

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON THURSDAY THE 11TH
DAY OF JULY, 2024.

BETWEEN: **SUIT NO. B/929/2022**
MR. ROBERT ABHAFIMEA OBHAFUOSO -----CLAIMANT/RESPONDENT
AND
FIRST BANK OF NIGERIA PLC. -----DEFENDANT/APPLICANT

RULING

This is a ruling in respect of a motion dated and filed on the 22nd of December, 2023 for stay of execution of the judgment delivered by this Court in this case on the 12th day of December, 2023.

In this motion, the Applicant is praying the Court for the following orders:

- 1) AN ORDER of this Honourable Court staying the execution of the final judgment delivered in this case on the 12th day of December, 2023 pending the hearing and determination of the appeal filed against the said judgment by the Appellant/Applicant; and***
- 2) For such order or further order(s) as this Honourable Court may deem fit and proper to make in the circumstances of this case.***

The motion is supported by an affidavit of 13 paragraphs, and a Written Address of the counsel for the Defendant/Applicant.

At the hearing of the motion, the learned counsel for the Defendant/Applicant, ***F.T. Odebata Esq.*** relied on his supporting affidavit and adopted his written address as his arguments in support of the application and urged the Court to grant their application for stay of execution of the judgment pending the outcome of their appeal.

In his Written Address, the learned counsel for the Applicant formulated a sole issue for determination as follows:

"Whether the Applicant has satisfied the conditions necessary for this Honourable Court to invoke its powers and discretions in its favour."

Arguing the sole issue for determination, the learned counsel posited that the grant of an application for a stay of execution of judgment is at the discretion of the Court which must be exercised judicially and judiciously. He relied on the case of ***AKILU V. FAWEHINMI (1989)3.SC. (Pt. 11)1 at 205-10*** and the provision of ***Section 6(6)(a) of the 1999 Constitution (As Amended)***.

He submitted that in an application for stay of execution of judgment, certain principles are usually considered by the courts and he referred to the decision of the Supreme Court in the case of ***CHIEF J.S. AMADI & ORS. V. MR. EDMUND CHUKWU & ORS. (2013)5 NWLR (PT. 1347) Page 301 at 304, Ratio 3***, where the Court held as follows:

"For an unsuccessful litigant to succeed in an application for stay of execution of judgment, such applicant must show clearly that there exists special or exceptional circumstances showing the balance of justice in his/her favour".

Counsel posited that in a situation where there is a pending appeal against the judgment, as in the instant case, the following special circumstances have received judicial approval when execution of the judgment would:

- (a) Destroy the res or subject matter of the proceedings;
- (b) Foist upon the court a situation of complete helplessness;

- (c) Render nugatory any order of the Appeal Court;
- (d) Paralyze in one way or the other, the exercise by the litigant of his constitutional right of appeal; or
- (e) Provide a situation in which even if the Appellant succeeds in his appeal, there would be no return to the status quo.

He maintained that an applicant for a stay of execution has a duty to show clearly and convincingly that special and exceptional circumstances exist and he relied on the following decisions:

MARTINS V. NICANNAR FOODS CO. LTD.(1988)1 NSCC 613 AT 617-618;and ARAGBIJI OF IRAGBIJI & ANOR. V. OLABODE OYEWINLE & 2 ORS.(2013) NWLR (PT. 1372) Page 566 at 574 Ratio 17.

Arguing further, the learned counsel submitted that the grounds of appeal contained in Exhibit B raise vital jurisdictional issues of law. He said that this constitutes substantial and exceptional circumstance that will warrant the grant of a stay of execution pending the hearing and determination of the appeal. See ***OLUNLOYO V.ADENIRAN (SUPRA)***.

On whether there is a pending valid appeal, he submitted that there is a pending valid appeal which grounds raise substantial and arguable points of law with bright chances of success thus justifying a stay of execution. He referred the Court to the already filed Notice of Appeal and the 13 paragraphs affidavit in support of the instant application. He also relied on the cases of ***DENTON-WEST V. MUOMA (2008) ALL FWLR (Part 433) page 1423 Ratio 2;*** and ***ODUNSI V. ABEKE (1999) 12 NWLR (Pt. 632) page 601.***

Relying on the above cited judicial authorities, the attached Notice of Appeal and the supporting affidavit learned counsel submitted that the Applicant has shown sufficient and cogent special circumstances that should justify the grant of this application for stay of execution of the judgment of this Honourable Court in this case.

Furthermore, counsel submitted that the Applicant has not been guilty of delay in filing this application.

Finally, he urged the Court to grant this application in the overriding interest of justice. In opposition to this application, the Claimant/Respondent filed a 16 paragraphs Counter – Affidavit and a written address of his counsel.

In his written address, the learned counsel for the Respondent, ***G.O. Giwa-Amu Esq.*** adopted the sole issue for determination as formulated by the Applicant which is as follows:

“Whether the Applicant has satisfied the conditions necessary for this Honourable Court to invoke its powers and discretions in its favour.”

Arguing the sole issue, learned counsel submitted that from the totality of the affidavit evidence in this suit, the Defendant/ Judgment – Debtor/ Applicant has failed to establish the precondition upon which this Honourable Court can exercise its discretion in staying the judgment delivered on the 12th day of December, 2023.

He submitted that the judgment sought to be stayed is a money judgment and from the totality of the depositions as contained in the Affidavit in Support of the Motion, the Defendant/ Judgment – Debtor/ Applicant has failed to state the relevant facts upon which this Honourable Court can grant a stay of execution of the said judgment.

He referred the Court to the case of ***SHELL PETROLEUM DEVELOPMENT CO. NIG. LTD V. OKEI (2006) 17 NWLR (PT. 1007) 1 AT 10 RT. 10*** where the Court held as follows:-

“Where Judgment has been given for the payment of a sum of money and the judgment debtor seeks a stay of execution, the affidavit or affidavits relied upon by him in such a situation, apart from stating relevant facts upon which to consider the principles for a stay, must ensure that those facts are full and frank including complete and accurate account and description of all the applicant’s income, assets, interest and properties as well as his obligations and liabilities. This is the only way the court can best exercise its discretion to grant or refuse a stay”.

He submitted that in the instant application, the Defendant/ Judgment – Debtor/ Applicant stated in paragraph 10 of the Affidavit in Support of the Motion thus:-

“That the judgment creditor will not be in a position to refund the money if the appeal succeeds”.

He posited that apart from paragraph 10 as stated above the entire affidavit in support of the application does not meet the requirements for the grant of a stay of execution of a money judgment as stated above.

He submitted that it is not enough for the Defendant/ Judgment – Debtor/ Applicant to state that the Claimant/Respondent/Judgment Creditor will be unable to refund the judgment debt in case the appeal succeeds. He said that the law requires them to give further particulars of the accounts and description of the income, assets, interest, properties, obligations and liabilities of the Claimant/Respondent/Judgment Creditor which they failed to do.

He referred the Court to ***Ratio 9*** in the case of ***SHELL PETROLEUM DEVELOPMENT CO. NIG. LTD V. OKEI (SUPRA)*** where the Court held as follows:-

“There should be no order for a stay of execution of judgment where:

- (a) It has not been shown by the applicant that the respondent will be unable to refund the judgment debt in case the appeal succeeds; or***
- (b) The respondent’s deposition in his counter – affidavit as to its credit worthiness stands unchallenged; or***
- (c) Where the respective parties express their ability to pay or refund the judgment sum.***

He maintained that in the instant application, the ability of the Respondent to refund the judgment sum is not in doubt. He referred to paragraphs 9, 10, 11 & 12 of the Counter – Affidavit where the Claimant/Respondent/Judgment Creditor stated that he is not a man of straw. He said that he went further to list his assets to convince the Court that he is able to refund the judgment debt if paid to him.

On the other hand, learned counsel conceded paragraph 9 of the Affidavit in Support of the Motion that the Defendant/ Judgment – Debtor/ Applicant is a reputable bank with the ability to pay the judgment sum.

Counsel submitted that where both parties have shown their ability to make payment and refund of the judgment sum, the discretion of the court should be exercised in favour of the Respondent and he relied on the case of ***ROYAL EXCHANGE ASSURANCE (NIG)LTD & ORS V. ASWANI TEXTILE INDUSTRIES LTD (1992) 2 SCNJ (PT II) 346 AT 350 PARA. 5 -10*** where the Court held thus: *“where there is parity in the ability of the parties to make payment or refund; and where the law and the balance of the equities is in favour of the respondent who is the judgment creditor, it is in the interest of justice not to disturb the exercise of discretion of the court below”*.

Responding to the submission of the Applicant’s counsel that they have good Grounds of Appeal, he urged the Court to disregard the arguments because the judgment sought to be stayed is a monetary judgment governed by different principles for stay of execution of same. Moreover, he submitted that it has been held in a plethora of cases that a strong and substantial ground of appeal does not necessarily mean that the appeal may succeed and he cited the case of ***ODEDEYI V. ODEDEYI (2000) 75 LRCN 295 AT 297 RT. 2.***

In conclusion, he urged the Court to dismiss this application.

I have carefully read all the processes in this application together with the written addresses of both counsel for the parties.

It is settled law that an application for Stay of Execution of Judgment is not granted as a matter of course, rather an applicant seeking for Stay of Execution of Judgment is expected to show special and exceptional circumstances justifying a Stay of Execution. This is because a Judgment Creditor is entitled to enjoy the fruits of his Judgment and as such he should not be deprived of reaping such fruits.

In considering whether to grant an application for stay of execution of Judgment or refuse it, the Court must note that the Stay of Execution should not be sought to serve as a substitute for the Judgment denied the party. This is because as long as the Judgment of a trial Court remains and such Judgment is not manifestly wrong, an appellate Court has a right to presume that it is right until the contrary is proved.

In considering an application for a stay of execution, the Appellate Courts in a number of decided cases have evolved some principles that will guide the courts. The paramount ones are as follows:

(a) A court has the unfettered discretion to grant or refuse a stay of execution of judgment, but such discretion must be exercised judicially and judiciously. Here, judicious connotes: proceeding from or showing sound judgment, having or exercising sound judgment and marked by discretion, wisdom and good sense.

(b) A court, in granting or refusing a stay, must take into account the competing right of parties to justice, far from being biased for or against one party.

(c) A successful party is entitled to the fruits of his judgment and must not be deprived of same except in situations recognized by law.

(d) A court has to protect the judgment it has awarded to a party.

(e) A court shall strive to preserve the subject-matter of any litigation before it.

(f) A stay is never used as a substitute for obtaining a judgment which a court has denied a party.

See the following decisions: *Ajomale v. Yaduat (No. 2) (supra)*; *Okafor v. Nnaife (1987) 4 NWLR (pt. 64). 129*; *T. S. A. Ind. Ltd. v. Kema Inv. Ltd. (2006) 2 NWLR (Pt. 964), 300*; *NNPC v. Famfa Oil Ltd. (2009) 12 NWLR (pt. 1156) 462*; and *IBIYEYE & ANOR V. GOLD & ORS (2012) LPELR-9757(CA) (PP. 36-38 PARAS. C).*

I will bear all these principles in mind while attending to this application.

In the instant application, in the affidavit in support of the application, the applicant deposed to some salient facts which are succinctly stated as follows:

- 1. That the Applicant's Notice of Appeal raises substantial, arguable and triable issues of law with bright chances at the Court of Appeal;*
- 2. That the balance of convenience is on the Applicant's side arising from the germane issues raised in the Notice of Appeal already filed;*
- 3. That the Applicant has the means and is willing to prosecute the appeal diligently and to its logical conclusion;*

- 4. That the Applicant's arguable points of law to be argued in the appeal raise special and exceptional circumstances;***
- 5. That unless the stay is granted, it will foist upon the Court of Appeal a situation of complete helplessness;***
- 6. That the Applicant is a foremost Bank in Nigeria with substantial assets and huge profit portfolio and as such, the judgment Creditor/Respondent has nothing to fear; and***
- 7. That the judgment creditor will not be in a position to refund the money if the appeal succeeds.***

In his counter-affidavit, the Claimant/Respondent deposed to some salient facts which are summarized as follows:

- 1. That the Respondent is not a man of straw but is a practicing lawyer and a farmer with farm establishments in Lagos, Benin City and Ekpoma in Edo State;***
- 2. That apart from his law practice, his income from his farming business gives him a return of over N30, 000,000.00 (Thirty Million Naira) only annually;***
- 3. That he has houses in Lagos, Benin City and Ekpoma where he collects rent worth over N5,000,000:00 (Five Million Naira) annually;***
- 4. That he has the ability to refund the judgment sum to the Defendant/Applicant in the unlikely event that the judgment of this Honourable Court is upturned on appeal.***

Furthermore, it is settled law that as a general rule, in a money judgment, the only ground for a stay of execution is an affidavit showing that of the damages and costs where paid, there would be no reasonable probability of getting them back if the appeal succeeds. This raises a substantial ground which is considered as a special circumstance.

In the case at hand the Applicant has not shown that the Respondent will be unable to refund the judgment debt if the appeal succeeds. On the other hand in his counter-affidavit, the Respondent has deposed to facts to show that he is not a man of straw but a man of means with multiple sources of income. These depositions were not controverted by the Applicant.

The reasons given by the Applicant in their affidavit about viable grounds of appeal can hardly support any special circumstance in an application for stay of execution of a money judgment such as this. The bare assertion of the alleged poverty or impecuniosity of the Respondent cannot be regarded as an exceptional circumstance to warrant the grant of stay of execution of a money judgment. See the case of *Nwabueze v. Nwosu* (1988) 4 NWLR (Pt. 88) 257.

Upon a juxtaposition of the facts supplied by the Applicant and those of the Respondent, it is apparent that the Applicant has not established any special circumstance to warrant the exercise of the discretion of this Court in their favour.

The application lacks merit and it is dismissed with N50, 000.00 (Fifty Thousand Naira) costs in favour of the Claimant/Respondent.

**P.A.AKHIHIERO
JUDGE
11/07/24**

COUNSEL:

F.T.ODEBATA ESQ-----DEFENDANT/APPLICANT/JUDGMENT DEBTOR

G.O.GIWA-AMU ESQ-CLAIMANT/RESPONDENT/JUDGMENT CREDITOR