

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON THURSDAY THE 15TH DAY OF DECEMBER, 2016
BEFORE HIS LORDSHIP
HON JUSTICE M. L. ABUBAKAR
JUDGE**

SUIT NO.FHC/AI/CS/47/2014

BETWEEN:

STEPHEN U. UWANKWO Esq. - APPLICANT

AND

- 1 HON. SAMUEL OPU
- 2 MR. VINCENT NWANKWO
- 3 ACP MATTHEW AKINYOSOLA
(AREA COMMANDER, NIGERIAN POLICE, AREA COMMAND)
EZZA ROAD ABAKALIKI)
- 4 DCP FRANCIS ODESANYA
(DEPUTY COMMISSIONER OF POLICE, EBONYI STATE COMMAND)
- 5 D. IG SOLOMON E. ARASE, NPM, fdc
(DEPUTY INSPECTOR GEN. OF POLICE CRIMINAL INVEST. DEPT. (FCID))
- 6 THE INSPECTOR-GENERAL OF POLICE
- 7 COMMISSIONER OF POLICE (EBONYI STATE COMMAND)

RESPONDENTS

APPEARANCE

Applicants 1st and 2nd present

O. J Onwe - 1st and 2nd Respondents/Applicants with P. N. Mgbebu Esq.

S. U. Nwankwo (In person) - Respondent

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RULING ON STAY OF EXECUTION

The Applicant's Counsel filed this application on 26/10/16 seeking for an order for stay of Execution of the Judgment of this court in this suit delivered on 9/3/15 by my predecessor, Hon. Justice M. A. Onyetenu.

In support is a 16 paragraphs Affidavit deposed to by the 1st Applicant himself and attached are Exhibit A and B respectively. There is also a Written Address where a sole issue was raised for determination. The counsel cited the case of *AJUWA & ANOR V SPDC (2012) vol 206 LRCN 123 at pg 165F and the case of ABOSELDEHYDE LAB, PLC V U.M.B. LTD (2013) VOL 224, LRCN (pt.1). pg 199* and submitted that where an applicant has satisfactorily shown certain prevailing circumstances for the grant of the order for stay of Execution, the court is enjoined to grant it. The counsel further submitted that the court has also laid down some conditions and circumstances that a judge should take into consideration while granting an application of this nature. These considerations includes:-

- (1) The chances of the applicant succeeding on appeal
- (2) The nature of the subject matter in dispute, whether maintaining the status quo until a final determination of the appeal in the case will meet the justice of the case.
- (3) Whether if the appeal succeeds the applicant will not be able to reap the benefit of the judgment on appeal. He referred to the case of *MARTINS v. NICANNAR FOODS CO LTD (1988) 2 NWLR pt 73 pg 83.*

The Counsel submitted further that the applicants have fulfilled the above considerations and added orally that the Respondents has filed an 11 paragraphs counter Affidavit but it is incompetent in law as paragraphs 3-10 offends section 115(1) and (2) of the Evidence act as they contained objections, legal arguments and conclusions.

He urged the court to grant their application.

In reaction, the counsel to the Respondent filed an 11 paragraphs counter Affidavit on 23/11/2016 deposed to by his humble self, attached are Exhibits R-B1 and R B 2. There is also a written address where sole issue was raised for determination. The counsel cited the case of *VASWANI v SAVALAKH (1972) 12 sc 77* and the *MARTINS V. NICANNAR FOOD LTD (1988) 3 SC 429* and submitted that the Applicant have not shown any special circumstances why judgment creditor should be deprive indefinitely of the fruits of his judgment.

Secondly the Applicant have not shown that the judgment sum cannot be recovered back from the judgment creditor assuming the appeal succeeds. The counsel urged the court to refused the application with N100,000 cost against the Applicant. But in the alternative to make an order directing the Applicants to as per this paragraph 14 of their supporting Affidavit, pay the judgment sum unto the account of this court without further delay for onward lodgment of same, unto an interest yielding account by the registrar of this court.

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KUALA LUMPUR

Those are the submission of counsels to both parties. The issue for determination is whether there is any merit in this application.

Before going into the merit or otherwise of this application, it should be noted that the first prayer or relief is seeking for an order of stay of Execution of a judgment of this court in this suit presided over by Hon. Justice M. A. Onyetenu and delivered on 9th March 2015. A careful perusal of the records of this court will show that there is no judgment delivered on that date i.e. 9th March 2015, by my predecessor. However, a judgment was delivered on 13th April 2016 by my predecessor which I believed the Applicant is appealing against as per his Notice of Appeal attached to this application i.e. Exhibit "B". I have a mind to declare this application as incompetent based on the above mentioned reason but in the interest of justice, I will not do so. In accordance with section 122(2) (m) of the Evidence Act 2011, this court has taken judicial Notice of all processes filed before this court including the judgment made on 13/4/2016. This brings us back to the main application itself and whether it has merit or not.

It should be noted that this Court under Order 32 Rules 2 of the Rules of this Court has the power to make or refuse an order for stay of execution or proceedings subject to such conditions as shall appear just including the deposit in Court of any money adjudged due to any party in the judgment appealed to or from.

An application for stay of execution like other interim order pending appeal is granted or refused at the discretion of the Court. Therefore the Court takes into consideration the competing interest of the rights of both the applicant and the Respondents. The Applicant must show substantial reasons warranting depriving the successful party of the fruits of his judgment. Thus a Court has 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. **SEE COMEX LTD V. NAB (1977) 3 NWLR PT 496 OAGE 642.**

The Court does not make it a practice of robbing a litigant of the fruits of success unless to refuse stay will lead to the destruction of the res or foist upon the Court of Appeal a situation of complete helplessness or render nugatory any judgment given by the Court of Appeal or provide a situation in which whatever happens to the case, in particular even if the Appellant succeeds there would be no return to the status quo. **See VASWANI TRADING CO VS SAVALAKH (1972) 12 SC 77, DEDUWA VS OKORODUDU (1976) 1 NWLR 236, BADEJO VS FED. MINISTER OF EDUCATION (1996) 8 NWLR PT 464 PG 15.**

One of the primary things considered by the Court in granting or refusing stay is whether prima facie there is merit in the grounds of appeal whether the grounds of appeal raise vital and substantial issue of law to be decided on appeal or where the law is to some extent recondite, such that either

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side may have a decision in his favour such should warrant a stay of execution being granted. See **MARTINS V NICANNAR FOOD CO LTD (1988) 2 NWLR PT 74 PG 83.**

Based on the above authorities, after careful consideration of the Affidavits and various submissions of the counsels to both parties. I am convinced that the application has merit and ought to be granted but on condition that within two (2) weeks from today the Applicant should pay into the Registry of this Court the sum of N3,000,000 (Three Million Naira) and the cost of N50,000.00 (Fifty Thousand Nair) that was made against them in favour of the Respondent by the Court on 13th April 2016. I so hold.

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M. L. ABUBAKAR
JUDGE
15/12/20016