

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BETWEEN:

MRS. Joyce Oduah

AND

THE INCORPORATED TRUSTEES OF THE
NIGERIAN BAR ASSOCIATION
MR. OLUMIDE Akpata
MR. JOHN Aikpokpo-Martins
DEBO ADEYEMO KAZEEM
OMBO Victor Frank-Briggs
UCHENNA Nwadialo
MERCY Ijato Agada
RAPHAEL NNAMDI Anagor
OLUKUNLE Edun
RAPULUCHUKWU Nduka
FERDINAND Naza
INSPECTOR GENERAL OF POLICE

Case No: FHC/ABJ/CS/1426/2022



Plaintiff/Respondent

- ...1ST DEFENDANT/RESPONDENT
- ...2ND DEFENDANT/ RESPONDENT
- ...3RD DEFENDANT/ APPLICANT
- ...4TH DEFENDANT/ APPLICANT
- ...5TH DEFENDANT/ APPLICANT
- ...6TH DEFENDANT/ APPLICANT
- ...7TH DEFENDANT/ APPLICANT
- ...8TH DEFENDANT/ APPLICANT
- ...9TH DEFENDANT/ APPLICANT
- ...10TH DEFENDANT/ APPLICANT
- ...11TH DEFENDANT/ APPLICANT
- ...12TH DEFENDANT/ RESPONDENT

MOTION ON NOTICE

**PURSUANT TO THE PROVISIONS OF SECTION 36 OF THE
CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS
AMENDED) ORDER 26 RULES 1 AND 2 AND ORDER 32 RULES 1 AND 2 OF
THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2019 ; AND
UNDER THE INHERENT JURISDICTION OF THE
HONOURABLE COURT**

TAKE NOTICE that this Honourable Court will be moved on the..... day of
..... 2022 at the hour of 9'0 Clock in the forenoon or so soon thereafter as
3rd-11th Defendants/Applicants may be heard for:

1. **AN ORDER** Staying Execution of the Ruling of this Honourable Court delivered per Honourable Justice A. R. Mohammed on the 23rd August 2022, pending the hearing and determination of the 3rd to 11th Defendants/Applicant's appeal which appeal was filed contemporaneously with this application.
2. **AN ORDER** Staying Further Proceedings in this Suit pending the hearing and determination of the appeal lodged by the 3rd to 11th Defendants herein.

AND FOR SUCH FURTHER or other orders as the Honourable court may deem fit to make in the circumstance.

THE GROUNDS UPON WHICH THIS APPLICATION IS BROUGHT ARE AS FOLLOWS:

1. The Applicant/Respondent filed an Originating motion before this Honourable Court, seeking declarative and injunctive reliefs against the Defendants.
2. The Honourable Court delivered a ruling in favour of the Applicant/Respondent on the 23rd August, 2022, without hearing the 3rd – 11th Defendants/ Applicants on the merit of the case, while also lacking the requisite jurisdiction to entertain the subject matter of the suit.
3. The 3rd -11th Defendant/Applicants have now filed an appeal against the said ruling vide the Notice of Appeal dated the 24th day of August 2022 and filed contemporaneously with this Motion on Notice.
4. The 3rd -11th Defendants/Applicants' Appeal against the said ruling of the Court raises strong and arguable grounds of appeal, with a real likelihood of success.
5. That the Ruling delivered by this Honourable Court on the 23rd August 2022 without according the 3rd – 11th Defendants/Applicants fair hearing is capable of rendering nugatory and a mere academic exercise the 3rd – 11th Defendants/Applicants' appeal unless an order staying the execution of the ruling is granted.

6. It is necessary in the interest of justice that the status quo and order of things existing between the parties prior to the ruling, be maintained pending the hearing and determination of the appeal against the Ruling delivered per Honourable Justice A. R. Mohammed on the 23rd August 2022.
7. It is necessary for the Court to grant the 3rd -11th Applicant's prayer for a stay of execution of the said ruling in order to protect the Applicants constitutional right to a fair hearing.
8. It is also necessary for the court to grant the 3rd - 11th Applicant's prayer for stay of proceedings in order to protect the Applicant's constitutional right to fair hearing.
9. That the court has the discretion to grant the order sought in this application.

Dated 24th day of August 2022.

C. Alaje



Chief Yusuf Asamah Kadiri, SAN, FCI Arb (UK)

- ✓ **Cornelius O. Alaje, Esq**
- Abdulhafeez Mohammad Esq.**
- Eniola Omotoye, Esq.**
- Nander Ndam, Esq.**
- Ed-David Kolawole Esq.**
- Legal Practitioners for the Appellants**
- c/o: Jackson, Etti & Edu**
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- Off Ajose Adeogun Street**
- Victoria Island, Lagos State**
- Email: asamahkadiri@nigerianbar.com**
- asamah.kadiri@jee.africa**

Phone: 01-4626841; 01-4626843; 07057759102

FOR SERVICE ON:

1. THE PLAINTIFF/RESPONDENT
C/O HIS SOLICITORS
Murtala Abdul-Rasheed, SAN,
LEGALTUXEDO & ASSOCIATES,
B3, Build Point Estate, Off Gishiri Road,
Opposite Nikon Junction, Katampe,
Abuja.
08069576551.
info@legaltuxedoandassociates.com ; ayotunde.ogunleye@nigerianbar.ng

2. 1ST AND 2ND DEFENDANT/RESPONDENT
NBA National Secretariat Abuja
Plot 1101, Mohammadu Buhari Way,
Central Business District,
FCT, Abuja.

3. 12TH DEFENDANT/RESPONDENT
INSPECTOR GENERAL OF POLICE (IGP)
NIGERIAN POLICE FORCE HEADQUARTERS,
LOUIS EDET HOUSE, SHEHU SHAGARI WAY,
AREA 11, GARKI,
FCT-ABUJA.

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT No: FHC/ABJ/CS/1426/2022

BETWEEN:

MRS. Joyce Oduah

...Plaintiff/Respondent

AND

THE INCORPORATED TRUSTEES OF THE

NIGERIAN BAR ASSOCIATION

...1ST DEFENDANT/RESPONDENT

MR. OLUMIDE Akpata

...2ND DEFENDANT/ RESPONDENT

MR. JOHN Aikpokpo-Martins

...3RD DEFENDANT/ APPLICANT

DEBO ADEYEMO KAZEEM

...4TH DEFENDANT/ APPLICANT

OMBO Victor Frank-Briggs

...5TH DEFENDANT/ APPLICANT

UCHENNA Nwadialo

...6TH DEFENDANT/ APPLICANT

MERCY Ijato Agada

...7TH DEFENDANT/ APPLICANT

RAPHAEL NNAMDI Anagor

...8TH DEFENDANT/ APPLICANT

OLUKUNLE Edun

...9TH DEFENDANT/ APPLICANT

RAPULUCHUKWU Nduka

...10TH DEFENDANT/ APPLICANT

FERDINAND Naza

...11TH DEFENDANT/ APPLICANT

INSPECTOR GENERAL OF POLICE

...12TH DEFENDANT/ RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION FOR STAY OF EXECUTION

I, Nander Ndam, Female, Adult, Legal practitioner, Nigerian Citizen of 42, Moses Majekodunmi Crescent, Off Okonjo Iweala Way, Utako, Abuja, do hereby make oath and state as follows:

1. I am a Legal Practitioner in the firm of Jackson, Etti and Edu, the firm retained by the 3rd – 11th Defendants herein by virtue of which fact I am quite conversant with all the facts deposed to herein.
2. I have the consent of the 3rd-11th Defendants/Applicants and my employers, to depose to this Affidavit.

3. That facts deposed to herein were relayed to me by the 3rd - 11th Defendants during a strategy meeting between the 3rd - 11th Defendants and our legal team through teleconferencing with the 3rd - 11th Defendants on the 23rd day of August 2022 at about 7:00pm, which I verily believe as follows:
 - i. The Applicant/Respondent filed an Originating motion before this Honourable Court, seeking declarative and injunctive reliefs against the Defendants.
 - ii. The Honourable Court delivered a ruling in favour of the Applicant/Respondent on the 23rd August, 2022, without hearing the 3rd - 11th Defendants/ Applicants on the merit of the case, and also deliberated on internal issues of the Nigerian Bar Association.
 - iii. The 3rd -11th Defendant/Applicants have now filed an appeal against the said ruling vide the Notice of Appeal dated the 24th day of August 2022 and filed contemporaneously with this application. The Notice of Appeal is hereby attached to this Affidavit as **Exhibit 1**.
 - iv. The 3rd -11th Defendant/Applicant's Appeal against the said ruling of the Court raises strong and arguable grounds of appeal, with a real likelihood of success.
 - v. It is necessary in the interest of justice that the status quo and order of things existing between the parties prior to the ruling, be maintained pending the hearing and determination of the appeal against the ruling delivered per Honourable Justice A. R. Mohammed on the 23rd August 2022.
4. This application is brought in good faith, and it will be in the interest of justice to grant the same.
5. I depose to this affidavit in good faith, consciously believing the content to be true and correct and in accordance with the Oaths Law.



DEPONENT

SWORN TO at the Federal High Court Registry, Abuja

this 25 day of August 2022.

BEFORE ME

**FEDERAL HIGH COURT REGISTRY
Commissioner For Oath**

Sign _____ Date _____

COMMISSIONER FOR OATHS

EXH 1

**IN THE COURT OF APPEAL
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

**APPEAL NO: _____
SUIT No.: FHC/ABJ/CS/1426/2022**

BETWEEN:

- 1. MR. JOHN AIKPOKPO-MARTINS
- 2. MR. DEBO ADEYEMO KAZEEM
- 3. MR. OMBO VICTOR FRANK-BRIGGS
- 4. MS. UCHENNA NWADIALO
- 5. MRS. MERCY IJATO AGADA
- 6. MR. RAPHAEL NNAMDI ANAGOR
- 7. MR. OLUKUNLE EDUN
- 8. MR. RAPULUCHUKWU NDUKA
- 9. MR. FERDINAND NAZA



190298695850

AND

- 1. MRS. JOYCE ODUAH
- 2. THE INCORPORATED TRUSTEES OF THE
NIGERIAN BAR ASSOCIATION
- 3. MR. OLUMIDE AKPATA
- 4. INSPECTOR GENERAL OF POLICE



RESPONDENTS

NOTICE OF APPEAL

TAKE NOTICE that the Appellants, being dissatisfied with the Ruling of the Federal High Court, Abuja Judicial Division, delivered by Honourable Justice A. R. Mohammed on the 23rd of August 2022, particularly the part set out in paragraph 2 hereof, hereby appeal to the Court of Appeal on the grounds set out in paragraph 3 and shall at the hearing of the Appeal seek reliefs set out in paragraph 4 hereof.

TAKE FURTHER NOTICE that the names and addresses of the persons directly affected by the Appeal are those as set out in paragraph 5, below.

1. PART OF THE RULING COMPLAINED AGAINST

The whole decision.

2. GROUNDS OF APPEAL

GROUND ONE

The learned trial Judge erred in law and truncated the Appellants' Constitutional Right to Fair Hearing when His Lordship conducted the proceedings of the Lower Court in the subject Suit No. **FHC/ABJ/CS/1426/2022** on the 23rd August 2022 and delivered a Ruling thereon on the same 23rd August 2022 in the absence of the Appellants nor a Counsel of their choice, without first ensuring prior service of the originating processes and all other processes filed by the Plaintiff in the said Suit No. **FHC/ABJ/CS/1426/2022** (now 1st Respondent) on the Appellants herein (then as 3rd to 11th Defendants at the Lower Court), and without any hearing notice issued nor served on the Appellants prior to the said proceedings of the 23rd August 2022, thereby occasioning a grave miscarriage of justice on the Appellants.

Particulars of Error:

- i. Fair hearing is a fundamental right and an essential part of the adjudication process.
- ii. The originating processes in this suit were not served on the Appellants, and the Appellants were neither in court nor represented in court when the Order was made by the trial Court.
- iii. The Appellants were not aware that the suit had been commenced at the trial court and therefore had no knowledge of any extant Motion nor the oral application made by counsel to the 1st Respondent.
- iv. The Appellants only became aware of the Ruling of the Court in the social media platforms on the 23rd August 2022.
- v. The failure of the 1st Respondent to serve the Appellants with the originating processes is a gross and flagrant breach of the right to fair hearing and has occasioned a grave miscarriage of justice against the Appellants.
- vi. The Appellants are also entitled to be issued a hearing notice of the date of the decision of the Court as this is a constitutive part of the hearing of the action.
- vii. The Lower Court's failure to serve the Appellants (then as 3rd to 11th Defendants) Hearing Notice prior to the said proceedings of 23rd August 2022 is a gross and flagrant breach of rights to fair hearing of the Appellants and, consequently has occasioned a grave miscarriage of justice against the Appellants.

GROUND TWO

The Learned Trial Judge of the Lower Court erred in law when he assumed jurisdiction over the instant Suit No. **FHC/ABJ/CS/1426/2022** and delivered the Ruling and made the Order of the 23rd August 2022, being a matter relating to the domestic affairs of the Nigerian Bar Association, without the Plaintiff/1st Respondent first exhausting the internal dispute resolution mechanisms stipulated in the **Constitution of the Nigerian Bar Association 2015 (as amended in 2021)**.

Particulars of Error:

- i. The 1st Respondent's complaint in the Originating Summons bothers on matters relating to domestic disputes in the Nigeria Bar Association.
- ii. The courts in our judicial system are restrained in relation to domestic matters of associations and such matters can only be resolved by a majority decision of its members.
- iii. The Federal High Court does not have jurisdiction to determine issues arising out of domestic matters in an association.
- iv. The grouse of the 1st Respondent is within the domestic affairs of the Nigerian Bar Association and accordingly outside the jurisdiction of the Federal High Court.
- v. The 1st Respondent's Originating Processes do not show that the 1st Respondent exhausted the internal remedies of the Association before commencing the action.
- vi. The 1st Respondent had predicated her case on the issue of suspension as General-Secretary of the Nigeria Bar Association which is a domestic issue and can only be settled by the Association.
- vii. The Trial Court's assumption of jurisdiction on the subject matter of the dispute is wrong in law and same had occasioned a grave miscarriage of justice on the Appellants.

GROUND THREE

The learned Trial Judge of the Lower Court erred in law in granting an oral application by ipse dixit submission of counsel without any materials placed before the Court with regards to the grant of mandatory injunction.

Particulars of Error:

- i. The 1st Respondent's (as Plaintiff at the Lower Court) counsel had raised an issue orally before the Court without placing any materials before the court to substantiate his claims.

- ii. There were no materials before the Trial Court to grant the order for mandatory injunction, as the 3rd to 11th Defendants had not been served.
- iii. It is incongruous in law for the trial court to grant the order of mandatory injunction while other parties are yet to be served in the case.
- iv. The submission of counsel cannot take the place of evidence.
- v. The issue of suspension or ratification thereto of the 1st Respondent are not within the issues the trial Court can take judicial notice of.
- vi. The decision of the trial court was based on conjectures, speculations and assumptions which is wrong in law.

GROUND FOUR

The learned Trial Judge of the Lower Court erred in law when he asserted jurisdiction over the Appellants herein (then as 3rd to 11th Defendants) in Suit No. **FHC/ABJ/CS/1426/2022** wherein the Court conducted the proceedings of the 23rd August 2022 and delivered a Ruling thereon that affects the legal rights of the Appellants as members of the Nigerian Bar Association and as members of both the National Executive Committee and National Executive Council of the Nigerian Bar Association, whereas the Appellants had not been served with any originating processes and other processes filed by the 1st Respondent (then as Plaintiff) at the Lower Court or any Hearing Notice or notice of the pendency of the Suit No. **FHC/ABJ/CS/1426/2022** at the Lower Court, prior to the Ruling delivered by the Lower Court on the 23rd August 2022 of the granting an oral application by ipse dixit submission of counsel without any materials placed before the Court with regards to the grant of mandatory injunction.

Particulars of Error:

1. Service of originating processes and any other processes on a party to suit is fundamental to the jurisdiction of the Court.
2. As at the time of the proceedings of the Lower Court in the Suit No. **FHC/ABJ/CS/1426/2022**, learned Trial Judge of the Lower Court knew that the Appellants (as 3rd to 11th Defendants at the Lower Court) had not been served with any originating processes and any other processes or any Hearing Notice of the pendency of the Suit, as he (the learned Trial Judge) had on the same date and during the same Court proceedings in the same Suit No. **FHC/ABJ/CS/1426/2022** granted leave to the Plaintiff/1st Respondent to serve the originating processes and other processes on the Appellants (as 3rd to 11th Defendants) by substituted means, sequel to an Ex Parte application of the Plaintiff/1st Respondent's Counsel.

3. Failure to serve originating processes and any other processes or any Hearing Notice of the pendency of the Suit No. **FHC/ABJ/CS/1426/2022** is fatal to the Suit and renders the entire proceedings pertaining to the 1st Respondents' Counsel's oral application for Mandatory Injunction and the Ruling of the Lower Court thereon on the 23rd August 2022 a nullity ab initio.

3. RELIEFS SOUGHT FROM THE COURT OF APPEAL

- a) **AN ORDER** allowing this appeal.
- b) **AN ORDER** nullifying and setting aside the entire Ruling delivered by Honourable Justice A. R. Mohammed of the Federal High Court (Abuja Judicial Division) on 23rd August 2022.

4. NAMES AND ADDRESSES OF PERSONS DIRECTLY AFFECTED BY THIS APPEAL

THE APPELLANTS:

THE 1ST APPELLANT

MR. JOHN AIKPOKPO-MARTINS
NBA National Secretariat Abuja
Plot 1101, Muhammadu Buhari Way,
Central Business District,
FCT-Abuja.

THE 2ND APPELLANT

DEBO ADEYEMO KAZEEM
NBA National Secretariat Abuja
Plot 1101, Muhammadu Buhari Way,
Central Business District,
FCT-Abuja.

THE 3RD APPELLANT

OMBO VICTOR FRANK-BRIGGS
NBA National Secretariat Abuja
Plot 1101, Muhammadu Buhari Way,
Central Business District,
FCT-Abuja.

THE 4TH APPELLANT

UCHENNA NWADIALO
NBA National Secretariat Abuja
Plot 1101, Muhammadu Buhari Way,
Central Business District,

FCT-Abuja.

THE 5TH APPELLANT

MERCY IJATO AGADA
NBA National Secretariat Abuja
Plot 1101, Muhammadu Buhari Way,
Central Business District,
FCT-Abuja.

THE 6TH APPELLANT

RAPHAEL NNAMDI ANAGOR
NBA National Secretariat Abuja
Plot 1101, Muhammadu Buhari Way,
Central Business District,
FCT-Abuja.

THE 7TH APPELLANT

OLUKUNLE EDUN
NBA National Secretariat Abuja
Plot 1101, Muhammadu Buhari Way,
Central Business District,
FCT-Abuja

THE 8TH APPELLANT

RAPULUCHUKWU NDUKA
NBA National Secretariat Abuja
Plot 1101, Muhammadu Buhari Way,
Central Business District,
FCT-Abuja

THE 9TH APPELLANT

FERDINAND NAZA
NBA National Secretariat Abuja,
Plot 1101, Muhammadu Buhari Way,
Central Business District, FCT-Abuja.

THE RESPONDENTS:

THE 1ST RESPONDENT

MRS. JOYCE ODUAH
721 ROAD, H CLOSE
FESTAC TOWN, LAGOS
OR

C/O HER SOLICITORS
Murtala Abdul-Rasheed, SAN
LEGAL TUXEDO & ASSOCIATES
3 Build Point Estate,
Off Gishiri Road,
Opposite Nikon Junction,
Katampe, Abuja, FCT.

THE 2ND RESPONDENT

THE INCORPORATED TRUSTEES OF THE NIGERIA BAR ASSOCIATION
NBA National Secretariat Abuja,
Plot 1101, Muhammadu Buhari Way,
Central Business District, FCT-Abuja.

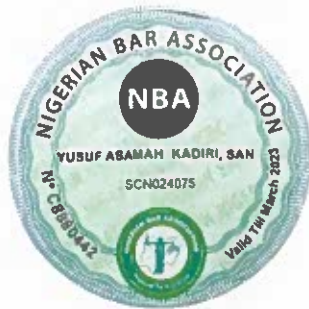
THE 3RD RESPONDENT

MR. OLUMIDE AKPATA
NBA National Secretariat Abuja,
Plot 1101, Muhammadu Buhari Way,
Central Business District, FCT-Abuja.

THE 4TH RESPONDENT

INSPECTOR GENERAL OF POLICE
NIGERIAN POLICE FORCE HEADQUARTERS,
LOUIS EDET HOUSE, SHEHU SHAGARI WAY,
AREA 11, GARKI,
FCT-ABUJA.

Dated this 24th day of August 2022



- ✓ **Chief Yusuf Asamah Kadiri, SAN, FCI Arb(UK)**
Cornelius Alaje, Esq.
Abdulhafeez Mohammad Esq.
Eniola Omotoye, Esq.
Nander Ndam, Esq.
Ed-David Kolawole Esq.
Legal Practitioners for the Appellants
3-5 Sinari Daranijo Street

**Off Ajose Adeogun Street
Victoria Island, Lagos State
Email: asamahkadiri@nigerianbar.com.ng
asamah.kadiri@jee.africa
Phone: 01-4626841; 01-4626843; 07057759102**

FOR SERVICE ON:

The Respondents

THE 1ST RESPONDENT

MRS. JOYCE ODUAH
721 ROAD, H CLOSE
FESTAC TOWN, LAGOS
OR
C/O HER SOLICITORS
Murtala Abdul-Rasheed, SAN

LEGAL TUXEDO & ASSOCIATES

3 Build Point Estate,
Off Gishiri Road,
Opposite Nicon Junction,
Katampe, Abuja, FCT.

THE 2ND RESPONDENT

THE INCORPORATED TRUSTEES OF THE NIGERIA BAR ASSOCIATION
NBA National Secretariat Abuja,
Plot 1101, Muhammadu Buhari Way,
Central Business District, FCT-Abuja.

THE 3RD RESPONDENT

MR. OLUMIDE AKPATA
NBA National Secretariat Abuja,
Plot 1101, Muhammadu Buhari Way,
Central Business District, FCT-Abuja.

THE 4TH RESPONDENT

INSPECTOR GENERAL OF POLICE
NIGERIAN POLICE FORCE HEADQUARTERS,
LOUIS EDET HOUSE, SHEHU SHAGARI WAY,
AREA 11, GARKI,
FCT-ABUJA.

**IN THE FEDERAL HIGH COURT OF NIGERIA
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SUIT No: FHC/ABJ/CS/1426/2022

BETWEEN:

MRS. Joyce Oduah

...Plaintiff/Respondent

AND

THE INCORPORATED TRUSTEES OF THE
NIGERIAN BAR ASSOCIATION

...1ST DEFENDANT/RESPONDENT

MR. OLUMIDE Akpata

...2ND DEFENDANT/ RESPONDENT

MR. JOHN Aikpokpo-Martins

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DEBO ADEYEMO KAZEEM

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OLUKUNLE Edun

...9TH DEFENDANT/ APPLICANT

RAPULUCHUKWU Nduka

...10TH DEFENDANT/ APPLICANT

FERDINAND Naza

...11TH DEFENDANT/ APPLICANT

INSPECTOR GENERAL OF POLICE

...12TH DEFENDANT/ RESPONDENT

**WRITTEN ADDRESS IN SUPPORT
OF MOTION ON NOTICE FOR STAY OF EXECUTION AND STAY OF
PROCEEDINGS**

1. INTRODUCTION

- 1.1 This is a Motion on Notice Brought Pursuant to Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and ORDER 26 RULES 1 AND 2 AND ORDER 32 RULES 1 AND 2 OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2019 of the Federal High Court (Civil Procedure) Rules, 2019 and under the Inherent

jurisdiction of the Honourable Court, and praying the honourable Court for the following orders:

1. **"AN ORDER** Staying Execution of the Ruling of this Honourable Court delivered per Honourable Justice A. R. Mohammed on the 23rd August 2022, pending the hearing and determination of the 3rd to 11th Defendants/Applicant's appeal which appeal was filed contemporaneously with this application.
 2. **AN ORDER** Staying Further Proceedings in this Suit pending the hearing and determination of the appeal lodged by the 3rd to 11th Defendants herein.
- 1.2 The Motion is supported by an affidavit deposed to by Nander Ndam, counsel representing the 3rd – 11th Defendants in this suit. Attached to the said affidavit is one exhibit marked **Exhibit 1**.

2. **BRIEF STATEMENT OF THE FACTS**

- 2.1 On the 23rd of August 2022, this Honourable Court delivered its ruling in this suit, setting aside the ratification of the suspension of the Plaintiff/Respondent by the 1st Defendant's National Executive Committee. Dissatisfied with the said ruling, the 3rd-11th Defendants/Applicants promptly appealed against the same. Exhibit 1 is a copy of the said Notice of Appeal already filed.
- 2.2 The said Notice of Appeal raises strong and arguable issues of competence of this suit, the jurisdiction of this Honourable Court, non-service and denial of the 3rd- 11th Defendants/Applicants' constitutional right of fair-hearing, among others. The 3rd -11th Defendants/Applicants now wish to exercise their constitutional right of appeal against the said ruling of the 23rd of August 2022.

3. **ISSUES FOR DETERMINATION**

It is submitted that the only issue arising for determination in this application is:

“Whether, in the circumstances of this case, the court ought to stay the execution of its ruling delivered on the 23rd of August 2022 and the entire proceedings in the instant suit, pending the determination of the appeal filed by the 3rd-11th Defendant/Applicant as comprised in the Notice of Appeal dated 24th August 2022”

4.0 ARGUMENT

4.1 Issue 1

“Whether, in the circumstances of this case, the court ought to stay the execution of its ruling delivered on the 23rd of August 2022 and the entire proceedings in the instant suit, pending the determination of the appeal filed by the 3rd-11th Defendant/Applicant as comprised in the Notice of Appeal dated 24th August 2022”

My Lord, we submit that this Honourable Court has the inherent powers and jurisdiction to grant the reliefs sought in the instant application. In the case of **AKILU V. FAWEHINMI (No. 2) (1989) 2NWLR (PT.102) 122 at 165 PARA C**, the Supreme Court held that the power to grant a stay of execution of its ruling/judgment falls within the inherent jurisdiction of the court and is determined generally by the exercise of discretion. We submit, therefore, that this Honourable Court is competent to grant this instant application.

- 2.1. My Lord, we submit that the exercise of the court’s discretion to grant Stay of the execution sought in this application is discretionary, and thus must be exercised judicially and judiciously, taking into consideration the particular circumstances of this matter. We refer this Honourable Court to the case of **OKAFOR V. NNAIFE (1987) 4 NWLR (PT. 64) 129** where the court held that whether or not to grant stay depends on the circumstances of each case.
- 2.2. My Lord, we submit that in determining and granting an application for Stay of Execution of the decision of a court, or stay of proceedings, the following principles should be considered by the Court:

- (a) Existence of a competent and arguable appeal
- (b) Whether the appeal raises an arguable or substantial issue of law.
- (c) The preservation of the res or subject matter of the litigation.
- (d) The existence of special or exceptional circumstances;
- (e) The appeal is not rendered nugatory, upon success;
- (f) The subject matter of the appeal and the request for the stay having or sharing the same substratum.

2.3. My Lord, we humbly refer the Court to the cases of **KOSOFE L.G V. DEMUREN (2003) 9 NWLR (PT 826) PAGE 435 AT 441 PARA H-C**. In the case of **ONUZULIKE V. MINISTER OF SPECIAL DITUIES (1990) 7 NWLR (PART) PAGE 252 AT 259 TO 260, PARA F-A**, the Court of Appeal per Uwaifo, JCA reinstated the aforestated principle.

2.4. We submit that where one or more of the above stated principles is proved by the applicant, the court is obliged to exercise its discretion in favour of the applicant for the stay of execution of its ruling or stay of proceedings pending the determination of the appeal. We refer this Honourable Court to the case of **KOSOFE L.G V. DEMUREN (SUPRA) AT 442 PARA C-E** where the above stated principle was restated by the court. My Lord, in view of the cogent circumstances of this case, we humbly reiterate the above-listed points as follows:

Existence of a competent and arguable appeal

2.5. My Lord, we submit that an applicant for the grant of an application for Stay of execution and stay of proceedings pending appeal has to show that he has a competent and arguable appeal. We refer the Court to the case of **KIGO (NIGERIA) LTD v. HOLMAN BROS. (NIGERIA) LTD & ANOR. (Supra)** where the Supreme Court restated the above principles. We also refer this Honourable

Court to the case of **NIGERCHIN INDUSTRIES LIMITED V. OLADEHI (2006) 13 NWLR PART 998 PAGE 536 AT 552 PARA F-G.**

- 2.6. We submit further that whether an arguable appeal exists, is deciphered by considering the grounds of the appeal filed. However, it is also the law that the applicant at this stage needs not show that the appeal will succeed. It is our submission that once it is established that the appeal is arguable, the honourable court ought to grant an order for stay of execution or stay of proceedings. We rely on the authority of **KABO AIR LIMITED V. INMCO BEVEARAGES LIMITED, (SUPRA) AT 340 PARA E-F.**
- 2.7. We humbly refer my Lord to paragraphs 3 (i) – (v) of the supporting affidavit to the instant motion with Exhibit 1 attached thereto, which paragraphs establish that the 3rd -11th Defendants/Applicants, being dissatisfied with the ruling of the honourable court delivered on the 23rd of August 2022 has lodged an appeal in the Court of Appeal comprised in Exhibit 1.
- 2.8. My Lord will observe from Exhibit 1 that the appeal has been brought on arguable grounds of seminal and substantial points of law, including issues of jurisdiction and absence of fair hearing.
- 2.9. It is our humble submission, therefore, that the 3rd- 11th Defendant/Applicant has shown that there are competent and arguable grounds of appeal upon which this Honourable Court ought to grant the instant application. We urge this Court to so hold.

Special or Exceptional Circumstances

- 2.10. My Lord, we submit that the facts of the instant application establish special and exceptional circumstances which make the grant of the reliefs sought in this application necessary. It is these actual and/or collateral circumstances of the case which ought to persuade your Lordship to direct the Plaintiff/Respondent to stay execution of the ruling delivered in her favour and the proceedings of the court, until the appeal filed has been disposed of by the Court of Appeal. We refer your Lordship to the case of **KOSOFE L.G .V. DEMUREN (SUPRA) AT 442 PARA E-H** where it was held thus:

*"It is trite law that a successful litigant should not be deprived the fruit of his judgment as decided in Vaswani Trading Co .v. Savalakh (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 the 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 the execution will paralyze the exercise by litigant of his constitutional right to appeal;***
- (e) **Where the appellant cannot be returned to the status quo if the appeal succeeds; or***
- (f) **Where the appellant has an important point of law to argue on appeal"***

2.11. We further refer the Honourable Court to the case of **OFORDEME V. ONYEBUNA (2006) 5NWLR (PT 947) PAGE 549 AT 561 PARA D-H**, and **ONUZULIKE V. MINISTER OF SPECIAL DITUIES (SUPRA) AT 261 TO 260, PARA A**, where the Court equally upheld the above stated principle.

2.12. My Lord, we submit that the circumstances in the cited authorities are evident from the facts of this case.

2.13. The constitutional right of the 3rd -11th Defendants/Applicants to appeal the decision/ruling of the court will be jeopardised if the execution of the ruling is not stayed and the ruling is then executed before the determination of the appeal. On the same vein, the rights of the Appellants would continue to be infringed upon if the proceedings are allowed to continue in this case. We submit that this situation also constitutes a special and exceptional circumstance which warrants the grant of this application for stay. We humbly

refer to the Supreme Court's decision in **VASWANI TRADING CO V. SAVALAKH (1972) NSCC VOL 7 PAGE 692 -693 LINES 49-5**

- 2.14. My Lord, the Applicants will be put in a situation of serious inconvenience, if the judgment is executed prior to the determination of the instant appeal, and the appeal is subsequently allowed. Wherefore, we urge your Lordship to grant the instant application in the interest of justice.

Preservation of the Res/Status Quo

- 2.15. My Lord, the general purpose of granting a stay of execution pending Appeal or stay of proceedings is to preserve the *res* in the case to maintain the status quo ante bellum. The Supreme Court in a plethora of judicial decisions has declared the basis of granting the order for the purposes of preserving the *res*, as well as protecting the decision of the Court of Appeal from being rendered nugatory by the execution of the judgment of the court. In the case of **SHODEINDE .V. REGISTERED TRUSTEES OF AHMADIYYA MOVEMENT-IN-ISLAM (1980) NSCC VOL 12 PAGE 70AT80 -81 LINES 35-45**, an authority for grant of stay of proceedings/execution, Idigbe, JSC cited with approval the dictum of Cotton LJ in **POLINI .V. GRAY (1897) 12 Ch.D 438 AT 446** as follows:

"It (the Court) does so (i.e. suspends, pending appeal, what it has declared to be the right of one of the litigant parties) on this ground that where there is an appeal about to be prosecuted the litigation is to be considered as not at an end, and that being so, if there is a reasonable ground of appeal, and if not making the order to stay the execution of the decree,...would make the appeal nugatory...then, it is the duty of the court to interfere and suspend the right of the party who, so far as the litigation had gone, has established his rights. That applies... as much as to the case where the action has been established, as to the case where a decree has been made to establish the plaintiff's right."

- 4.3 **Exhibit 1** is the Notice of Appeal in the instant case. The said Notice of Appeal raises strong and arguable issues as regards the competence of this suit, the jurisdiction of this Honourable Court, denial of

Defendants/Applicants' constitutional right to fair-hearing and misplacement of onus of proof, among others. It is submitted that the grounds of appeal herein show good cause why the appeal should be heard and are therefore arguable. See **Eze V. AG, Rivers 2001 18 NWLR Pt 746 524 at 567⁶** where **Karibi-Whyte, JSC** stated as follows:

"A ground of appeal raising the issue of jurisdiction of the Court cannot be ignored for any reason whatsoever."

- 4.5 By this application, the Defendants/Applicants are desirous of exercising their constitutional right of appeal. It is now settled law that a party's constitutional right of appeal ought not to be unduly fettered. See **Obikoya V. Wema Bank (supra) at 179^H** where **Oputa, JSC** stated thus:

"A right to appeal is a very important constitutional right and its exercise ought not to be unduly fettered."

- 4.7 We urge the Court to answer the sole issue herein in the affirmative.

5. CONCLUSION

On the strength of the above, we urge the Honourable Court to grant the application.

Dated 24th day of August 2022.



C. Alaje

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