IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

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

ON TUESDAY THE 16TH

DAY OF DECEMBER, 2025.

BETWEEN: ***SUIT NO. HUB/9/2010***

1. JOSEPH IMENYUKHU
2. JOHN EMHONYUA } ***CLAIMANTS/RESPONDENTS***
3. ELDER OKOSODO AIBIAZE
4. LUCKY EHI-DOUGLAS EHIDIAMEN

AND

1. EMMANUEL EHICHIOYA IMHADOJIEMU } ***DEFENDANT/APPLICANT***
(Also referred to as LUCKY EHICHIOYA IMHADOJIEMU EHIDIAMEN)

2. THE EXECUTIVE GOVERNOR OF EDO STATE
3. THE EXECUTIVE COUNCIL OF THE GOVERNMENT OF EDO STATE
4. ATTORNEY GENERAL AND COMMISSIONER FOR JUSTICE, EDO STATE } ***DEFENDANTS/RESPONDENTS***
5. COMMISSIONER FOR LOCAL GOVERNMENT AND CHIEFTAINCY AFFAIRS, EDO STATE

RULING

This is a ruling in respect of a motion filed on the 31st of October, 2025 for stay of execution of the judgment delivered by this Court in this case on the 30th day of October, 2025.

In this motion, the Applicant is praying the Court for the following orders:

1) ***AN ORDER FOR STAY OF EXECUTION of the Judgment delivered by this Honourable Court on the 30th day of October, 2025 in this Suit No. HEUB/9/2010 pending the hearing and determination of the Appeal filed by the 1st Defendant/Applicant to the Court of Appeal, Benin Division;***
2) ***AN ORDER restraining the Respondents, their agents, servants, privies, or any person acting through or under them, from giving effect to, or taking any steps to enforce, execute, or implement the said Judgment, pending the determination of the said appeal; and***
3) ***And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of the case.***

The motion is supported by an affidavit of 13 paragraphs, and a Written Address of the counsel for the Defendant/Applicant.

In his Written Address, the learned counsel for the Applicant ***Dan Ose Okoh, Esq., S.A.N.*** formulated a sole issue for determination as follows:

"Whether the Applicant herein is entitled to an Order for Stay of Execution of the Judgment of this Honourable Court pending the determination of the appeal to the Court of Appeal."

Arguing the sole issue for determination, the learned counsel posited that ***Order 55 Rule 1 of the High Court of Edo State (Civil Procedure) Rules, 2018*** states that:

> ***"Where any application is made to the court for stay of execution or of proceedings under any judgment or decision, appealed from such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or proceedings is sought".***

He stated that in order to succeed in an application for stay of execution, the Applicant must show first and foremost, that there is a pending appeal against the judgment the execution of which is sought to be stayed. He therefore submitted that an appeal is already pending against the said judgment, and referred to paragraph 6 of the affidavit in support and Exhibit "A" which is a copy of the Notice of Appeal

Learned counsel submitted that there is a compelling need to stay execution of the judgment of this Court in order to protect and not to render the Applicant's appeal nugatory. He also submitted that the principles that govern application for stay of execution of judgment pending appeal are now very well settled. He stated that the basic principles are as follows:

a) That the Applicant must show special or exceptional circumstance.

b) That unless the order for stay is granted, the res or subject matter would be destroyed.

c) That the appeal would be rendered nugatory if stay of execution is not granted.

d) That a refusal of a stay would be unjust and inequitable.

e) That where the court refuses a stay in money judgment, the Appellant would be deprived of the means of prosecuting the appeal.

Learned counsel submitted that by the materials placed before this Court by the Applicant, this application has merit and ought to be granted. He maintained that the 1st Defendant/Applicant has substantial grounds of appeal to canvass before the Court of Appeal in an area where the law is recondite. Therefore, this Court ought to lean towards the grant of this application. In support of this, learned counsel cited the case of ***Balogun v Balogun (1969) ANLR 341-343*** where the apex court held as follows: -

> ***"In order to obtain a stay of execution of judgment against a successful party an applicant must show substantial reasons to warrant a deprivation of the successful party of the fruit of his judgment by the Court. Where grounds exist on the motion suggesting a substantial issue of law to be decided on the appeal in an area in which the law is to some extent recondite***

and where either side may have a decision in his favour such substantial grounds as would warrant an interference clearly exists."

Learned counsel also cited the case of ***A.M. Co (Nig) Ltd v Volkswagen (Nig) Ltd (2012) 11 NWLR (Part 1312) 405 at 112, paras D-G*** where the Court of Appeal per ***Okoro, JCA*** (as he then was) held as follows:

"The Supreme Court has clearly stated the principles guiding the grant or refusal of stay of execution pending appeal. In Vaswani Trading Co. v. Savalakh (supra) the apex court held that the fundamental principle guiding the granting or refusal of an application for stay of execution of a judgment pending the determination of an appeal against it is the existence of special circumstances. Such special circumstances would involve the consideration of some collateral circumstances, and in some cases inherent matters which may, unless the order for stay is granted, destroy the subject matter of the proceedings and foist upon the court, complete helplessness, or paralyse, 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 case succeeds in the Court of Appeal, there can be no return to the status quo. No stay of execution will be granted if to grant it might deprive the winner in the court below of the fruits of his victory. On the other hand, stay of execution should not be refused if the effect of such refusal would render the appeal nugatory, if it should be eventually successful. It has been held that if the request for stay and the subject matter of the appeal have the same substratum so that the grant of one would dispose of the other, the stay of execution should be granted. See Deduwa & Ors v. Okorodudu & Ors. (1974) 6 SC 21 at 25; Nigeria Ltd. v. Dalami (Nig.) Ltd. (supra)."

He also relied on the case of ***NC/CE NPI v Mobol & Ass. Ltd (2009) 4 NWLR (Part 1131) 267 at 286, paragraphs A-C*** where the Court of Appeal per ***Omoleye, JCA*** held as follows:

"It has always been recognised however that an applicant who can show special or exceptional circumstances may be granted a stay of execution. See the cases of Vaswani Trading Co. v. Savalakh & Co. supra and Balogun

v. Balogun (1969) 1 All NLR 349 at 351. In the latter case, the Supreme Court agreed that where the grounds of appeal raise a substantial issue of law in an area where the law is to some extent recondite and where either party could have judgment in this favour, a stay of executioü must be granted. See also the case of: Martins v. Nicannar Food Co. Ltd. (1988) 2 NWLR (PT. 74) 75."

Learned counsel posited that it is trite that a successful litigant should not be deprived of the fruit of its success. He cited the case of ***The Annot Lyle (1886) 11 P114, P116 CA***. He however stated that the courts have held that equity follows the law and therefore in deserving cases, it intervenes albeit temporarily to relieve a litigant from an obligation under a judgment, especially in cases which come within instances that are recognized as exceptional circumstances.

Learned counsel stated that a court's discretion must be exercised judicially and judiciously and posited that the Defendant/Applicant has proffered affidavit evidence pointing to exceptional circumstances in his favour. He cited the case of ***Balogun v. Balogun (1969) 1 All N.L.R 349*** where the Supreme Court laid down certain circumstances which can constitute exceptional circumstances.

Learned counsel submitted that the Court of Appeal will be put into a state of hopelessness and the appeal rendered nugatory if not stayed. In support of this he cited the case of ***M. O. Kamu Sons v. FBN Plc (1998) 11 NWLR (Pt 572) 116*** and ***Vaswani Trading Co v. Savalakh*** (supra).

Learned counsel stated that the subject matter of this appeal concerns the traditional stool of Onogie of Okhuesan, an ancient institution of great cultural and communal significance, and which is unique and incapable of being adequately compensated in damages if execution proceeds. He said that if execution of the judgment is not stayed, it would render nugatory the decision of the Appellate Court if it favours the Applicant, and that any act of execution will frustrate the appeal.

He submitted that the facts of this case disclose exceptional circumstances which should result in a favourable consideration. He therefore urged this court to grant the application.

In opposition to this application, the Claimants/Respondents filed an 18 paragraphs Counter – Affidavit and a written address.

In his written address, the learned counsel for the Claimants/Respondents, ***Prof. Bola Adekanle Esq.*** formulated a sole issue for determination as follows:

"***Whether or not from the affidavit evidence of the 1st Defendant/Applicant, special or exceptional circumstances have been shown to deprive the 4th Claimant/Respondent of the fruit of his judgment."***

Arguing the sole issue, learned counsel submitted that the Supreme Court has in numerous cases stated that the court will not make it a habit of depriving a successful party of the fruits of his victory unless special or exceptional circumstances are advanced to justify a stay of execution. He cited the case of ***Odedeyi & Ors v Odedeyi & Anor. (2000) LPELR-2202 (SC); (2000)3 NWLR (Pt 650) 655***, where the Supreme Court, per Belgore, JSC stated the principle of law as follows:

> ***"The Guiding principle is that a victorious party must not lightly be deprived of the fruit of his victory. Having won his case, he under normal circumstances, ought to be allowed execution of that Judgment unless a special circumstance is advanced to justify stay of execution."***

Learned counsel also cited the case of ***Nwabueze v Nwosu (1988) LPELR-2081 (SC); (1988) 4 NWLR (Pt 88) 257***, the Supreme Court held thus:

> *"The principles laid down in Vaswani's case supra are quite clear. It is this that a court will not as a matter of course, deprive successful litigant of the fruits of his success unless there are "very special circumstances" for doing so. At page 82 of the report (Vaswani's case) the Supreme Court went on to define what it meant by special circumstances; it state, "when it is stated that the circumstances or conditions 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 a 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 paralyze, in one way or the other the exercise by the litigant 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".

Learned counsel submitted that from the judicial authorities above, as well as numerous others, it means that stay of execution and injunction pending appeal are not granted as a matter of course, but upon hard facts showing exceptional or special circumstances. He posited that these hard facts have to be deposed to by the Applicant in his affidavit in support of his application, and it has to be real and verifiable exceptional or special circumstances, not perceived ones.

Learned counsel stated that there must be something in the hands or possession of the Applicant which he wants the court to protect pending the determination of the appeal, and it is not the ego of the Applicant that the court needs to protect.

Learned counsel further submitted that the affidavit evidence of the Applicant has not disclosed any iota of special or exceptional circumstance to enable the court to exercise its discretion in granting this application. He emphasised that the onus is on the party applying for a stay or injunction pending appeal to satisfy the court that in the peculiar circumstances of his case, a refusal of stay would be unjust and inequitable.

Learned counsel again submitted that the stool of the Onogie of Okhuesan cannot be destroyed in any way by the execution of this court's judgment because it remains in perpetuity. He further maintained that there is no way it can be said that executing this court's Judgment will foist a state of helplessness on the Court of Appeal or that there could be no return to the status quo in the unlikely event that the 1st Defendant/Applicant's appeal succeeds.

Learned counsel referred to the 1st Defendant/Applicant's deposition that the 1st Defendant/Applicant's appeal raised substantial, arguable and recondite issue of law. He submitted that having wonderful, substantial, impressive and arguable grounds of appeal is not a special circumstance for granting a stay of execution. He said that it is not every case where the grounds of appeal raise arguable point or points of law that a stay of execution will be granted, as each case will be considered on its merit.

Learned counsel stated that where the Applicant has not demonstrated that his appeal involves some substantial point of law which necessitate that the status quo be maintained pending when the appeal is determined, as in the instant case, stay will not be granted. He cited the case of ***Agbaje v Adelokun (1990) 7 NWLR (Pt 164) 595 at 611*** where the Supreme Court held as follows:

> ***"This gives a false impression that once an appellant raises a serious and recondite issue of law in his ground of appeal, then he is ipso facto entitled to a stay of execution. But it has been recognized that it is not every point of law raised in a ground of appeal that could constitute a special circumstance for the purpose of a stay execution".***

Learned counsel submitted that the issue of law which will grant a stay in the notice of appeal is the one that goes to the root of the case, such as where it is manifestly clear that the court had no jurisdiction to entertain the suit appealed against. He said that this is not the case in the instant suit.

Learned counsel cited the case of ***Prof. Olunloyo v Adeniran (2001) 89 LRCN P. 2553 at 2562GI*** where the Supreme Court held that:

> ***"If, of course, a judgment or order is patently flawed upon a fundamental vice or obviously null and void on issue of jurisdiction, that could be seen as amounting to a special circumstance upon which an appellate court may base its discretion to stay the execution of such judgment or order. This is on the rationale that a judgment or order which ex facie is shown to suffer from a fundamental vice or to have been given without jurisdiction ought not to be enforced with the unnecessary consequence of hardship imposed on the judgment debtor."***

Learned counsel submitted that a stay of execution is never used as a substitute for obtaining the judgment which the trial court has denied a party. He stated that 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. He further submitted that the applicable principle is to the effect that the court will provide adequate protection to the judgment given to a successful litigant. In support of this learned counsel cited the cases of ***T.S.A Ind. v Kema Inv.(supra); Prof. Olunloyo v Adeniran (supra)***

He therefore urged this court to refuse the 1st Defendant's application in the interest of justice.

I have carefully read all the processes in this application together with the written addresses of both counsel 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 subject matter of this appeal concerns the traditional stool of Onogie of Okhuesan, an ancient institution of great cultural and communal significance, and which is unique and incapable of being adequately compensated in damages if execution proceeds.***
2. ***That the Notice and Grounds of Appeal raise substantial, arguable, and recondite issues of law. That the Appeal from the Grounds of Appeal has reasonable chance of success and more comprehensive grounds of appeal shall be filed on receipt of copy of the record of proceedings.***
3. ***That the Respondents are planning to give effect to the judgment, and unless restrained, the Respondents may proceed to execute or implement the judgment, thereby destroying the res in dispute and rendering the pending appeal nugatory.***
4. ***That if the appeal succeeds after any execution, it would be impossible to restore the parties to their original position, and the Applicant would suffer irreparable injury.***
5. ***That the balance of convenience tilts in favour of preserving the status quo, as no prejudice would be occasioned to the Respondents by maintaining things as they stand..***

In his counter-affidavit, the 4th Claimant/Respondent also deposed to some facts which are summarized as follows:

1. ***That the traditional stool of the Onogie of Okhuesan cannot be destroyed as it remains in perpetuity;***

2. ***That the Notice of Appeal of the 1st Defendant/Applicant has not raised any strong issue that can make the appellate court to overturn the Judgment in his favour;***

3. ***That damages will be adequate as compensation in the unlikely event that 1 st Defendant/Applicant wins his appeal;***

4. ***That he has the fund to pay the 1st Defendant/Applicant damages if this application is refused and in the unlikely event the 1st Defendant wins his appeal as he is gainfully employed***

5. ***That the Appellate Court has the capacity to tell him to vacate the throne in the unlikely event 1st Defendant/Applicant's appeal succeeds.***

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;
(c) 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.

I have carefully considered the affidavit evidence of both parties as well as the submission of both learned Counsel to the parties predicated on the evidence. Guided by the principles established in Savalakh's case (supra) and after careful study of the grounds of appeal, I feel the grounds are arguable but not substantial and they do not raise recondite area of law, which needs a consideration of an appeal Court. In the instant case, the applicant has not shown special or exceptional circumstances, which vary, from case to case and which must involve a consideration of some collateral circumstances. Per GALADIMA ,J.C.A. (Pp. 3-7 paras. D-D)

I am also of the opinion that the Applicant has not shown any special or exceptional circumstances to afford him a grant of a stay of execution. The Applicant's claims are majorly declaratory in nature, and execution does not have the effect of destroying the subject-matter of the action as the subject matter as pointed out by the Claimant/Respondent, exists in perpetuity. Execution will also not render any judgement of the Court of Appeal nugatory or useless. The Applicant can be returned to the status quo if his Appeal succeeds.

In the circumstance therefore, I hold that this application lacks merit and it is dismissed with N100, 000.00 (One Hundred Thousand Naira) costs in favour of the Claimants/Respondents.

P.A. AKHIHIERO
JUDGE
16/12/25

<u>COUNSEL:</u>

DAN OSE OKOH, ESQ., S.A.N ----------DEFENDANT/APPLICANT

PROF. BOLA ADEKANLE ESQ. ----------CLAIMANTS/RESPONDENTS

DR. S. ERHAZE ----------2ND – 5TH DEFENDANTS/RESPONDENTS