

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT
HOLDEN AT RUMUODOMAYA**

**BEFORE HIS WORSHIP B.H. ABE (MRS) ESQ., SITTING AT THE CHIEF
MAGISTRATE COURT 1 RUMUODOMAYA ON WEDNESDAY THE 3RD DAY OF
APRIL, 2024**

RMC/SCC/13/2023

BETWEEN

OKORIE WILSON OKE

-

CLAIMANT

VS.

CHIEF IBINABO

-

DEFENDANT

Matter for Ruling

RULING

Facts

The Applicant's Counsel SAB Opara, Esq., on the 6th March, 2024 adopted a Motion on Notice dated 19th February, 2024, praying the Court for the reliefs as seen on the face of the motion paper, attached is an 11 paragraph Affidavit and a written address in support of the motion.

The motion on notice is praying the Court for a stay of execution of this Court's judgment delivered on the 12/2/24 pending the determination of the Appeal to be filed before the Rivers State High Court, Port Harcourt. The Motion on Notice is brought pursuant to Order 15 Rule 5(4) (A), Order 15 rule 6 (2) of the Magistrate Court Rules, 2007. Also for other Orders this Court may deem fit to make in the circumstance.

In the Affidavit deposed by Gladys Uche Oparah, it was averred therein that the Defendant/Applicant is dissatisfied with the judgment of this Court and intends to Appeal, he has two (2) weeks from the date of Judgment to file his Appeal. That this Honourable Court has the power to Order for a stay of Execution pending the determination of the Appeal at the State High Court.

The appeal if in favour of the appellant, will be difficult to return to status quo, thereby rendering the Appeal nugatory.

In the written address, the applicant's counsel, relying on Order 15 rule 5 (4) (a) and Order 6(2) of the Magistrate Court Rules 2007, posited that the Court has the power to Order a Stay of Execution. The Defendant/Applicant has a right to appeal against the decision of the Court, if dissatisfied with the judgment of the Court. Also, that the appeal

is likely to succeed and this might render nugatory the appeal if the Judgment of the Court is not stayed.

Attached is a Notice of Appeal filed by the Applicant's Counsel. The Respondent filed a counter Affidavit in opposition to the Motion for Stay of Execution filed by the Applicant dated 27/2/24.

In the Counter Affidavit it was averred by the deponent, Emmanuel Egwuatu Esq., as follows:

That the affidavit of the applicant did not specify any exceptional and special or substantial reason or circumstance to warrant a deprivation of the successful party, the fruit of his judgment.

That the Rivers State High Court lacks the jurisdiction to entertain Appeals from the Rivers State Small Claims Court.

That the respondent will be unjustly deprived from enjoying the fruit of his judgement if the application for stay of execution is granted.

A written address is also attached to the counter affidavit, the issues for determination are;

- (1) Whether the Defendant/Applicant has shown any exceptional and special or substantial reason or circumstance to warrant a deprivation of the successful party the fruit of his judgment against the Defendant?
- (2) Whether the Rivers State High Court has the Jurisdiction to entertain appeals from the Rivers State Small Claims Court?

Legal Argument

- (1) 1st issue: the respondent's counsel Ogbugo Kenneth Owhondah Esq, relying on *LSPPC v. City Bank (West Africa) Ltd (1998) LPELR 1743 SC*, submitted that, the Courts have over the years, enclosed standard principles to be considered in granting an application for stay of execution of the Court's judgment pending appeal. The Court has a discretion to grant a Stay of execution if it is satisfied that there are exceptional and special or substantial reasons to warrant a deprivation of the successful party the fruit of his judgment. Also relying on judicial authorities therein stated. There exist no special or exceptional circumstance laid out by the applicant to warrant the grant of the stay of execution.
- (2) Issue 2

The proceedings of the Small Claims Court are guided by the provisions of the Rivers State Small Claims Court Practice Direction 2023, Article 15 provides inter alia that appeals from the small claims Court shall be filed at the Appeal section

of the Small Claims Court registry, and shall be afterward assigned by the most senior Judge of the Small Claims Appellate Court, designated to hear Appeals from the Small Claims Court. The Rivers State High Court lacks the jurisdiction to hear/entertain appeals from the Small Claims Court.

Also relied on Article 16 (3) of the Rivers State, Small Claims Court Practice Direction 2023.

The Defendant/Applicant cannot rely on Order 15 rule 5 (4) (a) and Order 15 rule 6(2) of the Rivers State Magistrate Court rules 2007, to file his appeal before the Rivers State High Court, thus no Appeal would be said to have been entered.

An application for stay of execution is predicated on the fact that there exist an appeal filed against the judgment of the trial Court. The notice of appeal filed is dated 26/2/24. No appeal was entered before filing the motion for stay of execution, dated 19/2/2024.

Rules of Court must be adhered to by parties and the Court for the smooth administration of Justice. He prayed the Court to strike out the motion for stay of execution.

The applicant filed a reply in response to the respondent's counter affidavit/written address dated 4/3/24, postulating as follows:

The Appellant has a right of Appeal in law, if a stay of execution is not granted, that right is defeated, relying on *Itok vs. Udogo* (2021) All FWLR (Pt. 1083) 442 Supreme Court.

An appeal is of right and requires no leave, relying on Section 24(1) of the 1999 Constitution of the Federal Republic of Nigeria.

The applicant has specified exceptional, special and substantial reasons why his stay of execution should be granted.

Secondly:

The Small Claims Appellate Court is also the High Court of Rivers State governed by the High Court Rules of the State; in line with Form RSSC8 of the Practice Direction 2023, the notice of Appeal of the applicant/appellant is headed in the small claims appellate Court, High Court of Rivers State, holding in Port Harcourt.

The only difference between the small claims Appellate Court and that of the State High Court is the amount of financial adjudication, the small claims appellate Court can adjudicate on: which is lesser than that of the State High Court. The Small Claims Court is also guided by the provisions of the Magistrate Court (Civil Procedures) rules 2007, the applicant is right to have relied on Order 15 rule 5 rules of Court 2007 and Order 15 rule 6 (2) rules of Court 2007.

The small claim appellate Court is described as the High Court, see objective 1 of the practice Directive, where the Small Claim Court is described as the Magistrate Court, see pages 21 and 22 of the Small Claims Court Practice Directive.

Finally, the Small Claims Court Practice Directive did not make provision for Stay of Execution, so the rules of the Magistrate Court will apply. Prayed the Court to grant the Stay of Execution and dismiss the Counter Affidavit of the Respondent.

Issues for Determination by this Court

- (1) Whether the Rivers State High Court has the jurisdiction to entertain the applicant's appeal from the judgment of this Court, that is the Small Claims Court?
- (2) Whether the Court can grant the stay of execution?

The Court will deal with the issue of jurisdiction firstly.

Jurisdiction is trite is the life wire of every suit, the Court's proceeding no matter how well conducted, will be a nullity where the Court lacks jurisdiction to determine or entertain such a proceeding.

The contention of the Respondent's counsel is that the Rivers State High Court lacks the jurisdiction to entertain appeals from the Rivers State small claims Court. The rules of the Small Claims Court provide for an Appeal section for the Small Claims Court for which such an appeal should be heard.

The applicant totally disagrees with the Respondent's counsel insisting that the Rivers State High Court has the jurisdiction to entertain Appeals from the Small Claims Court. Furthermore, the Respondent's counsel contends that the Applicant cannot rely on Order 15 rule 5(4) (a), Order 15 rule 6 (2) of the Rivers State Magistrate Court 2007 to file his Appeal at the High Court, Rivers State, this is improper for want of jurisdiction, thus no Appeal would be said to have been entered, no existing Appeal filed in response to this Court's judgment. **Article 15 (3,4,5) of the Rivers State Small Claims Court Practice Directive 2023** provides as follows:

3. The Records of Appeal shall be forwarded to the Appeals section of the Small Claims Court registry; it shall then be assigned by the **most senior Judge** of the Small Claims Appellate Court designated to hear appeals from the Small Claims Court.
4. **The Judge** shall issue Hearing Notices on the parties and the appeal shall be heard timeously at the earliest convenience of the Court.
5. The Appeal shall be determined based on the Records of Appeal and such oral clarification from the parties as the **Judge** may deem fit for the just determination of the Appeal.

The word Judge has been mentioned in all the paragraphs of Article 15. Judges sit in the High Court. The Small Claims Court practice directive of Rivers State 2023 provide for an Appeal section where appeals from the Small Claims Court can be heard. The records of Appeal are forwarded to the Appeal's section of the Small Claims Court registry.

The most senior Judge of the Small Claims Appellate Court assigns the Records of Appeal, who is designated to hear issues from the Small Claims Court. **The Judge** so designated shall issue Hearing Notices to both parties, **will be issued to them by the Judge so designated.**

Furthermore, the **Judge** may determine the Appeal or the records of Appeal and Oral clarification from both parties, for the just determination of the Appeal.

Article 16 paragraph 3 provides that, where no provision is made in this practice directive, the provisions of the **Magistrate Court Civil procedure rules** shall apply to the proceedings at the Small Claims Court, while the **High Court civil procedure rules or any other written laws for the time being in force shall so far as they can be conveniently applied, be adopted at the Small Claims Appellate Court.**

This paragraph authenticates the provision of the Magistrate Court's rules relied on by the Applicant's counsel Order 15 rule 5 (4)(A), Order 15 Rule 6(2) of the rules of Court 2007. Stay of Execution is not provided for in the Rivers State Small Claims Court Practice Directive 2023, Article 16 paragraph 3, empowers the Small Claims Court to rely on the provisions of the Magistrate Court 2007 where no provision is made in the practice directive, to proceedings of the Small Claims Court.

While the High Court civil procedure rules shall apply or be adopted at the Small Claims Appellate Court.

Form RSSC 8, the form for the notice of Appeal provides that, in the body of the form; do **hereby Appeal to the High Court of Rivers State designated to hear Appeals from the Small Claims Court** upon the grounds set out in paragraph 2 and will at the hearing of the Appeal seek the Reliefs set out in paragraph 3.

It is clearly stated therein that the High Court of Rivers State is designated to hear Appeals from the Small Claims Court.

Article 16 as seen above, provide that the High Court civil procedure rules as can be conveniently applied, be adopted at the Small Claims Appellate Court.

These provisions Art 15, Art 16, of the Rivers State Small Claims Court Practice Direction 2023 and Form RSSC 8 which heading provides, "in the small claims appellate court, High Court of Rivers State, holden at, all give jurisdiction to the High Court to hear Appeals emanating from the Judgment of the Small Claims Court as rightly provided by the Applicant's counsel. The preamble also mentions the designated High Courts as sitting over Appeals from the Small Claims Magistrate Court, see page 3 (iii).

The Rivers State High Court has the jurisdiction to hear appeals from the Rivers State Small Claims Court, such appeals are heard by the most senior Judge of the Small Claims Appellate Court, designated to hear such appeals from the Small Claims Court.

The Appeal is determined by the Judge based on the Records of Appeal and oral clarification of the parties. The objection raised by the Respondent as to the jurisdiction of the High Court hearing appeals from the Small Claims Court is hereby dismissed as being unmeritorious. The submissions of the applicant are accepted by this Court as rightful submissions.

Order 15 rule 5 (4) (a) and 6 (2) rules of Court 2007 are both applicable to this case, rightly submitted by the Applicant.

Issue 2

It must be noted that the possibility of the res being destroyed or lost or altered so much in character that it can no longer be repossessed by the applicant even if the appeal succeeds constitutes a special circumstance warranting the grant of stay of execution pending appeal. See the case of Kalu Igwe Vs. Okuwa Kalu (1992) 11 LRCN 296 at 304 paragraphs 30-40.

The applicant submits that; the execution of the judgment could render the appeal nugatory as it would foist a situation of helplessness on the Appellate Court who would be unable to give effect to its appeal if the judgement is not stayed.

Wherefore, when the execution of a judgment would render an appeal nugatory, the Court should exercise its discretion to stay execution of such judgment in the interest of justice. See Vaswani Trading Co. Vs. Savalakh & Co. (1972) All NLR 922. See also Kalu Igwe Vs. Okuwa Kalu (supra).

Section 50(3) of the Magistrate's Courts Law No. 2, 2004, provides that this Honourable Court "may order a stay of execution either unconditionally or upon the performance of such conditions as may be imposed by rules of Court made under the provisions of the High Court Law or of this Law". By virtue of this provision, this Honourable Court is clothed with the necessary jurisdiction and power to grant this application where necessary.

It is trite that Courts do not ordinarily grant applications for stay of execution of a judgment in favour of the judgment debtor unless exceptional circumstances are shown, however where a notice of appeal discloses substantial grounds of appeal to be argued on appeal, the Court is justified in granting a stay of execution, relying on the case of TSA Industries Ltd. Vs. KEMA Investments Ltd. (2007) 7 SCM 99 at 108, 109.

Also see Leaders & Co. Ltd. Vs. Adetona (2003) 2 WRN 33.

Premised on the above are the following questions:

1. Has the applicant shown special and exceptional circumstances to compel the Court to grant his application?
2. Has the applicant's notice of appeal disclosed any substantial ground of appeal to be argued on appeal; in order for this Court to grant a stay of execution of its judgment pending the outcome of the appeal?

The applicant posits that the possibility of the judgement sum being lost or altered so much in character that it can no longer be repossessed by the applicant even if the appeal succeeds constitutes a special circumstance which warrants the grant of a stay of execution pending appeal.

The appeal will be rendered nugatory and will foist a situation of total helplessness on the appellate Court. See *Vaswani Trading Coy. Vs. Savalak & Co.* (1972) All NLR 922.

The applicant strongly believes the Court will resolve the appeal in his favour.

In *National Pension Commission Vs. F.G.P. Ltd.* (2014) 2 NWLR (Pt. 1391) pg. 354-355 – On special circumstances when an order of injunction/stay of execution pending appeal may be made, the special circumstances under which an order of injunction/stay of execution pending an appeal may be made are as follows:

- a. Where the subject matter of the dispute will be destroyed if the injunction is not granted;
- b. Where a situation of hopelessness will be foisted on the Court especially an appellate Court;
- c. Where execution will paralyse a party's right of appeal;
- d. Where the order of the Court will be rendered nugatory; and
- e. Where execution will prevent a return to status quo if the appeal succeeds.

Also see; *Ndaba Nig. Ltd. Vs. UBN Plc* (2007)9 NWLR (Pt. 1040) 439; *SPDC Nig. Ltd. Vs. Amadi* (2011) 14 NWLR (Pt. 1266) 157 referred to, P. 378, paras. B-D.

The grant or refusal of Stay of Execution of judgment by the Court is purely discretionary, though the discretion must be exercised both judicially and judiciously but certainly not arbitrarily. An application for a Stay of Execution must consider both sides of equity for the unsuccessful party and justice for the successful party. It is not a substitute for judgment the trial Court denied the applicant. See *Oladeji Ise Oluwa (Nig.) Ltd. Vs. Nigeria Distilleries Ltd.* (2001) 6 NWLR (pt. 709) 427.

When it is stated that the circumstances or conditions for granting a stay should be special or strong, it means it must involve a consideration of some collateral circumstances and perhaps in some cases, inherent matters which may unless the order for stay is granted, destroy the subject matter of the proceedings or foist upon the Court, especially the Appellate Court, a situation of complete helplessness or render nugatory, any order or orders of the Appellate Court or paralyse in one way or the other, the exercise by the appellant of his constitutional right of appeal or generally

provide a situation in which whatever happens to the case, and in particular even if the appellant succeeds in the Appellate Court, there could be no return to the status quo. This was clearly buttressed in *Vaswani Trading Co. Vs. Savalakh & Co.* (1972) 12 SC 77, (1972) NSCC 692 referred to, p. 688, paras. D-G.

In *Gov. Oyo State Vs. Akinyemi* (2003)1 NWLR (Pt. 800) pgs. 4-7 – in a judgment involving money, the terms upon which the Court would grant a stay of execution are easier to determine than in other judgments where the “res” is perishable or prone to alteration. The terms are:

- a. Whether making the applicant to satisfy the judgment would make his financial position such that he could not prosecute the appeal;
- b. Whether it would be difficult to secure the refund of the judgment debt and costs from the respondent, if the appeal succeeds, for which purpose the financial ability of the respondent is taken into account.

As applicable in this instant suit before the Court.

See the following cases; *Deduwa Vs. Okorodudu* (1974) 1 All NLR 272; *Utilgas Vs. Pan African Bank Ltd.* (1974) 10 SC 105; *Uniport Vs. Kraus Thompson Organisation Ltd.* (1999) 11 NWLR (Pt. 625) 91; *Oladeju Ise-Oluwa Nig. Ltd. Vs. Nigeria Distilleries Ltd.* (2001) 6 NWLR (Pt. 709) 427 referred to; p. 16, paras. E-H.

I must reiterate that an applicant in an application for Stay of Execution must show special and exceptional circumstances exist before the Court will grant a stay of Execution, see *Vaswani Trading Coy vs. Savelakh & Co* (Supra) 77.

In the instant case, the applicant in his Affidavit attached to the motion on notice via the deponent averred that the Applicant/Defendant is dissatisfied with the Judgment of this Court and that the purpose of his appeal is to enable the Defendant fund the appeal, to prevent the decision of the High Court from been nugatory in such a manner that it will be very difficult to return to status quo.

Where there is an apprehension as to the ability of the respondent (in an application for a stay of execution) to refund the judgment sum if paid to him, the practice of the Court is to exercise its discretion in granting a conditional stay upon the payment of the judgment debt into the Court. However, this discretionary power is to be exercised judicially and judiciously depending on the peculiar facts and circumstance of each case.

Payment of the judgment debt into an interest yielding account will more often meet the justice of the case as the winner in the appeal will not suffer any loss. See *Orient Bank Nig. Plc. Vs. Bilante International Ltd.* (1996) 5 NWLR (Pt. 447) 166 referred to; pp. 18-19, paras. H-B.

In *Gov of Oyo state v Akinyemi*, Per Adekeye, J.C.A. at page 20, paras. E-G: stated;

“Where a party complains in a monetary judgment that the respondent may not be able to secure a refund of the judgment/debt after an appeal, the Court has a discretion to grant a conditional stay upon the payment of the judgment/debt into an interest yielding account for delivery to who ultimately establishes title after an appeal.

This Court is obliged in the instant appeal to make an order that will be in the interest of justice and conducive – with the effect that the appellant shall not come back to a hollow victory after an appeal in their favour, while the respondent shall not suffer any loss if the judgment of this Court is confirmed on appeal”.

In the instant case, there exist no prima facie arguable grounds of appeal.

Special and exceptional circumstances do not also exist for the Court to grant a stay execution, the Court will not exercise its discretion judicially in favour of the applicant.

The applicant has failed to prove special and exceptional circumstances for which the judgment creditor should be deprived of the fruits of his judgment. This should have been deduced on the face of the applicant’s affidavit but unfortunately, the applicant did not prove it via his affidavit.

The applicant’s application lacks sufficient disclosure of his inability to pay the judgment sum.

There is no substantial or arguable ground of appeal in favour of granting the stay of execution.

Notwithstanding, I do not see how payment of the judgment debt will render the applicant incapable of prosecuting his appeal.

The Court I must reiterate will not deprive a successful litigant the fruits of his success, the law perceives every judgment to be correct until set aside. See *Vaswani Trading Co. Vs. Savalakh & Co.* (1972) 12 SC 77.

The Court will only grant a stay of execution if the High Court being the appellate Court so directs.

This does not alter the applicant’s constitutional right to appeal.

The judgment creditor should not deal with the res in a way that will render the order of the Appeal Court nugatory and foist a situation of total hopelessness on the Appeal Court.

In *United Spinners Ltd. Vs. Chartered Bank Ltd.* and *Balogun Vs. Balogun* (1969) 1 All NLR 341, it was held that stay of execution is not granted in every case where the grounds of appeal raise arguable points or points of law.

Wherefore, the grant of a stay of execution being discretionary, this Court in exercising its discretion judicially, has decided to dismiss the application for an order of this Court staying the execution of the Court's judgment delivered on the 12th February, 2024.

In this case, the Court will not Order that the judgment sum be paid into an interest yielding account for delivery to whoever succeeds at the Appeal, but in the interest of justice and fairness, the Court Hereby Orders that the Respondent should preserve the judgment sum, so that if the Applicant succeeds in his appeal, the Appeal will not be rendered nugatory and will not foist a sense of helplessness on the Applicant.

The Court consequently dismisses the application of the Applicant praying the Court to Stay Execution of its judgment given in the substantive suit on the 12th February, 2024, pending the determination of the Appeal filed by the Applicant.

The applicant has failed to prove special or strong exceptional circumstances in the grant of his application for stay of execution.

The application for a stay execution pending appeal is hereby dismissed as being unmeritorious.

This is the ruling of the Court.

There is no order as to cost.

MRS BARIYAAH .H. ABE
Chief Magistrate
3rd April, 2024.

