

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA-ABUJA
ON MONDAY THE 31ST OCTOBER, 2023**

**SUIT NO: FCT/HC/CV/1638/2020
MOTION NO: FCT/HC/M/5100/2023**

BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI

BETWEEN

MARY GIWA.....JUDGMENT CREDITOR/RESPONDENT

AND

- | | | |
|--|---|-------------------------|
| 1. THE INSPECTOR GENERAL OF POLICE | } |RESPONDENTS |
| 2. NIGERIAN POLICE | | |
| 3. IJEOMA FARIDA WADA.....JUDGMENT DEBTOR/APPLICANT | | |

R U L I N G

This court on the 18th February 2021 delivered a judgment in a matter under the fundamental right enforcement procedure rules in favour of the judgment creditor (Mary Giwa). Thereafter, the 3rd judgment debtor filed a motion to set aside the said judgment. The motion was heard and refused. Being dissatisfied with the ruling of the court, the 3rd judgment debtor (Ijeoma Farida Wada) lodged an appeal at the Appeal Court, Abuja Judicial Division on the 20/02/2023.(Notice of Appeal is attached).

Sequel to that, A.C. Uba, of counsel to the judgment debtor filed a motion on notice dated and filed the 20/02/2023 brought pursuant to order 61(1) of the High Court of the Federal Capital Territory (Civil Procedure Rules) 2018 and under the inherent jurisdiction of this Honourable Court. The application seeks the following:

1. An Order of this Honourable Court staying the execution of its judgment delivered in the suit on Thursday, 18th day of February 2021.
2. An Order of Injunction restraining the judgment Creditor/Respondent from giving effect to the Ruling of the court delivered in this case on 7th day of February, 2023.
3. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The application is anchored on 4 grounds thus:

- i. The judgment/Debtor is dissatisfied with the ruling of the court delivered against her application to set aside the judgment of the court delivered on the 18th day of February 2021 and order retrial, which ruling was delivered on the 7th day of February, 2023.
- ii. The judgment Debtor/applicant has filed a Notice and Grounds of Appeal against the said ruling of 7th day of February 2023.
- iii. The grounds of appeal raise substantial issues of law and stand good chance of success on appeal.

- iv. The grant of this application will afford parties opportunity to have the appeal determined on its merit with possible retrial of the substantive suit without foisting the situation of foit accompli on the courts,.

In support of the application is affidavit of 5 paragraphs deposed to by Emmanuel Okereke, a litigation clerk in the law firm of OA & C-Legal, counsel to the 3rd judgment debtor/applicant, annexed with exhibits A1 and A2. Exhibit A1 is a notice of appeal while exhibit A2 is filing fee. Also filed is a written address in support of the application which the counsel adopts as their argument and therein formulate a sole issue for the determination of the court. The issue is: **whether having regards to the facts and circumstances of this application same ought to be granted.**

In arguing the issue, the learned counsel A.C. Uba Esq, considered conditions for regulating the grant of stay of execution and injunction pending appeal; he placed reliance in **Kogi State House of Assembly v. Sani & Ors (2019) LPELR-48463 (CA)**, in that case, the Court of Appeal relying on the decision of the Apex Court held thus:

“The Supreme Court in SODC (NIG) Ltd v. Amadi & Amp Ors (supra) in a very instructive restatement of the law on the point stated thusly- ‘I must point out here that principles guiding an application for stay of execution and injunction pending appeal are the same. Both are subject to the discretion of the court, and in exercising its discretion, the court is enjoined to

consider some conditions in granting or refusing the application, some of which are:

- a. The grounds of appeal must raise substantial legal issues in area of law that is novel or recondite.**
- b. The application must disclose special circumstances why the judgment should be stayed.**
- c. The application must disclose why matters should be put in status quo or preserve the res so as not to render the appeal nugatory”**

It is submitted that the applicant has deposed to facts and attached exhibits which all points to fulfillment of the requirements for granting the application and that the law is also trite that either the trial court or the appellate court has jurisdiction and powers to consider the extant application and grant same. Cited **City Exp. Bank Ltd v. Lagos State Government, (2004)7 NWLR (872) 258**. The counsel restates the position of law to the effect that the grant or refusal to grant application for stay of execution is at the discretion of the court which discretion must be exercise judicially and judiciously. Cited **NNPC v. Famfa Oil Ltd (2009)12 NWLR (PT.1156) SC. 462 at 490-491**. The court is therefore urged in the interest of justice to grant this application in order not to foist or render the appeal nugatory in case of the applicant succeeding in his appeal.

In reaction to the application filed by the judgment debtor/applicant, the judgment creditor/respondent filed 7 paragraphs of counter affidavit dated and filed the 28/02/2023,

deposed to by one Sophia Clement, a legal assistant in E.I. Okani & Associates of counsel to the judgment creditor/respondent. Annexed therein is the certified true copy of the ruling delivered on the 7th February, 2023 which is being appealed against and a written address.

In his argument, the learned counsel Emmanuel I. Okani Esq, of counsel to the judgment creditor conceded that an application of this nature is entirely at the discretion of the court. Cited **Ajuwa v. S.P.D.C.N.L (2010)11 WRN 1-184 Paras 15-30**. He submitted that in exercise of the court's discretion, the interest of both parties must be considered. The argument of the learned counsel in the course of adumbration is that there is no competent appeal against the monetary judgment of the court delivered on the 18/02/2021 but that the appeal is against the ruling of the court delivered on the 7/2/2023 refusing to set aside its judgment which is not a monetary judgment. He submitted that for a court to grant stay of execution there must be appeal against a monetary judgment of the court. They also complained that 92 days after filing the appeal, no record of appeal is compiled and no application to transmit record to the court of appeal. It is their conclusion therefore that the judgment debtor is employing all tactics to frustrate the judgment creditor from reaping the fruit of the judgment. Reference is made to Order 61 rule 2 of the rules of this court. The judgment creditor/respondent contended that granting this application will prevent her from reaping the fruit of her litigation and will amount to double jeopardy

after having suffered the trauma of the loss of her son due to the action of the judgment debtors.

As to what constitute special or exceptional circumstances for the court to consider in the grant of an application for stay of execution; I am commended to the cases of **NIWA V. SPDC LTD (2008)13 NWLR (PT. 1103)48** and **VASWANI TRADING COMPANY V. SAVALAH ANF CO. (2002)29 WRN 29**. It is averred in paragraph 3.7 of the written address in support of the counter affidavit that the anus ls on the party applying for stay to satisfy the court that in peculiar circumstances of this case a refusal would be unjust. Cited the case **Wema Bank v. Adebowale**. They asserted that the deposition of the applicant did not disclose any special or exceptional circumstance to warrant the grant of this application. More so, that there is no evidence before the court to show that the applicant has taken step to transmit or compile records of this court.

I must not fail to quickly restate the stance of the judgment debtor while adumbrating which is to the effect that the judgment delivered on 18/02/2021 is a default judgment which cannot be appeal against because that only final judgment is appealable. In this case, that their appeal is against the ruling of the court while the application before this court is for stay of execution of the default judgment.

It is apt at this point to state that the 1st and 2nd judgment debtors never filed processes in response to the claim of the judgment

creditor against them or appear in person nor by representation despite service of all the processes.

It is not in dispute evinced by the processes filed before the court that the appeal of the judgment debtor is not against the judgment of the court delivered on the 18th day of February 2021 but against the ruling delivered on the 07/02/2023 refusing to set aside its judgment delivered on 18th day of February 2021 and order for retrial. However, the extant application is seeking for the stay of the execution of the judgment delivered on the 18th February 2021. Generally; a court has inherent power to grant a stay of its judgment/ruling that is being challenged on appeal on certain conditions. In the exercise of its power or discretion like in all cases, the court must not only act judicially and judiciously but in doing that, it must have in mind the equal or competing rights of the parties. That is, the right of appeal of the judgment debtor/applicant against any decision that she is not satisfied with on one hand and delete the right of the judgment creditor to enjoy the fruit of her judgment on the other hand. **See SPDC & ORS V. AGBARA & ORS (2015) LPELR – 25987(SC).**

The parties in the instant case are in consensus *idi dem* that an application for stay of execution to be granted, there must be special or exceptional circumstances. Having carefully examined the grounds of appeal, affidavit in support of the extant application, the counter affidavit in opposition of same, all the exhibits attached thereto vis-à-vis the arguments and submission of the parties, I found

it convenient in the resolution of this application to adopt the sole issue formulated by the applicant in her written address thus: **whether having regards to the facts and circumstances of this application same ought to be granted.**

The consideration of the grounds for the grant of a stay of execution pending appeal has been well articulated in various judicial pronouncements. See **Soom & Ors V. Jibo & Ors (2019) LPELR – 47774 (CA)**. The principles that will guide the Court in the exercise of its discretion to grant or refuse such an application have become so well known that they can be described as being trite, they include:

1. The taking into account of the competing rights of the parties to justice;
2. The right of a winning party to the fruits of his judgment cannot be compromised and therefore, no Court must make a practice at the instance of an unsuccessful party of depriving a successful party of the fruits of the judgment in his favour until a further appeal is determined;
3. An unsuccessful party applying for a stay of execution has the duty on him to show special or exceptional circumstances which point conclusively to the fact that the balance of justice weighs in favour of the grant of a stay;

4. The Court will readily grant a prayer for stay if the effect of such refusal would render the appeal nugatory or deprive the appellant of the means of prosecuting the appeal.

See (1) *Okafor v. Nnaife* (1987) 4 NWLR (Pt.64) 129; (2) *Arojoye v. U.S.A.* (1986) 2 NWLR (Pt.20) 101; ...”

The 1st and 2nd principles have already been dealt with above and I want to add that the right of the judgment debtor to appeal the decision of this court that is against her interest is guaranteed by sections 241, 242 and 243 of the Constitution of the Federal Republic of Nigeria 1999 as amended. See ***E.F.P.C Ltd. V. NDIC* (2007) All FWLR (pt. 367) 798 @ pp. 825 – 826; *Becay Int’L (Nig) Ltd v. Fidelity Bank* (2017) LPELR-41971).** Conversely, the Judgment creditor also has the right to enjoy the fruit of her judgment. It is settled that Court do not form the habit of depriving a successful party the enjoyment of the fruits of his judgment. See ***Uket vs. Ukpa* (2006) 8 NWLR Part 983.** Hence, when it comes to issue of stay of execution, the court must be very cautious not to suspend the judgment creditor's right to the benefit of his judgment unless under special or exceptional circumstances.

The next principle that guides the court in the grant or refusal of the grant of stay of execution as listed above that I need to address is that: **an unsuccessful party applying for a stay of execution has the duty on him to show special or exceptional circumstances which point conclusively to the fact that the balance of justice weighs in favour of the grant of a stay.** What constitute special or exceptional

circumstances vary from one case to the other. However, the Supreme Court in **Vaswani Trading Company v Savalakh (1972) ALL NLR 483**), laid down the conditions and is reechoed in plethora of recent decisions of superior courts as “a consideration of some collateral circumstances and perhaps in some cases inherent matters which may, unless the order of stay is granted destroy the subject matter of the proceeding or foist upon the court, especially the Court of Appeal a situation of complete helplessness or render nugatory any order or orders of the Court of Appeal in one way or the other...” What is required of the applicant, in an application for stay, is to show firstly that there is a pending appeal against the judgment the execution of which is sought to be stayed; secondly, to show such extra ordinary or special reasons that aggressively threaten the **res** of the appeal and dictating a compelling necessity to grant an order for stay. See **FIB PLC V. CITY EXPRSS BANK (2004) 6 NWLR (PT. 869)**.

The judgment debtor/applicant undoubtedly filed a notice of appeal on 20/02/2023 against the ruling of this court delivered on the 07/02/2023; and not against the judgment of the court delivered on the 18/02/2021. In order to ascertain whether there are special or exceptional circumstances to warrant the grant of the stay, I had to examine the five paragraphs affidavit in support of the application. I hereby reproduced the relevant paragraphs as follows:

Para 4: That on the 14th day of February in our Law Firm at about 2.00pm, I was informed by A.C Uba Esq of a counsel to the

Judgment Debtor/Applicant of the following facts which I verily believe to be true:

- i. That by an Application under Fundamental Rights Enforcement, the Judgment Creditor/Respondent obtained a judgment of the honourable court in her favour on default of appearance of the Respondents; the said judgment was delivered on the 18th day of February, 2021.
- ii. That when the Judgment Debtor/Applicant got wind of the said judgment, she filed an application through counsel asking the Honourable Court to set aside the said judgment and order retrial in the suit.
- iii. That on the 7th day of February 2023, the honourable court delivered its ruling denied the application to set aside the said judgment and order retrial.
- iv. That being dissatisfied with the said ruling of the honourable court, the judgment debtor/applicant has filed a notice of appeal against the said ruling, which copy is attached as exhibit A1 and the receipt of filing fees as Exhibit A2.
- v. That the grounds of appeal contained in the said notice of appeal raised substantial triable issues of law that are recondite and stands good chances of success at appeal.

- vi. That the judgment creditor/respondent has commenced garnishee proceedings at magistrate court to enforce the judgment of the court and the same proceeding was adjourned sine die pending the outcome of the application to set judgment aside and same may be resumed at this instance except this court grants this application for stay and injunction pending appeal.
- vii. That the essence of this application is to avoid foisting a situation of fait accompli on the court should the case succeed on appeal.

I have pointed out in agreement with the submission of the applicant in this ruling that the appeal filed by the judgment debtor/applicant is not against the judgment of this court delivered on the 18/02/2011 but against the ruling delivered on 07/02/2023. That is to say by implication the judgment debtor/applicant is not aggrieved by the decision contained in the said judgment. Her grouse is only against the ruling of the court delivered on the 07/02/2023 refusing to set aside the judgment and order for retrial the reason she appeal against same. The question that beclouded the mind of the court while writing this ruling after considering the entire processes filed and the argument advance before me is: why will the court stay execution of judgment delivered on the 18/02/2023 and deny the judgment creditor of the fruit of the judgment when there is no appeal against same? I therefore agree with the submission of the judgment creditor/respondent that there is no competent appeal

against the monetary judgment of the court delivered on the 18/02/2021. Assuming but not conceding that the appeal is against the judgment of the court delivered on the 18/02/2021 and this court has the power to determine the application for stay of execution of the judgment; I have critically examined the affidavit in support reproduced above, I am unable to find any fact disclosing special or exceptional circumstances to warrant the court to stay the execution of this judgment. I therefore refused to grant relief one seeking the order of court to stay execution of its judgment delivered on the 18th day of February 2021.

On the appeal against the ruling of the court, and the principle or conditions for injunction pending appeal, applicant placed reliance on the case of **Onuzulike v. Commissioner for Special Duties (1990)7 NWLR (PT. 161) 262**; and they failed to avail the court with a copy of the judgment; unfortunately despite all my attempt I was unable to lay my hands on one. Notwithstanding, there are plethora of judicial authorities on the principle for injunction pending appeal like stay of execution pending appeal. The Court of Appeal held in the case of **National Pension Commission v. First Guarantee Pension Ltd & Anor (2013) LPELR-20824 (CA)** thus:

"There are well recognized conditions for grant of injunction pending appeal just as in grant of stay of execution some of which are: 1. the grounds of appeal must raise substantial legal issues in an area of law that is novel or recondite. 2. The application must disclose special circumstances why the

judgment should be stayed. 3. The application must disclose why matters should be put in status quo or preserve the res so as not to render the appeal nugatory. See *Shell Petroleum Development Company of Nigeria Ltd. v. Amadi & ors* and the numerous authorities cited in the lead judgment."

The Supreme Court per Fabiyi JSC made it succinctly clear in **NNPC v. Famfa Oil Ltd (supra)**, that even if a *recondite* issue is established it must co-exist with special circumstances. I quote him: "...Just as in application for stay of execution, in an application for injunction pending appeal, it is the subsistence of a *recondite* point of law coupled with the depiction of a special circumstance that would warrant a grant of an injunction pending the determination of the main appeal. Thus, where these are non-existent, the application would be discountenanced."

The appellant's application to set aside the judgment of the court and order retrial which was refused is premised on the fact that the mode of substituted service adopted by the court worked against her right to fair hearing which is a point of Law that is *recondite*. But in line with the decision of the Supreme Court in **NNPC** case (Supra), it is pointed out that the requirement that the ground of appeal must raise a point of Law that is *recondite* does not depend on the importance or seriousness of the ground of appeal taken in isolation. Rather, it relates to what the effect of a refusal of stay of execution on the appellant would be if the appeal succeeds, **Ajomale v. Yadaut (No.2) (1991) 5 NWLR (pt.191) 256. As Nnaemeka-Agu.**

In the light of the aforementioned facts vis-à-vis the judicial authorities outlined above, and considering that the appeal is against the refusal of the trial court to set aside its judgment delivered on the 18/02/2023 and order for retrial; I agreed entirely with the submission of the respondent that the applicant failed to disclose in her affidavit in support that if this application is refused, the subject matter will be destroyed nor a disclosure that a grant of the application will render a situation of hopelessness on the appellate court or render the appeal nugatory. It is my view that even when the appeal succeed upon refusal to grant this application, the appellate court still stand the chance of setting aside the judgment of this court delivered on the 18/02/2021.

There is no averment in any of the affidavit of the applicant to show that if the judgment is executed, the Judgment Creditor will not be able to pay back the money in case the appeal succeeds. In fact, It is averred with no contradiction in paragraph 5(viii) of counter affidavit of the respondent that the judgment creditor will be willing to refund the judgment sum any time it becomes necessary. In other words, if this application is refused, the appellate court will not be put in a helpless situation as the applicant can re-claim its money from the judgment creditor/respondent if his appeal succeeds, hence the Court of Appeal decision cannot be rendered nugatory.

In the light of the aforesaid, I agree entirely with the submission of the Respondent and I so hold that no special or exceptional circumstances has been shown by the judgment debtor/applicant

in his affidavit evidence to warrant a stay and an order of injunction. In that vein, the application for stay of execution and for order of injunction to restrain the judgment creditor/respondent from giving effect to the ruling of the court delivered in this case on 7th day of February, 2023 is refused on no cost.

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HON. JUSTICE A.I. AKOBI
31/10/2023

APPEARANCE:

A. C. Uba for the Applicant.
Okani Emmanuel with Jenifer Ugwoke for the Respondents.