

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

6TH DAY OF JUNE, 2023

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

SUIT NO. FCT/HC/CV/3383/2020
MOTION NOS. M/6301/2023; M/6452/2023

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

KINGSLEY ENYINNAYA **JUDGMENT CREDITOR/
(Doing business in the name and style RESPONDENT
of CITADEL CONCEPT VENTURES)**

AND

1. AKINWALE AKINSOLA **} JUDGMENT DEBTORS**
2. COLOSSIAN MEGA UNIVERSAL LIMITED }

AND

1. FIDELITY BANK PLC **} ... GARNISHEES/
2. FIRST CITY MONUMENT BANK (FCMB)** } APPLICANTS

RULING

The 1st Garnishee’s application prays the Court for stay of execution in this suit pending the outcome of the appeal against the decision of this Court delivered on Monday, the 13/03/2023.

The grounds upon which the Motion is predicated is

- (1) That the Applicant is dissatisfied with the Ruling.
- (2) That the Defendant/Applicant has appealed against the said Judgment.
- (3) That they have prayed the Appeal Court to set aside the Ruling made on 13/03/2023.

The 1st Garnishee also relied on its Affidavit. The deponent deposes that the Applicant is dissatisfied with the Ruling and has prepared and filed a Notice of Appeal against same. That it is in the interest of justice to grant the application.

The 2nd Garnishee vide M/6452/23 also prays the Court for an Order staying execution of the Judgment in M/9373/22 delivered on the 13/03/2023 pending the hearing and determination of the appeal.

Learned Counsel relies on the 4 paragraphs Affidavit. She moves on terms.

In her Affidavit, she deposes that she is dissatisfied with the Ruling delivered on 13/03/2023. That a Notice of Appeal has been filed. That the appeal is arguable. That the Respondent will not be able to refund the Judgment sum in the event that the appeal succeeds.

I have also considered the Written Address of Counsel. The issue for determination is whether the Applicants have made out a case to enable the Court stay execution of the Ruling/Order.

The Applicants in issue are not parties to the main action but Garnishees. The Order Nisi made absolute on 13/03/2023 is not a Judgment.

The subject matter of the Order made on 13/03/2023 is for the Garnishee Banks to turn over the Judgment Debtor's money in their custody to the Judgment Creditor to satisfy the Judgment debt.

The grant of a stay of execution is at the discretion of the Court to be exercised judicially and judiciously. The law is that an Applicant seeking for an Order for stay of execution must show special or exceptional circumstances why the Order should be made because the Court will not make an Order depriving a successful litigant of the fruit of his Judgment.

In situations such as this, where the res in the action is quantified in amount, an Applicant may obtain a stay of execution pending appeal if he can show that the Respondent will be unable to repay the money if the appeal succeeds.

The Applicant has to go beyond mere allegation as done by the 2nd Applicant. The Court should be supplied with facts about his income and or the source of his income. He must establish that he has indeed no resources before his claim to poverty can amount to special circumstance warranting a grant of the Order of Stay.

See ABDULKADIRI vs. ALI (1999) 1 NWLR (PT. 588) 613.

The Applicants have failed to establish same. I have also read the Notice of Appeal. The Applicants have also not applied for compilation of Records of Appeal. Appeal has not entered. Mere filing of a Notice of Appeal without more cannot be a ground for stay of execution.

I have also listened to the 1st Garnishee's argument in respect of the Judgment Creditor's Counter Affidavit which was filed out of time. It is obvious the Counter Affidavit was filed out of time. It is incompetent and accordingly discountenanced.

In totality, the applications lack merit and they are dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
06/06/2023

Parties absent.

No legal representation.

Linda Atuakak, Esq. for the 2nd Garnishee Bank.

I. O. Ogbaga, Esq. for the 1st Garnishee.

P. C. Obinna, Esq. holds the brief of Oliver Eya, Esq. for
the Judgment Creditor.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
06/06/2023