

SUPREME COURT OF NIGERIA
13TH JANUARY, 2006 SC. 155/2001
CORAM:- I. L. KUTIGI, U. A. KALGO, D. MUSDAPHER,
A. M. MUKHTAR, I. F. OGBUAGU, JJSC

T. S. A. INDUSTRIES LTD. APPELLANT
AND
KEMA INVESTMENTS LTD. RESPONDENT

STAY OF EXECUTION - Definition - Purpose of the order - Is to arrest further action by the court - By Suspending execution of the judgment in issue (H1)

COURTS - Discretion - Where properly exercised - Appellate court would not interfere - Merely because it would have exercised its discretion differently (H2)

STAY OF EXECUTION - Propriety of the grant - Where chances of success in the appeal - Are virtually nil - Stay will not be granted (H3)

LANDLORD & TENANT - Stay of execution - Recovery of possession - What court would consider - Before granting a stay - Includes ensuring that a party - Does not obtain the very reliefs he lost (H4)

FACTS

The plaintiff/respondent leased 5 warehouses and office to the defendant/appellant for an initial term of four and half years with an option to renew. Appellant paid only for a period of two and half years and paid no further rent even at the expiration of the said term initially granted. Respondent caused Statutory Notices to be served on the appellant to quit and pay the accrued rent. And subsequently, filed an action claiming possession, mesne profits or alternatively damages for use and occupation at the rate of N4,660,800 from 1st of July, 1995, until possession is given up, plus interest. Appellant filed a statement of Defence wherein it counter

claimed and sought for two declarations.

On 4th March, 1999, the trial court delivered judgment in favour of the respondent. Appellant appealed to the Court of Appeal for a stay of execution. The Court of Appeal after considering the affidavit in support of the application and that in opposition, granted the application conditionally. Still dissatisfied, appellant has further appealed to the Supreme Court seeking an unconditional stay of execution.

ISSUE FOR DETERMINATION

“Whether the judgement of the High Court which was delivered in defiance of the pending application for stay of execution, and which is therefore liable to be set aside ex debito justitiae, should have been stayed unconditionally by the Court of Appeal?”

HELD (Unanimously dismissing the appeal per **OGBUAGU JSC**)

STAY OF EXECUTION - Definition - Purpose

1. What is a stay of execution? It is now firmly settled that it is an interim order and does not possess the attribute of finality. In the case of Chief Shodeinde & ors v The Registered Trustees of the Ahmadiyya Movement-in-Islam (1980) 1 - 2 S.C. 163 ; (2001) FWLR (pt. 581) 1065, it is stated that, it is nothing more than one for “suspension of rights” - i.e. the right which a court had declared in favour of a Respondent and, of course, the preservation of property pending the determination of an appeal from a judgment in respect of that right and/or property. A stay, merely arrests further action by the court itself in the suit. It only prevents the plaintiff or beneficiary of the judgment or order, from putting into operation, the machinery of the law - i.e. the legal process of warrants of execution and so forth. (p. 403 D)

COURTS - Discretion - Where properly exercised

2. This appeal therefore, in my respectful view, is against the exercise of discretion by the court below in respect of the application for a stay of execution. The attitude of this Court or indeed, by all Appellate Courts, as regards exercise of discretion by lower courts, has been stated and restated in a number of described authorities. See The Owners of the M.V.

Lupex v. Nigerian Overseas Chartering & Shipping Ltd. (2003) 6 SCNJ. 404 @ 410. A discretion properly exercised either by a trial or lower court, will not be lightly interfered with by an appellate court even if the appellate court, was of the view that it might have exercised the discretion differently. It is only where a trial or lower court, exercised a discretion under a wrong principle or mistake of law or under a misapprehension of the facts or took into account, irrelevant or extraneous matters or excluded relevant matters, thereby giving rise to injustice, that an appellate Court, will not abdicate its duty to interfere, with the exercise of that discretion, in order to correct or prevent the injustice. (p. 404 C)

STAY OF EXECUTION - Propriety of the grant

3. It is not every case where grounds of appeal raise point or points of law, that stay of execution, will be granted. Indeed, in the case of Alhaji Agbaje & 5 ors. v. Mr. Adelekan & 4 ors. (1990) 7 NWLR (pt. 164) 595 @ 611 ; (1990) 12 SCNJ. 18 @ 27 & 28, Nnaemeka-Agu, JSC, held inter alia, that it is not every point of law raised in an appeal that could constitute a special circumstance for purposes of a stay of execution. That the grant of a stay of execution, involving, as it does, the exercise of the court's discretion, the court, without pre-empting the main appeal, by deciding the issue of law raised in the appeal, ought always to take into account, the chances of the point of law so raised, succeeding on appeal. That where the chances of success in the appeal, are virtually nil, such a ground of law, will be unavailing. There is therefore, the necessity of an Applicant, applying for stay of execution, to demonstrate that his appeal, has merit. (p. 405 D)

Stay of execution - Recovery of possession

4. A discretion to grant or refuse a stay of execution/proceeding, must take into account, the competing rights of the parties. See First Bank of Nigeria Ltd v. Doyin Investment Nig. Ltd. (1989) 1 NWLR (pt.99) 634 @ 639 ; - per Oputa, JSC, where it was stated that a discretion that is biased in favour of an applicant for a stay, but does not adequately take into account the Respondent's equal right to justice, is a discretion that has not been

judiciously exercised.

Secondly, a stay of execution, is never used as a substitute for obtaining the judgment which the trial court has denied a party. A court will not grant a stay of execution of a judgment, for the purpose of enabling
B a party to obtain the very reliefs which he lost in the action leading to the judgment for which an appeal has been lodged. In other words, the applicable principle, is to the effect that the court will provide adequate protection to the judgment given to a successful litigant. This is because,
C a litigant, will not be deprived of the fruits of the judgment, in his favour, unless the debtor, shows exceptional circumstances for doing so.

Thirdly, and more importantly, an Appellate Court, can re-order recovery of possession, where an appeal in respect of possession of property, succeeds. (p. 406 G)

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REPRESENTATION

E. O. Etomi (Mrs.) for the appellant.

Hakim Bolaji Abina with him Olusegun Ibironke for the respondent.

E

CASES REFERRED TO

Chief Shodeinde & ors v The Registered Trustees of the Ahmadiyya Movement-in-Islam (1980) 1 - 2 S.C. 163 ; (2001) FWLR (pt. 581) 1065
F Alhaji Umarui Tukur v Govt. of Gongola State (1989) 9 SCNJ. 1072 - 73
Chief Kalu Igwe & 2 ors. v. Chief Okuwa Kalu & 2 ors. (1990) 5 NWLR (pt.149) 155 @ 164

The Owners of the M.V. Lupex v. Nigerian Overseas Chartering & Shipping Ltd. (2003) 6 SCNJ. 404 @ 410

G Alhaji Agbaje & 5 ors. v. Mr. Adelekan & 4 ors. (1990) 7 NWLR (pt. 164) 595 @ 611 ; (1990) 12 SCNJ. 18 @ 27 & 28

Wey v. Wey (1975) I S.C. 1 and Odufaye v. Fatoki (1975) NMLR 222
Ajomale v. Yaduat & anor. (1991) 5 SCNJ. 1 78 @ 188

H Nwabueze v. Nwosu (1998) 4 NWLR (pt.88) 357; (1 988) 9 SCNJ. .52
Josien Holdings ltd. & 3 ors. v. Lornameed Ltd. & anor. (1995) 1 NWLR (pt. 171) 254; (1995) 1 SCNJ. 133 @, 139

Solanke v. Ajibola (1968) NSCC vol. 5 page 40 @ 44 - 46

Awani v. Erejuwa (1976) 11 S.C. 307. Ngwu v. Onuigbo (1999) 13 NWLR (pt.636) 512 @ 524-525

Nigerian Industrial Dev. Bank v. Ambe Board Mills (Nig.) Ltd. (2001) 10-11 C.A. 123 @ 130 - 131

B

LEAD JUDGMENT BY OGBUAGU JSC

This is an appeal against the Ruling of the Court of Appeal, Lagos Division delivered on 14th May, 2001. The Appellant had applied to that Court (hereinafter called “*the Court below*”), for a stay of execution of the Judgment of the trial court delivered on 4th March, 1999 in Suit No. IJ/1902/97. The court below after considering the affidavit in support of the application and that in opposition, granted the application, but conditionally. It is against the said grant/decision that life Appellant has appealed to this Court on two (2) Grounds of Appeal which read thus:

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“(1) *The lower Court erred in law when it held that the decision of the Supreme Court in the case of Mohammed Olawuni, (1993) 4 NWLR (Part 287) 254 at 281 is inapplicable herein.*

Particulars of Error

E

“(i) *In Mohammed vs Olawumi (supra), the Supreme Court held that where the High Court proceeds with a case in defiance of an application for stay of proceedings pending in the Court of Appeal, an application to set aside the judgment or to stay execution of the Judgment thereby obtained could be made to ensure that the Court of Appeal is not foisted with a fait accompli.*

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(ii) *In the instant case, it is not in dispute that the lower Court proceeded with the Suit to judgment notwithstanding that it is aware of the application for stay of further proceedings pending before the Court of Appeal.*

G

(2) *The lower Court erred in law when it held as follows:-*

“*In the instant case the High Court had dealt with the issue of application for stay of further proceedings and had gone further to deliver H final judgment. The Applicant did not predicate his application on the Ruling of the Court below refusing to stay proceedings made by the High Court. The appeal pending before, this Court i.e. this application is*

H

against the final judgement delivered by the lower Court on 4- 3 -99”.

Particulars of Error

(i) *The Appeal on the basis of which the application in the lower Court was made is the appeal instituted by a Notice of Appeal date 15th October, 1998, (sic) which is an appeal against the Ruling delivered on 28th September, 1998;*

(ii) *In proceeding to judgement in defiance of the application to stay proceedings pending the said appeal, the High, Court has effectively rendered the outcome of the said appeal nugatory.*

(iii) *The appeal against the Judgment delivered on 4th of March, 1999, is only relevant as evidence of the defiance of the said trial Court;*

(iv) *The Court of Appeal in the circumstances ought to have, stayed the execution of the judgment unconditionally to ensure that the appeal before it is not rendered nugatory”.*

The facts of the case leading to (his appeal briefly stated, are that the Plaintiff/Respondents let/leased the property/premises (5) warehouses and office to the Respondent/Appellant, and factory for an initial term of 4½ (four and half) years with an option to renew the same. The Appellant, at the commencement of the tenancy, paid for a period of 2½ (two and half) years and never paid any rent even at the expiration of the said initial term of 4½ (four and half) years. So, the option to renew the same, could not arise. The Respondent caused Statutory Notices to be issued and served on the Appellant to quit and pay the accrued rent.

When the Appellant would not rend/comply, the Respondent, was obliged to institute the action at the trial court claiming for possession, and mesne profits or alternatively damages for use and occupation at the rate of N4,660.800 from 1st of July, 1995 until possession is given up plus interest, After entering appearance, the Appellant filed a Statement of Defence wherein it counter-claimed and sought for (2) two declarations.

The trial, suffered several adjournments for too many reasons that appear in the Records and on 4th March, 1999, the trial court delivered its said Judgment. The Appellant is still in possession of the said premises and have not paid the rents up till the date this appeal came up for hearing and no doubt, up till date.

The Relief sought reads as follows:

“RELIEF SOUGHT FROM THE COURT OF APPEAL”

It can be seen that the relief sought, is from the Court of Appeal and not from this Court. On this ground, I was minded to strike out this appeal. But since this Court, will not visit the mistake of counsel, on the Appellant B more so, as the Notice of Appeal reads inter alia, “doth hereby appeal to Supreme Court.....” and the relief actually sought, is -

“To allow the Appeal and set aside the Ruling of the Court of Appeal dated 14th May, 2001, and in its stead order an unconditional stay C of separate execution of the judgment dated 4th March, 1999”

I will deal with the merits of the appeal. I take it that the “Court of Appeal”, means this Court.

Now, since the “Preliminary” contained in the Respondent’s Brief D of Argument, was abandoned on 18th October, 2005 by the learned counsel for the Appellant when this appeal came up for hearing, I will discountenance the same as his learned counsel told the Court that it has been overtaken by events.

The lone issue formulated by the Appellant in his Brief of E Argument, read as follows:

“Whether the judgement of the High Court which was delivered in defiance of the pending application for stay of execution, and which is therefore liable to be set aside ex debito justitiae, should have been stayed F unconditionally by the Court of Appeal?”

Put differently, it is whether in granting a stay of execution of the judgment on terms which amount to a compliance with the said judgment (sic) the Court of Appeal is not thereby acquiescing in the decision of the High Court to foist it with a fait accompli” G

The Respondent on its part, also formulated one (1) lone issue for determination, thus:

“3.01 Was the judgment of the High Court in the suit herein given in defiance of an application for stay of proceedings filed at the Court of Appeal and the Court of Appeal was therefore wrong in not ordering an unconditional stay of such a judgment? H

Put differently whether the learned trial Judge erred when he

proceeded with the trial of the action after he dismissed the application for interim Stay of Proceedings and when the Appellant refused to file an application at the Court subsequent to the High Court ruling?"

Comment: The Respondents learned counsel regards the above issue as two hence he stated in their Brief. *"The two issues would be argued together"*. I will, with respect, confine myself in this Judgment, to the compliant that the court below, was wrong in granting a conditional stay of execution of the judgment of the trial court contained at pages 45 to 66 of the Records, I will therefore, adopt the lone main issue of the Appellant and that of the Respondent and ignore with respect the "Put differently" of the parties. The decision/Judgment of the trial court sought by the Appellant in the court below to be stayed, as appears at page 79 of the Records, reads as follows:

"1. The Defendant shall give up possession of the five Bays of warehouses and office premises with the appurtenances situate at Plot No 7B ACME Road, Block 9, Ogba Industrial, (Estate, Ikeja, Lagos State on or before the 31st day of March, 1999 and shall pay mesne profits of N4,282,900.00 (Four, Million Two hundred and Eighty Two Thousand Nine hundred Naira) for the period 1st day of July, 1995 to 31st day of December, 1996 and N4,144,900 (Four Million One Hundred and Forty-four Thousand, Nine hundred Naira) from the 1st day of January, 1997 until possession is given up,

2. The Defendant's Counter-claim is hereby dismissed in its entirety.

The court below - per Ige, JCA (of blessed memory) considered the relevant paragraphs of the affidavits deposed lo by the parties at the trial Court and then stated at page 83 of the Records, as follows:-

"I have looked at the Applicants notice and grounds of appeal filed against the judgment of the lower Court. Some of the grounds constitute arguable and substantial issues. Nevertheless that alone cannot, warrant an automatic stay of the judgment. The applicant has not shown that the Respondent will not be able to pay back the money involved in the judgment, should the appellate court reverse the judgment.,

Part of the judgment in this case is monetary and mesne profits. The

Applicants are tenants of the Respondent and are still in possession of the rented premises. Equity and Law demand that a tenant should pay his rents as and when due during the period of occupation of the said premises to his landlord. In the interest of justice and in order to be fair to both sides I think the applicant should be granted a stay of execution subject to the following conditions:-” B

The learned Justice, then proceeded to give the conditions. The Appellant, has not asked for a variation of the said conditions in this Court and the nature of the variation it seeks that will be favourable to it. C

By way of comment, it seems to me that the Appellant did not first apply to the trial court for stay of execution and the same was refused, before it applied for the same in the court below. This is because, the two lower courts, have concurrent jurisdiction in the matter. See Chief Kalu v. Chief Odili & ors. (1992) 5 NWLR (pt. 240) 130; (1992) 6 SCNJ. 76. But since this point/issue was never raised nor canvassed in the court below or this Court, I say no more about this. D

What is a stay of execution? It is now firmly settled that it is an interim order and does not possess the attribute of finality. In the case of Chief Shodeinde & ors v. The Registered Trustees of the Ahmadiyya Movement-in-Islam (1980) 1 - 2 S.C. 163 ; (2001) FWLR (pt. 581) 1065, it is stated that, it is nothing more than one for “suspension of rights” - i.e. the right which a court had declared in favour of a Respondent and, of course, the preservation of property pending the determination of an appeal from a judgment in respect of that right and/or property. A stay, merely arrests further action by the court itself in the suit. It only prevents the plaintiff or beneficiary of the judgment or older, from putting into operation, the machinery of the law i.e. the legal process of warrants of execution and so forth. See also the cases of Alhaji Umaru Tukur v. Govt. of Gongola State (1989) 9 SCNJ. 1072 - 73 and Chief Kalu Igwe & 2 ors. v. Chief Okuwa Kalu & 2 ors. (1990) 5 NWLR (pt.149) 155 @ H 164 C.A. - per Kolawole, JCA, (of blessed memory). F G

The general rules or guiding principles in respect of the discretion of the court to either grant or refuse an application for stay of execution

pending appeal, are not exhaustive - See *Vaswani Trading Co. v. Savalakh & Co.* (1972) 12 S.C. 77 @ 82; (2000) FWLR (pt.28) 2174; *Util Gas Nigerian & Overseas Gas Co. Ltd. v. Pan African Bank Ltd.* (1974) 10 S.C. 105 @ 107; (1974) 1 ANLR (pt.2) 47 = per Coker, JSC. *Phoenix Motors Ltd. v. Omokeowa* (1986) 3 NWLR (pt. 30) 523 @ 527; *Okafor & 3 ors. v. Nnaife* (1987) 4 NWLR (pt. 64) 129 @ 136 - 137; (1987) 9-11 S.C. 105 @ 115- 119; (1987) 9-10 SCNJ. 63; (2002) FWLR (pt.134) 604 , - per. Oputa, JSC. *Inter-Contractors Nig. Ltd. v. U.A.C of Nig. Ltd.* (1988) 1 NSCC. Vol. 19 page 737; (1988) 4 SCNJ. 131 and *Chief Harriman v. Mrs. Harriman* (1989) 5 NWLR (pt. 119) 6 @ 15 - 16 C.A. just to mention but a few.

This appeal therefore, in my respectful view, is against the exercise of discretion by the court below in respect of the application for a stay of execution. The attitude of this Court or indeed, by all Appellate Courts, as regards exercise of discretion by lower courts, has been stated and restated in a number of described authorities. See *The Owners of the M.V. Lupex v. Nigerian Overseas Chartering & Shipping Ltd.* (2003) 6 SCNJ. 404 @ 410. A discretion properly exercised either by a trial or lower court, will not be lightly interfered with by an appellate court even if the appellate court, was of the view that it might have exercised the discretion differently. It is only where a trial or lower court, exercised a discretion under a wrong principle or mistake of law or under a misapprehension of the facts or took into account, irrelevant or extraneous matters or excluded relevant matters, thereby giving rise to injustice, that an appellate Court, will not abdicate its duty to interfere, with the exercise of that discretion, in order to correct or prevent the injustice. See *Kudoro v. Alaka* (1956) SCNLR 255 @ 257; *Solanke v. Ajibola* (1968) NSCC vol. 5 page 40 @ 44 - 46; *Awani v. Erejuwa* (1976) 11 S.C. 307; *Ngwu v. Onuigbo* (1999) 13 NWLR (pt.636) 512 @ 524-525; *Alhaji Oyakanmi v. NEPA* (2000) 12 SCNJ. 75 @ 95; *United Spinners Nig. Ltd. v. Chartered Bank Ltd.* (2001) 7 SCNJ, 204 @ 220; ((2001) FWLR (pt.28) 2174; *Nigerian Industrial Dev. Bank v. Ambe Board Mills (Nig.) Ltd.* (2001) 10-11 C.A. 123 @ 130 - 131; *Jonason Triangles Ltd.& anor. v. Charles Moh*

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& Partners Ltd. (2002) 15 NWLR (pt. 789) 176 @ 194; (2002) 10 SCNJ.
1; (2002) 103 LRCN 2310 @ 2321 and many others.

In the instant case, it is both a monetary judgment and an order for possession. The Appellant was granted a conditional stay. From all indications, the Appellant, had never wanted the substantive suit to go on. As I stated earlier in this Judgment, the Appellant is still in possession of the premises/warehouses. They will not vacate and they will not pay the rent due and over due. This action was instituted since 1997. The Appellant, wants an unconditional stay of execution, so that it will continue being in possession of the premises without paying the rent due to the Respondent as even ordered by the court below. This attitude, no doubt, is not Equity and/or justice.

The court below, in my respectful view, was very magnanimous to the Appellant by that grant of conditional stay of execution. Of course, and this is settled, that an Appellant, has wonderful, substantial, impressive and arguable grounds of appeal, is not a special circumstance for granting a stay. In other words, **it is not every case where grounds of appeal raise point or points of law, that stay of execution, will be granted** - See Okafor & ors. v. Nnaife (supra) @ p. 137 of the NWLR Report. **Indeed, in the case of Alhaji Agbaje & 5 ors. v. Mr. Adelekan & 4 ors. (1990) 7 NWLR (pt. 164) 595 @ 611; (1990) 12 SCNJ. 18 @ 27 & 28, Nnaemeka-Agu, JSC, held inter alia, that it is not every point of law raised in an appeal that could constitute a special circumstance for purposes of a stay of execution. That the grant of a stay of execution, involving, as it does, the exercise of the court's discretion, the court, without pre-empting the main appeal, by deciding the issue of law raised in the appeal, ought always to take into account, the chances of the point of law so raised, succeeding on appeal. That where the chances of success in the appeal, are virtually nil, such a ground of law, will be unavailing.** See also Wey v. Wey (1975) 1 S.C. 1 and Odufaye v. Fatoki (1975) NMLR 222. **There is therefore, the necessity of an Applicant, applying for stay of execution, to demonstrate that his appeal, has merit.** See Chief Nwude v. Chairman EFCC (2005) All FWLR (pt.) 740 @ 766 C.A. citing several other cases therein.

In spite of the above statement of law, I am aware that it is settled that if a Notice of Appeal, does disclose substantial grounds of appeal to be argued on appeal, there is every justification, for the exercise of the discretion to grant a stay. See *Martins v. Nicannar Food Co. Ltd. & anor* B (1988) 2 NWLR (pt. 74) 75 @ 89; (1988) 71 NSCC Vol. 19 at page 613; (1988) 3 SCNJ. (pt. II) 246 @ 252 -255 and *Josien Holdings Ltd. & 3 ors. v. Lornameed Ltd. & anor.* (1995) 1 NWLR (pt. 171) 254; (1995) 1 SCNJ. 133 @ 139 - per Kutigi, JSC. But surely, an appeal, does not operate as a stay of execution - See *Josiah Cornelius Ltd. & ors. v. Chief Ezenwa* C (1996) 4 NWLR (pt. 443) 391@ 410; (1996) 4 SCNJ. 123 and *The Pharmacists' Council of Nigeria v. The Nigerian Association of Patent & Proprietary Medicine Dealers & 7 ors.* (2005) All FWLR (pt. 276) 772 @ 780 C.A.

D I have no doubt in my mind, that the Appellant, is creating appeals. However, there are concurrent judgments of (2) two lower Courts. For the attitude of this Court in respect thereof, see recently, the case of *Ogbu v. Wokoma* (2005) 14 NWLR (pt. 944) 118; (2005) 7 S.C. (pt. II) 123 @ E 136, citing several cases therein.

Before concluding this Judgment, I wish, with respect, to disagree with the submission of the learned counsel for the Appellant under their paragraph 4.0 of their brief- Conclusion (b) that the appeal be allowed;

F *“Because if the judgment is not stayed unconditionally, there will be no need whatsoever to proceed with the appeal before the Court of Appeal for even if the appeal succeeds, the Court of Appeal will be put in a position of complete helplessness”.*

(the underlining mine)

G This is because and this is settled, firstly, that **a discretion to grant or refuse a stay of execution/proceeding, must take into account, the competing rights of the parties.** See *First Bank of Nigeria Ltd. v. Doyin Investment Nig. Ltd.* (1989) 1 NWLR (pt.99) 634 @ 639 ; - per H Oputa, JSC, where it was stated that a discretion that is biased in favour of an applicant for a stay, but does not adequately take into account the Respondent’s equal right to justice, is a discretion that has not been judiciously exercised. See also the comment in the case of

Ajomale v. Yaduat & anor. (1991) 5 SCNJ. 178 @ 188.

Secondly, a stay of execution, is never used as a substitute for obtaining the judgment which the trial court has denied a party. See Okafor & ors. v. Nnaife (supra). A court will not grant a stay of execution of a judgment, for the purpose of enabling a party to obtain the very reliefs which he lost in the action leading to the judgment for which an appeal has been lodged. See J. C. Trustees Ltd. v. J. S. Darwen (Successors) Ltd. (1990) 2 Q.B. 296. In other words, the applicable principle, is to the effect that the court will provide adequate protection to the judgment given to a successful litigant. This is because, a litigant, will not be deprived of the fruits of the judgment, in his favour, unless the debtor, shows exceptional circumstances for doing so. See Vaswani Trading Co. v. Savalakh & Co. (supra) and Nwabueze v. Nwosu (1998) 4 NWLR (pt.88) 257; (1988) 9 SCNJ. 52.

Thirdly, and more importantly, an Appellate Court, can re-order recovery of possession, where an appeal in respect of possession of property, succeeds. See Omorogie v. Saidi (1960) L.G.R. 127 and Nweke v. A. W. Ibe & anor. (1974) 4 ECSLR 93.

It has been the Appellant, that had employed all sorts of tactics/antics, to delay/frustrate the hearing of the suit. If an unconditional stay of execution is granted as is the wish/prayer of the Appellant, then of course, your guess is as good as mine. But this Court, will not be a party to support delays that will produce injustice to the Respondents.

In the end result/final analysis, while I do not concede or subscribe to the assertion in the lone issue of the Appellant that the judgment of the trial court, “*was delivered in defiance of the pending application for stay of execution*”, my answer, with respect, is that since the court below had/has the discretion in the matter before it and gave its reasons for the said exercise, the conditional stay of execution, cannot be faulted by me or this Court. My answer to the Respondent’s sole issue, is in the Negative.

This appeal, undoubtedly, is very frivolous and lacks merit. It fails and it is accordingly dismissed. I hereby affirm the said Ruling of the court, below. Costs of N10,000.00 (ten thousand naira) are awarded in favour

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of the Respondent payable to it by the Appellant.

KUTIGI JSC

B I read before now the judgment just delivered by my learned brother
Ogbuagu, J.S.C. The appeal which is against an order of unconditional
stay of execution granted by Court of Appeal clearly lacks merit. The Court
of Appeal no doubt exercised its discretion judicially and judiciously too.
C The appeal is accordingly dismissed with N10,000.00 costs in favour
of the Respondent against the Appellant.

KALGO JSC

D I have read in draft the judgment just delivered by my learned
brother Ogbuagu JSC in this appeal. I agree with his reasoning and
conclusions reached therein and I therefore find no merit in the appeal. I
hereby dismiss the appeal and award the costs of N10,000.00 in favour of
E the respondent.

MUSDAPHER JSC

F I have seen before now, the judgment of my Lord Ogbuagu, JSC
just delivered. I agree with the conclusion that this appeal is unmeritorious.
I dismiss it. I abide by the order for costs contained in the aforesaid
judgment.

G

MUKHTAR JSC

I have read in advance the lead judgment delivered by my learned
brother Ogbuagu, JSC. I am in fully agreement that the appeal is devoid
H of merit and should be dismissed. I also dismiss the appeal, and abide by
the consequential orders made in the lead judgment.