

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

SUIT NO: FHC/ABJ/1426/2022

BETWEEN

MRS. JOYCE ODUAH

PLAINTIFF/RESPONDENT

AND

1. THE INCORPORATED TRUSTEES OF THE NIGERIAN BAR ASSOCIATION DEFENDANTS/APPLICANTS
2. MR. OLUMIDE AKPATA
3. MR. JOHN AIKPOKPO-MARTINS
4. DEBO ADEYEMO KAZEEM
5. OMBO VICTOR FRANK-BRIGGS
6. UCHENNA NWADIALO
7. MERCY IJATO AGADA
8. RAPHAEL NNAMDI ANAGOR /RESPONDENTS
9. OLUKUNLE EDUN
10. RAPULUCHUKWU NDUKA
11. FERDINAND NAZA
12. INSPECTOR GENERAL OF POLICE (IGP)



150698746070

DEFENDANTS

NOTICE OF MOTION

BROUGHT PURSUANT TO ORDER 32 RULES 1 & 4 (1) OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2019 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on the _____ day of _____ 2022 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel may be heard on behalf of the 2nd Defendant/Applicant ("**Applicant**") praying the Honourable Court as follows:

- I. **AN ORDER OF INJUNCTION** restraining the 1st Respondent (the “1st Respondent”), whether by herself, her agents, privies and allies, or any person acting on her behalf or with her authorisation or assistance, advice or recommendation, from taking any steps to enforce the Ruling of Honourable Justice A. R. Mohammed of this Honourable Court made on the 23 August 2022 (“**The Ruling**”), pending the hearing and final determination of the Applicant’s appeal to the Court of Appeal vide its Notice of Appeal dated 24 August 2022, against the Ruling.
- II. **ANY FURTHER ORDER(S)** as this Honourable Court may deem fit to make in the circumstances.

TAKE FURTHER NOTICE that the grounds upon which the Applicant has brought this Application are as follows:

1. By a Ruling delivered on 23 August 2022 this Honourable Court granted an order of Mandatory injunction reversing the ratification of the 1st Respondent’s suspension by the NBA-National Executive Council (“**NBA-NEC**”).
2. The Applicant, being dissatisfied with the said Ruling of this Court, has prepared and filed a Notice of Appeal dated 24 August 2022 seeking to set aside the Ruling.
3. The Notice of Appeal raises triable issues challenging the grant of the order of Mandatory injunction.
4. This Application seeks to restrain the Plaintiff from taking any steps to enforce or give effect to the Ruling pending the determination of the appeal by the Court of Appeal.
5. It is expedient that the Plaintiff is restrained by an Order of this Honourable Court pending the determination of the appeal otherwise the eventual decision of the Court of Appeal on the Applicant’s appeal may be rendered nugatory, a mere academic exercise and thus foisting on the Court of Appeal a *fait accompli*, particularly in the very likely event the Applicant’s appeal succeeds.
6. This Honourable Court has the inherent jurisdiction to grant this application and it is in the interest of justice that this application be granted.

DATED THIS 24 DAY OF AUGUST 2022



GODWIN OMOAKA, SAN, FCI Arb [signed]

MUNACHISO MICHAEL, ESQ.

FRANCIS JARIGO, ESQ.

KECHIKAMMA OMEHIA, ESQ.

Counsel to the 1st and 2nd Defendants

TEMPLARS (BARRISTERS & SOLICITORS)

6 Usuma Close

Maitama, Abuja

08037235285, 08036084166

godwin.omoaka@templars-law.com; munachi.michael@templars-law.com;

godwin.omoaka@nigerianbar.ng



FOR SERVICE ON:

1. The Plaintiff

c/o Her Counsel

Murtala Abdul-Rasheed, SAN

Ayotunde Ogunleye, Esq.

Utibeabasi J. Atan, Esq.

Jideofor Madu, Esq.

Deborah Chinyere Okonna, Esq.

Ahmad Murtala Abubakar, Esq.

Abubakar Khalifa Musa, Esq.

Chimuanya Eustacia Umeozor, Esq.

LegalTuxedo & Associates

B3, Build Point Estate

Off Gishiri Road

Opposite Nikon Junction

Katampe, Abuja

08069576551

info@legaltuxedoandassociates.com

ayotunde.ogunleye@nigerianbar.ng

2. The 3rd to 10th Defendants

NBA National Secretariat Abuja

Plot 1101, Muhammadu Buhari Way

Central Business District

FCT-Abuja

3. **The 12th Defendant**
Nigerian Police Force Headquarters
Louis Edet House, Shehu Shagari Way
Area 11, Garki
Abuja.

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

SUIT NO: FHC/ABJ/1426/2022

BETWEEN

MRS. JOYCE ODUAH

PLAINTIFF/RESPONDENT

AND

1. THE INCORPORATED TRUSTEES OF THE
NIGERIAN BAR ASSOCIATION
2. MR. OLUMIDE AKPATA
3. MR. JOHN AIKPOKPO-MARTINS
4. DEBO ADEYEMO KAZEEM
5. OMBO VICTOR FRANK-BRIGGS
6. UCHENNA NWADIALO
7. MERCY IJATO AGADA
8. RAPHAEL NNAMDI ANAGOR
/RESPONDENTS
9. OLUKUNLE EDUN
10. RAPULUCHUKWU NDUKA
11. FERDINAND NAZA
12. INSPECTOR GENERAL OF POLICE (IGP)

DEFENDANT

DEFENDANT/APPLICANT

DEFENDANTS

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, **Daniel Ugye**, Adult, Male, Christian, Nigerian citizen of 13A, A.J. Marinho Drive, Victoria Island, Lagos, do hereby make oath and state as follows:

Introduction

1. I am a Litigation Clerk with Messrs. Templars (Barristers and Solicitors), the firm of legal practitioners having the conduct of this case on behalf of the 1st Defendant/Applicant ("**Applicant**") and by virtue of my position, I am conversant with the facts deposed to in this affidavit.

2. The facts to which I depose to are facts within my personal knowledge, and where otherwise, I have stated so and verily believe the source of my information.
3. I have the authority of the Applicant as well as that of my employers to depose to this Affidavit in Support of the Notice of Motion.
4. I was informed by **Godwin Omoaka, SAN**. Lead counsel representing the Applicant in these proceedings at our offices on Tuesday, 23 August 2022 at 3pm and I verily believe the information to be true that:
 - i. On 23 August 2022, during the oral hearing of the matter, the Plaintiff/1st Respondent's (Plaintiff) counsel orally informed this Honourable Court that on 21 August 2022, the 1st and 2nd Defendants herein, acting through an organ of the 1st Defendant – the NBA-National Executive Council (NBA-NEC or the Council) took steps to allegedly alter the status quo and subject matter of the suit when the NBA-NEC approved/ratified the suspension of the Plaintiff.
 - ii. On that basis, the Plaintiff orally applied to the court to make (i) an order of mandatory injunction reversing the ratification of the Plaintiff's suspension by the Council, and (ii) an order directing the parties to revert to and maintain the status quo ante bellum.
 - iii. Issues were joined on the application and this Honourable Court delivered its ruling in favour of the Plaintiff and granted the application the prayer for a mandatory injunction reversing the ratification of the Plaintiff's suspension by the Council.
 - iv. The Applicant as a law-abiding citizen naturally respects the decision of this Honourable Court, he is nonetheless dissatisfied with the decision above and has exercised his constitutional right of appeal by filing his Notice of Appeal dated 24 August 2022. Now shown to me and attached to this affidavit as **Exhibit A1** is a certified true copy of the Applicant's Notice of Appeal.
 - v. Furthermore, that the grounds of appeal contained in the Notice of Appeal are arguable as the Notice of Appeal raises cogent and substantial issues.
 - vi. The issues raised in the Notice of Appeal which are not just germane but fundamental go create exceptional circumstances for which this Honourable Court should grant an injunction pending determination of the appeal.

5. I verily believe that if the enforcement of the ruling of this Honourable Court is not stayed or suspended pending the determination of the appeal, the Applicant's constitutional right of Appeal would be stifled, and the operation of the 2nd Respondent gravely affected by the plausible actions of the Plaintiff and the consequential loss will be immeasurable and irreparable. More so, the very likely success of the Applicant on appeal would have been rendered nugatory and of no moment.
6. I verily believe that the attitude of the Applicant in appealing the Ruling immediately after it was delivered, is most deserving of the grant of this application.
7. It is my belief that the interest of justice will be best served if this application is granted and that the Respondents will not be prejudiced by its grant.
8. That I depose to this Affidavit in good faith believing all the contents contained herein to be true, correct and in accordance with the Oaths Act.



DEPONENT

Sworn to at the Registry of the Federal High Court.
This 25 day of August 2022



IN THE COURT OF APPEAL
HOLDEN AT ABUJA

APPEAL NO:
SUIT NO: FHC/ABJ/CS/1426/2022

BETWEEN

- 1. THE INCORPORATED TRUSTEES OF THE NIGERIAN BAR ASSOCIATION
- 2. MR. OLUMIDE AKPATA

APPELLANTS

AND

- MRS. JOYCE ODUAH
- 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 (IGP)

RESPONDENTS



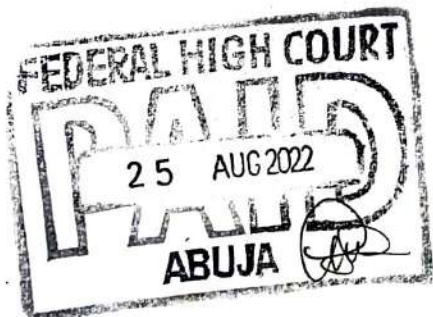
NOTICE OF APPEAL

TAKE NOTICE that the Appellants being dissatisfied with an aspect of the ruling of the Federal High Court, Abuja Division, Coram: Hon. Justice A. R. Mohammed (the "Court below") delivered on 23 August 2022, doth hereby appeal to the Court of appeal upon the ground set out in paragraph 3 and will at the hearing of the appeal seek the reliefs set out in paragraph 4 of this Notice of Appeal.

AND the Appellants further state that the names and addresses of the persons directly affected by this Appeal are those set out in paragraph 5.

2. PART OF THE DECISION COMPLAINED AGAINST

That part of the ruling where the Court below granted an order of mandatory injunction reversing the ratification of the suspension of the 1st Respondent by Nigerian Bar Association – National Executive Council (the "NBA-NEC") on 21 August 2022 stating that the act of ratification altered the subject matter of the proceedings pending before it.



1006 9868 0415

3. **GROUND(S) OF APPEAL**

GROUND 1

The Court below erred in law when it held that the approval of the suspension of the 1st Respondent by the Nigerian Bar Association – National Executive Council on 21 August 2022 altered the subject matter of the proceedings before it. (Please delete the misapplied the law and comments above)

PARTICULARS OF ERROR

- (i) The 1st Respondent's argument before the Court below was that the 1st and 2nd Defendants/Appellants ("Appellants") altered the subject matter of the proceedings before the Court below and foisted a fait accompli on the Court below when an organ of the 1st Defendant – the NBA-National Executive Council ratified the suspension of the 1st Respondent by the National Executive Committee on 21 August 2022.
- (ii) The 1st Respondent further argued that the ratification by the NBA-NEC on 21 August 2022 amounts to overthrowing the jurisdiction of the Court below to continue to adjudicate upon the proceedings pending before it.
- (iii) The subject matter of the suit has not been altered by the ratification of 21 August 2022 notwithstanding the mischaracterizations of the 1st Respondent's Counsel.
- (iv) The ratification/approval of the 1st Respondent's suspension by the NBA-NEC does not alter the subject matter of the suit which is the suspension of the 1st Respondent by the Nigerian Bar Association National Executive Committee given that the 1st Respondent had already been effectively suspended by the National Executive Committee since 15 August 2022, and that the ratification by the NBA-NEC is simply an approval in principle.
- (v) The ratification does not oust the jurisdiction of the Court below over the proceedings.
- (vi) The question of the validity of the suspension is the subject of the substantive suit which is yet to be heard. As a result, the court below is capable of completely setting aside the suspension if it finds merit in the Originating Summons.
- (vii) The Court below concluded that the ratification of the suspension by NBA-NEC on 21 August 2022 altered the subject matter of the proceedings and impugned its jurisdiction to adjudicate over the suit – a finding which is wrong.
- (viii) Ratification simply means approval or confirmation.

- (ix) The holding of the Court below failed to take into account the reliefs sought in the Originating Summons filed by the 1st Respondent on 18 August 2022 to determine the subject matter of the proceedings. In **Anekwe & Anor. v. Nweke** [2014] LPELR-22697 (SC) the Supreme Court observed to wit: *“it is pertinent and also elementary to state that a subject matter of a claim before a Court is determined on the plaintiff’s claim per the pleadings filed.”*

GROUND 2

The court below erred in law in granting the order of mandatory injunction when the conditions for the grant of an order of mandatory injunction had not been met by the 1st Respondent.

PARTICULARS OF ERROR

- i. The power of the Court to grant a mandatory injunction must like in every injunction, be exercised with the greatest possible care. Some of the circumstances in which mandatory injunction may be granted are: 1. Where the injury done to the plaintiff cannot be estimated and sufficiently compensated for by damages. 2. Where the injury to the plaintiff is so serious and material that the restoration of things to their former condition is the only method whereby justice can be adequately done. 3. Where the injury complained of is in breach of an express agreement: **Abubakar & Ors. V. Jos Metropolitan Development Board & Anor. (1997) LPELR – 5301 (CA)**.
- ii. In the instant case, the 1st Respondent did not adduce and/or satisfy any of the conditions for grant of mandatory injunction.

4. RELIEFS SOUGHT FROM THE SUPREME COURT

1. **AN ORDER** allowing this Appeal and setting aside that part of the ruling of the Court below where the Court below granted an order of mandatory injunction reversing the ratification of the suspension of the 1st Respondent by NBA-NEC on 21 August 2022 stating that the ratification altered the subject matter of the proceedings pending before it.
2. Cost of these proceedings in favour of the Appellants.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL

1. **The Appellants**
The Incorporated Trustees of the Nigerian Bar Association
Mr. Olumide Akpata
C/o their counsel
SOLOMON UMOH, SAN
EMMANUEL EKONG

The Nigerian Lawyer

SOLomon UMOH SAN & CO.

No. 4, Ejura close

Wuse 2, Abuja

AND

GODWIN OMOAKA, SAN

MUNACHISO MICHAEL

FRANCIS JARIGO

KECHIKAMMA OMEHIA

TEMPLARS

5th Floor, the Octagon

13A, A.J. Marinho Drive

Victoria Island Annexe, Lagos

AND

6 Usuma Close

Maitama, Abuja

08037235285, 08036084166

2. The 1st Respondent

c/o Her Counsel

Murtala Abdul-Rasheed, SAN

Ayotunde Ogunleye, Esq.

Utibeabasi J. Atan, Esq.

Jideofor Madu, Esq.

LegalTuxedo & Associates

B3, Build Point Estate

Off Gishiri Road

Opposite Nikon Junction

Katampe, Abuja

08069576551

info@legaltuxedoandassociates.com

ayotunde.ogunleye@nigerianbar.ng

3. 3rd – 11th Respondents

NBA National Secretariat, Abuja

Plot 1101, Mohammadu Buhari Way

Central Business District,

FCT – Abuja

4. 12th Respondent

Nigerian Police Force Headquarters

Lious Edet House, Shehu Shagari Way

Area 11, Garki

FCT – Abuja

DATED THIS 24 DAY OF AUGUST 2022



GODWIN OMOAKA, SAN, FCI Arb [signed]
MUNACHISO MICHAEL, ESQ.
FRANCIS JARIGO, ESQ.
NABILA GADUYA ESQ.
KECHIKAMMA OMEHIA, ESQ.
TEMPLARS (BARRISTERS & SOLICITORS)

6 Usuma Close
Maitama, Abuja
08037235285, 08036084166
AND

SOLOMON UMOH, SAN
EMMANUEL EKONG ESQ.
Solomon Umoh, SAN & CO.

No. 4, Ejura close
Wuse 2, Abuja

Counsel to the Appellants

godwin.omoaka@templars-law.com; munachi.michael@templars-law.com;
godwin.omoaka@nigerianbar.ng

For service on:

- The 1st Respondent**
c/o Her Counsel
Murtala Abdul-Rasheed, SAN
Ayotunde Ogunleye, Esq.
Utibeabasi J. Atan, Esq.
Jideofor Madu, Esq.
LegalTuxedo & Associates
B3, Build Point Estate
Off Gishiri Road
Opposite Nicon Junction
Katampe, Abuja.
08069576551
info@legaltuxedoandassociates.com
ayotunde.ogunleye@nigerianbar.ng
- 3rd – 11th Respondents**
NBA National Secretariat, Abuja
Plot 1101, Mohammadu Buhari Way

Central Business District,
FCT – Abuja

3. **12th Respondent**
Nigerian Police Force Headquarters
Lious 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/1426/2022

BETWEEN

MRS. JOYCE ODUAH

PLAINTIFF/RESPONDENT

AND

1. THE INCORPORATED TRUSTEES OF THE NIGERIAN BAR ASSOCIATION
 2. MR. OLUMIDE AKPATA
 3. MR. JOHN AIKPOKPO-MARTINS
 4. DEBO ADEYEMO KAZEEM
 5. OMBO VICTOR FRANK-BRIGGS
 6. UCHENNA NWADIALO
 7. MERCY IJATO AGADA
 8. RAPHAEL NNAMDI ANAGOR
 9. OLUKUNLE EDUN
 10. RAPULUCHUKWU NDUKA
 11. FERDINAND NAZA
 12. INSPECTOR GENERAL OF POLICE (IGP)
- DEFENDANT
DEFENDANT/APPLICANT
- DEFENDANTS

WRITTEN ADDRESS IN SUPPORT OF NOTICE OF MOTION DATED 24 AUGUST 2022

1.0. Introduction

- 1.1. This is the 2nd Defendant/Applicant's ("**Applicant**") written submissions in support of his Motion on Notice seeking an injunction pending appeal (the "**Application**").
- 1.2. The Application is brought pursuant to Order 32 Rule 1 and 4(1) of the Federal High Court (Civil Procedure) Rules 2019 and under the inherent jurisdiction of this Honourable Court.
- 1.3. This application is supported by an affidavit of 8 paragraphs deposed to by Daniel Ugye, a litigation clerk in the employ of Templars - the firm of legal practitioners having the conduct of these proceedings on behalf of the Applicant.
- 1.4. Simultaneously filed with the Application is this written address which contains the legal arguments in support of the Application. In arguing this Application, the Applicant shall rely on the depositions in the affidavit and the exhibits attached, as well as this written address, and shall urge this Honourable Court to grant the Application.

1.0. **Factual Background to the Application**

- 1.1. The factual background to this Application is within a very narrow compass and have been properly articulated in the affidavit of Daniel Ugye in support of this Application. The Applicant shall rely on all the paragraphs of the affidavit.

3.0. **Issue for Determination**

- 3.1. It is submitted on behalf of the Applicant that this Application raises a sole issue for determination which is:

Whether the surrounding facts and circumstances of this Application do not present a case deserving of the grant of an injunction suspending the enforcement of the ruling of this Honourable Court reversing the ratification of the 1st Respondent's suspension by the NBA-NEC pending the hearing and determination of the Applicant's appeal to the Court of Appeal?

4.0. **Arguments**

- 4.1. My Lord, in a number of cases, our superior courts have laid down the relevant materials or conditions to be satisfied by a party who applies for an injunction pending appeal. These conditions are as follows:

- i. There must be a competent and pending appeal which contains substantial and arguable grounds of law;*

ii. **Existence of legal right;**

iii. **Existence of special or exceptional circumstances;**

iv. **There is need to preserve the res so that the appeal will not be rendered nugatory;**

v. **Where greater hardship would be caused, i.e., the balance convenience is in favour of the Applicant.**

See *Oluwadare v. Unilorin* (2009) 17 NWLR (Pt. 1169) 1 at 26 paras. B-C; *A.P.K.G. Ltd. v. B.S.W.C.* (2009) 17 NWLR (Pt. 1171) 429 at 439; *Amadi v. Chukwu* (2013) 5 NWLR (Pt. 1347) 301 at 310; *Shodeinde v. Registered Trustees of the Ahmaddiyya Movement-in-Islam* (1980) 1-2 SC page 163; (1983) 2 SCNLR 284.

4.2. We submit that a review of the Applicant's case clearly shows that the Applicant has satisfied the above conditions and thus made out a case for the favourable exercise of the court's discretion by granting this application in his favour.

4.3. We shall now consider the conditions seriatim to buttress the foregoing assertion.

There is a pending appeal

4.4. In order for a court to grant an application for injunction pending appeal, there must be in existence a valid and competent notice of appeal and grounds of appeal.

4.5. In this instant, the Applicant filed a valid and competent Notice of Appeal dated 24 August 2022. See **Exhibit A1** attached to the affidavit in support of this Application.

4.6. In the case of *U.B.A. Ltd. v. Taan* (1993) 4 NWLR (Pt. 287) 368 it was held that:

"An appeal is deemed to be pending in the Court of appeal the moment the notice of appeal is filed in accordance with the rules of the court."

4.7. It is therefore submitted that the Applicant's appeal is valid and pending and this Honourable Court ought to exercise its discretion to grant an injunction pending appeal.

4.8. The grounds of appeal in the Notice of Appeal relate to the jurisdiction of this Honourable Court. We therefore submit that the Applicant has in existence a valid and pending appeal.

- 4.9. For an application for injunction pending appeal to be granted by the court, the grounds of appeal must be arguable. It is submitted that the grounds of appeal contained in the Notice of Appeal dated 24 August 2022 filed by the Applicant in this case are competent and arguable being founded on settled points of law.
- 4.10. All the grounds of appeal in the Notice of Appeal raise cogent triable issues primarily bordering on the jurisdiction of this Honourable Court to entertain the Plaintiff's oral application and the grant of the said application.
- 4.11. Undoubtedly, these grounds of appeal throw-up very contentious and arguable issues for which it is imperative that their Lordships of the Court of Appeal will need to make a pronouncement on.
- 4.12. The law is settled that for a notice of appeal to raise arguable grounds of appeal, the grounds of appeal need not have certainty of success. Once an Applicant shows that the pending appeal is arguable and has a chance of success, an application for stay would be granted. Please see **Eze v. Okolonji (1997) 7 NWLR (PT 513) page 515 @528 Para A-C**
- 4.13. We submit that the grounds contained in the Applicant's Notice of Appeal disclose *prima facie* valid and substantial issues of law to warrant the exercise of this Honourable Court's discretion in his favour.

Existence of legal right

- 4.14. In **Oluwadare v. Unilorin (supra)**, it was stated by the Court of Appeal that an applicant seeking for injunction pending appeal must first show that he has a legal right to be protected from the judgment he seeks to stay or restrain the respondent from enforcing. In **A.-G., Lagos State vs. A.-G., Federation (2004) 18 NWLR (Pt.904) P. 97-98, paras. G-B**, per TOBI, JSC, defined a legal right as follows:

What is a legal right? **A legal right, in my view, is a right recognisable in law. It means a right recognised by law and capable of being enforced by the plaintiff. It is a right of a party recognised and protected by a rule of law, the violation of which would be a legal wrong done to the interest of the plaintiff, even though no action is taken. [Emphasis added]**

4.15. The Applicant has shown in his affidavit that the grant of the application is extremely important to protect the operation of the 2nd Respondent which otherwise will be greatly jeopardized if the application is refused and the Plaintiff is allowed to proceed to enforce the Ruling of this Honourable Court, when it is most probable that the Court of Appeal will very likely find the said Ruling to be incompetent and that your Lordship did not have the jurisdiction to make such in the first place. Consequently, the Applicant's legal right over the subject matter of the appeal is therefore not in doubt.

Existence of special or exceptional circumstances/balance of convenience

- 4.16. In **Amadi v. Chukwu (supra)**, the Supreme Court restated the law that for an unsuccessful litigant to succeed in an application for stay of execution, and we dare say an injunction pending appeal, such an applicant "*must show clearly that there exists special or exceptional circumstances showing that the balance of justice is in his favour.*"
- 4.17. On the meaning of special circumstances, the court held:
- "Special circumstances involve a consideration of some collateral factors and some inherent matters such as preservation of the subject matter of litigation; need not to foist upon the court, especially an appellate court a situation of complete helplessness; or to avoid rendering nugatory any order or orders of the appellate court or to ensure that if the appeal is allowed, there could be a return to status quo ante."*
- 4.18. The law is trite that what would qualify as special or exceptional circumstance as to warrant the grant of an injunction pending appeal is usually a question of fact and is left solely to the discretion of the court. See **Odedeyi v. Odedeyi** (2000) 3 NWLR (Pt.650) 655.
- 4.19. However, the apex court has, in a plethora of cases, laid down the principle that an appeal which raises genuine issues as to the competence or jurisdiction of the trial court, qualifies as a special and exceptional circumstance deserving of the grant of a stay of execution or an injunction pending appeal. See: **Martins v Nicannar Foods Co. Ltd** (1988) 1 NWLR (Pt. 74) 75 and **Obimonure V Erinosh** (1966) 1 All NLR 250, 252-253.
- 4.20. In the circumstance My Lord, there can hardly be any argument that the Appeal raises cogent triable issues which qualify as exceptional and special circumstance deserving of the grant of an injunction pending appeal, otherwise, should the Applicant succeed on appeal, then the plausible damage done by the Plaintiff will, without doubt, be immeasurable and irreparable.

4.21. Having regard to the foregoing, it is apparent that all the grounds of appeal in the Applicant's Notice of Appeal border on the competence of this Honourable Court's Ruling. Accordingly, it is our submission in line with the avalanche of apex court decisions on the point, that the appeal raises special and exceptional circumstances deserving of the grant of an injunction pending appeal and we urge your Lordship to so hold.

There is need to preserve the res so that the appeal will not be rendered nugatory

4.22. Again, as highlighted in the **Amadi** case (*supra*), another cardinal consideration for grant of an injunction pending appeal is the need for the lower court not to render the appeal before the appellate court nugatory and foist a state of *fait accompli* on the Court of Appeal, should the Applicant's appeal succeed at the end of the day.

4.23. Indeed, the attitude of the superior Courts towards steps that could render an appeal nugatory was aptly captured in **Biocon Agrochem Ltd. v. Kudu Holdings (Pty) Ltd. (1996) 3 NWLR (Pt. 437) 373 @ 381, para C**, as follows:

Simply stated, any act which will tend to render an order of an appeal court nugatory will vigorously be resisted. [Emphasis supplied]

4.24. We therefore urge this Honourable Court to graciously exercise its discretion judicially and judiciously by granting this Application for an injunction pending appeal. This Honourable Court, it is submitted, owes a duty to the Court of Appeal not to pre-empt its judgement or take any steps which has the tendency to render such judgment nugatory. As such, this Court is respectfully but vigorously urged to resist any step that has the potential to do so.

Irreparable loss or damage

4.25. It is trite that where an award of damages cannot adequately compensate an applicant for the injury he is likely to suffer before the determination of the appeal, the application ought to be granted to await the determination of the appeal. Please see **Adamu v. A-G Nassarawa State (2007) 6 NWLR (Pt. 1031) 485 at 492 para G**.

4.26. Flowing from the foregoing submissions in the preceding paragraphs, there can hardly be any argument that an enforcement of the decision of the court will have very devastating effect on the operations of the 2nd Respondent.

4.27. Accordingly, it is expedient and in the interest of justice that this application is granted. The Applicant therefore urges Your Lordship to hold that the Applicant's situation is one worthy of the grant of this application.

5.0 Conclusion

5.1 The Applicant has shown facts and adduced authorities that overwhelmingly meet the requirements for a favourable exercise of this Honourable Court's discretion to grant an injunction pending appeal.

5.2 We therefore pray this Honourable Court to oblige the Applicant and grant the injunction restraining the Plaintiff from giving effect to the Ruling made by this Honourable Court on 23 August 2022, pending the hearing and final determination of the Applicant's appeal to the Court of Appeal.

DATED THIS 24 DAY OF AUGUST 2022



GODWIN OMOAKA, SAN, FCI Arb [signed]

MUNACHISO MICHAEL, ESQ.

FRANCIS JARIGO, ESQ.

KECHIKAMMA OMEHIA, ESQ.

Counsel to the 1st and 2nd Defendants/Applicants

TEMPLARS (BARRISTERS & SOLICITORS)

6 Usuma Close

Maitama, Abuja

08037235285, 08036084166

godwin.omoaka@templars-law.com; munachi.michael@templars-law.com;

godwin.omoaka@nigerianbar.ng



FOR SERVICE ON:

1. The Plaintiff

c/o Her Counsel

Murtala Abdul-Rasheed, SAN

Ayotunde Ogunleye, Esq.

Utibeabasi J. Atan, Esq.

Jideofor Madu, Esq.

The Nigerian Lawyer
Deborah Chinyere Okonna, Esq.
Ahmad Murtala Abubakar, Esq.
Abubakar Khalifa Musa, Esq.
Chimuanya Eustacia Umeozor, Esq.
Legal Tuxedo & Associates
B3, Build Point Estate
Off Gishiri Road
Opposite Nikon Junction
Katampe, Abuja
08069576551
info@legaltuxedoandassociates.com
ayotunde.ogunleye@nigerianbar.ng

2. **The 3rd to 10th Defendants**

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

3. **The 12th Defendant**

Nigerian Police Force Headquarters
Louis Edet House, Shehu Shagari Way
Area 11, Garki
Abuja.