

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 09TH DAY OF FEBRUARY, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/3275/2020
MOTION NO.: M/2479/2022

BETWEEN:

1SQM HOMES LIMITED

CLAIMANT/RESPONDENT

AND

PRODAC NIGERIA LIMITED

DEFENDANT/APPLICANT

RULING

This Ruling is in respect of an application for stay of proceedings brought by the Defendant/Applicant.

By way of a Motion on Notice dated and filed on the 4th of March, 2022, the Defendant/Applicant, Prodac Nigeria Limited, brought this application seeking the following reliefs:

- 1. An Order of Court staying its proceedings pending the determination of the Applicant's Appeal in respect of the Ruling of the Court delivered on 12th January, 2022.*
- 2. Any Order(s) the Honourable Court may deem fit to make in the circumstances of this case.*

The grounds upon which the application was brought are that the Defendant/Applicant, being dissatisfied with the Ruling, has appealed against same, adding that it may suffer some jeopardy if the proceeding before this Court is not stayed. The application is supported by an 11-paragraph affidavit deposed to by one Elijah Onoja who is a Director in the Defendant/Applicant. Attached to the affidavit is **Exhibits 1a and 1b** which, respectively, are the Notice of Appeal which the Defendant/Applicant has filed and the receipt of filing. The Defendant/Applicant also filed a Written Address in support of the application.

In the affidavit in support of the application, the deponent swore that the Court in its Ruling delivered on the 12th of January, 2022 in respect of the application for an interlocutory injunction which the Claimant/Respondent filed only stated that parties should maintained *status quo* without giving any reason for its decision. He also averred that the Court did not consider the facts contained in its Counter-Affidavit challenging the application of the Claimant/Respondent for an Order of interlocutory injunction which facts the deponent also reproduced in the affidavit in support of the present application, he stated that it would be in the interest of justice for the Court to grant the present application.

In the Written Address in support of the application, learned Counsel for the Defendant/Applicant formulated a sole issue for determination, that is: “*Whether this is an application this Honourable Court can grant considering the entire circumstances of this matter.*”

Arguing this sole issue, learned Counsel submitted that the gravamen of the application was that the Honourable Court in its Ruling simply directed the parties to maintain *status quo* without specifying the nature of the *status quo* to be maintained. He contended that the Court did not advert its mind to the facts contained in the Counter-Affidavit of the Defendant/Applicant challenging the application of the Claimant/Respondent for an Order of interlocutory injunction.

It was the case of the Defendant/Applicant that the application was one which this Court could grant, considering the circumstances of this case, since the Claimant/Respondent was not challenging the title of the Defendant/Applicant to the land in question. He added that it would be unfair to deprive the Defendant/Applicant the use of its land. While conceding that the power to grant an Order of stay of proceedings was within the discretionary powers of the Court, learned Counsel commended the following cases to the Court: ***Emir of Kano v. Agundi (2006) 2 NWLR (Pt. 965) 573 at 592 – 593; Okafor v. Nnaife (1987) 4 NWLR (Pt. 64) 129; Jadesimi v. Okotie-Eboh (1986) NWLR (Pt. 16) 264; Akilu v. Fawehinmi (No. 2) (1989) 2 NWLR (Pt. 102) 122; Martins v. Nicannar (1988) 2 NWLR (Pt. 74) 75; S.B.N. Plc v. N.D.I.C. (2004) 11 NWLR; Kigo v. Holman (1980) 5 – 7 SC 60; Gomwalk v. Okwuosa (1996) 32 NWLR (Pt. 439) 681; Akilu v. Fawehinmi (1989) 3 SCNJ 1 at 18.*** He urged the Court to grant the application.

The Claimant/Respondent filed its Counter-Affidavit to the application on the 6th of April, 2022. Because the Claimant/Respondent was already out of time by the time it filed its Counter-Affidavit, it brought an application with Motion Number

M/10150/2022 dated and filed on the 29th of August, 2022 praying this Court for an Order of the Court extending the time within which it could file its Counter-Affidavit. The Court heard and granted the prayers sought therein on the 6th of October, 2022.

In the Counter-Affidavit, the deponent, one Abah Patience, a litigation clerk in the law office of the Counsel to the Claimant/Respondent, referred to the circumstances and facts of the application of the Claimant/Respondent for an Order of interlocutory injunction. According to the deponent, the Defendant/Applicant had continued to disobey the Order of this Court for the parties to maintain *status quo*, adding that the Claimant/Respondent had initiated contempt proceedings against the Defendant/Applicant because of its acts of disobedience to the Order of Court. The deponent further averred that the Notice of Appeal attached to the application for an Order for stay of proceedings did not have an appeal number, adding that it was doubtful that an appeal had, indeed, been filed. She further swore that the outcome of the said Notice of Appeal would have no effect on the proceedings in this suit and *vice versa*.

In the Written Address in support of the Counter-Affidavit, learned Counsel for the Claimant/Respondent formulated three issues for determination. The issues are: “(i) *Whether the outcome of the appeal will dispose the suit or render the proceeding a nullity; (ii) Whether the Applicant has shown special circumstance to be entitled to the grant of the relief sought; and (iii) Whether the refusal of the Order for stay of proceeding will destroy the res.*”

Arguing the three issues jointly, learned Counsel submitted that an Order for stay of proceeding was grantable only where the non-suspension of the proceeding would render the outcome of the appeal nugatory, adding that the essence of an order for stay of proceeding is to preserve the *res*. Counsel further contended that the attitude of the Courts is to refuse to grant an Order for stay of proceedings if the ruling appealed against would not dispose of the case. He submitted that the Order appealed against would not dispose of the suit pending before the Court. Pointing out that the Applicant's appeal did not disclose any substantial question bordering on lack of jurisdiction, lack of *locus standi*, and admissibility of evidence, he urged the Court to dismiss the application for lacking in merit.

For all his submissions on the three issues he submitted, learned Counsel cited and relied on ***Okumagba v. FBN Plc (2019) LPELR-49254 (CA); Nika Fishing Co. Ltd v. Lavina Corporation (2008) LPELR-2035 (SC); Michael & Ors v. Access Investment (Nig.) Ltd & Ors (2017) LPELR(CA); Cotenca Destination Inspection Ltd v. Boyson Nig. Ltd (2013) LPELR-22063 (CA); and Gomwalk v. Okwuosa (1996) 3 NWLR (Pt. 439) 681.***

The above is the summary of the facts and arguments placed by the parties for and against the application. In determining this application, this Court has to consider the following Issue: ***“Whether the Defendant/Applicant has not satisfied the requirements for this Honourable Court to make an Order staying the proceedings in this suit pending the outcome of the appeal it has filed?”***

It bears restating that stay of proceedings is an important application that the Courts do not treat with levity. This is because of its very nature which affects the right of the other party to have their grievance determined through the process of litigation in Court. In ***Okeke v. Yaroson (1999) 11 NWLR (Pt. 625) 106 C.A. at 120, paras E – F***, the Court held that “***Stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case and therefore a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.***” In ***Obi v. Elenwoke (1998) 6 NWLR (Pt. 554) 436 C.A. at Pp. 442-443, paras. H-A***, the Court went on to hold that “***a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.***”

An Order for stay of proceedings is an equitable relief. See ***Mobil Oil (Nig.) Plc. v. Kena Energy Ltd. (2004) 8 NWLR (Pt. 874) 113 C.A. at 127, paras. D-E; Graseg (Nig.) Ltd. v. Registered Trustees of Triumph Baptist Church & 3 Others (2012) 13 NWLR (Pt. 1316) 168 C.A. Pp. 183-184, paras. G-A; 184, paras, F-G; Morison Industries Plc. v. CPL Industries Ltd. (2009) 17 NWLR (Pt. 1169) 119 C.A. at 131 para H; Momah v. Vab Petroleum Inc. (2000) 4 NWLR (Pt. 654) 534 S.C. at 557, paras E – F; Fani-Kayode v. F.R.N. (2011) 4 NWLR (Pt. 1237) 340 C.A at 356 para D – H***. Since it is an equitable remedy, it is grantable at the discretion of the Court. In the exercise of its discretionary powers,

the Courts must exercise same judicially and judiciously. See ***F.R.N. v. Abacha (2008) 5 NWLR (Pt. 1081) 634 C.A. at 654, paras E – F*** where the Court of Appeal per Ariwoola, JCA (as he then was, but now, CJN) noted that,

“It is trite that stay of proceedings of a case before the court is a matter of discretion of the court. The exercise of this discretion is however, as established by several decided cases of the apex court, dependent on the facts and circumstances of each case and founded on grounds of appeal, which must not be frivolous. See; Vaswani Trading & Co. v. Savalakh (1972) 12 SC 77, (1972) 1 All NLR (Pt.2) 483; Okafor v. Nnaife (1987) 4 NWLR (Pt. 64) 129 at 136... As earlier stated, the court has the power to grant or refuse an application for stay of proceedings in a trial, yet that power which though is discretionary must be exercised both judicially and judiciously by the court.”

In all cases, the Court must have regard to the facts and circumstances of the case. In other words, an application for stay of proceedings is not granted as a matter of course. In ***Carribbean Trading & Fidelity Corporation v. Nigerian National Petroleum Corporation & 2 Others (1991) 6 NWLR (Pt. 197) 352 at page 360, paras. F-H***, the Court held per Tobi, JCA (as he then was, later, JSC) that ***“...stay of proceedings is of a very serious nature that a court of law does not grant as a matter of course. This is because it delays the trial process of the main matter, at times inordinately. Stay of proceedings is***

antithesis to the speedy hearing of the case. Therefore, before it can be granted, there must be a compelling and inevitable circumstance.”

The Courts have laid down guidelines to guide the Court in the determination of applications for stay of proceedings pending appeal. In ***F.R.N. v. Abacha (2008) 5 NWLR (Pt. 1081) 634 C.A. at 654, paras E – F***, the Court of Appeal restated the principles it laid down in the case of ***Carribbean Trading & Fidelity Corporation v. Nigerian National Petroleum Corporation & 2 Others [1991] 6 NWLR (Pt. 197) 352 at 361 -162, paras. A-B***. According to the Court,

“Some of the principles laid down by the courts guiding grant or refusal of stay of proceedings include the following:

(a) There must be a competent pending appeal. Where there is no competent pending appeal there is both in law and in fact nothing to stay. The court will therefore not consider an application for stay of proceedings in respect of an invalid appeal. (b)The pending appeal must be arguable. This is decided by considering the grounds of appeal filed. At this stage, the applicant need not prove that the appeal will succeed. Once the applicant could show that the appeal is arguable, a stay could be granted. (c) The applicant must establish that there are special and exceptional circumstances to warrant the grant of the application. (d) The court must consider the rights of both the applicant and the respondent, that is, the court will take into consideration the justice and equity of the application,

for example the court will not grant an application for stay of proceedings if it will cause greater hardship than if the application is refused. (e) Where an appeal raises issue of jurisdiction of the lower court, the appeal court will grant an application for stay of proceedings, if on the face of the appeal the court is satisfied that there is real issue of jurisdiction. (f) Where an action is an abuse of judicial process, an application for stay of proceeding should be granted. (g) If the interlocutory order will finally dispose of the case, a stay of proceedings would be granted. However, a stay of proceedings may not be granted if the interlocutory order will not dispose of the case. (h) Another important factor is the preservation of the res. Where the res will be destroyed, damaged or annihilated before the matter is disposed of, the court will grant stay. (i) In view of the importance the courts attach to the protection of the fundamental rights entrenched in the Constitution, an application for stay will be granted if final determination is likely to render the rights sought to be protected null and void. (j) An application for stay of proceedings being an equitable remedy, the applicant must place before the court all material facts to enable the court consider the application sympathetically. (k) Where an application for stay of proceedings will unnecessarily delay and prolong proceedings, it will not be granted. (l) The court has a discretionary power to exercise in the matter and like every other discretionary power, it

must exercise such power judicially and judiciously. In other words, the discretionary power must not be exercised in vacuum but in relation to the existing facts of the particular case before the court.”

I have paid particular attention to the depositions contained in the affidavit in support of the application for stay of proceedings. I will not be in remiss in observing that the Defendant/Applicant placed more emphasis on its depositions in its Counter-Affidavit challenging the application of the Respondent for an Order of interlocutory injunction than in adducing facts that should sway the mind of the Court in its favour in this application for stay of proceedings. I do not see how beneficial these facts are to the Defendant/Applicant. Further to this, the Notice of Appeal which the Applicant attached to the affidavit in support of the affidavit did not disclose an appeal number. In other words, as far as this Court is concerned, there is no competent appeal before Court of Appeal. See ***Carribbean Trading & Fidelity Corporation v. Nigerian National Petroleum Corporation [1991]***, *supra* where the Court per Tobi, JCA (as he then was, later, JSC) held *inter alia* that

“(a) There must be a pending appeal. Where there is no pending appeal, there is both in law and in fact, nothing to stay. In short the application is incompetent and the court will strike it out. And the pending appeal must in law be valid. See National Bank of Nigeria Ltd. v. Nigeria External Telecommunication Ltd. (1986) 3 N.W.L.R. (Pt.31) 667. There are however certain circumstances when an

application could be granted without a pending appeal.

See Oladapo v. A.C.B. Ltd. (1950) 13. W.A.C.A. 110.

“(b) In order to enable this court exercise its discretionary power to grant an application for stay of proceedings, the appeal must be competent and arguable on its merits. Where an appeal is frivolous, vexatious or an abuse of court's process this court will decline jurisdiction. See Kigo v. Holman Brothers (1980) 5-7 S.C. 60; Arojoye v. U.B.A. Ltd. & Another (1986) 2 N.W.L.R. (Pt.20) 101.”

It is interesting to note that the application for interlocutory injunction the decision in respect of which the Defendant/Applicant has filed an appeal was brought by the Claimant/Respondent. I find it somewhat puzzling that the Defendant/Applicant would challenge the decision of this Court preserving the *res* and, in another breath, make the need for the preservation of the *res* the grounds of its application for an Order of this Court staying the proceedings in this suit. I agree with learned Counsel for the Claimant/Respondent that the appeal, even if it is valid, is not of such nature that it can dispose of the questions in the substantive suit.

I do not see, therefore, how the refusal of this Court to stay proceedings in this suit will be detrimental to the case of the Defendant/Applicant. This is more so considering that the purported appeal is in respect of the Ruling of this Court on an application for an Order of interlocutory injunction. It has always been the cardinal principle in applications of this nature for the Court to address its mind to

the risk of the *res* being dissipated in the event of a non-grant of the application. Again, as I have noted earlier, there is no competent appeal in this suit.

Having preserved the *res* in my Ruling on the application for an Order of interlocutory injunction, I do not see the necessity for this application. This application lacks merit. It is not only unmeritorious; it is simultaneously vexatious, frivolous and calculated to delay the hearing of this substantive suit. In addition to these debilitating attributes, it does not satisfy any of the requirements for the grant of applications of this nature, as the Defendant/Applicant has not adduced any compelling and inevitable circumstances to ground the grant of this application. The application for stay of proceedings with Motion Number M/2479/2022 dated and filed on the 4th of March, 2022, therefore, is liable to be dismissed and is accordingly dismissed.

This is the Ruling of this Court delivered today, the 09th day of February, 2023.

HON. JUSTICE A. H. MUSA
09/02/2023
JUDGE