

**SUPREME COURT OF NIGERIA**  
11TH FEBRUARY, 2000. SC. 128/1993  
**CORAM:- S. M. A. BELGORE, I. L. KUTIGI, S. O. UWAIFO,**  
**A. O. EJIWUNMI, E. O. AYOOLA, JJSC**

SABITU LAYINKA ODEDEYI & ANOR. .... PLAINTIFFS/  
(For themselves and on behalf of Odedeyi ..... RESPONDENTS  
Olowu Family)

AND

1. ALHAJI ISHOLA ODEDEYI ..... DEFENDANTS/APPELLANTS
  2. ALHAJI M. B YUSUF
  3. SHOES MANUFACTURERS (NIG.) LTD.
  4. NABIL ABDUL CHAIDA
  5. NIGERIA TORREFACTION COFFEE LTD.
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***AFFIDAVITS*** - Appeals - Where the issues are clear - And there is no serious contradiction in the affidavit evidence - Oral evidence will be unnecessary.

***STAY OF EXECUTION*** - Subject matter of the appeal - Where at the risk of destruction if a stay is not granted - The court in its discretion will grant a stay.

***STAY OF EXECUTION*** - Threat to res - If execution is carried out - Where not established - Stay of execution will be refused.

***STAY OF EXECUTION*** - Victorious party - Must not lightly be deprived of the fruit of his victory - Unless a special circumstance to justify a stay is advanced.

**FACTS**

This is an appeal against the decision of the Court of Appeal which refused to grant the defendants/appellants a stay of execution of the judgment of High Court of Lagos. An earlier application for stay was

refused by the High Court. The High Court had given judgment in favour of the plaintiffs/respondents granting damages for trespass and injunction in respect of the property in dispute. The initial ground for seeking a stay of execution pending appeal was that appellants contended that there were factories, costly machineries and warehouses on the land. But appellants later filed better affidavit wherein they admitted there was no longer a factory on the land. As the application for stay of execution was rejected by the Court of Appeal, appellants have now appealed to the Supreme Court raising a lone issue.

**ISSUE FOR DETERMINATION**

*"Whether the Court of Appeal Lagos (Division) was wrong in refusing the applicants' application for stay of execution of the judgment of the Ikeja High Court delivered on 4th September, 1987, pending the hearing and determination of the appeal filed against this judgment.*

**HELD** (Unanimously dismissing the appeal per lead judgment of **BELGORE JSC**)

***Stay of execution - Victorious party***

1. The guiding principle is that a victorious party must not lightly be deprived of the fruit of his victory. Having won his case he under normal circumstance ought to be allowed execution of that judgment unless a special circumstance is advanced to justify stay of execution. [Vaswani Trading Co. Ltd. vs Savalkh (1972) All NLR 483.] Special circumstance is very wide and its category is not closed. However "special circumstance" though may include strong and substantial ground of appeal, this alone may not be enough. A strong and substantial ground of appeal does not necessarily mean the appeal may succeed; certainly the Court must be wary of such ground so as not to prejudice the substantive appeal. (p. 405 E)

***Stay of execution - Subject matter of the appeal***

2. In cases where the res, the subject-matter of the appeal, is at the risk of destruction if a stay is not granted, or its nature may be altered as to make it irreversible to its original state; or if it is monetary, and the victo-

rious party is a man of straw, and may not be able to redeem the money should substantive appeal be decided against him, the Court in its discretion will grant a stay of execution pending determination of the appeal. (p. 405 G)

***Affidavits - Appeals - Where the issues are clear***

3. There was a clear issue before Court of Appeal that there were only three warehouses on the land in dispute and two of them were empty; the third one was with a tenant who kept very little inside. Thus the affidavit evidence never revealed any serious contradiction to be resolved by oral evidence. Therefore the cases of Falobi vs Falobi (1976) NMLR 169, 178; Eboh vs Oki (1974) 3 S.C. 35, 64; and Akinsete vs Akindutere (1966) 1 All NLR 147, 148 will not apply as contended by the appellants. (p. 406 A)

***Threat to res - If execution is carried out***

4. There is no evidence of threat to res if the execution is carried out as the res has not been shown to have been altered or destroyed since January, 1977 when High Court delivered its judgment. The only unfortunate thing is that for over twenty years the land has been allowed to waste - without development or improvement and the substantive appeal has not been heard and determined because of the little skirmishes brought by this interlocutory appeal. I find no merit in this appeal and I dismiss it (p. 406 C)

**NOTABLE POINT OF INTEREST**

**UWAIFO JSC**

***1. Stay of execution - When appeal court is not to exercise its own discretion***

In an appeal of this nature, this court is not being called upon to exercise its discretion to grant the stay which the lower court refused. It could only do so in a situation permitting the discretion to grant a stay to be concurrently exercised by the lower court and this court where the Rules provide that on refusal to grant a stay by the lower court, the higher

court could entertain a similar application. Such a discretion will be exercised by the said higher court independently of the lower court's reasoning. This being an appeal, it is a different approach. The appellants must show to the satisfaction of this court in what respect the lower court was wrong in refusing to order a stay of execution. The lower court reached its decision on the basis that there were no business machines in the factories on the land as claimed by the appellants and that the factories had been converted to three warehouses no longer tenanted by companies which were there previously. Therefore it held that there was nothing upon which the discretion to stay execution could be exercised in favour of the appellants. (p. 406 H)

### **REPRESENTATION**

D K. Sofola, SAN with Miss Helen Akpan for the appellants  
Mrs. L. A. Okunnu-Shuaib for the respondents

### **CASES REFERRED TO**

E Falobi vs. Falobi (1976) NMLR 169, 178  
Eboh vs. Oki (1974) 3 S.C. 35, 64  
Akinsete vs. Akindutere (1966) 1 All NLR 147, 148

### **LEAD JUDGMENT BY BELGORE JSC**

F This is an interlocutory appeal against the decision of Court of Appeal which refused to grant the appellants a stay of execution of the judgment of High Court of Lagos. An earlier application for stay of execution pending appeal was refused by the High Court leading to similar application in Court of Appeal which was also refused.

G The 1st and 2nd plaintiffs/respondents sued the 1st, 2nd, 3rd, 4th and 5th defendants/appellants seeking the setting aside of a certain deed of conveyance made by 1st Defendant to 2nd Defendant and from H 2nd Defendant to 3rd, 4th and 5th Defendants as tenants. High Court granted substantial parts of the reliefs sought including nullification of the deed of conveyance, damages for trespass and injunction.

The main issue in this appeal is very narrow and it is as follows:

*"Whether the Court of Appeal Lagos (Division) was wrong in refusing the applicants' application for stay of execution of the judgment of the Ikeja High Court delivered on 4th September, 1987, pending the hearing and determination of the appeal filed against this judgment.*

The main plank of the appellants' application at the lower court B as deposed in their affidavit was that there were factories and warehouses on the land; and also costly machineries installed in the said factories with over 4000 tons of raw materials made up of corn and coffee in the warehouses. In the counter-affidavit the plaintiff deposed that only three warehouses were on the land and that there were no factories. C Two of the three warehouses were empty; the third one was half-empty and was occupied by a tenant, Livestock Feeds Ltd. Who stationed only one store-keeper and two security guards there. There was no coffee stored there contrary to appellants affidavits. The appellants, to plain- D tiffs counter-affidavit, filed better affidavit wherein they admitted there "was no longer a factory" on the land, but only "three warehouses". Two of the warehouses were empty and the third let to Livestock Feeds Ltd. as contended by the plaintiffs. E

**The guiding principle is that a victorious party must not lightly be deprived of the fruit of his victory. Having won his case he under normal circumstance ought to be allowed execution of that judgment unless a special circumstance is advanced to justify F stay of execution. [Vaswani Trading Co. Ltd. vs Savalkh (1972) All NLR 483.] Special circumstance is very wide and its category is not closed. However "special circumstance" though may include strong and substantial ground of appeal, this alone may not be enough. A strong and substantial ground of appeal does not neces- G sarily mean the appeal may succeed; certainly the Court must be wary of such ground so as not to prejudge the substantive appeal. In cases where the res, the subject-matter of the appeal, is at the risk of destruction if a stay is not granted, or its nature may be H altered as to make it irreversible to its original state; or if it is monetary, and the victorious party is a man of straw, and may not be able to redeem the money should substantive appeal be decided**

against him, the Court in its discretion will grant a stay of execution pending determination of the appeal.

There was a clear issue before Court of Appeal that there were only three warehouses on the land in dispute and two of them were empty; the third one was with a tenant who kept very title inside. Thus the affidavit evidence never revealed any serious contradiction to be resolved by oral evidence. Therefore the cases of Falobi vs Falobi (1976) NMLR 169, 178; Eboh vs Oki (1974) 3 S.C. 35, 64; and Akinsete vs Akindutere (1966) 1 All NLR 147, 148 will not apply as contended by the appellants. There is no evidence of threat to res if the execution is carried out as the res has not been shown to have been altered or destroyed since January, 1977 when High Court delivered its judgment. The only unfortunate thing is that for over twenty years the land has been allowed to waste - without development or improvement and the substantive appeal has not been heard and determined because of the little skirmishes brought by this interlocutory appeal.

I find no merit in this appeal and I dismiss it with N10,000.00 costs to plaintiffs/respondents against defendants/appellants.

#### KUTIGI JSC

I read in advance the judgment just delivered by my learned brother Belgore, JSC. I agree with him that this appeal lacks merit and ought to be dismissed. It is accordingly dismissed with N10,000.00 costs against the Appellants.

#### UWAIFO JSC

I agree with the judgment of my learned brother Belgore JSC that there is no merit in this appeal. The appeal is against the interlocutory decision of the lower court which refused a stay of execution of the judgment of the High Court of Lagos pending the appeal against the said judgment. In an appeal of this nature, this court is not being called upon

to exercise its discretion to grant the stay which the lower court refused. It could only do so in a situation permitting the discretion to grant a stay to be concurrently exercised by the lower court and this court where the Rules provide that on refusal to grant a stay by the lower court, the higher court could entertain a similar application. Such a discretion will be exercised by the said higher court independently of the lower court's reasoning.

This being an appeal, it is a different approach. The appellants must show to the satisfaction of this court in what respect the lower court was wrong in refusing to order a stay of execution. The lower court reached its decision on the basis that there were no business machines in the factories on the land as claimed by the appellants and that the factories had been converted to three warehouses no longer tenanted by companies which were there previously. Therefore it held that there was nothing upon which the discretion to stay execution could be exercised in favour of the appellants. Arguments were canvassed that the warehouses were still in use. But it would appear only one of them was half-empty and the other two in disuse. In such a circumstance, the main facts upon which the application before the trial court was founded appear to have shifted from the existence of factories and machines to only a warehouse partially in use when the matter got to the Court of Appeal. It was on that basis the Court of appeal gave its decision.

I have carefully examined the record and the appellants' brief. I find it difficult to justify setting aside the decision reached by the Court of Appeal upon those facts. That court reached its decision judicially and, in my view, it is not a decision which is unreasonable. I too, inevitably, consider that the appeal should be dismissed and I would do so and abide by the order for costs made by Belgore JSC.

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**EJIWUNMI JSC**

Being privileged to have read in advance, the judgment just delivered by my learned brother Belgore, JSC, I also agree for the reasons given in the leading judgment for dismissing the appeal. In the result, I

also dismiss the appeal. I also abide with the order made as to costs.

**AYOOLA JSC**

I too would dismiss this appeal for the reasons given in the judgment which my learned brother, Belgore, JSC gives in the judgment just delivered by him which I have had the privilege of reading in advance. I abide by the order for costs he makes.

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