

IN THE HIGH COURT OF JUSTICE  
IN THE AGENEBODE JUDICIAL DIVISION  
HOLDEN AT AGENEBODE  
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,  
JUDGE, ON MONDAY THE  
17<sup>TH</sup> DAY OF JULY, 2017.

SUIT NO.HAG/17/2016

BETWEEN:

ESHIESHI ANDREW .....CLAIMANT/RESPONDENT

AND

1. ADENIYI OLUSHOLA
2. JULIUS BERGER NIGERIA PLC .....DEFENDANTS/APPLICANTS

SUIT NO.HAG/18/2016

BETWEEN:

GIWA FRIDAY .....CLAIMANT/RESPONDENT

AND

1. ADENIYI OLUSHOLA
2. JULIUS BERGER NIGERIA PLC.....DEFENDANTS/APPLICANTS

SUIT NO.HAG/19/2016

BETWEEN:

BILLA SALIU .....CLAIMANT/RESPONDENT

AND

1. ADENIYI OLUSHOLA
2. JULIUS BERGER NIGERIA PLC.....DEFENDANTS/APPLICANTS

SUIT NO. HAG/20/2016

BETWEEN:

ALDOPHUS YAKUBU.....CLAIMANT/RESPONDENT

AND

1. ADENIYI OLUSHOLA
2. JULIUS BERGER NIGERIA PLC.....DEFENDANTS/RESPONDENTS

### RULING

This is a ruling in respect of a motion for stay of proceedings of consolidated Suits Nos: HAG/17/2016, HAG/18/2016, HAG/19/2016, and HAG/20/2016.

By an order of this Court made on the 28<sup>th</sup> of February, 2017, the four suits were consolidated.

As it is settled law that consolidated suits retain their separate identities, the motion for stay of proceedings of each suit will be considered separately in this Ruling.

#### SUIT NO.HAG/17/2016:

The Claimant instituted this suit by a writ of summons dated 7/10/2016 and filed on 21/10/2016, against the Defendants jointly and severally claiming as follows:

- (a) A declaration that the prosecution of Eshieshi Andrew, the Claimant herein at the Magistrate's Court, Okpella in Charge No: MCO/19C/2014 at the instance of the Defendants is malicious;
- (b) ₦122, 056.16 (One hundred and twenty two thousand fifty six Naira, sixteen kobo) only as Claimant's loss of income per month from the 1/1/2015 until judgment is delivered; and
- (c) ₦50, 000,000.00 (fifty million naira) being general damages for the malicious prosecution of the Claimant at the Magistrate's Court, Okpella in Charge No: MCO/19C/2014.

Upon the service of the endorsed writ of summons on the Defendants, they entered a conditional appearance together with a Notice of Preliminary Objection challenging the jurisdiction of this Court. The Court overruled the preliminary objection and the Defendants/Applicants being dissatisfied with the ruling, appealed *vide* their Notice of Appeal dated 3<sup>rd</sup> of May, 2017 annexed to the affidavit in support of this motion as Exhibit B.

Sequel to the appeal, the Applicants have filed this motion, praying the Court for an order, staying further proceedings in this case pending the hearing and determination of the appeal against the ruling of this Court delivered on the 24<sup>th</sup> of April, 2017.

The motion is supported by an affidavit of four paragraphs, and two exhibits to wit: the Ruling of this Court, annexed as Exhibit A; and the Notice and Grounds of Appeal, annexed as Exhibit B. The motion is also supported by a Written Address of counsel.

At the hearing of the motion, the learned counsel for the Defendants/Applicants, O.A.Sokale Esq., leading Oluleye Sokale Esq. relied on his supporting affidavit and adopted his written address as his arguments in support of the application and urged the Court to grant their application to stay further proceedings in the substantive suit pending the outcome of their appeal.

In his Written Address, the learned counsel for the Applicants formulated a sole Issue for Determination as follows:

***“Whether the Honourable Court can stay further proceedings pending the determination of the appeal.”***

Arguing the sole Issue for Determination, learned counsel submitted that the Court has discretionary powers to grant the application to stay proceedings pending the determination of the appeal and relied on the Court of Appeal decision in the case of: ***Omololu-Thomas vs. Aderinokun (2003) FWLR (Pt.181) 1710 at 1722.***

He submitted that the issue of jurisdiction is an exceptional circumstance that will warrant the grant of a stay of proceedings pending appeal and relied on the case of: ***NNPC vs. O.E. (Nig.) Ltd. (2008) 8 NWLR (Pt.1090) 583 at 593.***

Furthermore, he submitted that one of the conditions for granting a stay of proceedings is where there is a valid appeal which is pending, competent and arguable and relied on the decision of the Court of Appeal in the case of: ***NNPC vs. O.E. (Nig.) Ltd. (2008)*** supra, at pp 617-618. He posited that the Applicants have filed such an appeal and referred the Court to the Notice of Appeal which is annexed as Exhibit B.

He finally urged the Court to grant the application and stay further proceedings in the substantive suit pending the outcome of their appeal.

Responding, the learned counsel for the Claimant/Respondent, Mrs. R.A.Odifiri relied on her Counter Affidavit of sixteen paragraphs and her Written Address in opposition to the motion. She adopted her Written Address as her arguments in opposition.

In her Written Address, the learned Claimant's Counsel also formulated a sole Issue for Determination as follows:

***“Whether the Defendants/Applicants have made out a case for the grant of a stay of proceedings in this suit.”***

Opening her arguments, learned counsel posited that the principles governing the grant of a stay of proceedings have been established by a line of judicial decisions such as: *Nigerchin Ind. Ltd. vs. Oladehin (2006) 3 FWLR (Pt.328) 4946 at 4948; N.B.N.vs. NET Ltd. (1986) 3 NWLR (Pt.31) 667; and F.R.N vs. Abacha (2008) 5 NWLR (Pt.1018) 634 at 650-652.*

She submitted that an application for stay of proceedings must be based on affidavit evidence to show some exceptional circumstances to warrant the exercise of the discretion of the Court to grant a stay of proceedings pending appeal. She maintained that the grant is based on very stringent principles laid down in decided cases such as: *Akilu vs. Fawehinmi No.2 (1989) 2 NWLR (Pt.102) 122; and Kigo (Nig.) Ltd. vs. Holman Bros (Nig.) Ltd. (1980) 5-7 S.C. 60.*

She submitted that from the affidavit evidence adduced by the Applicants, there are no exceptional circumstances to warrant the exercise of the Court's discretion in favour of the Applicants.

According to learned counsel, a stay of proceedings normally delay proceedings and it should only be granted when necessary. See: *Obi vs. Elenwoke (1998) 6 NWLR (Pt.554) 436 at 442 to 443.*

She said that the application should be refused where it is merely designed to waste time and prolong the proceedings and relied on the case of: *Mobil Production (Nig.) Ltd. vs. Ayeni (2008) 1NWLR (Pt.1067) 185 at 208.*

Learned counsel submitted that an appeal of this nature is no longer encouraged by the appellate courts. She said that the acceptable trend is for every point to be taken up at the end of the case to avoid delay and waste of time. For this view, she referred the Court to the case of: *Bosiec vs. Kachala (2006) 1 FWLR (Pt. 298) 431 at 458 to 460.*

Learned counsel further contended that the appeal is incompetent as it violates section 242(1) of the 1999 Nigerian Constitution as amended. She maintained that by virtue of the said section, no interlocutory appeal can be lodged on grounds of mixed law and facts without the leave of Court. She relied on the case of: *N.I.C vs. ACEN ins. Co.Ltd. (2007) 6 NWLR (Pt. 1031) 589 AT 602.*

She contended that the grounds of appeal are on mixed law and fact and the leave of Court was not obtained before filing same. She submitted that the appeal is incompetent and the Court should not grant a stay of proceedings and she relied on the following decisions on the point:

*N.I.C vs. ACEN INS. CO. Ltd. (2007) 6 NWLR (Pt.1031) 589 at 602; Coker vs. U.B.A Plc. (1997) 2 NWLR (Pt.490) 641 at 661; and Odonukwe vs. Ofomata (2010) 12 MJSC 1 at 17-18.*

She submitted that the Courts have cautioned that great care should be exercised when considering an application for stay of proceedings. See the case of: *Aroyewun vs COP Ogun State (2004) 44 WRN 52 at 61.*

Finally, she submitted that the application is naturally and inherently incompetent and should be struck out.

I have carefully considered the processes filed, together with the arguments of learned counsel for the parties. I observed that the issues formulated by both counsel are quite similar. In the event, I adopt the Issue for Determination of the Applicants' counsel with a slight modification as follows:

***“Whether this Court should grant a stay of further proceedings pending the determination of the appeal.”***

Before I consider the sole Issue for Determination, I think it is expedient for me to consider the objection raised by the Respondent's counsel on the competence of the appeal without the leave of Court. This objection is hinged on the combined provisions of sections 241(1) (b) and 242(1) of the 1999 Nigerian Constitution as amended.

In a nutshell, the aforesaid sections provide that where the interlocutory appeal is not on grounds of law alone, the appellant must seek leave to appeal. According to the learned counsel for the respondent, the grounds of appeal are on mixed law and fact for which the appellants require the leave of Court to appeal.

It is settled law that in determining whether a ground of appeal is a ground of law or not, it is not how the ground of appeal is christened that matters but what it complains about. Where the facts are not disputed and the only complaint is as to the way the lower court has applied the law to those established facts, then it is a ground of law. See: *Nwadike vs. Ibekwe (1987) 4 NWLR (Pt.67) 718 at 744; and Metal Construction (W.A) Ltd. vs. Migliore (1990) 1 NWLR (Pt.126) 299.*

In the instant case, there is no dispute whatsoever on the facts. What is being disputed is how this Court applied the law on the issue of jurisdiction as disclosed from the pleadings. As a matter of fact this Court has not made any finding of fact. The ruling of the Court was on a preliminary objection based on the facts as pleaded.

This clearly qualifies the grounds of appeal as purely grounds of law for which the leave of Court is not required by virtue of section 241(1) (b) of the 1999 Nigerian Constitution as amended.

The objection of the respondent's counsel on the competence of the appeal is therefore misconceived and it is overruled.

We now come to the merits of the application. The issue is whether the Applicants are entitled to a stay of proceedings pending the outcome of their appeal.

The major principles upon which the court can exercise its discretion to grant a stay of proceedings pending appeal are as follows:

1. There must be a pending appeal;
2. The appeal must be competent and arguable on its merits;
3. A stay of proceedings will be granted to preserve the res;
4. Where a stay of proceedings will cause greater hardship than when it is refused, the Court will not grant it;
5. Where a stay is likely to render the rights sought to be protected null and void, it will be refused;
6. Where an appeal raises issue of jurisdiction, it is a strong factor in support;

See the case of: *Caribbean Trading & Fidelity Corporation vs. NNPC (1991) 6 NWLR (Pt.197) 352 at 361 to 362.*

Applying the foregoing principles to the present application the strongest consideration appears to be on the principle of jurisdiction as a ground of appeal. The ruling which the Applicants are challenging on appeal is on the jurisdiction of this Court to entertain the suit. The issue of jurisdiction is fundamental to every suit.

However, I must point out that it is not the law that once jurisdiction is raised, the Court must grant an application staying proceedings. As *Niki Tobi (JCA as he then was)* pointed out in the case of: *Ojukwu vs. Onyeador (1991) 7 NWLR (Pt.203) 286 at 322:*

*“Jurisdiction does not have such a saintly immunized character or content to diffuse the entire judicial system. Merely because it is raised does not mean ‘heavens must fall’, otherwise a litigant can couch his application in the best legal phraseology in the name of jurisdiction, when the application is about non-compliance.”*

Coming to the instant application the controversy is on the jurisdiction of the National Industrial Court, a court whose jurisdiction appears to be very elastic and ever increasing. It is becoming very difficult to define the exact boundaries of the jurisdiction of that court. We will welcome more judicial pronouncements from the

appellate Courts on the matter. This appeal will be another opportunity to shed some light on this vexed subject.

It is in the light of the peculiarities of this particular appeal that I will classify the issue of jurisdiction as an exceptional circumstance in favour of this application. In the case of: *Bamaiyi vs. The State (2003) 17 NWLR (Pt.848) 47 at 51 to 52*, the Court held thus:

***“The issue of jurisdiction is a fundamental and crucial one and where it forms the basis of an appeal upon which a stay of proceedings hinges, as in the instant case, there is an irresistible temptation to grant the order.”***

Sequel to the foregoing, I think this is an appropriate case for me to exercise my discretion in favour of the Applicants. I therefore resolve the sole Issue for Determination in favour of the Applicants. The application is granted as follows:

***I hereby stay further proceedings in the substantive suit, pending the hearing and determination of the appeal against the ruling of this Court delivered on the 24<sup>th</sup> of April, 2017.***

SUIT NO.HAG/18/2016:

The Claimant instituted this suit by a writ of summons dated 7/10/2016 and filed on 21/10/2016, against the Defendants jointly and severally claiming *inter alia*: A declaration that the prosecution of Giwa Friday, the Claimant herein at the Magistrate’s Court, Okpella in Charge No: MCO/19C/2014 at the instance of the Defendants is malicious.

Upon the service of the endorsed writ of summons on the Defendants, they entered a conditional appearance together with a Notice of Preliminary Objection challenging the jurisdiction of this Court. The Court overruled the preliminary objection and the Defendants/Applicants being dissatisfied with the ruling, appealed vide their Notice of Appeal dated 3<sup>rd</sup> of May, 2017 annexed to the affidavit in support of this motion as Exhibit B.

Sequel to the appeal, the Applicants have filed this motion, praying the Court for an order, staying further proceedings in this case pending the hearing and determination of the appeal against the ruling of this Court delivered on the 24<sup>th</sup> of April, 2017.

The motion is supported by an affidavit of four paragraphs, and two exhibits to wit: the Ruling of this Court, annexed as Exhibit A; and the Notice and Grounds

of Appeal, annexed as Exhibit B. The motion is also supported by a Written Address of counsel.

At the hearing of the motion, the learned counsel for the Defendants/Applicants, O.A.Sokale Esq., leading Oluleye Sokale Esq. relied on his supporting affidavit and adopted his written address as his arguments in support of the application and urged the Court to grant their application to stay further proceedings in the substantive suit pending the outcome of their appeal.

Responding, the learned counsel for the Claimant/Respondent, Mrs. R.A.Odifiri relied on her Counter Affidavit of sixteen paragraphs and her Written Address in opposition to the motion. She adopted her Written Address as her arguments in opposition and urged the Court to refuse the application.

The arguments in the Written Addresses of both counsel are *ipsissima verba* (verbatim repetition) as in SUIT NO.HAG/17/2016. So I do not need to repeat them. Similarly, I adopt my reasoning and conclusions in my ruling in the aforesaid suit.

Consequently, the application is granted as follows:

***I hereby stay further proceedings in the substantive suit, pending the hearing and determination of the appeal against the ruling of this Court delivered on the 24<sup>th</sup> of April, 2017.***

#### SUIT NO.HAG/19/2016:

The Claimant instituted this suit by a writ of summons dated 7/10/2016 and filed on 21/10/2016, against the Defendants jointly and severally claiming *inter alia*: A declaration that the prosecution of Billa Saliu, the Claimant herein at the Magistrate's Court, Okpella in Charge No: MCO/19C/2014 at the instance of the Defendants is malicious.

Upon the service of the endorsed writ of summons on the Defendants, they entered a conditional appearance together with a Notice of Preliminary Objection challenging the jurisdiction of this Court. The Court overruled the preliminary objection and the Defendants/Applicants being dissatisfied with the ruling, appealed vide their Notice of Appeal dated 3<sup>rd</sup> of May, 2017 annexed to the affidavit in support of this motion as Exhibit B.

Sequel to the appeal, the Applicants have filed this motion, praying the Court for an order, staying further proceedings in this case pending the hearing and determination of the appeal against the ruling of this Court delivered on the 24<sup>th</sup> of April, 2017.



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At the hearing of the motion, the learned counsel for the Defendants/Applicants, O.A.Sokale Esq., leading Oluleye Sokale Esq. relied on his supporting affidavit and adopted his written address as his arguments in support of the application and urged the Court to grant their application to stay further proceedings in the substantive suit pending the outcome of their appeal.

Responding, the learned counsel for the Claimant/Respondent, Mrs. R.A.Odifiri relied on her Counter Affidavit of sixteen paragraphs and her Written Address in opposition to the motion. She adopted her Written Address as her arguments in opposition and urged the Court to refuse the application.

The arguments in the Written Addresses of both counsel are *ipsissima verba* (verbatim repetition) as in SUIT NO.HAG/17/2016. So I do not need to repeat them. Similarly, I adopt my reasoning and conclusions in my ruling in the aforesaid suit.

Consequently, the application is granted as follows:

***I hereby stay further proceedings in the substantive suit, pending the hearing and determination of the appeal against the ruling of this Court delivered on the 24<sup>th</sup> of April, 2017.***

#### SUIT NO.HAG/20/2016:

The Claimant instituted this suit by a writ of summons dated 7/10/2016 and filed on 21/10/2016, against the Defendants jointly and severally claiming *inter alia*: A declaration that the prosecution of Adolphus Yakubu, the Claimant herein at the Magistrate's Court, Okpella in Charge No: MCO/19C/2014 at the instance of the Defendants is malicious.

Upon the service of the endorsed writ of summons on the Defendants, they entered a conditional appearance together with a Notice of Preliminary Objection challenging the jurisdiction of this Court. The Court overruled the preliminary objection and the Defendants/Applicants being dissatisfied with the ruling, appealed vide their Notice of Appeal dated 3<sup>rd</sup> of May, 2017 annexed to the affidavit in support of this motion as Exhibit B.

Sequel to the appeal, the Applicants have filed this motion, praying the Court for an order, staying further proceedings in this case pending the hearing and determination of the appeal against the ruling of this Court delivered on the 24<sup>th</sup> of April, 2017.

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At the hearing of the motion, the learned counsel for the Defendants/Applicants, O.A.Sokale Esq., leading Oluleye Sokale Esq. relied on his supporting affidavit and adopted his written address as his arguments in support of the application and urged the Court to grant their application to stay further proceedings in the substantive suit pending the outcome of their appeal.

Responding, the learned counsel for the Claimant/Respondent, Mrs. R.A.Odifiri relied on her Counter Affidavit of sixteen paragraphs and her Written Address in opposition to the motion. She adopted her Written Address as her arguments in opposition and urged the Court to refuse the application.

The arguments in the Written Addresses of both counsel are *ipsissima verba* (verbatim repetition) as in SUIT NO.HAG/17/2016. So I do not need to repeat them. Similarly, I adopt my reasoning and conclusions in my ruling in the aforesaid suit.

Consequently, the application is granted as follows:

***I hereby stay further proceedings in the substantive suit, pending the hearing and determination of the appeal against the ruling of this Court delivered on the 24<sup>th</sup> of April, 2017.***

Sequel to the foregoing, the consolidated suits are adjourned *sine die*.

P.A.AKHIHIERO  
JUDGE  
17/07/17

COUNSEL:

O.A. SOKALE ESQ.....DEFENDANTS/APPLICANTS

MRS.R.A.ODIFIRI.....CLAIMANT/RESPONDENT

