

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT GARKI, ABUJA
BEFORE HON. JUSTICE S.B BELGORE**

CLERK: CHARITY

COURT NO: 10

SUIT NO: FCT/HC/BW/CV/215/22

**IN THE MATTER OF AN APPLICATION BY EBISI AUSTINE CHIJOKE
FOR THE ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS**

**IN THE MATTER OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT
PROCEDURE) RULES 2009 MADE PURSUANT TO SECTION 46(3) OF
THE 1999 CONSTITUTION (AS AMENDED) AND THE AFRICAN
CHARTER ON HUMAN AND PEOPLES RIGHTS (RATIFICATION AND
ENFORCEMENT) ACT**

BETWEEN:

**EBISI AUSTINE CHIJOKE..... JUDGMENT CREDITOR/
RESPONDENT**

AND

**1. GUARANTY TRUST BANK PLC..... JUDGMENT DEBTOR/
APPLICANT**

**2. THE INSPECTOR GENERAL OF POLICE..... JUDGMENT DEBTOR/
RESPONDENT**

RULING

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

On the 1/12/2022, this Court entered judgment against the 1st and 2nd Judgment debtors respectively in this suit and awarded monetary compensation in favour of the judgment creditor, Ebisi Austine Chijioke. Piqued by the decision of this Court, the 1st Judgment debtor filed a notice of appeal on the 7/12/2022, and

challenged the judgment of this court on three grounds contained therein (please see Exhibit A). The motion is praying for the following:

1. **AN ORDER** for staying (sic) the execution of the judgment of this Honourable Court delivered on 1st December, 2022 in **Suit No: FCT/HC/BW/215/2022 BETWEEN EBISI AUSTINE CHIJOKE V. GUARANTY TRUST BANK PLC & ANOR**, pending the hearing and determination of the Appellant/Judgment Debtor's appeal at the Court of Appeal, Abuja Judicial Division.
2. **AND FOR SUCH FURTHER ORDER(S)** as the Honourable Court may deem fit to make in the circumstances in the interest of justice.

The 1st Judgment debtor's motion contains a 13 paragraphed affidavit and a written address in support of the application. The 2nd Judgment debtor was served with all the processes in this post-judgment application and hearing notices, as usual he failed to take the fair hearing opportunity afforded him by this Court, he will be bound in law and fact by any decision reached herein.

The Applicant/Judgment Creditor whose processes were regularised by the order of this Court filed a copious counter affidavit of 5 paragraphs and a written address in support in urging me to refuse this application.

On the 24/01/2023 respective counsel on behalf of their clients moved and adopted their respective processes and cited several authorities as to why I should grant and/or refuse this application. I wish to state that this Court is overwhelmed by a lot of cases numbering over a thousand, including applications of this nature. The court must be brief in its ruling and will not rehash the arguments in the written addresses of parties, they form part of the record of this court and available to any person upon application.

The 1st judgment debtor formulated a lone issue for determination at page 8 of his written address thus:

“Whether the Honourable Court can graciously grant this application in the circumstances of this matter”

While the judgment creditor at page 6 of his written address equally formulated a lone issue which is:

“Whether having regard to the nature of the judgment of this Court being a monetary judgment, the Judgment Debtor/Applicant has disclosed any special or exceptional circumstance to warrant an unconditional stay of execution in terms of the relief sought.”

I will determine the application on the sole issue formulated by the 1st judgment debtor.

RESOLUTION

The law is now settled that a Court is reluctant always to deprive a successful litigant of the fruit of his litigation, put differently, for an unsuccessful litigant to invoke the exercise of the discretionary powers of Court to stay a judgment, he must demonstrate extraordinary circumstances that warrants such indulgence. From the days of **VASWANI & CO. (1972) 12 SC 77** to the millennium decision in **NNPC VS. FAMFA OIL LTD & ANOR (2009) LPELR-2023 (SC)**, Apex Court has reiterated the conditions which the applicant must satisfy to warrant the grant of such orders. The reason is not farfetched as there is a presumption of regularity and correctness in favour of a judgment of Court, as such an applicant must demonstrate the irreparable damage that will be done to him by its execution. I shall mirror the instant application through the principles mentioned in the apex Court cases I referenced earlier in this ruling.

Is there a recondite point raised in the 1st judgment notice of appeal? I have read through the 3 grounds of appeal in this motion in exhibit “A” to discover if they are arguable grounds and shows any recondite point. Ground one in my view does not disclose any arguable ground; I say this because if ground one succeeds, its unable to upset the judgment of this Court. This is so as there is an adverse finding that the 1st judgment debtor refused to lift the restriction on the account of the judgment creditor even after the Magistrate sitting in Ibadan set aside the purported order obtained therefrom. Ground two is equally afflicted by the reason in ground one, moreso that the 1st Judgment debtor has been a party in suits where the various courts under section 6 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) declared that the so-called Bankers Order Act is a non-existent law and that a Magistrate has no competence to make such order. It is akin to where GTB receives an order directing it to kill a

person, would the bank ordinarily obey such orders? This ground is equally baseless. Ground 3 stated that the Court erred when it adopted their processes in a makeshift court. This ground is baseless and amounts to an attempt to embarrass and ridicule the Court. Firstly, the 1st respondent never filed an iota of fact in support of this ground in its affidavit but the judgment creditor filed a copious response at Paragraphs 4(J) – (4(o)), I wish to reproduce it hereunder:

- j. That contrary to Exhibit A annexed to the Judgment Debtor/Applicant's affidavit wherein the Judgment Debtor/Applicant in Ground 4 is alleging irregularity pertaining the sitting of this Honourable Court on the 14th of October, 2022, that the Court did not sit in a makeshift Court.***
- k. That the Judgment Creditor/Respondent was under the mistaken impression that the Court sat in a "makeshift" Court on 14/10/2022 and communicated same to the Court and the Judgment Debtor/Applicant vide a letter dated and filed on 18/11/2022.***
- l. That the Judgment Debtor/Applicant did not respond to the said letter.***
- m. That in the course of the proceedings in this suit leading up to the delivery of judgment, the Judgment Debtor/Applicant in fact urged the Court to discountenance the Judgment Creditor/Respondent's observation on the so-called "makeshift court" and to proceed to judgment.***
- n. That subsequently, on 01/12/2022 when Judgment was to be delivered in this suit, the Judgment/Creditor/Respondent sought to make a similar observation but the Judgment Debtor/Applicant again objected to the issue of a makeshift court and urged the Court to proceed to judgment.***
- o. That on two separate occasions, the Judgment Debtor/Applicant insisted that the Court was properly constituted and the proceedings were properly conducted and urged the Court to deliver its judgment.***

From the above, it is obvious that the Court sat at a building designated as a High Court building by the Honourable, The Chief Judge of the High Court of the Federal Capital Territory. Instead of Counsel to commend the Court for sitting in a very compact Court room without electricity and in the heat of that day, it claimed the Court did not robe. The Court robed and when the heat was unabating I ordered Counsel appearing in the cases that day may

remove their wigs and gown if the condition is unbearable or affects their health and safety. The Judgment creditor applied that the case be reopened after the main Court hall was fully refurbished, it was the 1st respondent who opposed that application on record, commended the Court and urged it to proceed to judgment. Now the judgment is unfavourable to the 1st respondent, it is struggling like a person drowning in the ocean, desperately looking for a straw to hang unto, he has raised this embarrassing ground to hoodwink the Court. He must be stopped in law and equity from shifting from one position to the other, this ground discloses no arguable ground and raises no recondite point.

There is equally no exceptional circumstances in the scanty affidavit of the 1st respondent to warrant the granting of this application, I equally hold that the balance of convenience is not in its favour. It failed to disclose the status of the judgment creditor, whether he can repay the monetary sum in the event the appeal is successful. I equally note that they undertook to indemnify the judgment creditor in the event it loses the appeal.

Now I have considered the circumstances of this case and the amount awarded therein, equally order 4 rule 6 (1) (b) of the Court of Appeal rules, which states:

6-(1) The Court shall have the power to make orders by way of injunctions or the appointment of a Receiver or Manager, and such other necessary orders for the protection of property or person, pending the determination of an appeal to it even though no application of such an order was made in the lower Court, upon the fulfilment of the following conditions to the satisfaction of the Court-

(b) In appeals relating to monetary judgments, a bond, guarantee or other like instrument from an eligible institution, in such sum not exceeding the judgment sum, as the Court may direct, deposited as security for the judgment sum or such sum, as the Court may determine, deposited into an interest yielding account in the name of the Chief Registrar or Deputy Chief Registrar of the Court, and

I will in exercise of my discretion reluctantly grant this application with the following conditions as I have earlier signed the writ of *fifa* in this suit. It is ordered as follows:

1. The Deputy Sheriffs of this Court are ordered not to enforce the Writ of FFA executing the judgment in **Suit No. FCT/HC/BW/CV/215/2022**, pending the 1st Judgment debtor's compliance with the orders below, failing which this order shall abate forthwith.
2. The 1st judgment debtor is hereby ordered to pay the judgment sum together with the calculated interest as at today into an interest yielding account in the name of the Chief Registrar of this Honourable Court within 7 days after the making of this order failing which this order shall abate.
3. The 1st judgment debtor is hereby ordered to expeditiously assist the Registrars of this Court if they are still within time or if they are not to compile and transmit the record of appeal in this matter within 14 days from today failing which this order shall abate.

This is the ruling of this Court.

SIGNED
S. B. Belgore
(Judge) 15/2/23

Appearance of Counsel:

Segun Fiki Esq. for the Judgment Creditor/Respondent.

Reginald Nwali for the 1st Judgment Debtor/Applicant.

No appearance for the 2nd Judgment Debtor.