

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO,

ON THURSDAY THE

14TH DAY OF MAY, 2026.

BETWEEN:

SUIT NO. B/263M/2025

ENGR. EHIGIE WILFRED OBASEKI ----- CLAIMANT/RESPONDENT

AND

1. MR. FAITH NIKORO } DEFENDANTS/APPELLANTS/APPLICANTS
2. MR. EKPEN OBASEKI }

RULING

This is a ruling in respect of a motion filed on the 30th of September, 2025 for stay of execution of the judgment delivered by the Chief Magistrate Court, in Suit No. MOR/180/2022 Between ENGR. EHIGIE WILFRED OBASEKI V. MR. FAITH NIKORO AND MR. EKPEN OBASEKI on the 29th day of August, 2025, pending the hearing and determination of the Appeal of the Defendants/Appellants/Applicants filed on the 1st day of September, 2025 against the said judgment.

In this motion, the Applicants are praying the Court for:

- 1. An Order staying the execution of the judgment of the trial Chief Magistrate Court, in suit No. MOR/180/2022 Between ENGR. EHIGIE WILFRED OBASEKI V. MR. FAITH NIKORO AND MR. EKPEN OBASEKI delivered on the 29th day of August, 2025; pending the hearing and determination of the Appeal filed on the 1st day of September, 2025 against the said judgment.***

AND for such further or other Order(s) that this Honourable Court may deem fit to make in the circumstance of this case.

The motion is supported by an affidavit of 28 paragraphs, and a Written Address of the counsel for the Defendants/Applicants.

In his Written Address, the learned counsel for the Applicant *H. I. Iyare, Esq.*, formulated a sole issue for determination as follows:

“Whether it is not in the overriding interest of justice to grant this application.”

Arguing the sole issue for determination, the learned counsel submitted that the grant or refusal of applications of this nature lies within the discretionary powers of court, which must be exercised judicially and judiciously and not arbitrarily. He argued that in exercising such discretion, the court is enjoined to take the competing rights of the parties to justice into account. He cited the Supreme Court case of **FATOYINBO V. OSADEYI (2002) 98 LRCN 1225 AT PG. 1230 PARA. OO.**

Learned counsel further cited the case of **CITYMARK (WEST AFRICA) LTD. V. L.S.D.P.C. (1998) 61 LRCN 4660 AT 4664 RATIO 1 and 4686C** where the Supreme Court held that applications for stay of execution are granted to maintain the status quo between the parties, and protect the res or subject matter of dispute, in order not to render the decision of the appellate court on the matter nugatory. He also cited the case of **IYANDA V. AMORI (2007) 37 WRN 87 AT 90 RATIO 4**, where the court held that:

“The principle behind stay of execution of a judgment lies in recognition of the court’s duty to preserve the subject matter (res) of the action, and thereby ensure that the appeal is not otherwise rendered nugatory if it is successful.”

He also further cited the case of **PROF. OLUNILOYO V. ADENIRAN (2001) 89 LRCN 2, PAGE 2554** where it was held that the special circumstance which shall receive judicial approval are when execution would;

- a. Destroy the subject matter of the proceeding;**
- b. Foist upon the court a situation of complete helplessness; or**
- c. Render nugatory any order or orders of the appeal court;**
- d. Paralyze in one way or the other, the exercise by the litigant of his constitutional right of appeal; or**
- e. Provide a situation in which even if the appellant succeeds in his appeal, there could be no return to the status quo.”**

He submitted that in the instant case, that execution of this judgment which the Applicants are seeking to stay would:

- a. Destroy the subject matter of the proceeding;**
- b. Foist upon the court a situation of complete helplessness; or**
- c. Render nugatory any order or orders of the appeal court;**
- d. Paralyze in one way or the other, the exercise by the litigant of his constitutional right of appeal; or**

Provide a situation in which even if the appellant succeeds in his appeal, there could be no return to the status quo.

Learned counsel emphasized that the Applicants have by paragraphs 17, 18, 19, and 20 of the Affidavit in support of this application deposed to the facts that the Claimant/Respondent had threatened and is still threatening to demolish the 1st Defendant/Applicant's store at No, 74C Mission Road, Benin City the moment the judgment of this court is executed, so as to ensure that the Applicants do not reap the benefits of a successful appeal, should their appeal against the judgment be determined in their favour by this honourable court.

He argued that if the execution of the judgment is not stayed, the Claimant/Respondent may carry out his threat and thereby render any decision of this honourable court in favour of the Applicants' nugatory. According to him, the grant of this application would help in protecting the res from the threatened destruction of the Claimant/Respondent.

He therefore stated that the Applicants have shown that there is need for this honourable court to protect the res/subject matter of this appeal to ensure that its judgment in this appeal is not frustrated.

Learned counsel submitted that it is in the interest of justice for the res in this appeal to be protected, and for the status quo which existed before the judgment against which this application is brought to be maintained by a grant of this application, pending the hearing and determination of the Applicants' appeal before this honorable court.

Learned counsel further emphasized that the Applicants have by paragraph 6 of the Affidavit in support of this application deposed to the fact that there exist special or exceptional circumstances why this application should be granted. He cited the case of **AJAYI V. OLADELE (1999) 7 NWLR (PT. 612) P. 560 AT 576 PARA. C** where the Court of Appeal held that what would constitute special or exceptional

circumstance vary from case to case, and that inherent matters which may, if not prevented, destroy the subject matter of the proceedings, or foist upon the appellate court a situation of helplessness, or render any order of the appellate court nugatory, or paralyze in any way the litigant's constitutional right of appeal constitute special or exceptional circumstance.

Learned counsel submitted that the courts are enjoined to grant stay of execution of judgment, which is subject of appeal, where the applicant establishes before the court, the existence of any special or exceptional circumstance which would necessitate the order of stay of execution to be made by the court. He cited the case of **FATOYINBO V. OSADEYI (SUPRA) AT PG. 1231 PARA. F – K**, where the Supreme Court held that to succeed in an application for stay of execution of a judgment, the applicant must show special or exceptional circumstance showing that the balance of justice is in his favour.

Learned counsel further posited that the Applicants have by paragraphs 10, 11, 12, and 17 of their Affidavit disclosed to this honourable court that there exist special or exceptional circumstances to warrant the grant of this application, when they deposed to the facts that the judgment which enforcement they seek to stay is such that once enforced, it would be practically impossible to revert to the status quo which existed before it was delivered; thereby rendering any decision on appeal in their favour nugatory.

Learned counsel argued that the Applicants have by their affidavit evidence shown that if the execution of the judgment of this court which they have appealed against is not stayed, the Claimant/Respondent may carry out his threat of destroying the res, thereby rendering any decision of the Appellate Court in favour of the applicants nugatory, and that the grant of a stay of execution of the judgment would help in protecting the res from the threatened destruction of the Claimant/Respondent.

Relying on the Supreme Court decision in **FATOYINBO V. OSADEYI (SUPRA)** learned counsel urged this court to grant this application on the ground that the Applicants have disclosed that there are exceptional or special circumstances why this application should be granted.

He submitted that by paragraphs 21, 22, and 24 of the Affidavit in support of this application, the Applicants have showed copiously that the balance of convenience is in their favour as the Claimant/Respondent would not suffer any loss or injustice by the grant of this application; but on the contrary, the Applicants would suffer grave and irreparable injustice if this application is refused; as a refusal of this application would render nugatory any decision in their favour on appeal.

Learned counsel further submitted that the Applicants having disclosed before court, that there exist special or exceptional circumstances to warrant the grant of this application, it would be in the overriding interest of justice to grant this application; as it would help in maintaining the status quo, and protecting the subject matter of the appeal, so as to ensure that a decision thereon in favour of the Applicants is not rendered nugatory.

Learned counsel therefore urged this court to grant this application.

In opposition to this application, the Claimant/Respondent filed a 17 paragraphs Counter – Affidavit and a written address.

In his written address, the learned counsel for the Claimant/Respondent, **Ayoola O. Eniayeye Esq.** formulated a sole issue for determination as follows:

“Whether it would be in the interest of this Honorable Court to grant an order of stay of execution of the Judgment delivered in this suit on the 29th day of August 2025.”

Arguing the sole issue, learned counsel submitted that the affidavit filed in support of this application is misleading and contains unsubstantiated assertions concocted with lies.

Learned counsel posited that the Supreme Court exposted in the case of ***Ajomale Yaduat (2)1991(5) NWLR part 191.pg 216*** that a stay of Execution of Judgment can be granted on the balance of hardship not on the balance of convenience of one party.

He argued that granting this application for stay of Execution of Judgment would bring hardship to the Claimant/Respondent who has obtained three Judgments from competent judges/courts and has been denied the benefits of reaping the fruits of his judgments.

Learned counsel submitted that the pendency of an application for stay of execution of Judgment cannot operate as a stay of execution of Judgment especially when it has not been granted. He relied on the case of ***Yaji ORS V Wonbo (2021) LPELR 54849A (CA)*** where the Court of Appeal held that an application for stay can only operate and bring about a stay when it has been granted by a Court of competent Jurisdiction staying execution and the writ of possession at the main sight of an application for stay of execution is tantamount to denying a successful litigant of the fruit of his Judgment.

Learned counsel argued that from the Counter Affidavit of the Claimant/Respondent it is evidently clear that granting this Application will cause a great injustice to the

Claimant/Respondent, and that he would not be able to reap the benefits of his judgment. He argued that from the Affidavit of the Defendant/Applicant it is abundantly clear that there are no special or exceptional circumstances that exists as stated in the Defendant/Applicant's affidavit, as the issue of ownership has been decided by the High Court in suit No: B/94/2008, and the issue of tenancy has been decided by this Honorable court. He referred to the case of *SPDC NIG LTD V AMADI(2011)LPELR-3204(SC)* where the Apex Court held that *“a stay of execution would be granted if the applicant has been able to show special and exceptional circumstances”* which the Defendant/Applicant have not been able to show.

Learned counsel therefore urged this court to refuse this application as the court cannot at this stage know or evaluate whether the Appeal of the Defendant/Applicant will be allowed. He said that granting or refusing this application is entirely at the discretion of this Honorable Court.

He concluded by urging this Court to exercise its discretion in favour of the Claimant/Respondent by dismissing this application of the Defendants/Applicants

In response to the Claimant/Respondent's counter affidavit and written address, the Defendants/Applicants filed a Further and Better Affidavit and Reply on Point of Law.

In their Reply, learned counsel submitted that on the Claimant/Respondent's contention that the Appellants cannot plead poverty or livelihood as a special or exceptional circumstances, the submission of the learned Counsel to the Claimant/Respondent is misconceived and unsustainable in law. He argued that it is trite that in an application for stay of execution, what constitutes “special or exceptional circumstances” is not limited to any rigid category.

Learned counsel submitted that the guiding principle is whether, in the particular facts of the case, refusal of a stay of execution would render the appeal nugatory or cause substantial injustice. Learned counsel cited the cases of **VASWANI TRADING CO. vs. SAVALAKH & CO. (1972) 12 SC 77**; **NIGERIAN BREWERIES PLC vs. DUMUJE (2016) 8 NWLR (Pt. 1515) 536 at 554**, where the Supreme Court held that each application must be decided on its peculiar facts and circumstances.

He posited that the Courts have recognized that where the subject matter of litigation constitutes the very means of livelihood of the Applicant, this may amount to a special circumstance deserving of protection pending appeal. He cited the case of **OKAFOR vs. NNAIFE (1987) 4 NWLR (Pt. 64) 129** where the Supreme Court

emphasized that the Court must prevent an appeal from being rendered nugatory by acts done in execution.

He also submitted that poverty is not a special ground for granting a stay of execution. However, there is an exception to the rule, and it is to the extent that where the effect will be to deprive the appellant of the means of prosecuting his appeal it becomes a special ground in granting stay of execution. In support of this learned counsel cited the case of **Vaswani Trading Co. Vs. Savalakh (Supra)**.

Learned counsel submitted that the Defendants/Applicants averment that the res constitutes his source of livelihood is not a plea of “poverty” but a material fact showing the potential for irreparable hardship and injustice should execution proceed before the determination of the appeal and that the balance of hardship is on the side of the Defendants/Applicants.

Learned counsel posited that the paramount consideration in an application of this nature is the preservation of the subject matter of the appeal and the balancing of convenience between the parties. He emphasized that the court must ensure that the appeal, if successful, is not rendered an empty victory. He cited the cases of **U.B.A. LTD vs. ODUSOTE BOOKSTORES LTD (1995) 9 NWLR (Pt. 421) 558**, and **JADESIMI vs. OKOTIE-EBOH (1986) 1 NWLR (Pt. 16) 246**.

Learned counsel further submitted that a Stay of Execution will be granted where failure of it will destroy the subject matter of the proceedings or foist upon the appellate Court, a situation of complete hopelessness or render nugatory any order or order of the court of appeal or paralyze the exercise by the litigant of his constitutional right of appeal. He cited the case of **Vaswani Trading Co. Vs. Savalakh (Supra)**.

He emphasized that it would be in the interest of justice, fairness and equity for this Honourable Court to grant a stay of execution pending appeal, to prevent irreparable harm to the Appellant and to preserve the res pending the final determination of the substantive appeal.

He further posited that the Claimant/Respondent’s reliance on a purported High Court judgement allegedly granting him possession cannot avail him. He argued that it is trite that a judgement cannot bind a person who was not a party to the proceedings and was not served with any process. He further argued that such judgement, as it relates to a non-party, is a nullity in so far as it purports to affect his rights or interest. He cited the case of **OKE vs. AIYEDUN (1986)2 NWLR (Pt. 23) 548**, where the Supreme Court held that a judgment cannot operate against a person who was not a party to the action. He also cited the case of **A. G. FEDERATIONS**

vs. A. I. C. LIMITED (2000) 79 LRCN, PG 1876, RATIO 4 where the Supreme Court held that: *“for a judgment or order to be valid against a party, he must be aware of the relief claimed and be given the opportunity to resist it”*.

Learned counsel submitted that in the present case, the Defendants/Appellants have shown by their Further and Better Affidavit that they were neither a party to the alleged High Court proceedings nor served with any processes and the purported High Court judgement does not cover property No. 74C, Mission Road, Benin City.

He therefore concluded by stating that the Respondent’s objections are unfounded in law and urged this court to discountenance same and to grant the Defendants/Applicants/Appellants application for stay of execution as prayed.

I have carefully read all the processes in this application together with the written addresses of both counsels for the parties.

It is settled law that an application for Stay of Execution of Judgment is not granted as a matter of course, rather an applicant seeking for Stay of Execution of Judgment is expected to show special and exceptional circumstances justifying a Stay of Execution. This is because a Judgment Creditor is entitled to enjoy the fruits of his Judgment and as such he should not be deprived of reaping such fruits.

In considering whether to grant an application for stay of execution of Judgment or refuse it, the Court must note that the Stay of Execution should not be sought to serve as a substitute for the Judgment denied the party. This is because as long as the Judgment of a trial Court remains and such Judgment is not manifestly wrong, an appellate Court has a right to presume that it is right until the contrary is proved. See, **BALOGUN V. BALOGUN (1969) 1 ALL NLR 349**

In considering an application for a stay of execution, the Appellate Courts in a number of decided cases have evolved some principles that will guide the courts. The paramount ones are as follows:

(a) A court has the unfettered discretion to grant or refuse a stay of execution of judgment, but such discretion must be exercised judicially and judiciously. Here, judicious connotes proceeding from or showing sound judgment, having or exercising sound judgment and marked by discretion, wisdom and good sense.

(b) A court, in granting or refusing a stay, must take into account the competing right of parties to justice, far from being biased for or against one party.

(c) A successful party is entitled to the fruits of his judgment and must not be deprived of same except in situations recognized by law.

(d) A court has to protect the judgment it has awarded to a party.

(e) A court shall strive to preserve the subject-matter of any litigation before it.

(f) A stay is never used as a substitute for obtaining a judgment which a court has denied a party.

See the following decisions: *Ajomale v. Yaduat (No. 2) (supra)*; *Okafor v. Nnaife (1987) 4 NWLR (pt. 64). 129*; *T. S. A. Ind. Ltd. v. Kema Inv. Ltd. (2006) 2 NWLR (Pt. 964), 300*; *NNPC v. Famfa Oil Ltd. (2009) 12 NWLR (pt. 1156) 462*; and *IBIYEYE & ANOR V. GOLD & ORS (2012) LPELR-9757(CA) (PP. 36-38 PARAS. C)*.

I will bear all these principles in mind while attending to this application.

In the instant application, in the affidavit in support of the application, the Applicant deposed to some facts which are succinctly stated as follows:

- 1. That the learned trial Chief Magistrate in the said judgment ordered that I should deliver up possession of my rented apartment to the Claimant/Respondent, who is not my landlord on or before Sunday the 31st day of August, 2025. The Certified True Copy of the said judgment is hereby attached as "Exhibit B".*
- 2. That there exist special or exceptional circumstances why this application should be granted.*
- 3. That I carry out my business, which is the source of my livelihood, at the premises which the trial Chief Magistrate Court in its judgment in respect of which this application is made, ordered me to vacate from.*
- 4. That I intend to finance my appeal against the said judgment, with the proceeds from my business at the premises where this court ordered me to vacate from, as my business thereat is my only source of livelihood.*
- 5. That the execution of the judgment of the trial Chief Magistrate Court if not stayed would paralyse my constitutional right of appeal.*
- 6. That the judgment is such that once enforced, it would be practically impossible to revert to the status quo which existed before it was delivered.*
- 7. That owing to the fact stated in paragraph 10 above, any decision reached by this honourable court in my favour in this appeal would be rendered nugatory, unless this application is granted.*
- 8. That the execution of the judgment of the trial Chief Magistrate Court would foist upon this honourable court, a situation of helplessness; and render nugatory any decision or Order made in my favour or in favour of the 2nd Defendant/Appellant/Applicant in this appeal.*

9. *That there exist reasonable and arguable grounds of law in this appeal.*
10. *That there is a very strong likelihood that my appeal against the judgment in respect of which this application is filed would succeed.*
11. *That the res, that is, my rented store in respect of which the Claimant/Respondent instituted the suit for recovery of possession wherein the trial Chief Magistrate Court delivered the judgment in respect of which this application for stay of execution was filed, is at No. 74C Mission Road, Benin City; and not at No. 74 Mission Road, Benin City.*
12. *That No. 74C Mission Road, Benin City where my rented store (the res) is situate, is owned by the 2nd Defendant/Applicant who is my landlord and if the execution of the judgment is not stayed, the Claimant/Respondent would use it to take over ownership of the 2nd Defendant/Applicant's property.*
13. *That the Claimant/Respondent had threatened and is still threatening to demolish the premises housing my store at No, 74C Mission Road, Benin City the moment the judgment of this court is executed, to ensure that the 2nd Defendant/Applicant and I do not reap the benefits of a successful appeal, should our appeal against the judgment, which execution I am praying this Honorable Court to stay, be determined in our favour by this honourable court.*
14. *That it is in the interest of justice for the res to be protected and for the status quo which existed before the judgment against which this application is brought to be maintained pending the determination of our appeal by this honorable court.*
15. *That if the execution of the judgment which I have appealed against is not stayed, the Claimant/Respondent may carry out his threat and hereby render any decision of this honourable court in favour of the 2nd Defendant/Applicant and I nugatory.*
16. *That the grant of a stay of execution of the judgment would help in protecting the res from the threatened destruction of the Claimant/Respondent.*
17. *That the Claimant/Respondent would not suffer any loss or injustice by the grant of this application.*
18. *That on the contrary, the 2nd Defendant/Applicant and I would suffer grave and irreparable injustice if this application is refused; as a refusal of this application would render nugatory any decision in our favour on appeal.*
19. *That there are arguable points of law raised in the grounds of appeal; and it would be inequitable for this application to be refused.*
20. *That the balance of convenience is in our favour.*
21. *That the grant of this application will not result in the determination of any of the issues which is subject of appeal.*

22. That the execution of the judgment, if not stayed, has the effect of unlawfully giving ownership rights over No. 74C Mission Road, Benin City (which is the property of the 2nd Defendant/Applicant) to the Claimant/Respondent.

23. That it would be in the interest of justice to grant this application.

The Applicant in his further and better affidavit also deposed to some certain facts as follows:

- 1. That the store/shop is where I use for my chemist store; a business I have been doing for over 30years.***
- 2. That I have been in this shop No. 74C, Mission Road, Benin City for up to 10years.***
- 3. That it will be impossible for me to deliver up possession within two (2) days as stated in the judgment of the Magistrate Court attached as Exhibit "B" in my supporting affidavit.***
- 4. That part of the money calculated as my rent by the Claimant was used to erect and expand my shop and which money has not expired at the time the 2nd Defendant/Applicant claim ownership of the house wherein my store is, as it was shared to 2nd Defendant/Applicant as his inheritance.***
- 5. That I have also made payment to my landlord; the 2nd Defendant/Applicant up to the year 2026.***
- 6. That my only source of income is my shop that I am applying for stay of execution.***
- 7. That it will be more harmful to me if this stay of execution is not granted.***
- 8. That the Claimant/Respondent can be adequately compensated with mesne profit if my appeal fails.***
- 9. That if my drugs and goods are thrown out by the execution of this judgment, I will not be able to take care of my family as well as my children's education and also prosecute this appeal.***
- 10. That the 2nd Defendant/Applicant and myself have never boasted on any occasion to frustrate the Claimant/Respondent not to reap the fruit and the benefit of his judgment.***
- 11. That the judgment referred to in paragraph 7 of the Claimant/Respondent Counter Affidavit and in suit No B/94/2008 is not in any way connected with the 2nd Defendant/Applicant or myself.***
- 12. That the 2nd Defendant/Applicant and myself were never a party to suit No. B/94/2008 and did not derive our title or possession from any of the parties or their privies, agents or servant or through any person claiming through them.***

- 13. That the suit referred to in Federal High Court was a Fundamental Right Suit instituted against the Claimant/Respondent by 1st Applicant and other tenants who are not parties to this suit and no benefit whatsoever was granted to the Claimant/Respondent against me which I have frustrated the Claimant/Respondent from reaping.***
- 14. That in response to paragraph 10 of the Claimant/Respondent Counter Affidavit, I state that the store is my source of income and other tenants in the house and also the source of income to the 2nd Defendant/Applicant.***
- 15. That ownership of the property known as No. 74C, Mission Road, Benin City and the House wherein the 1st Applicant is a tenant is a subject of litigation in Suit No. B/261/2025 which was assigned to Multidoor Court with Suit No. 60/R/25. Copy of the Writ of Summons and Statement of Claim is hereby attached as Exhibit "A".***
- 16. That the Claimant/Respondent has deliberately avoided service of the above-named suit on him.***
- 17. That the Claimant/Respondent has boasted that he will use the judgment of the Magistrate court to frustrate the 2nd Defendant/Applicant suit referred to in paragraph 18 above.***
- 18. That the loss of 1st Defendant/Applicant source of income and the taken over of the 2nd Defendant's property by the Execution of the Judgment of the Magistrate Court, are special circumstances and it will paralyze our constitutional right to appeal.***
- 19. That the execution of the Magistrate Court judgment will affect the Defendants/Applicants appeal already filed before this court and the 2nd Defendant/Applicant suit referred to in paragraph 18 above***

In his counter-affidavit, the Claimant/Respondent also deposed to some facts which are summarized as follows:

- 1. That the judgment of the Magistrate Court was delivered in my favour on the 29th day of August 2025 by his worship AFE OSAMUDIAMEN ESQ., CHIEF MAGISTRATE. It's hereby attached as Exhibit "A".***
- 2. That the Ruling on motion for stay of execution judgment of the Magistrate Court was delivered in my favour on the 1st day of August 2025 by his worship AFE OSAMUDIAMEN ESQ., CHIEF MAGISTRATE. It's hereby attached as Exhibit "B".***
- 3. That Paragraph 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 of the Affidavit in support of the Respondent/Applicant /Appellant motion on notice are false and disposed to deceive and mislead this Honourable Court.***

4. *That the Defendant/Applicant/Appellant wants to frustrate, terminate, and ensure that the Claimant/Respondent does not reap the benefits of his Judgment.*
5. *That the Defendant /Applicant /Appellant has boasted several times before that they will frustrate the Claimant/Respondent not to reap the fruits and benefits of his Judgment.*
6. *That the Claimant/Respondent has gotten judgment from Edo State high court in Suit No: B/94/2008 by his Lordship HON. JUSTICE M. OJABULU IGHODALO on the 2nd Day of November 2020. It's hereby attached as Exhibit "C", wherein the issue of ownership has been determined of No. 74, Mission Road, Benin city, Edo State.*
7. *That the Claimant/Respondent has gotten judgment also from the Federal high court before in Suit No: FHC/B/CS/136/2021 by his Lordship HON JUSTICE B.O. QUADRI on the 23rd Day of May 2025. It's hereby attached as Exhibit "D".*
8. *That the Defendant/Applicant/Appellant frustrated him not to reap the fruit and benefits of his Judgments, and also trying the same thing on this Honourable Court.*
9. *That the Defendant/Applicant/Appellant cannot plead in their supported Affidavit that the res is the source of their livelihood as poverty cannot be pleaded as a special or exceptional circumstances this kind of application.*
10. *That the ownership of the property known at No. 74, Mission Road, Benin city, Edo State, and the apartment occupied by the 1st Defendant /Applicant/Appellant has been determined as a fact in Suit No: B/94/2008 at the Edo State high court of Justice. That the motion for stay of execution filed to the High court was filed the same day the Appellants motion for stay of execution was struck out at the Magistrate court.*
11. *That it would be in the interest of Justice that the Defendant/Applicant/Appellant application is refused as it's an infringement on the rights of the Claimant/Respondent to reap the fruit of his judgments.*
12. *That it would be a great miscarriage of Justice if the Application of the Defendant/Applicant /Appellant is granted.*

13. That the refusal of this application will not affect the Defendant/Applicant/Appellant from processing their appeal before this Honourable court.

14. That there is no special or exceptional circumstances that would not make the Defendant/Applicant/Appellant to continue with notice of Appeal or appeal if this application is refused.

15. That the Claimant/Respondent will suffer great loss and injustice if this application is granted against me.

It is trite law that a stay of execution merely suspends the rights of a successful party until the appeal is decided. See, ***ZABUKA (NIG.) LTD V. ADE ALAREGE & ORS. PER TSAMMANI JCA (2022) LPELR-57784(CA) (PP. 27-28, PARAS. E-A).*** Therefore, a stay of execution will only be granted if there are special or exceptional circumstances capable of rendering nugatory any order or orders of the Court of Appeal or paralyzing an order of the Court of Appeal should the Applicant succeed in his Appeal.

In ***ONUORA V. ONUORA & ORS (1999) LPELR-5694(CA)***, the Court of Appeal, per Fabiyi, JCA stated as follows;

“It must be stated right away that the grant of an order of stay of execution of a Trial Court’s order pending determination of appeal is not just decreed as a matter of course or just for the asking. The law relating to the grant is now well settled by decided authorities which leave no one in any iota of doubt. In Vaswani Trading Company v. Savalakh & Co. (1972) NSCC 692, it was, pronounced that a Court of Appeal should not grant a stay of execution unless there are special circumstances for doing so. This means 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 paralyses, in one way or the other, 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.” Per FABIYI, J.C.A (Pp. 5-7 paras. B)

It should be noted that the burden is placed entirely on the Applicant to establish the existence of the presence of the special or exceptional circumstances to enable a court grant an order for stay of execution. In specifying these special and exceptional

circumstances the Court of Appeal in *KOSOFE LG V. DEMUREN (2002) LPELR-5791(CA)* stated as follows:

I would like to state that the onus is placed squarely on the applicant to establish one or more of these principles, especially the existence of special or exceptional circumstances, and this must be shown on the face of their affidavit. See Kigo (Nig.) Ltd. v. Holman Bros (Nig.) Ltd. (1980) 5 - 7 SC 60; Shodeinde v. The Registered Trustees of The Ahmaddiya Movement-in-Islam (1980) 1 - 2 SC 163; Okafor v. Nnaife (1987) 4 NWLR (Pt. 64) 129; Henkel Chemicals Nigeria Ltd. v. Henkel K.G.A.A. (1993) 1 NWLR (Pt. 269) 356.

It is a trite law that a successful litigant should not be deprived of the fruits of his judgment as decided in Vaswani Trading Co. v. Savalakh & Co. (1972) 12 SC 77, the locus classicus on authority for stay of execution.

However, certain events occur which make the successful party to wait for a while, till the appeal filed by the judgment debtor has been disposed of. The special or exceptional circumstances which have received judicial recognition include: -

- (a) where execution will have the effect of destroying the subject-matter of the action;*
 - (b) where execution will foist on the Court especially, the Court of Appeal a situation of complete helplessness.*
 - (c) where execution will render nugatory any order or orders of the Court of Appeal;*
 - (d) where execution will paralyze the exercise by the litigant of his constitutional right to appeal;*
 - (e) where the appellant cannot be returned to his status quo if the appeal succeeds; or*
 - (f) where the appellant has an important point of law to argue on appeal.*
- Per GALADIMA, J.C.A. (Pp. 3-7 paras. D-D)*

I am of the opinion that the Applicant has succeeded in showing special or exceptional circumstances to afford him a grant of a stay of execution. Learned counsel argued that a plea of poverty does not constitute special or exceptional circumstances to warrant a grant of an order for stay of execution.

It is trite that poverty by itself is generally not regarded as a special or exceptional circumstance sufficient to warrant a stay of execution. The courts have consistently held that a successful litigant should not ordinarily be deprived of the fruits of

judgment merely because the judgment debtor claims financial hardship. However, poverty may become relevant where the applicant can show that refusing the stay would effectively deprive them of the ability to prosecute their appeal or render the appeal nugatory. See the cases of *Okafor v. Nnaife* (1987) 4 NWLR (Pt. 64) 129; *Vincent Standard Trading Co. Ltd v. Xtodeus Trading Co. Ltd* (1993) 5 NWLR (Pt. 296) 675; *Nwabueze v. Nwosu* (1988) 4 NWLR (Pt. 88) 257.

The judgment sought to be stayed is executory rather than declaratory. The judgment directs the Applicant to deliver up possession of the shop from which he carries on his business and source of livelihood. The Applicant has further deposed that he has occupied the said shop for several years and that execution of the judgment would lead to the destruction of the res and make it practically impossible to restore the status quo should the appeal succeed.

I have carefully considered the affidavit evidence before this court. I am mindful of the fact that a successful litigant ought not ordinarily to be deprived of the fruits of his judgment. However, I am equally mindful of the settled principle that where the execution of a judgment would render the appeal nugatory or create a situation where there can be no return to the status quo ante, the court is entitled to intervene in the interest of justice.

The Applicants have deposed that the shop in question constitutes the 1st Applicant's means of livelihood and source of funding for the prosecution of the appeal and that eviction prior to determination of the appeal may irreversibly disrupt both the res and the Applicants' ability to effectively prosecute the appeal. The Applicants also contend that there exists a dispute as to the identity and ownership of the property, particularly whether the property in issue is No. 74 Mission Road or No. 74C Mission Road, Benin City. Furthermore, there is evidence before the court that another suit touching on the ownership of the property is pending before a court of competent jurisdiction.

All these facts are not determined conclusively at this stage but are sufficient enough to justify preservation of the res. While this court will refrain from making pronouncements on issues that touch on the substantive appeal, I am of the view that the peculiar facts disclosed by the Applicants constitute exceptional circumstances warranting the preservation of the res pending the determination of the appeal. If execution proceeds and the Applicants are evicted from the premises, and the property altered or demolished as alleged, the appeal may ultimately be rendered nugatory even if successful.

I have also considered the argument of the learned counsel for the Respondent that the Applicants merely seek to frustrate the Respondent from enjoying the fruits of

his judgment. While that concern is legitimate, the law imposes on the court a duty to balance the competing rights of both parties in a manner that best serves the interest of justice.

In the circumstances of this case, I am satisfied that the balance of justice tilts in favour of preserving the subject matter pending the hearing and determination of the appeal. Thus, without pronouncing on the merits of the substantive appeal, I am satisfied that the Applicants have disclosed arguable grounds of appeal and sufficient exceptional circumstances showing that refusal of a stay may render the appeal nugatory.

Consequently, this application succeeds and the Defendants/Appellants/Applicants are granted the following relief:

An Order staying the execution of the judgment of the trial Chief Magistrate Court, in suit No. MOR/180/2022 Between ENGR. EHIGIE WILFRED OBASEKI V. MR. FAITH NIKORO AND MR. EKPEN OBASEKI delivered on the 29th day of August, 2025; pending the hearing and determination of the Appeal filed on the 1st day of September, 2025 against the said judgment.

I make no order as to costs.

P.A. AKHIHIERO
JUDGE
14/05/26

COUNSEL:

H.I. IYARE ESQ. -----DEFENDANTS/APPELLANTS/APPLICANTS

AYOOLA O. ENIAYEYE ESQ. -----CLAIMANT/RESPONDENT