

SUPREME COURT OF NIGERIA
10TH MARCH, 1995. SC.66/1993
CORAM:- M. L. UWAIS, A. B. WALI, I. L. KUTIGI,
E. O. OGWUEGBU, A. I. IGUH, JJSC

LYDIA MODUPE LAWAL-OSULA	DEFENDANTS/
EDITH GUOBADIA	APPELLANTS/APPLICANTS
V. EMOVON	

ODODO ODARO	DEFENDANT/RE-
SPONDENT	

KENNETH OLADIPO LONGE	DEFENDANTS/
G. EBOREIME	APPELLANTS/APPLICANTS

AND

CHIEF SAKA LAWAL-OSULA	
EBUN OLATUNJI	
TAWA AGHEDO	PLAINTIFFS/RESPONDENTS
IYAYI AIGBE	

INTERLOCUTORY INJUNCTION - Contempt of a subsisting court order - A party in contempt - Is not entitled to a favourable exercise of court's discretion.

JUDGMENTS - Non compliance - With the order of Court of Appeal - Found revealed by the facts,

JUDGMENTS - Contravention - Of Court of Appeal's orders by the Applicants - As shown by the affidavit evidence - Duty of the Courts to ensure that lawful orders - Are not rendered useless.

JUDGMENTS - Subsistency of Court of Appeal's judgment - Where there is no order staying the judgment - Applicants' violation thereof is in contempt.

STAY OF EXECUTION - Contempt of a subsisting court order - Whether a party in contempt - Is entitled to a favourable exercise of court's discretion.

FACTS

The Applicants in this case filed an application before the Supreme Court praying for a total of four reliefs. Applicants' prayer to substitute deceased 1st Defendant/Appellant with her children was granted, not being opposed by the Respondents. They withdrew their prayer for enlargement of time within which to apply for a stay of execution and it was accordingly struck out. The Applicants were then left with their prayer for stay of execution of the judgment and orders of the Court of Appeal, Benin Division, and an interlocutory injunction restraining the first Plaintiff/Respondent from acting on the said Court of Appeal's orders granted in his favour.

Applicants filed affidavit in support of their application while the Respondents filed counter affidavit in opposition. The facts contained in the parties' affidavit revealed that the Applicants were acting in violation of the Court of Appeal's judgment and orders. The Supreme Court had to determine whether to grant the Applicants' said prayers.

HELD (Unanimously dismissing the application per lead ruling of **WALI JSC**)

Non compliance with the order of Court of Appeal

1. The facts referred to above are very revealing in that the applicants knew that an appeal was pending against the judgment of the High Court when they proceeded to perfect the assignments of the landed properties referred to in Exhibits 01 and 03 respectively. This is a clear contravention of and non-compliance with the order of the Court of Appeal contained in its judgment dated 11th December 1992. (P.612G)

Contravention - Of Court of Appeal's orders

2. The affidavit evidence shows that the applicants are acting in contravention of the Court of Appeal orders when they proceeded to assign the landed properties in Exhibits 01 and 02 to U.T.C. Nigeria Ltd. and Saidi Hotels Ltd. respectively. It is the duty of the courts to protect and ensure that orders lawfully made are not rendered useless or nugatory by the action and conduct of the parties. (P.613A)

Subsistency of Court of Appeal's judgment

3. The judgment of the Court of Appeal and the orders contained therein are still subsisting. The appeal against the judgment is still pending before this court, there is no order staying or suspending the orders of the Court of

Appeal, therefore, the applicants are no doubt in contempt of the said judgment by their acts and conduct. (P. 613C)

Stay of execution - Interlocutory injunction - Contempt of court order

4. A person who is in contempt of a subsisting court order is not entitled to be granted court's discretion to enable him continue with the breach. As long as the applicants continue in their contempt of disobeying the orders contained in the judgment of the Court of Appeal, this court will not exercise its discretionary powers in their favour. The application for stay of execution and interlocutory injunction fails and it is accordingly dismissed. (P. 613D)

NOTABLE POINTS OF INTEREST

WALI JSC

1. Admission in the applicants affidavit

From the affidavits filed in this application, it is clear that the applicants as deposed to in paragraphs 4(ii) - (vi) of the Further and Better Affidavit, admitted disposing of the properties mentioned therein when fully knowing that an appeal had been lodged and pending against the judgment of the trial court. (P. 612C)

OGWUEGBU JSC

2. When applicant cannot invoke court's equitable jurisdiction

Where an applicant is in continuing disobedience of the order of the court and has not the least intention of complying with it as in this case, it will be improper for the court to consider the exercise of its discretion in his favour. The applicants are asking this court to help them continue in their disobedience. If this application is granted, the court will unwittingly erase the judgment of the court below. The applicants having defied the mandatory orders of the court below, they cannot turn round and invoke the equitable jurisdiction of this court on the same subject. (P. 616H)

IGUH JSC

3. He who seeks equity must do equity

The equitable maxim is that he who seeks equity must do equity. In the

same vein, he who comes into equity must come with clean hands. In the present case the applicants have stubbornly refused to be restrained or to obey the order of the Court of Appeal and have persisted in selling the properties in issue in utter defiance of the said court order. (P. 617E)

B 4. *Supreme Court cannot tolerate disobedience of court orders*

The applicants being in contempt of court in this cause cannot now be heard to invoke the equitable and discretionary jurisdiction of this court for a stay of execution or to restrain the respondents from selling the properties in dispute. In invoking the equitable and discretionary jurisdiction on this court in this application, they have neither come with clean hands nor done equity. This court cannot condone or shut its eyes to the applicants' despicable misconduct in this matter. It cannot also tolerate any reckless disobedience of court orders. A case of disobedience of court order having been made out, this court cannot indulge the applicants. (P. 617G)

D

REPRESENTATION

Oku Asuquo, for the Applicants.

O. Evbuomwan, for the Plaintiffs/Respondents.

E C. Aghoja, for the 3rd Defendant/Respondent.

CASES REFERRED TO

Eguna v. Eguna (1989) 2 NWLR (pt. 106) 473 at 778

F Hart v. Hart (1990) 4 WBRN 1 at 19

Vaswani Trading Co. v. Savalakh & Co. (1972) 12 SC. 17

Governor of Lagos State v. Ojukwu (1986) 3 NWLR (pt. 26) 39

First African Trust Bank Ltd. & Anor. v. Ezegbu (1992) 9 NWLR (pt. 264) 132

G Cower v. Cower (1938) p. 106

Tewogbade and Sons Ltd. v. Governor of Oyo State (1991) 2 NWLR (pt. 171) 52 at 59

Oyeyemi v. Irewole Local Government (1993) 2 KLR 113.

H

LEAD JUDGMENT BY WALI JSC

The applicants in this case filed an application before this Court praying for the grant of the following orders until the disposal of the substantive appeal now pending in this Court:-

“(i) An order substituting the 1st defendant/appellant who died intestate on 31st May, 1993 with Hajia Morenike Ibrahim Yahaya, Mrs. Iyabo Akai and Mrs. Edugie Agada who together with the 4th defendant/appellant/applicant are her personal representatives and children.

(ii) An order granting an enlargement of time within which to apply for a stay of execution.

(iii) Stay of execution of the orders contained in the judgment of the Court of Appeal. Benin Division delivered on December 11, 1992 pending the determination of the appeal already filed and entered in this Honourable Court.

(iv) An interlocutory injunction restraining the 1st plaintiff/respondent by himself, his servants, agents or privies from taking over, disposing of or otherwise dealing with the real and personal property presently comprised in the estate of the Late Usman Mofeyintoluwa Lawal-Osula pending the determination of the appeal already filed and entered in this Honourable Court.”

Prayer (i) of the application to wit: *“an order for substituting the 1st defendant/appellant who died intestate on 31st May, 1993 with Hajia Morenike Ibrahim Yahaya, Mrs. Iyabo Akai and Mrs. Edugie Agada when together with the 4th defendant/appellant/applicant are her personal representatives and children* “was granted as it was not opposed .

Prayer (ii) was also voluntarily withdrawn and same was struck out.

As regards prayers (iii) and (iv) which were taken together, learned counsel relied on the affidavits and other documents filed in support of his prayers and urged the court to grant them. He cited and relied on Egbuna v. Egbuna (1989) 2 NWLR (Pt. 106) 773 at 778 in support.

Mr. C. Aghoja, learned counsel for the 3rd defendant/respondent submitted that the affidavits and other documents filed by the applicants did not show special circumstances to warrant granting the orders sought in prayers (iii) and (iv). In addition, learned counsel further contended that the applicants have not still complied with the orders of the Court of Appeal issued in relation to the deceased’s estate in dispute and have, even seven months thereafter, sold one of the properties comprised in the said

order of the Court of Appeal. They have also given Estate Agents instruction for the disposal of other properties affected by the same order. He therefore submitted that the applicants are in contempt of the Court of Appeal orders which have not been suspended or vacated and urged this court not to give indulgence to the flouting of a court's orders. He cited and relied on the following decisions in urging this court not to grant the orders prayed for Hart v. Hart (1990) 4 WBRN 1 at 19; Tewogbade & Sons Ltd. v. Governor of Oyo State (1991) 2 NWLR (Pt. 171) 52 at 59 and Oyeyemi v. Erewole Local Government (1993) 1NWLR (Pt. 270) 462 at 468.

Mr. Evbuomwan, learned counsel for plaintiffs/respondents, after relying on the counter-affidavits he had filed, said he adopted the submissions made by learned counsel for the 3rd plaintiff/respondent and urged the court to refuse the application in terms of prayers (iii) and (iv) thereof. He cited and relied on Vaswani Trading Co. v. Savalakh & Co. (1972) 12 S.C. 77; Nwabueze v. Nwosu (1988) 4 NWLR (Pt. 88) 257 and 258-259; (1988) 2 NSCC 480; Governor of Lagos State v. Ojukwu (1986) 3 NWLR (Pt. 26) 39.

In prayers (iii) and (iv) of the application the applicants who also are the appellants in this appeal, are asking for a stay of the judgment of the Court of Appeal by an interlocutory order of injunction restraining the respondent, his servants, agents or privies from enforcing the orders of the Court of Appeal contained in its judgment.

The often-quoted statement of law relating to the question of stay of execution made by this court in Vaswani Trading Co. v. Savalakh (supra) provides a clear guiding principle for granting a stay of execution in a case that satisfies the conditions stated therein. In the judgment, Coker J.S.C. stated thus:

"Stay of execution will be granted where failure of it will destroy the subject-matter of the proceeding or foist upon the court especially Court of Appeal, a situation of complete helplessness or render nugatory any order or orders of the Court of Appeal or paralyse the exercise by the litigant of his constitutional right of appeal or provide a situation whereby even if the appellant succeeds on appeal there will be no return to the status quo."

In that case, this court expressly stated as a rule that it will only grant the application when the applicant establishes that there are special circumstances. In this type of application, the evidence to support it is always provided by means of affidavit or affidavits unless it is one of the orders

being asked for at the end of the hearing of the case by a successful litigant.

In the present application, both the applicants as defendants/appellants and the respondents as plaintiffs/respondents filed affidavits and counter affidavits for and against the application.

In the affidavit filed by Ododo Odaro, Female and Legal Practitioner residing at No.7 George Idah Avenue (Formerly First Avenue) GRA. Benin City, who is also the 4th defendant/appellant, she averred that when the Court of Appeal substantially set aside the judgment of the trial court on 11/12/92, the appellants applied by a motion on notice dated 30/12/92 for a stay of execution of the judgment of the Court of Appeal but by the time the same came up for hearing by the Court of Appeal, the appeal had already been entered in this court, resulting in the withdrawal of the motion. See Paragraph 5 of the affidavit. She also averred as follows in these paragraphs:-

"7. On the 31st of May, 1993, the 1st appellant herein died intestate at the age of 68 years at Benin City Edo State

8. The 1st appellant, who got married under the Marriage Act at Benin in 1950 to the deceased testator whose estate is essentially the subject-matter of this appeal, is survived by four children, who in addition to being her personal representatives are all beneficiaries under the will of the said deceased testator, namely:

- (i) The 4th appellant herein*
- (ii) Hajia Morenike Ibrahim Yahaya*
- (iii) Mrs. Iyabo Ifueko Akai*
- (iv) Mrs. Edugie Agada*

9. I am aware that the 5th and 6th appellants herein, who were appointed executors under and by virtue of the testator's will and later granted probate in respect thereof, have since 1973 administered the estate of my late father, the testator, in accordance with the said will until the judgment of the Court of Appeal in December, 1992. A copy of the said will is attached hereto and marked Exhibit B1.

10. The 1st, 2nd, 3rd and 4th defendants in the High Court who are now appellants, save for the 3rd defendant, are together with my aforesaid sisters Major beneficiaries of the will. While on the other hand, none of the plaintiffs/respondents were named in the said will.

11. The property known as "Osagiemwagbon House" and situate at 7, George Idah Avenue (Formerly First Avenue) G.R.A. Benin City which was devised to the 1st appellant (now deceased) and to myself and my three sisters of the full blood was the matrimonial home of the 1st appellant from

1961 up till her death in 1993. The said house, which I presently reside in is also used by my sisters as a family house whenever they are in Benin and for family purposes too.

12. Sometime in March, 1994, three women, one of whom claimed to be the 1st plaintiff/respondent's wife came to the said Osagiemwagbon House B and threatened to take over possession of same, by violent means if necessary, if my sisters and I did not voluntarily give it up.

13. Similarly, the property known as No. 34, Lagos Street Benin City which was devised to me and my three full-blooded sisters was forcibly taken over by the 1st plaintiff/respondent sometime in 1985 and he has since been C residing therein.

14. During his lifetime, the testator granted long leases of his landed property at Akpakpava Road, Benin City and of the properly known as Diana Estate, Benin (both of which were devised to me and my said sisters) to corporate tenants all of whom are still in occupation thereof.

15. I verily believe that unless restrained, the 1st plaintiff/respondent will D sell or dispose of the various landed properties devised to us and our proprietary rights over and in respect thereof will be irreversibly prejudiced in the event that our appeal succeeds.

E 16. I verily believe that it will be in the interest of justice to grant a say of execution so as to maintain the status quo which has been in place with regard to the administration of the estate by the executors for twenty years.

17. That 1st plaintiff/respondent has on his own been demanding rents and F other sums from our tenants, which sums he is not in a position to manage, account for or refund in the event that we succeed on appeal.

18. Ever since the judgment of the Court of Appeal, in effect vesting all the properties comprised in the estate in the 1st plaintiff/respondent, there has G been no proper management of the estate with the result that the properties comprised therein have depreciated in value and are under imminent threat of sanction by Government due to non-payment of fees and levies relating thereto.

19. Unless the 1st plaintiff/respondent is restrained and the status quo maintained the entire estate will be put in further and total disarray.

H 20. The 1st plaintiff/respondent will not be prejudiced by the grant of the orders sought herein particularly those relating to the preservation of the testator's estate pending the determination of this appeal"

In the counter-affidavit filed by the 1st plaintiff/respondent, he denied the averments contained in paragraphs 9, 11, 12, 13, 14, 15, 16,

17, 18, 19, 20 and 22 of the affidavit filed by the 4th defendant/appellant/ applicant and countered as follows:-

"3. In further answer to paragraph 9 of the affidavit in support that the executors who are among the defendants/applicants until 9th July 1993 even after the judgment of the Court of Appeal were still administering the estate even against the tenor of the Court of Appeal judgment. The executors are yet to comply with the provisions of administration of Estate Law of Bendel State, and have neither filed account of completion of administration of the estate nor have they sought court order approving their administration of the estate and finally clearing them that they have completed the administration of the estate." B C

4. Further to the denial of paragraph 11 of the affidavit in support the deponent to the affidavit in support does not reside at 7, George Idah Avenue (formerly First Avenue) G.R.A" Benin City nor does the sister live there at all and have no family purpose to use the place for. The appellant has flagrantly failed to carry out Court of Appeal judgment relative to the house and has been in contempt of Court judgment. She resides in her matrimonial home at Modupe House, 27 Aideyan Avenue G.R.A. Benin City." D

5. Further to the denial of paragraph 12 of the affidavit in support I depose that no such incident took place and none of my wives ever took such steps as alleged or step to the said premises at all." E

6. Further to paragraph 13, I deny having "forcibly taken over" the property in question."

7. That in further denial of paragraphs 14, 15, 16 and 17 I aver that: F

a) I know as a fact that the applicants are buying time to dispose or sell all the property comprising the estate of my father and thus render final judgment on appeal if in my favour nugatory, already recently as my enquiry from Mr. Saidi of Saidi Centre, along Murtala Mohammed Way, Benin City (property of my late father) in respect of this property he leased from my late father, he told me and I verily believe him that the applicants even when this case was still pending in the Court of Appeal, recently sold the said property to him for much over N2,000,000 (Two Million Naira) of which he had paid N500,000 (Five Hundred Thousand). G

b). Also another landed property was around the same time when this case was pending sold to Chief Gabriel Osawaru Igbinedon, The Esama of Benin illegally by Oni & Sons with the applicants consent. The property is in Sapele Road, Benin City leased earlier by my father to Oni & Sons. This purchase of the property brought Chief Igbinedon in conflict with Chief H

Odigie Oyegun the then Governor of Edo State who compulsorily acquired it as Government property because earlier before being Governor, the Governor Oyegun's company was a tenant to Oni & Sons who sold the place to Chief Igbinedon and who subsequently evicted Oyegun's company from the place. This property was put in the State of jeopardy by the sale of it

B *with the applicants consent and connivance.*

(c) I swore to these facts in a counter-affidavit filed on 5th March, 1993 to their application for stay in Court of Appeal Benin City which they on the face of the facts had to withdraw also after having filed in a further and better affidavit in which they admitted not only the sale of these two property but also of other two more.

C *8. That in utter contempt of the Court of Appeal judgment, the applicants again assigned another property to UTC Nigeria PLC., for N 1,000,000.00 (One Million naira) on 5th July, 1993 where and when the Court of Appeal gave judgment on 11th December, 1992.*

D *A photostat copy of the reply of UTC Nigeria PLC., dated 17th May, 1994 Ref No. AAO/EUA/UTC/BOP. 6 in response to the plaintiffs/respondents lawyer Christ Aghoja Esq., enquiry is herewith attached and marked Exhibit "A".*

E *A photostat copy also of a certified true copy of the Registered Deed of Assignment dated 9th July 1993 and Registered as NO. 14 at Page 14 in volume 839 of the Lands Registry in the Office at Benin City is herewith attached and marked as Exhibit "B".*

F *9. That as a fact the defendants/applicants have absolutely refused to comply with the Court judgment and have sold valuable assets and property since judgment and I have nothing left for me by the executors to manage at all.*

10. That as a fact I am baffled by the action of 4th and 5th appellants/applicants who are lawyers and decide after judgment to sell a property no longer theirs or over which they no longer had title.

G *11. That I am constrained from making application to cite defendants/applicants most of whom are members of my family and I as traditional and natural head of the family strive not to take steps that will make reconciliation, co-operation and peace in the family impossible.*

H *12. That I believe sincerely, truly and verily that if the application for stay is granted nothing will remain at the end of the case and the defendants/applicants would have no resources to pay back to the purchasers the money they have realized so far and would further realize from sale of other property."*

The 3rd respondent to the motion also filed counter-affidavit in

which he also denied the averments in paragraphs, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 of the affidavit. She complained in the affidavit that the applicants have not only failed to comply with the Court of Appeal orders but have proceeded to secretly dispose of real and personal properties comprised in the estate of the deceased. She mentioned No. 113 Sapele Road, Benin City sold to UTC Nigeria Limited in paragraphs 9 and 10 of the counter-affidavit. B

Reacting to the averments contained in counter-affidavits, the 4th defendant/appellant refuted the averments contained therein in paragraph 3. She averred that *“all the appellants have collectively and individually complied strictly with the order contained in the judgment of the Court of Appeal and have, in that regard. Not tampered with the estate or sold off any of the property comprised therein since the said judgment of the 11th of December, 1992.”* C

On the sale of the landed property comprised in the deceased's estate, she averred that:- D

“4. (ii) The sale of land to UTC PLC though evidenced by Deed of Assignment dated 5th July, 1993 was concluded or affected long before the judgment of the Court of Appeal. Annexed hereto and marked Exhibit O1 is a copy of a letter dated 25th June, 1993 written in respect to our application for Governor's Consent dated 14th October, 1992 in respect of the afore-said Deed of Assignment, two months before the said judgment. E

(iii) Similarly, the sale of land to Saidi Hotels Ltd, was concluded long before the said judgment. Annexed hereto and marked Exhibits O2 and O3 are copies of a letter dated 5th July 1993 written in response to our application for Governor's consent dated 13th October, 1992 and copy of the Treasury receipt dated 14th October, 1992 in respect thereof. F

(iv) The transactions in respect of the sale of land to UTC PLC and Saidi Hotels Ltd. and the actual sale took place at a time when the judgment of the trial court upholding the validity of my late father's will and the dispositions therein was subsisting and there was no order for stay of execution of the said judgment. G

(v) The said sales was in respect of land that was devised to my uterine sisters and I, under and by virtue of the said will.

(vi) Since the Court of Appeal judgment, none of the appellants and/or beneficiaries of the estate have attempted to lease or sell any part thereof and do not intend to do so before the determination of this appeal. H

She further averred that:-

“5. On the contrary, the 1st respondent has among other things, been collecting rents on other properties comprised in the estate. Attached hereto

and marked Exhibits 04 and as are receipts issued by the 1st respondent in respect of rents collected from Saidi Hotels Ltd.

6. With particular reference to paragraph 7(b) of the 1st respondent's counter-affidavit, at no time whatsoever was any land sold or leased to Chief Igbiniedion by any of the appellants and or beneficiaries. Again, on the contrary, I was informed by Chief Igbiniedion whom I believe that sometime this year he gave the 1st respondent the sum of N150,000 as part payment of purchase price for land along Sapele Road, Benin earlier leased by my late father to Oni & Sons Ltd."

Both the 1st respondent and 3rd respondent filed further and better counter affidavits making counter-allegations against the applicants.

From the affidavits filed in this application, it is clear that the applicants as deposed to in paragraph 4(ii) - (vi) of the Further and Better Affidavit, admitted disposing of the properties mentioned therein when fully knowing that an appeal had been lodged and pending against the judgment of the trial court. The applicants admitted in paragraph 4(ii) of the said Further and Better Affidavit that they applied to the Governor for consent to assign the property identified in Exhibit 01 attached to the Further and Better Affidavit to UTC Nigeria PLC on 14th October, 1992 and the consent was granted on 25th June, 1993 as Per Exhibit 01.

Similarly, in paragraph (iii) of the Further and Better Affidavit, there is an admission by the applicants of the assignment of the property identified in Exhibit 03 to Saidi Hotel Ltd. which is also the subject of Governor's consent to assign the same to the said Saidi Hotel Ltd. The consent dated 5th May, 1993 was granted subsequent to the application of 13th May, 1992 and marked Exhibit 02.

The appeal against the High Court decision to which the applicants were respondents was filed in the Court of Appeal, Benin Division, on 28th June, 1988 as per Official receipt No. S.021640. The judgment of the Court of Appeal in that appeal was delivered on 11th December, 1992.

The facts referred to above are very revealing in that the applicants knew that an appeal was pending against the judgment of the High Court when they proceeded to perfect the assignments of the landed properties referred to in Exhibits 01 and 03 respectively. This is a clear contravention of and non-compliance with the order of the Court of Appeal contained in its judgment dated 11th December, 1992.

Although, the applicants are exercising their constitutional right of appeal, they are well aware that there are subsisting orders against them made by the Court of Appeal in favour of the respondents to this application, and if they. In transgression of these orders, went outside them or

anyone of them, then they are not exercising the undoubted right of appeal given them by the Constitution. See *Vaswani v. Savalakh* (supra).

The affidavit evidence shows that the applicants are acting in contravention of the Court of Appeal orders when they proceeded to assign the landed properties in Exhibits 01 and 02 to UTC Nigeria Ltd. and Saidi Hotel Ltd. respectively. It is the duty of the courts to protect and ensure that orders lawfully made are not rendered useless or nugatory by the action and conduct of the parties. See: *Governor of Lagos State v. Ojukwu* (1986) 3 NWLR (Pt. 26) 39 and *Obeya Memorial Specialist Hospital v. A.G. of the Federation* (1987) 3 NWLR (Pt. 60) 325.

I wish to emphasize here that the judgment of the Court of Appeal and the orders contained therein are still subsisting. The appeal against the judgment is still pending before this court, there is no order staying or suspending the orders of the Court of Appeal, therefore, the applicants are no doubt in contempt of the said judgment by their acts and conduct.

A person who is in contempt of a subsisting court order is not entitled to be granted court's discretion to enable him continue with the breach. As long as the applicants continue in their contempt of disobeying the orders contained in the judgment of the Court of Appeal, this court will not exercise its discretionary powers in their favour, See: *First African Trust Bank Ltd. & Anor v. Basil O. Ezegbu & Anor* (1992) 9 NWLR (Pt. 264) 132 and *Hadkinson v. Kadkinson* (1952) CA 285.

The application for stay of execution and interlocutory injunction fails and it is accordingly dismissed with N100.00 costs to each set of respondents.

F

UWAIS JSC

I have had the opportunity of reading in draft the ruling read by my learned brother Wali, J.S.C. I entirely agree that since the applicants have flouted the order of the Court of Appeal they are not qualified to be granted the indulgence of this court in their application for stay of execution and interlocutory injunction. See *Governor of Lagos State v. Ojukwu* (1986) 3 NWLR (Pt. 18) 621.

H

Accordingly prayer (i) is hereby granted. The 1st defendant/appellant who died on 31st May, 1993 is substituted with (1) Hajiya Morenike Ibrahim Yahaya (2) Mrs. Iyabo Akai and (3) Mrs. Edugie Agada, Prayers (iii) and (iv) in respect of stay of execution pending the determination of the

appeal in this court and for injunction to restrain the 1st plaintiff/respondent respectively are hereby refused.

In the result the application is granted in part only with N100.00 costs to each set of the respondents.

B _____

KUTIGI JSC

I agree with the ruling just delivered by my learned brother Wali, C.J.S.C. Prayers (3) & (4) of the application are dismissed with N100.00 costs to each set of respondents.

D **OGWUEGBU JSC**

I have read the lead ruling of my learned brother Wali, J.S.C. in this application. I agree with his reasoning and conclusion.

The respondents in this application were plaintiffs in Suit No. B/E 193/86 in the High Court of the former Bendel State holden at Benin. They claimed from the defendants jointly and severally various reliefs touching and concerning the last will and Testament of Chief Usman Mofeyintoluwa Lawal-Osula who died in Benin on 22/1/68.

One relief succeeded in the court of trial. This relief concerned the F paternity of the plaintiffs. The other reliefs were dismissed. Both parties were dissatisfied with the decision of the learned trial Judge and appealed to the Court of Appeal. The appeal of the plaintiffs was allowed and all the reliefs they sought were granted. The cross-appeal of the defendants was dismissed and they further appealed to this court. They also filed an appli- G cation which has given rise to this ruling. The prayers have been set out in the lead ruling. I need not repeat them.

The court below made the following crucial orders which form the basis of this application:-

H “(a) A declaration that the dispositions of the property of the testator (The late Usman Mofeyintoluwa Lawal-Osula) made in the Will of the said testator dated 22nd November, 1968, are null and void and of no effect whatsoever for none compliance with the Wills Law, Cap. 172 of the Laws of Bendel State of Nigeria 1976.

(b) An order that the 1st, 2nd, 3rd, 4th, 5th, and 6th respondents jointly and severally shall, within 21 days of the date of this order, submit a comprehensive inventory of all the properties, real and personal, comprised in the estate of Chief Usman Mofeyintoluwa Lawal Osula (deceased) to the 1st appellant;

(c) B

(d) An order requiring the 5th and 6th respondents to furnish the 1st appellant within 21 days of the date of this order, with the particulars of the position and condition of the properties comprised in the estate of the aforesaid testator.....and to hand over, within 21 days of this order, to C the 1st appellant the keys to any property not hitherto occupied by tenant or tenants;

e) An order requiring each of the respondents to supply the 1st appellant, within 21 days of the date of this order a true and full account, verified by his/her affidavit, of all rents, profits and/or monies collected by or paid to D any of the respondents by the tenants and/or occupiers of any of the properties purportedly disposed of in the will of the aforesaid testator and to pay into court within the period of 21 days from the date of this order all monies received by any of the respondents in respect of any of the properties purportedly disposed of in the said Will of the testator. E

(f) An order restraining the respondents jointly and severally from administering, expending, disposing of or otherwise dealing in any way with any of the properties real or personal, purportedly disposed of in the Will of the said testator..... F

.....”
The 1st appellant in the court below is the 1st respondent in this application.

At the hearing of the application on 12/12/94, learned counsel for G the applicants withdrew prayer two and it was struck out. Prayer one was not opposed. It was accordingly granted. We heard arguments on prayers three and four.

On a careful reading of the affidavits in support of the application H and the counter-affidavits in opposition to it, one is left in no doubt that the applicants have not complied with any of the orders of the court below made 11/12/92. Infact, they are still dealing with the properties comprised in the estate as if there were no injunctive orders.

In paragraph 8 of the counter-affidavit of the 1st plaintiff/respondent, he deposed:

"8. That in utter contempt of the Court of Appeal judgment the applicants again assigned another property to UTC Nigeria PLC., for N1,000,000.00 (One Million Naira) on 5th July, 1993 where and when the Court of Appeal gave judgment on 11th December, 1992. A photostat copy of the Reply of UTC Nigeria PLC., dated 17th May, 1994 Ref. No. AAO/EUA/UTC/BOP 6 in response to the plaintiffs/respondents lawyer Christ Aghoja Esq., enquiry is herewith attached and marked "Exhibit A"

C

In Paragraph 4(11) of their further and better affidavit deposed to by one Ododo Odaro, a legal practitioner. she averred that:

"4(ii) The sale of Land to UTC PLC though evidenced by Deed of Assignment dated 5th July, 1993 was concluded or effected long before the judgment of the Court of Appeal. Annexed hereto and marked Exhibit 01 is a copy of a letter dated 25th June, 1993 written in respect of our application for Governor's consent dated 14th October, 1992 in respect of the afore-said Deed of Assignment, two months before the said judgment."

E

The applicants gave the same reason for the sale of other properties including Saidi Hotels Ltd. These transactions were going on when the appeal was pending in the court below. They were perfected in utter disobedience to the orders of the Court of Appeal.

F The applicants are seeking an order for a stay of execution of the judgment of the court below as well as an interlocutory injunction restraining the plaintiffs/respondents from taking over, disposing or dealing with the properties comprised in the estate pending the appeal.

G The applicants failed in their attempt to deny the averments in the counter affidavits of the respondents and particularly, paragraphs 7(a) and 8 of the counter affidavit of the 1st plaintiff respondent

The consent of the Governor conveyed by Exhibit "01" and "02" were obtained about seven months after the judgment of the Court of Appeal. If the applicants had any respect for the orders of the court, they would have shelved further actions on the assignments.

H

Where an applicant is in continuing disobedience of the order of the court and has not the least intention of complying with it as in this case, it will be improper for the court to consider the exercise of its discretion in his favour. The applicants are asking this court to help them continue in their disobedience. If this application is granted, the court will unwittingly

erase the judgment of the court below. See: Governor of Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621; Odogwu v. Odogwu (1992) 2 NWLR (Pt. 225) 539 at 559; First African Trust Bank Ltd. & Ors v. Ezeogu & Ors (1992) 9 NWLR (Pt. 264) 132 and Gower v. Gower (1938) P. 106.

The applicants having defied the mandatory orders of the court below, they cannot turn round and invoke the equitable jurisdiction of this court on the same subject.

For the above reasons and the fuller reasons contained in the lead ruling of my learned brother Wali, J.S.C. I, too, dismiss the application with N100.00 (One hundred naira) costs to each set of respondents.

C

IGUH JSC

I have had the privilege of reading in draft the lead ruling just delivered by my learned brother, Wali, J.S.C. I agree that there is no merit in this application and that the same should be dismissed.

It ought to be observed that the application for stay of execution and interlocutory injunction is based on the equitable and discretionary jurisdiction of this court. The equitable maxim is that he who seeks equity must do equity. In the same vein, he who comes into equity must come with clean hands.

In the present case, the applicants have stubbornly refused to be restrained or to obey the order of the Court of Appeal and have persisted in selling the properties in issue in utter defiance of the said court order. This conduct on the part of the applicants constitute definite misconduct and amounts to contempt of court for which they may be made to suffer appropriate punishment.

It is a serious matter for anyone to flout a positive order of a court of competent jurisdiction and then turn round to seek a discretionary remedy from court while still in contempt of such court order. See *The Military Governor of Lagos State & 2 Ors v. Chief Emeka Odumegwu Ojukwu* (1986) 1 NWLR (Pt. 18) 621 and *Tewogbade & Sons Ltd. V. Governor of Oyo State* (1991) 2 NWLR (Pt. 171) 52 at 59. The applicants being in contempt of court in this cause cannot now be heard to invoke the equitable and discretionary jurisdiction of this court for a stay of execution or to restrain the respondents from selling the properties in dispute. In invoking the equitable and discretionary jurisdiction of this court in this application, they have neither come with clean hands nor done equity.

This court cannot condone or shut its eyes to the applicants' despicable misconduct in this matter. It cannot also tolerate any reckless disobedience of court orders. A case of disobedience of court order having been made out, this court cannot indulge the applicants. See *Oyeyemi v Irewole Local Government* (1993) 1 NWLR (Pt- 270) 462 at 479. Accordingly. I
B am in full agreement that the application for a stay of execution and interlocutory injunction must fail and I too, dismiss it with costs as assessed in the lead ruling.

Prayer (i) for substitution is not being opposed and it is hereby granted as prayed. Prayer (ii), having been withdrawn, is hereby struck out.

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