

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
14TH DAY OF MARCH, 2023

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

SUIT NO. FCT/HC/CV/2750/2016
MOTION NO. M/6204/2020

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

DAVID AIYEDOGBON CLAIMANT/RESPONDENT

AND

EMEKA UGWUONYE DEFENDANT/APPLICANT

RULING

The Defendant/Applicant's Motion is brought pursuant to Section 241 (2) of the 1999 Constitution and Order 43 rule 1, Order 61 (1) of the Rules of Court. It prays the Court for:

- (1) An Order of stay of proceedings of this suit pending the determination of the interlocutory appeal filed by the Defendant/Applicant challenging the Ruling of this Court delivered on 16/03/2022.

(2) And for such Order or further Orders as the Court may deem fit to make in the circumstance.

The grounds for the application are:

- (1) That Defendant/Applicant filed a Motion for extension of time to file a defence dated 11/10/2021 and continue Cross-Examination of the PW1 and all other witnesses.
- (2) That on 16/03/2022, the said Motion was dismissed.
- (3) That Defendant is dissatisfied with the said Ruling.
- (4) That he has filed an application for leave to appeal before the Court of Appeal.
- (5) That the grounds of appeal contain recondite issues.
- (6) That unless a stay of proceeding is granted the appeal will be rendered nugatory.
- (7) That the appeal seeks to challenge the propriety or otherwise of the Court to dismiss Defendant's right to file a defence.
- (8) That if the Court refuses to stay proceedings the Defendant/Applicant will suffer grave injustice.

(9) That the balance of convenience is in favour of the Defendant/Applicant.

(10) That the Prosecution will not be prejudiced.

Exhibit A is the copy of the Ruling while Exhibit B is the Notice of Motion filed in the Court of Appeal. Both exhibits are attached to the Application.

Learned Counsel to the Defendant adopted his Written Address dated 5/11/2022. He posited one issue for determination, which is: *Whether this Court can grant the prayers sought.*

He canvasses that the exercise of the Court's discretion to grant a stay of proceedings will be prompted by the peculiar circumstances of each case.

He submits that an application for leave to appeal ought to be deemed to be an appeal. That the proposed Notice of Appeal contains recondite points of law. That unless a stay be granted, the appeal will be rendered nugatory

and the Defendant/Applicant will suffer grave injustice. That the Defendant has been able to establish special circumstances.

The Learned Counsel to the Claimant relies on his Counter Affidavit of 7 paragraphs sworn to by Florence Abu, Litigation Secretary on the 9/11/2022.

I have read same and considered the Written Addresses of Counsel. Exhibit A attached to the Applicant's Affidavit in support is a Ruling of this Court.

In this application, the Defendant/Applicant is praying this Court to stay proceedings pending the determination of his appeal to the Court of Appeal.

Exhibit B is a Court of Appeal process filed by the Defendant/Applicant attached to this application. It prays for extension of time within which to seek leave to appeal to the Court of Appeal.

He further seeks for an Order of stay of proceedings of this suit pending the determination of the appeal.

In other words, the application in this Court seeks for an Order of stay while another application for stay of proceeding filed by the Applicant in this suit is equally pending in the Court of Appeal. This is clearly an abuse of Court process.

The law is that once an application is pending in the Court of Appeal between the same parties on the same issue, the lower Court ought to decline jurisdiction.

It is also trite law that an application for stay of proceedings may only be made by a party who has appealed against an interlocutory Ruling of a Court and seeks a stay of proceedings in the matter before the Court pending the outcome of the appeal on the interlocutory decision.

See **AKILU vs. FAWEHIMIN (No. 2) (1989) 2 NWLR (PT. 102) 122 SC.**

The Defendant/Applicant has not appealed against the Ruling as Defendant is merely seeking for extension of time to seek leave. No appeal is therefore pending.

By the Court of Appeal Rules, an Applicant in the Court of Appeal (as could be seen in Exhibit B) for stay of proceedings of the High Court must establish that a similar application had earlier been made to the High Court and refused. The application must be based on the existence of a competent appeal.

See **BAIMAYI vs. STATE (2003) 17 NWLR (PT. 848) CA.**

In the instant case, there is no application for stay of proceeding in this Court based on a competent appeal. For the foregoing reasons, the application lacks merit and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
14/03/2023

Parties absent.

No legal representation.

REGISTRAR: The Defendant wrote a letter dated 13/03/2023 stating that he is in the High Court, Gudu for a criminal case.

COURT: The name of the case and Court is not availed the Court.

Ruling delivered.

(Signed)
HON. JUDGE
14/03/2023