

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 3RD DAY OF APRIL, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/3237/2017
MOTION NO.: -FCT/HC/M/6011/2022

BETWEEN:
**EDMONTON CONSULTS LTD:....JUDGMENT CREDITOR/
RESPONDENT**

AND

**ATISALAT GLOBAL RESOURCES LTD.:JUDGMENT DEBTOR/
APPLICANT**

Osawe M. Aikpatanyi for the Claimant.
Ataguba Aboje for the Defendant.

RULING.

The Judgment Debtor/Applicant brought this application praying the Court for the following:

1. An order for stay of execution pending appeal of the judgment of this honourable Court delivered on the 22nd day of March, 2022 in this suit pending the hearing and determination of the appeal filed on the 23rd May, 2022 against the judgment.
2. And for such further order or orders as this honourable Court may deem fit to make in the circumstance of this case.

The grounds for this application for stay of execution as averred by the Applicant in its affidavit in support of the Motion on Notice, is that being dissatisfied by the judgment of this Court in

this case, it has filed a notice of appeal to challenge the said judgment at the Court of Appeal, hence the need to stay the execution of same pending the determination of the appeal.

In his written address in support of the motion on notice, learned counsel for the Judgment Debtor/Applicant, Ataguba S. Aboje, Esq, submitted a sole issue for determination, namely;

“Whether the Applicant has made out a case for the grant of the reliefs sought in the application?”

Proffering arguments on the issue so raised, learned counsel posited that by virtue of Order 61 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 and the inherent jurisdiction under Section 6(6)(b) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, this Court has the jurisdiction and discretion to consider an application for stay of execution of its judgment which is being challenged on appeal. He referred to **Mohammed & Ors v. Bi-Courtney Ltd (2010)LPELR-20030(CA).**

Relying on **Vaswani Trading Co. v. Savalakh & Co. (1972)12 SC 77,** he posited that the two most important pre-conditions for the grant or refusal of stay of execution, are that there must be a pending appeal which must be valid in law, and that there must exist special circumstances to warrant the grant of a stay.

He argued that the Applicant has fulfilled the first requirement when it exhibited vide paragraph 4 of its affidavit the Notice of Appeal filed against the judgment of this Court.

In respect of the second condition, learned counsel referred to paragraphs 5-12 of the Applicant’s affidavit and submitted that the appeal, which contains 5 grounds of appeal, raised substantial issues of errors of law and misdirection on the facts and evidence led at the trial.

He further submitted that the Applicant has satisfied the essential requirements for the Court to exercise its discretion in its favour, and urged the Court to so exercise its discretion in favour of the Applicant and grant the relief sought in this application.

In opposition to the application, the Judgement Creditor/Respondent filed a 20 paragraphs counter affidavit deposed to by one Victor Azubike, wherein he averred that the notice and grounds of appeal do not raise substantial and arguable issues of law.

He further averred that the balance of convenience is not in favour of the Applicant but in favour of the Respondent, and that the res is not in grave danger of being dissipated.

Learned Respondent's counsel, Nicholas Elechi, Esq, in his written address in support of the counter affidavit, also submitted a sole issue for determination, to wit;

“Whether the Applicant is entitled to a grant of stay of execution?”

He argued that the Court's power to grant stay of execution of a judgment is only exercisable if it is satisfied that there are exceptional and special or substantial reasons or circumstances to warrant a deprivation of the successful party of the fruits of his judgment.

He referred to **Okafor & Ors v. Nnaife (1987)LPELR-2420 (SC)** on the guiding principles for the grant or refusal of stay of execution.

Learned counsel posited that the onus is on the party applying for a stay of execution pending appeal to satisfy the Court that

in the peculiar circumstances of the case, a refusal of the stay would be unjust and inequitable.

He further referred to **Martins v. Nicanar Food Co. Ltd (1988)2 NWLR (Pt.74)83** on the points which a Court should consider when considering whether or not to grant a stay of execution.

He posited that the Applicant's chances of succeeding on appeal are rather too slim or non-existent as the Applicant has failed to raise triable issues of law in their notice of appeal.

Furthermore, that the Applicant has not placed before the Court substantial reasons to warrant the grant of this application.

He urged the Court to refuse the grant of this application.

Both counsel in their respective written addresses, adumbrated on the guiding principles for the grant or refusal of an application for stay of execution pending appeal.

However, in **Macfoy v. Macfoy (2007)vol. 34 WRN 124 at 132,** the Court of Appeal, per Ngwuta, JCA, held that:

“The principles guiding the grant or refusal of stay of execution pending appeal will fall for consideration only if there is a valid appeal pending.”

Thus, where there is no evidence that a valid appeal has been entered and pending against the judgment of a Court, there will be no valid basis to order a stay of execution of such judgment pending appeal.

It is to be noted that mere filing of a notice of appeal at the Appeal Registry of the High Court does not constitute the entering of an appeal at the Court of Appeal.

In **Governing Council of Industrial Training Fund v. Chijioke & Anor (1997) LPELR-5678(CA)**, the Court of Appeal, per Oguntade, JCA, held that:

“The Supreme Court Made the point that filing of an appeal is different from entering of an appeal. An appeal is only entered in the Court of Appeal when the record of appeal has been received at the Court of Appeal from the High Court.”

From the available evidence before this Court, the Applicant herein has merely filed a notice of appeal at the Appeal Registry of this Court, without more. By the position of the law, as enunciated in a plethora of judicial authorities, no valid appeal has been entered against the judgment of this Court in this case.

In the circumstance, there is no basis for granting a stay of execution pending appeal, as it is a trite position of the law that one cannot place something on nothing and expect it to stand. See **Amusan & Ors v. Orebajo & Ors (2012)LPELR-8486(CA)**.

This application therefore, is standing on nothing and the inevitable fate is that it must fall like a pack of cards.

Accordingly, the application fails and is hereby dismissed.

HON. JUSTICE A. O. OTALUKA
3/4/2023.