

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 20 GUDU - ABUJA
ON THURSDAY THE 19TH DAY OF JANUARY, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI
SUIT NO. HC/CV/1004/2021
MOTION NO: FCT/HC/M/1255/2022

BETWEEN:

KNN NETWORK LIMITED ----- CLAIMANT/RESPONDENT
AND
INTEGRATED FIRE & SAFETY
SOLUTIONS LIMITED -----DEFENDANT/APPLICANT

RULING

The Defendant/Applicant filed a motion on notice praying the court to set aside ruling delivered on 12/10/2022 refusing the Applicant's application for the stay of proceedings and an order directing the transmission from this court to the Court of Appeal the motion praying for the stay of proceedings. Attached to the motion is a 3 paragraph affidavit, exhibits and a written address wherein counsel raised a sole issue for determination to wit;

“Whether under the circumstances of this case and in accordance with the provisions of order 4 Rules 10 and 11(1) of the Court of Appeal Rules, 2021, this Court still possesses the requisite jurisdiction when it delivered its ruling on the 12/10/2022, refusing [the prayer for stay of its proceedings”

Summarily, learned counsel submitted that once an appeal has been entered at the Court of Appeal then the Court of Appeal exercises total jurisdiction over the said appeal including any application relating to that appeal. Counsel relied on the following authorities amongst others; **Order 4 Rules 10 and 11(1) of the Court of Appeal Rules, 2021; Afro Continental Nig. Ltd. & Anor v. Co-op Ass. Of Professional Inc. (2003) 5 NWLRPt. 813 p. 303 at 318 to 319.**

The defendant's counsel filed a 10 paragraph counter affidavit in opposition to the application. Attached to the motion is a process of the Court of Appeal and a written address wherein learned counsel in summary submitted that it is trite that for a court to grant an order for stay of proceedings, there must be a valid appeal pending before the Court of Appeal. He relied on the following authorities amongst others; **Sections 14(1) and 241 (1) Constitution of the Federal Republic of Nigeria 1999 (as amended) and Sections 14 (1) and 24 (1) (a) of Court of Appeal Act.**

I have read the Defendant/Applicant's application together with the affidavit evidence, written address as well as the annexed exhibits for setting aside the ruling of this court delivered 12/10/2022. I have also examined the counter affidavit in opposition to the application and written address filed by the Claimant/Respondent and only one (1) issue can be distilled for determination and that is;

“Whether the Applicant has made out cogent ground for the grant of the reliefs sought”.

It is the law that an appeal would be said to have been entered where the records of appeal has been compiled and transmitted to the Court of Appeal and accepted by the Registry of the Court of Appeal with an Appeal number given. Once that is the case, it is said that an appeal is pending and the Court of Appeal becomes seised as held in the case of **PDP & 1OR VS. BADAIRE & ORS (2019) LPELR-47063 (CA)**. Hence relying on the documents annexed to this motion on notice it is evident that the records of this Court was transmitted to the Court of Appeal on 5/07/2022 and Appeal No was given on 6/07/2022 which goes to show that the Appeal had been entered at the Court of Appeal before the ruling was delivered on 12/10/2022. Suffice to state that at the time this Honourable Court delivered the ruling on 12/10/2022 the fact that appeal had been entered at the Court of Appeal was not made known to this Court, subsequently this court had no jurisdiction to have delivered the ruling.

Consequently, this application for setting aside of the ruling of this court delivered 12/10/2022 is hereby granted. Accordingly, it is hereby ordered as follows:

- i. The ruling of this court delivered on 12/10/2022 refusing the application for stay of proceedings with respect to Suit No. FCT/HC/CV/1004/2021 is hereby set aside.
- ii. Proceedings in Suit No. FCT/HC/CV/1004/2021 is hereby suspended pending the determination of Appeal No. CA/ABJ/CV/726/2022.

Parties: Absent

Appearances: H. A. Eze appearing for the Claimant.
Akware Chiedozie appearing for the defendant.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
19TH JANUARY 2023**