

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE OSOGBO JUDICIAL DIVISION
HOLDEN AT OSOGBO
ON 26TH DAY OF MAY 2016
BEFORE HIS LORDSHIP
HON. JUSTICE M.A. ONYETENU
JUDGE

SUIT NO: FHC/OS/CS/42/2011

BETWEEN:

MR. BABATUNDE DAROIYO

**JUDGEMENT CREDITOR/
RESPONDENT**

AND

- | | | |
|---|---|---|
| 1. THE INSPECTOR GEN. OF POLICE | } | JUDGEMENT
DEBTORS/APPLICANTS |
| 2. THE ATTORNEY GEN. OF THE FEDERATION | | |
| 3. POLICE SERVICE COMMISSION | | |
| 4. COMMISSIONER OF POLICE OSUN STATE | | |

RULING

By a motion on Notice filed on 5/02/16 the judgment debtor Applicants prayed this court for an order granting a stay of execution of judgment given in favour of the Judgment Creditor/Respondent delivered on 3/6/15 against them pending the hearing and determination of the application filed at Court of Appeal Akure.

The motion is supported by a 17 paragraph affidavit which the Judgment Debtors/Applicants relied on and an exhibit. Exhibit A Notice of Appeal.

In his written address counsel to the Judgment debtors/Applicant gave a brief fact of this case and submitted thereafter that the existence of a valid and arguable appeal is a vital issue to be considered in an application of this nature citing

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Carribean Trading & Fidelity

Corp v. NNPC

1991 6 NWLR Pt 197 at 360

as well as the competing rights of the parties.

He submitted that a stay of execution of the said judgment will not jeopardize the free right of the Respondents citing

Olunloyo v. Adeniran

2001 8 MJSC 120 at 123

Counsel submitted that the power to grant a stay of execution of judgment is discretionary and such discretion is to be exercised judiciously and judicially citing

Daily Times of Nigeria Plc v.

Chief Mrs A.S. Kusamotu

2002 CA/L/388/99

He also submitted that both trial and appellate court can exercise the discretion to grant a stay execution of judgment citing

KIGO Nig Ltd v. Holman Bros Nig Ltd

1980 5-7 S.C 64

Vincent Standard Trading Co. Ltd v.

Xtrodeus Trading Co. Ltd

1993 5 NWLR Pt 296 at 675

Counsel submitted that in the present case a refusal of this application would deprive the appellant of the means of prosecuting this appeal as the judgment debt is N10 million citing

Governor of Oyo State v. Akinyemi

2003 1 NWLR PT. 800 at 16

He urged this court to grant his application.

M. A. Oyelewa

The Judgment creditor/Respondent filed a counter affidavit of 8 paragraphs which they relied on.

Counsel submitted in his written address that a party in whose favour judgment is given must be allowed to reap the fruits of his judgment and where this is not done it is injustice and defeats the purpose of seeking redress in court citing

Integration Nig. Ltd v. Zumafon Nig Ltd
2014 All FWLR Pt. 727 at 692.

Counsel further submitted that for an applicant to be entitled to order for stay of execution of judgment he has to show clearly and unequivocally that there exists special or exceptional circumstances showing that balance of justice is in his favour citing

Ulith v. Abegunde
2013 All FWLR Pt. 669
At 1166

He then submitted that special circumstances involves consideration of inherent matter which unless the order of stay is granted:

- (a) Destroy the subject matter of the proceedings or thrust upon the Court of Appeal a situation of helplessness.
- (b) Which will render nugatory any order or orders of Court of Appeal
- (c) Which will paralyze in one way or the other the exercise of the litigant's constitutional right of appeal.
- (d) Or generally provide a situation in which whatever happens to the case and in particular even when the appeal succeeds in the court of Appeal there can be no return to a status quo.

In order words that in a prayer for stay of execution of money judgment it must be shown by affidavit that if the money is paid over to the

M. A. Oyetenu

successful party there is no reasonable probability that the sum would be paid back should the appellate court revise the judgment.

It is not enough to make a bare assertion that the judgment creditor/Respondent will not be able to refund the money should the appeal go against him.

And this the judgment debtor/Applicants have failed to do

Counsel also submitted that an applicant seeking a grant of this kind of application must show the existence of special or exceptional circumstances citing

Vasweni Trading Co V. Savalakh & Co

1972 1 All NWLR Pt. 4 483

Dr. T.O. Dada V. University of Lagos and others

1971 1 UILR 344

Okafor v. Nnaife

1987 4 NWLR Pt 64 129

Which they have failed to do citing

Daily Times of Nigeria Plc v. Chief Mrs A.S. Kusamotu

2002 LPEWR 10993 at 19

Counsel further referred to paragraphs 4 and 5 of the Applicant's affidavit in support of this motion submitting that where records have not been transmitted to the appellate court a grant should not be granted talk less of the situation in this case where the records have not been so compiled referring to pages 7 – 9 of the said judgment.

Counsel also referred this court to paragraphs 13 and 14 of the judgment debtors/Applicant's affidavit and his response in paragraph 5 (d) of the Respondent's counter affidavit in which they stated that Judgment has been long available. He therefore urged this court to dismiss this application as it lacks merit.

M.A. Oyelewa

I have carefully considered the application sought by the judgment debtors/Applicant in this suit. I have also considered the reply of the judgment creditor/Respondent.

By order 32 Rule 3 of the Federal High Court Civil Procedures rules an applicant for stay of execution of judgment shall cause to be compiled the records of appeal within 90 days from date of filing a notice of appeal and where the record is not so compiled the respondent may apply to strike out the application.

In the present case the notice of appeal was filed on 25/1/16. It is now more than 90 days. The judgment debtors/Applicants have not shown that records of Appeal have been compiled in this affidavit in support of this application. They gave the reason that the former Judge was on national assignment. But the time starts running from when notice of Appeal was filed which is after his lordship returned from national assignment and when the present court had resumed. Thus the reason given by the judgment debtors/Applicants is not tenable.

But then has the respondent applied for this application to be struck out? They did not file any formal application to this effect.

Now the purpose for stay of execution of judgment is mainly to preserve the subject matter the res of the litigation and to fore stall a situation where the appellate court before whom the subject matter of the suit is properly brought is foisted with a fait accompli (where the subject matter has been altered and in turn render the appeal nugatory if successful

See Kigo v. Holmen Brothers (Supra) Akilu v. Fawehiunmi No.2 1989 2 NWLR Pt 102 122

Therefore the 1st issue to be determined is whether there is a competent appeal. If there is none there is nothing to stay.

M.A. Oyedun

In the present case the records have not even been compiled talk less of transmitted to the court of appeal. The judgment debtors/Applicant have not shown that there is any appeal pending at the court of appeal.

In the circumstances there is nothing for this court to stay the execution of judgment for.

The application therefore lacks merit and is hereby dismissed.

M. A. Onyetenu

M. A. ONYETENU

Judge

26-05-2016

M. A. Onyetenu