

**IN THE HIGH COURT OF JUSTICE OF THE F. C. T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDING AT APO, ABUJA**  
**ON TUESDAY, THE 18<sup>TH</sup> DAY OF APRIL, 2023**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO: FCT/HC/CV/300/2021**  
**MOTION NO.: FCT/HC/M/6942/2023**

**BETWEEN:**

**ENGR MUHAMMAD ALI KACHALLA ABUBAKAR**      **CLAIMANT/JUDGMENT**  
**CREDITOR/RESPONDENT**

**AND:**

**H-MEDIX PHARMACY LIMITED**                      **DEFENDANT/JUDGMENT**  
**DEBTOR/APPLICANT**

**AND**

**THE CHIEF REGISTRAR,**  
**FCT HIGH COURT (DEPUTY SHERIFF)**                      **RESPONDENT**

**RULING**

By a Motion on Notice dated and filed on the 31<sup>st</sup> of March, 2023, the Defendant/Judgment Debtor/Applicant (Hereinafter referred to as the Applicant) brought this application seeking the following two specific reliefs and one omnibus relief from this Honourable Court against the Claimant/Judgment Creditor/Respondent (Hereinafter referred to as the Respondent) and the Chief Registrar of this Honourable Court as the Deputy Sheriff:-

- 1. An Order of this Court staying the execution of the Final Judgment of the FCT High Court delivered on the 30<sup>th</sup> day of March, 2023 in this suit with Suit No. CV/300/2023 – ENGR. MUHAMMAD ALI KACHALLA ABUBAKAR V. H-MEDIX PHARMACY LIMITED pending the final*

*determination of the appeal lodged to the Court of Appeal by the Defendant/Judgment Debtor/Appellant/Applicant.*

2. *An Order of Court restraining the Plaintiff/Respondent (Engr. Muhammad Ali Kachalla Abubakar) whether by himself or through his relatives, employees, hired hands, cohorts, friends, legal representatives or howsoever known and also the Chief Registrar as Deputy Sheriff of this Court together with his employees, operatives or howsoever known from disturbing the Defendant/Judgment Debtor/Appellant/Applicant's use and enjoyment of the premises subject of Appeal until the final determination of the Appeal.*
3. *And for such further or other Order(s) as the Honourable Court may deem fit to make in the circumstances.*

The application was founded on four grounds, which are that the Notice of Appeal disclosed recondite, substantial and arguable grounds, that the res of the Judgment was in the possession of the Applicant, that the res of the Judgment of this Court would be destroyed if the application was not granted, and that the ends of justice supported the application.

In support of the Motion on Notice was a 4-paragraph affidavit deposed to by one Ekene Ngene, a Litigation Secretary in the Law Firm of the of the Counsel representing the Applicant. Attached to the affidavit was an exhibit marked as **Exhibit 1** which is the Applicant's Notice of Appeal. The Applicant also filed a written address in support of the application.

In the affidavit, the deponent swore that the apprehension of the Applicant arose from a conversation its representation overheard whereat a member of the audience in the open Court advised the Respondent to expedite the execution of the Judgment that was being delivered on that 30<sup>th</sup> day of March, 2023. The deponent averred that the Applicant was dissatisfied with the Judgment of this Court on several grounds which had been set out in **Exhibit 1**. He further informed the Court that the Applicant had lodged an appeal and that the grounds of the appeal were weighty, substantial and recondite. While pointing out that the Judgment of this Court had not been released to it, he noted that damages would not be sufficient to assuage the loss the Applicant would suffer if the application was not granted, as the entire business of the Applicant was being run from the res of the Judgment.

In the written address, Counsel formulated the following issue for determination: *“Whether this Honourable Court can exercise its discretion in favour of the Defendant/Applicant in the circumstances of this case and grant a stay of execution.”* Arguing this sole issue, learned Counsel submitted that the primary consideration in an application for stay of execution was the protection and preservation of the res so that the Court of Appeal would not be confronted with a *fait accompli*. He referred to the case of Soyawo v. Akinyemi (2001) NWLR (Pt. 714) 95 at 123 – 124, paras D – H, A – B where the Court of Appeal noted six items the Courts must consider in applications of this nature.

Counsel conceded that a mere filing of a Notice of Appeal would not translate to an automatic stay of execution. He also acknowledged that the reliefs sought

were grantable as part of the discretionary powers of this Court. He, however, contended that the application satisfied the requirements for the grant of the applications of this nature. He also submitted that the appeal was competent and raised substantial and recondite points of law. He also argued that the res would be destroyed irretrievably if the application was not granted. He therefore urged the Court to grant the reliefs sought in the application.

For all his submissions on the lone issue he formulated, learned Counsel cited and relied on the following cases: ***Vaswani Trading Co. v. Savalakh & Co. (1992) 12 SC 77; A.P.K.P Ltd v. B.S.W.C. (2009) 17 NWLR (Pt. 1171) 429; Adewumi v. Adebest Telecoms (Nig.) Ltd (2013) All FWLR (Pt. 703) 1954 at 1985, paras D – G and Morrison Ind. Plc. v. CPL Ind. Ltd (2009) 17 NWLR (Pt. 1169) 1 at 123 and 132.***

On the 6<sup>th</sup> of April, 2023, the Respondent filed its response in the form of a counter-affidavit and the accompanying written address. The 5-paragraph affidavit was deposed to by one Tajudeen Ayeni, a litigation clerk in the law firm of solicitors representing the Respondent. In the counter-affidavit, the deponent stated that the Applicant had refused to comply with the terms of the Judgment of this Court which was delivered on the 30<sup>th</sup> of March, 2023 even though it was aware of the Judgment.

He averred that the Applicant had continue to remain in occupation of the property of the Respondent even though its tenancy expired since 12<sup>th</sup> of January, 2021. The deponent denied paragraph 3(ix) of the affidavit in support of the application and added that the Respondent was capable of indemnifying the

Applicant. He swore that the application was an attempt by the Applicant to deny the Respondent the use of his property. He denied that the Appeal raised any weighty, substantial or recondite point of law.

In the written address in support of the application, Counsel formulated the following lone issue: “*Whether in the circumstances, the Judgment Debtor/Applicant has met the conditions to be entitled to an order for stay of execution as sought.*”

In his submissions on this sole issue, Counsel premised his argument on the established principle that a successful party must not be deprived of enjoying the fruits of his litigation. While recognizing that the grant of the application lies within the discretionary powers of the court, he, however, contended that the Applicant had not satisfied the conditions set out by the courts in a plethora of decisions such as ***Moore Associates Ltd v. Exphar S.A. (2023) 3 NWLR (Pt. 1872) 619 S.C. at 643, paras B – G*** and ***Integration (Nig.) Ltd v. Zumafon (Nig.) Ltd (2014) 4 NWLR (Pt. 1398) 479 at 482, paras D – F*** for the grant of an application for stay of execution.

It was the argument of Counsel for the Respondent that the grounds of appeal as disclosed in **Exhibit 1** did not raise any recondite point of law. He referred to the case of ***Dita Ltd v. Wema Bank Ltd (1997) 4 NWLR (Pt. 501) 624*** and other cases in that regard. He also reiterated the presumption that the conclusions of a trial court were correct until same was set aside on appeal in urging the Court to discountenance the application, more so as the substantiality of a ground of appeal was not even sufficient enough to grant an order for stay of execution. He

relied on *S.A. Industries Ltd v. Kema Investment Ltd (2006) 2 NWLR (Pt. 974) 300 and Oketade v. Adewunmi (2010) 8 NWLR (Pt. 1195) 63 at 75 – 76, H – B*. He therefore urged the Court to dismiss the application with a cost of ₦500,000.00 (Five Hundred Thousand Naira) only.

The Chief Registrar of the High Court of Justice of the Federal Capital Territory, Abuja, as the Deputy Sheriff in enforcement proceedings, did not file any response to this application. The resolution of this application therefore is on the basis of the processes filed by the Applicant and the Respondent in this application. To determine this application, one sole issue calls for determination, and that is, ***“Whether from the facts and circumstances of this application, the Applicant is not entitled to the exercise of the Court’s discretionary powers in its favour by the grant of the reliefs sought in this application?”***

By way of a prefatory remarks, I must restate the salient facts relating to this application. On the 4<sup>th</sup> of February, 2021, the Respondent herein as the Claimant brought an action for recovery of premises, mense profit and damages against the Applicant herein, then the Defendant. The Applicant, then the Defendant counter-claimed. After hearing, this Court, in a considered Judgment delivered on the 30<sup>th</sup> of March 2023, found for the Respondent herein, then the Claimant, granted the reliefs sought in the Writ of Summons and proceeded to dismiss the counter-claim of the Applicant herein, then the Defendant. Dissatisfied, the Applicant on that same 30<sup>th</sup> of March, 2023 lodged an appeal challenging the Judgment of this Court. The next day, that is, the 31<sup>st</sup> of March, 2023, the

Applicant brought this application. Attached to the application is the Notice of Appeal attached as **Exhibit 1**. On the exhibit are the grounds of appeal.

A survey of judicial pronouncements will readily avail us with the meaning and nature of stay of execution and the circumstances under which an application for same may or may not be granted by the Court. In **University of Agric., Makurdi v. Ogwuche(2000) 12 NWLR (Pt. 681) 360 C.A. at 367, paras E – F**, the Court held that **“A stay of execution in its connotation presupposes that there is a subsisting competent judgment which execution has to be stayed. But the court cannot stay execution of a judgment that is yet to be given. The grounding of stay of execution is coterminous with the pendency of an appeal and the appellant has to apply for it, as it is not as a matter of right. Besides, it underscores the presence of a valid notice of appeal containing competent grounds in the matter.”**

The circumstances under which Court can make an order for stay of execution were well-stated in the case of **Moore Associates Ltd v. Exphar S.A. (2023) 3 NWLR (Pt. 1872) 619 S.C. at 643, paras B – G** thus:

**“For a court to order a stay of execution of any judgment pending an appeal lodged against it by the losing party, the following factors must be taken into account, to wit:**

**(a) whether the applicant has established special or exceptional circumstances; if he does, the court would grant a stay;**

- (b) whether or not granting a stay would render the appeal nugatory such as whether the res would be destroyed before the appeal is heard;***
- (c) whether making the applicant satisfy the judgment would make his financial positions such that he could not prosecute the appeal; although poverty per se is not a ground for granting a stay;***
- (d) whether it would be difficult to secure the refund of the judgment debt or the damages and costs from the respondent if the appeal succeeds. For this purpose, the financial ability of the respondent is taken into consideration.”***

On the effect of an order for stay of execution, the Supreme Court, in the case of ***Nwora v. Nwabueze (2019) 7 NWLR (Pt. 1670) 1 S.C. at 35 – 36, paras H – B*** held that ***“An order for stay of execution of judgment cannot be made in vacuum as it cannot stand alone. An order of stay of execution pending appeal only prevents the beneficiary of a judgment or order from putting into operation the machinery of the law, the legal process of warrants of execution pending the determination of appeal.”***

It is important to note that the grant or otherwise of an application is an invitation to the Court to exercise its discretion one way or the other. In order to exercise this discretion, the Court must consider all the facts and circumstances of the case. See ***Psychiatric Hospitals Management Board v. Utomi (1999) 13***



*NWLR (Pt. 636) 572 C.A. at 583, paras E – F; Carrena v. Akinlase(2008) 14 NWLR (Pt. 1107) 262 S.C. at 284 – 285, paras F – A; Pamol (Nig.) Ltd. v. Illah Agric Project Ltd.(2003) 8 NWLR (Pt. 821) 38 C.A. at 49-50, paras. E-D.In Cala Niger v. Lead Merchant Bank Ltd.(2004) 5 NWLR (Pt. 867) 575 C.A. at 595 – 596, paras G – A, the Court held that “Whether an application for stay of execution or proceedings would be granted or refused is entirely that of exercise of judicial discretion. The exercise of discretion in such a situation depends on the particular facts of each case as presented and the justice it demands. However, a stay of execution will only be granted if the applicant shows special or exceptional circumstance justifying the stay sought. This principle flows from the background that a successful litigant ought not be denied the fruits of his judgment unless there are special or exceptional circumstances.”*

Has the Applicant in this case shown any special or exceptional circumstance that should justify the grant of the application for stay of execution of the Judgment of this Court delivered on the 30<sup>th</sup> of March, 2023? The Applicant thinks so. In support, it has referred this Court to **Exhibit 1** and the grounds of appeal contained therein which it believes raise weighty, substantial and recondite issues of law. On the other hand, the Respondent does not think so. It believes that the application does not contain any novel point of law that is capable of shaking the foundations of our extant jurisprudence.

I have studied **Exhibit 1**. Ground 1 is the omnibus ground of appeal, which is, that the Judgment was against the weight of evidence. Ground 2 is challenging

the evaluation of evidence adduced by the parties in the course of the hearing. Ground 3 is challenging the decision of the Court rejecting the invitation of the Applicant to vary the written tenancy agreement between it and the Respondent on the basis of the *ipse dixit* oral evidence of the Applicant that the parties agreed on a long lease of fifteen (15) years and not a fixed tenancy of a term of two years at each time as evidenced from the body of evidence before the Court. Ground 4 is challenging the award of mense profit, general damages and cost of action. I find it extremely difficult to see how these grounds tantamount to weighty, substantial and recondite points of law as contended vehemently by the Applicant in this application. I agree with learned Counsel for the Respondent that the grounds are notorious issues and points of law that have been pronounced by the Courts repeatedly in a plethora of authorities to the point of ennui. Moreover, the Courts have held that even where the appeal raises recondite issues of law, the Court may not grant the application for stay of execution of the Judgment if the recondite issues so raise do not disclose special and exceptional circumstances. See, for instance, ***LeadersCo. Ltd. v. Adetona(2003) 14 NWLR (Pt. 840) 431 C.A. at 445, paras D – G.***

Besides, an applicant who seeks an order for stay of execution of judgment of a court must show that there is a competent appeal against the Judgment. See ***University of Agric., Makurdi v. Ogwuche(2000), supra.*** A competent appeal is an appeal that has been entered. A cursory examination of **Exhibit 1** shows that the Applicant's appeal is not competent as it has not been entered. An appeal that has been entered is shown by an Appeal Number on the face of the Notice of Appeal. There is none on the face of **Exhibit 1**.

What is particularly worrisome in this application is the disturbing determination of the Applicant, who came into possession of the property as a tenant of the Respondent challenging the right of the Respondent to take over his property from him. That is how I view Ground 2 of this application. The ground states thus: “The res in the suit founding the Judgment of this Court of the 30/3/23 appealed against by the Defendant/Judgment Debtor/Applicant is her possession and continued occupation and use of the Plaintiff/Judgment Creditor’s/Respondent’s property known as Plot 554, Wuse 2, Abuja otherwise known as No. 43 Adetokunbo Ademola Crescent, Wuse II, Abuja.” The chutzpah with which the Applicant is challenging the reversionary interest of the Respondent in the property reminds me of the case of ***Oketade v. Adewunmi (2010) 8 NWLR (Pt. 1195) 63*** which led Niki Tobi (JSC) or blessed memory to denounce the determination of the Appellant to hold on to the Respondent’s property **at pages 75 – 76, para B – C of the law report** thus:

***“What is the real quarrel in this appeal? A landlord has an unfettered legal right to terminate a tenancy upon giving adequate notice. After all, the property is his and he can at any time retrieve it subject to the conditions in the tenancy agreement. Once he abides by the provisions of the tenancy agreement, the tenant has no choice than to vacate possession. The position of the law is as straight and as simple as that. It is almost like the day and the night changing places. What usually brings problems between a landlord and a tenant is the giving of adequate notice. What constitutes adequate notice is spelt out in***

*the lease or tenancy agreement. In other words, the landlord must give the tenant the quit notice as provided in the tenancy agreement. If the tenant refuses to quit, a court of law can, on an action by the landlord, force him out of the premises. That, I think, was what the Magistrates Court did but the appellant will not take the decision of the Magistrate for an answer and that has taken this matter inordinately for fourteen years plus.*

*The appellant has moved to three more courts in his dogged effort to remain permanently glued to the property, if I may use that expression unguardedly. And so he pushed all sorts of processes to the court to ensure that he remains there, perhaps in perpetuity. Why? Is he the owner of the property? Can the appellant really deny the allodial rights of the owner on the property? I do not think so.*

*The appellant has done so much to deny the respondent his right to the property. After the judgment of the High Court, he obtained a stay of execution of the judgment. Dissatisfied, the respondent went to the Court of Appeal challenging the order of the High Court to stay the execution of the judgment of the Magistrate's Court. The Court of Appeal ordered the appellant to pack out of the premises. The appellant is not deterred. Rather, he is determined and his determination to keep the property in perpetuity perhaps has made him come to us. Why and why, I*

***ask? Is he the owner of the property? Why is he so adamant?  
The appellant's bluff and use of the court process must stop, whether he likes it or not. And it must stop today because I cannot see how a tenant will struggle for supremacy or hegemony over a property that he did not build and perhaps did not know when and how the property was built. I do not blame the appellant, but I blame the law that has given the appellant such a latitude and effrontery to use the processes of the court to stay on a property he does not own for a period of fourteen years. This looks to me as a typical example of the aphorism or cliché that the law is at times an ass. I must quickly remove the ass content in the law and face the reality of the law. So be it.***

***In sum, I order that the appellant must vacate possession within three months from the, date of this judgment. I order consequentially that he pass all the rents due up to the date of his vacating possession to the respondent. I award ₦50,000.00 costs in favour of the respondents."***

I will say no more. For the reasons stated above, I hereby resolve the issue I have formulated in this Ruling against the Applicant. The application of the Defendant/Judgment Debtor/Applicant for stay of execution of the Judgment of this

Court delivered on the 30<sup>th</sup> of March, 2023 is hereby dismissed. No cost is awarded. Parties should bear their costs.

This is the Ruling of this Court delivered today, the 18<sup>th</sup> day of April, 2023.

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**HON. JUSTICE A. H.  
MUSA  
JUDGE  
18/04/2023**