

**SUPREME COURT OF NIGERIA**  
FRIDAY 17TH JANUARY, 2014. SC. 189/2004  
**CORAM:- I. T. MUHAMMAD, J. A. FABIYI, M. U. PETER-  
ODILI, O. ARIWOOLA, M. D. MUHAMMAD, JJSC**

INTEGRATION (NIGERIA) LTD ..... APPELLANT  
AND  
ZUMAFON (NIGERIA) LTD ..... RESPONDENT

---

STAY OF EXECUTION - Grant - Condition - Party seeking for stay of execution against successful adversary - Must show substantial reasons to justify denial of the latter - Of the fruit of his judgment (H1)

APPEALS - Court - Discretion - Exercise of - Supreme Court rarely interferes with discretion exercised by lower courts - Save where such exercise was based on extraneous issues - Or was not bona fide (H2)

FAIR HEARING - Breach - Allegation of - Appellant's allegation of not having fair hearing at CA cannot be sustained - Since he had the opportunity in SC - To redress any anomaly done in the lower court (H3)

**FACTS**

Before the High Court of Enugu State, plaintiff/respondent filed this action against defendant/appellant seeking inter alia for specific performance of the contract between respondent and appellant, perpetual injunction and general damages for breach of contract. After hearing in the matter, the court entered judgment in favour of respondent for N8 million as general damages. Appellant in protest filed appeal in the Court of Appeal, Enugu Division. Appellant also filed motion for stay of execution exhibiting the Notice and Grounds of Appeal.

The court granted the motion for stay of execution and ordered that the judgment debt be paid into an interest yielding account with First Bank of Nigeria Plc and that the party that eventually wins in the appeal should collect the money with the interest on it. The terms of the stay of execution were not satisfactory to appellant. Hence, appellant filed an application before the Court of Appeal

seeking for a reversal of the terms in the stay of execution. The court refused the application as appellant has not provided sufficient material to justify reviewing the discretion exercised by the trial court in granting the stay of execution. The court affirmed the order made by the trial court. Dissatisfied, appellant appealed to Supreme Court to challenge the affirmation by the Court of Appeal of the order of stay of execution made by the trial court.

**ISSUE FOR DETERMINATION**

1. Whether the Court of Appeal acted judiciously and judicially by refusing to interfere with the discretion of the lower court exercised in favour of the appellant.

**HELD** (Unanimously dismissing the appeal per **PETER-ODILI JSC**)

*STAY OF EXECUTION - Grant - Condition*

**1. It must not be lost sight of in all these that at the root of it all is the basic fact that a party to obtain a stay of execution of a judgment against a successful adversary must show substantial reasons to justify the denial of that successful party of the fruit of his judgment by the court. To state the above differently is to emphasise that a judgment that is executory should have no hindrance from the delivery of the judgment to the effecting of the order or orders of court emanating therefrom.**

**A basic rule and sacrosanct and so to restrain the immediate execution of that judgment some special circumstances or unique occurrence must exist to hold back the hand of the court. (p. 318 G)**

*Court - Discretion - Exercise of*

**2. The principles above recanted situated in the present circumstances of this case throw up the fact that what is being called up right here and now is the exercise of the discretion of the trial High Court endorsed by the Court of Appeal which translates to a concurrent decision of the two courts below. In this regard is a reiteration of the fact that this court in its appellate jurisdiction will rarely interfere with the exercise of**

**discretion by the lower courts. It can only be done where such an exercise is based on extraneous issues or where the exercise of such discretion is not bona fide.** (p. 319 B)

*FAIR HEARING - Breach - Allegation of*

**3. It has to be said that the appellant flying the flag of fair hearing on the ground that he did not have as much time at the Court of Appeal to properly address the court of the important angles that would have changed the mind of the court has no leg to stand on since at this point where he has had all the time and the Brief of Argument to persuade this court to redress an anomaly done in the lower court he had not been forthcoming.**

**Citing the case of Isiyaku Mohammed v. Kano N. A. (1968) 1 ALL NLR 424 has not enhanced his condition as the facts in that case are different from the current one. In that case the right to fair hearing of the accused was infringed upon as there were irregularities in the conduct of the investigation and trial. That is a far cry from what is obtaining in the current circumstances as the affidavit from which the appellant ought to have highlighted the reasons albeit special circumstances for which the stay of execution or reviewing of the order of the trial court would have been based was empty. The Court of Appeal was therefore right to say so in its judgment and I see no reason to depart from that stance of the Court of Appeal which supported what the trial court did.** (p. 319 F)

### **REPRESENTATION**

Dr. E. E. J. Okereke, for the Appellant

Respondent absent and not represented. He was served by post on 19/9/13

### **CASES REFERRED TO**

Balogun v. Balogun (1969) 1 ALL NLR 349

Vaswani Trading Co v. Savalakh & Co. (1972) 12 SC 77

Utilgas Nigerian & Overseas Co. Ltd v. Pan African Bank Ltd (1974) 10 SC 105

Mohammed v. Kano N.A. (1968) ALL NLR 426

- Obieze v. A. G. Rivers State (2001) 12 SCNJ 35  
 University of Lagos v. Olaniyan (1985) 16 NSCC (pt. 1) 98  
 Eronini v. Iheuko (1989) 2 NSCC (pt. 1) 503  
 Martins v. Vicannar Food Co. Ltd (1988) SC 429  
 Shoderinde v. Trustees in Islam (1981) 2 SC 165  
 B Amadi v. Chukwu (pt. 12) 12 SCM 18  
 Okafor v. Nnaije (1987) 4 NWLR (pt. 64) 129  
 Solanke v. Ajibola (1969) 1 NMLR 253  
 Awani v. Erejuwa II Olu of Warri (1976) 9 - 10 SC (Re print) 271

C

### ***LEAD JUDGMENT BY PETER-ODILI JSC***

This is an appeal against the Ruling of the Court of Appeal, Enugu Judicial Division delivered on 22nd September, 2004 wherein it ordered the appellant to pay the judgment debt of Eight Million  
 D Naira (N8, 000,000.00) with ten thousand naira (N10,000.00) costs.

#### **FACTS BRIEFLY STATED**

The suit originated at the Enugu High Court on the 30th day of July, 1999 where the plaintiff now respondent brought an action against the defendant now appellant seeking the following reliefs:

E (a) Specific performance of the contract between the plaintiff and the defendant dated 27th August 1998.

(b) An order of Perpetual Injunction restraining the defendant from purchasing and laying or utilizing 150mm ductile iron delivery pipes or any other type or size of pipes for water supply at the  
 F University of Nigerian Teaching Hospital, Ituku Ozalla, Enugu from any other source or source(sic) whatsoever other than from the plaintiff or in the alternative.

(c) N6,596,285.00 as loss of profit flowing directly from the  
 G defendant's breach of the said contract as against what was mutually agreed.

(d) N30,000.00 as general damages for breach of contract.

On the 1st of April, 2003 Judgment was entered in favour of the plaintiff now respondent for eight million naira as general damages. The defendant appealed to the Court of Appeal and also filed a  
 H motion for stay of execution exhibiting the Notice and Grounds of Appeal.

The motion for stay of execution was granted on the 11th day of April 2003 in favour of the defendants as follows:

*“The judgment debt of (N8, 000.000.00) (Eight Million Naira” with N10,000 (Ten Thousand Naira) cost should be paid into an interest Yielding Account with the First Bank of Nigeria Plc. Okpara Avenue Enugu in the Name of the Assistant Chief Registrar, High Court Enugu and the party that eventually wins in the appeal should collect the money with the interest on it.”* B

The defendant not happy with the terms of the stay of the execution order appealed by way of motion on notice to the Court of Appeal, Enugu Division to have the condition for stay of execution reversed. The appellate court refused the application and stated C as follows:

*“Generally, this court will sparingly interfere in the exercise of discretion of the lower court. On the whole we are not satisfied that there are special circumstances or sufficient materials placed before this court to warrant reviewing the condition for stay ordered by the lower court. It is refused. The order of the lower court ought to be carried out to the letter and also immediately in the circumstances of this case.”* D

The defendant not satisfied once again has appealed to the Supreme Court seeking that the order of the High Court of Enugu State as affirmed by the Court of Appeal be reviewed. E

On the 28th October, 2013 date of hearing, Dr. E. E. J. Okereke, learned counsel for the appellant adopted the brief of argument he had settled and filed on the 18/10/04. In the brief, learned F counsel for the appellant had distilled three issues for determination which are stated hereunder:

1. Whether the Court of Appeal acted judiciously and judicially in exercising its discretion when it took the posture that this being a money judgment, respondent was entitled to reap the fruits G of its judgment and no more.

2. Whether the Court of Appeal was precluded from exercising its discretion in granting a stay of execution with or without conditions if there were other circumstances recognized by law and relied upon by the applicant which would avail the court the opportunity H to exercise the discretion to grant the applicant’s prayer.

3. Whether the applicant was given a fair hearing in presenting argument of its application.

For the respondent, learned counsel on its behalf adopted a

brief of argument which was titled “*Respondents Reply Brief of Argument*” settled by Ifeanyi Udenze Esq. and filed on 28/9/05. He distilled a sole issue for determination, viz:

Whether the Court of Appeal acted judiciously and judicially by refusing to interfere with the discretion of the lower court exercised in favour of the appellant.

The single issue as couched by the respondent seems apt and sufficient to utilize in answering the question in dispute.

Canvassing for the appellant, Dr. Okereke of counsel said that in the appellant’s affidavit and Grounds of appeal at the Court of Appeal that there was no breach of contract that warranted an award of damages. That the respondent’s counter affidavit did not challenge that contention and was merely insisting that respondent was entitled to reap the benefits of the money judgment in its favour.

He stated on that the principle of law that a successful litigant is entitled to the fruits of its judgment is a general principle and is not applied like a robot but there are other situations that would make this inapplicable such as the present instance. He cited *Balogun v. Balogun* (1969) 1 ALL NLR 349; *Vaswani Trading Co v. Savalakh & Co.* (1972) 12 SC. 77; *Utilgas Nigerian & Overseas Co. Ltd v Pan African Bank Ltd* (1974) 10 SC. 105.

For the appellant was submitted that the Court of Appeal was entitled to look at the Notice of Appeal and the judgment and make a finding as to whether a substantial point or points of law raised therein may likely affect the result of the appeal. That the judgment itself dismissed all the three reliefs specifically asked for by the respondent but proceeded to award general damages. Also that the judgment stated that the contract was impossible to perform and came to the decision that the contract was frustrated and the parties discharged from their obligation.

Dr. Okereke contended on that the respondent claimed for a breach of contract of 27th August, 1998 whilst the court gave judgment for two breaches. That it is trite law that the court is bound to show the basis for the award of general damages and cannot make an award in vacuo. That the refusal of the Court of Appeal to consider the grounds of appeal and appraise the judgment was prejudicial to the appellant’s application and occasioned a miscarriage of justice.

For the appellant was further raised the fact that appellant was given five minutes by the Court of Appeal to present his argument and so the applicant's counsel was in the circumstances not given the opportunity to present the argument for the applicant. That the haste applied by the court below deprived the lower court the opportunity of giving a considered judgment and a serious error was made which led to a miscarriage of justice. He cited Mohammed v Kano N.A. (1968) ALL NLR 426. B

Learned counsel for the respondent, Mr. Ifeanyi Udenze in response said that the order for stay of execution of judgment pending appeal is a discretionary order. That an appellate court can only interfere with the discretion of the lower court where such a discretion of a lower court is manifestly wrong, arbitrary, reckless and injudicious. He cited Obieze v. A. G. Rivers State (2001) 12 SCNJ 35. C

Learned counsel for the respondent said appellant either at the Court of Appeal or at the Supreme Court did not raise by way of affidavit evidence any issue of recklessness or arbitrariness or that the judgment was injudicious. That the decision of the lower court ordering the judgment debt to be paid into an interest yielding account in the name of the Chief Registrar of the court can hardly be described as injudicious, arbitrary and reckless. He said appellant's argument dealing with the main appeal instead of addressing the relevant issue of the exercise of the discretion of the lower court would not work in favour of the appellant. D E

The central part of the judgment, basis of this appeal shall be recaptured thus: F

*"We have carefully gone through the relevant affidavit in support of the application and the relevant paragraphs of the counter affidavit. The main plank of the arguments of the appellant as deposed to in paragraph 8 of the affidavit is that it has not got that sum of N8 million and N10,000.00 cost to deposit with the lower court as this would cripple its business. This assertion without more has never been considered as special circumstances in an application for a stay..."* G

*Generally, this court will sparingly interfere in the exercise of discretion of the lower court. So much so where it was the appellant that sought for it at the lower court. On the whole we are not satisfied that there are special circumstances or sufficient materials placed before this court to warrant reviewing the condition for stay as ordered* H

*by the lower court. It is refused. The order of the lower court ought to be carried out to the letter and also immediately in the circumstances of this case."*

Having stated the salient part of that judgment of the lower court, the next leg is whether that court was correct and therefore the need to have recourse to the principles guiding the ordering of a stay of a judgment of court. The guides are well stated in the often quoted decision of this court in Vaswani Trading Company v. Savalakh & Company (1972) NSCC 692 at 695 per Coker JSC and they are as follows:

*"When it is stated that the circumstances or conditions for granting a stay should be special or strong we take it as involving 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 court of appeal a situation of complete helplessness or render nugatory any order or orders of the Court of Appeal or paralyse, in one way or the order, the exercise by the litigant 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 Court of Appeal, there could be no return to the status quo."*

Again to be said in line with the decision of the Supreme Court in Utilgas Nigeria & Overseas Co. Ltd v Pan African Bank Ltd (1974) NSCC 393, is that though the courts including the Apex Court have a wide discretion in granting or refusing an application for stay of execution of a judgment already delivered but such discretion should be exercised judiciously and it would be so exercised where it is demonstrated that the appeal involves substantial point or points of law necessitating that the parties and matters be kept in status quo until the legal issues are resolved.

***It must not be lost sight of in all these that at the root of it all is the basic fact that a party to obtain a stay of execution of a judgment against a successful adversary must show substantial reasons to justify the denial of that successful party of the fruit of his judgment by the court. To state the above differently is to emphasise that a judgment that is executory should have no hindrance from the delivery of the judgment to the***



***effecting of the order or orders of court emanating therefrom.***

***A basic rule and sacrosanct and so to restrain the immediate execution of that judgment some special circumstances or unique occurrence must exist to hold back the hand of the court. See Balogun v. Balogun (1969) ALL NLR 341.***

***The principles above recanted situated in the present circumstances of this case throw up the fact that what is being called up right here and now is the exercise of the discretion of the trial High Court endorsed by the Court of Appeal which translates to a concurrent decision of the two courts below. In this regard is a reiteration of the fact that this court in its appellate jurisdiction will rarely interfere with the exercise of discretion by the lower courts. It can only be done where such an exercise is based on extraneous issues or where the exercise of such discretion is not bona fide.*** I place reliance on the case of Obieze v Attorney General of Rivers State (2001) 12 SC (Pt. 11) 21 at 31 & 32.

From the foregoing and what is available to this court, the appellant has gone into the merits of the substantive appeal at the Court of Appeal leaving unattended the necessary materials that would impel this court to be favourably disposed to his application. The discretion exercised by the trial court and affirmed by the Court of Appeal of ordering the judgment debt to be paid into an interest yielding account in the name of the Chief Registrar of the court do not in my humble view qualify for an injudicious, arbitrary and reckless exercise of the discretion of the court.

***It has to be said that the appellant flying the flag of fair hearing on the ground that he did not have as much time at the Court of Appeal to properly address the court of the important angles that would have changed the mind of the court has no leg to stand on since at this point where he has had all the time and the Brief of Argument to persuade this court to redress an anomaly done in the lower court he had not been forthcoming.***

***Citing the case of Isiyaku Mohammed v. Kano N. A. (1968) 1 ALL NLR 424 has not enhanced his condition as the facts in that case are different from the current one. In that case the right to fair hearing of the accused was infringed upon***

***as there were irregularities in the conduct of the investigation and trial. That is a far cry from what is obtaining in the current circumstances as the affidavit from which the appellant ought to have highlighted the reasons albeit special circumstances for which the stay of execution or reviewing of the order of the trial court would have been based was empty. The Court of Appeal was therefore right to say so in its judgment and I see no reason to depart from that stance of the Court of Appeal which supported what the trial court did.***

C To the question therefore raised in this appeal my answer is an emphatic No, in that the Court of Appeal acted judiciously and judicially in refusing to interfere with the discretion of the trial High Court in exercising the discretion against the appellant. This appeal lacking in merit is hereby dismissed.

D I award the sum of N100,000 costs to the Respondent to be paid by the Appellant.

---

### **I. T. MUHAMMAD JSC**

E I have had the privilege of reading in draft the judgment just delivered by my learned brother Odili, JSC. The appeal lacks merit. I dismiss it. I abide by orders made in the lead judgment.

---

### **FABIYI JSC**

G I have had a preview of the judgment just delivered by my learned brother - Peter - Odili, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

At the trial High Court, Enugu, Ugwu CJ on 1st April, 2003 entered judgment against the appellant as defendant thereat in the sum of Eight Million Naira as general damages with N10,000 costs. The appellant applied for stay of execution at the trial court. In the exercise of his discretion, the trial CJ granted the application in the following term:-

*“The judgment debt of N8,000,000 [Eight Million Naira] with N10,000 (Ten Thousand Naira) cost should be paid into an interest yielding account with the First Bank of Nigeria Plc Okpara Avenue,*

*Enugu in the name of the Assistant Chief Registrar, High Court Enugu and the party that eventually wins in the appeal should collect the money with the interest on it.”*

The appellant applied to the Court of Appeal, Enugu Division for a review of the terms of stay of execution granted by the trial court. The Court of appeal ruled as follows:- B

*“Generally this court will sparingly interfere in the exercise of discretion of the lower court so much so where it was the appellant that sought for it at the lower court. On the whole we are not satisfied that there are special circumstances or sufficient materials placed before this court to warrant reviewing the condition for stay ordered by the lower court. It is refused; the order of the lower court ought to be carried out to the letter and also immediately in the circumstance of this case.”* C

The appellant has decided to try his chance before this court. D In it's relief, it urged that the decision of the Court of Appeal be set aside and that its prayer for stay of execution of the judgment of the trial court be stayed pending the hearing and determination of the substantive appeal against the judgment of the Court of Appeal.

It is now basic that this court will only interfere with the exercise of discretion of the lower court which affirmed that of the trial court where same is manifestly wrong, arbitrary, reckless and injudicious. See: *University of Lagos v. Olaniyan* (1985) 16 NSCC (Pt. 1) 98 at 113; *Eronini v. Iheuko* (1989) 2 NSCC (Pt. 1) 503 at 513 (1989) 3 SC (Pt. 1) 30; *Obieze v. Attorney-General Rivers State* (2001) 12 SCNJ 35. E F

The appellant failed to demonstrate by way of affidavit evidence any issue of arbitrariness or that the decision of the lower court was injudicious. Arguments canvassed on behalf of the appellant relate to the main appeal and not the issue of exercise of discretion by the lower court. The appellant failed to show any valid reason why this court should interfere with the exercise of discretion ably and fairly carried out by the lower court. G

The appeal is clearly misconceived. It ought not to have been filed before this court in the first instance. The appellant should comply with the order of the trial court and pursue its appeal before the Court of Appeal without any further undue delay. H

For the above reasons and the fuller ones ably set out in the

lead judgment, I too feel that the appeal lacks merit and should be dismissed. I order accordingly and abide by the consequential orders contained in the lead judgment.

B

### **ARIWOOLA JSC**

I had the privilege of reading in draft the lead judgment of my learned brother, Mary Peter-Odili, JSC just delivered and I agree with the reasoning and conclusion reached in the said lead judgment.

C

The appellant had appealed to the court below against the ruling of the trial court delivered on 11/4/2003. The trial court had, sequel to the appellant's application for stay of execution of the judgment of the trial court, granted a conditional stay of execution.

D

The court ordered the payment of the judgment debt into an interest yielding account with the First Bank of Nigeria Plc. The court below had on appeal refused to interfere with the order by the trial court in exercise of its discretion. That led to the instant appeal.

E

In their respective briefs of argument, both the appellant and respondent distilled three and sole issue respectively for determination of the appeal. The sole issue of the respondent which is capable of resolving the matter goes thus:

F

*"Whether Court of Appeal acted judiciously and judicially by refusing to interfere with the discretion of the lower court which was exercised in favour of the appellant."*

G

It is noteworthy that the appellant was the defendant/applicant/appellant before the trial court and court below. After the trial court gave judgment in favour of the respondent the appellant against whom the judgment was given had sought a stay of execution of the judgment. The court therefore granted a conditional stay which did not go down well with the appellant.

H

What is it to stay execution of a judgment? This is the postponement, halting or suspension of judgment of a court.

It is settled law that a stay of execution of a judgment will only be granted by the court, if it is satisfied that there are special or exceptional circumstances to warrant doing so. The reason being that the law is that a judgment of a court of law is presumed to be correct and rightly given until the contrary is proved or established. The courts

have refused to make it a practice of depriving a successful litigant of the fruits of his success in court. See *Martins v. Vicannar Food Co. Ltd* (1988) SC 429; *Shoderinde vs. Trustees in Islam* (1981) 2 SC 165; *Vaswani Trading Co. Ltd. v. Savalakh & Ors* (1972) 12 SC 77, *Amadi & Ors v. Chukwu & Ors* (pt. 12) 12 SCM 18.

Ordinarily, for an unsuccessful litigant to succeed in an application for stay of execution of judgment, he must show clearly that there exists special or exceptional circumstances showing the balance of justice in his favour. B

It is however trite law that 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. See *Okafor & Ors V. Nnaije* (1987) 4 NWLR (Pt.64) 129. C

In the instant case, as the court below had found, the trial court cannot justifiably be said to have exercised its discretion on the appellant's application arbitrarily. Indeed, the judicial power on the said application was exercised judicially and judiciously by the order that the judgment debt should be paid into an interest yielding account, which will be available with the accrued interest to whoever turns out to be entitled to the money at the end of the appeal. D E

In other words, the appellant failed to show that it was entitled to or deserving of anything better than the court gave him on his application. Otherwise, ordinarily the respondent would have wanted a total refusal of stay of execution of the judgment but the court granted a conditional stay. The court below was therefore right to have refused to interfere with the exercise of the trial court's discretion in favour of the application in a way. The law and the available facts support the order. F G

In the circumstance, I too consider this appeal lacking in merit and liable to dismissal. Accordingly, it is dismissed by me. I abide by the order on costs in the lead judgment.

---

H

**M. D. MUHAMMAD JSC**

I had a preview of the lead judgment of my learned brother Peter-Odili JSC, just delivered. I am in complete agreement that the appeal lacks merit and for the reasons hereunder provided, purely

for the sake of emphasis, and the fuller reasons articulated in the lead judgment I also dismiss the appeal.

The Enugu State High Court in its judgment of 1st April 2003 found for the respondent and ordered the appellant to pay the former the sum of Eight million naira general damages and ten thousand naira costs. The appellant applied that the trial court's judgment be stayed. The court ordered a conditional stay that the judgment sum be paid into an interest yielding account with the First Bank of Nigeria Plc Okpara Avenue Enugu in the name of that court's Assistant Chief Registrar. The principal sum and the accrued interest on same, on the determination of the appeal against the judgment of the trial court by the court below, are to be collected by the successful party.

The appellant being aggrieved appealed to the court below. The dismissal of the appeal by the court below informs the instant appeal.

The appeal challenges the lower court's exercise of discretion. An appeal from a decision made in the exercise of a trial judge's discretion is to be allowed when, in exercising his discretion the trial judge has acted under a mistake of Law, or in disregard of principle or under a misapprehension of the facts has taken into account irrelevant matters or on the ground that injustice could arise. See *Solanke v. Ajibola* (1969) 1 NMLR 253 and *Awani & 3 Ors v. Erejuwa II Olu of Warri & 4 ors* (1976) 9 - 10 SC (Re print) 271.

In the case at hand, the lower court's affirmation of the trial court's exercise of discretion that is not bedeviled by any of the vices the occurrence of which entitles an appellate court to interfere, remains unassailable. The appeal before us must accordingly fail and I so hold.

I abide by the consequential orders made in the lead judgment including the order on costs.

H