGMENT  
CREDITOR/APPLICANT

ELVIS OKPOHESQFOR THE 1<sup>ST</sup> GARNISHEE

BOYEDE JOSHUA ESQ FOR THE 2<sup>ND</sup> GARNISHEE WITH OGBOLE  
LIVINUSESQ





