

**IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA**  
**IN THE PORT HARCOURT MAGISTERIAL DISTRICT**  
**HOLDEN AT PORT HARCOURT**  
**RESUMED ON WEDNESDAY THE 19<sup>TH</sup> DAY OF FEBRUARY, 2025**  
**BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ, SENIOR MAGT. GD. I**  
**HOLDEN AT SMALL CLAIMS COURT 6 PORT HARCOURT**

**PMC/SCC/259/2024**

**BETWEEN**

**ALI MUSTAPHA**

—

**CLAIMANT/RESPONDENT**

**AND**

**ACCESS BANK**

—

**DEFENDANT/APPLICANT**

**RULING**

The Applicant herein filed a Motion on Notice dated and filed 5-2-25, the motion is brought pursuant to Order 15 Rules 6(2) of the Rivers State Magistrates Court Rules, 2007 and the inherent jurisdiction of this court. The motion is seeking for an order of this Honourable court staying the execution of the judgement of this Honourable Court delivered on the 14<sup>th</sup> day of January, 2025.

And for such further order or orders as this Honourable Court may deem fit to make in the circumstance.

The grounds on which the application is brought is stated on the face of the motion paper. The said motion is supported by a 14 paragraph affidavit and one Exhibit, Exhibit "A" being a notice of appeal and in line with the rules of this court the applicant counsel also filed a written address on same date as the motion, wherein the Applicants counsel raised a lone issue for determination. The Respondent herein in opposition to the applicant's motion filed a 7 paragraph counter affidavit on 10-02-25, the counter affidavit also has a written address filed on same day, the counsels in their written addresses raised one issues for determination each.

The application and the counter affidavit in opposition were adopted on 13-02-25 with the applicants counsel asking the court to grant her application in the interest of justice. While the the Respondents counter affidavit and written address were deemed adopted in the absence of the respondents counsel .

From the issues raised by the counsels in their respective written addresses I shall raise a sole issue for determination to wit :

***Whether giving the facts and circumstances of this application this court can order as prayed by the Applicant?***

The sole relief of the applicant in this application is one for stay of Execution of the Judgement of this court delivered on 14<sup>th</sup> day of January, 2025,

A stay of execution is an equitable remedy,an order for stay of execution is a discretionary matter and as with all exercise of discretion , it must be done judiciously and judicially.

There are a plethora of cases and guiding principles when it comes to an order of stay of execution, with locus classicus in Nigeria being the case of **Vaswani Trading Co. Ltd v Savalakh & co (1972) All NLR 922.**

Counsels in their written addresses have stated some of the guiding principles and for want of time and space I shall not repeat them, but limit my ruling to the two guiding principles that I consider germane in the circumstances of this case which are that the applicant must show that (1) that there is high chance of success of the appeal (2) that if the application for stay is not granted the subject matter of the proceeding will be destroyed or it will foist helplessness on the court or render nugatory any order or orders of the appeal court. See **Akilu v Oduntan & ors (1991) 5 NWLR (pt 171) Pg 1.**

This is an application for stay of execution on a judgement for liquidated money sum of this court

On the principle guiding stay of money judgement, the only ground for grant of a stay of execution is an affidavit showing that if the damages and cost were paid there would be no reasonable probability of getting them back if the appeal succeeds.

This raises a substantial ground and it can be considered as a special circumstance.

**. D T N PLC V KUSAMOTU (2002) 15 NWLR (Pt 790) 401**

In the instant case I find in the paragraphs of the affidavit in support of the application particularly in paragraphs 6 and 7 thereof that the applicant has shown special circumstance why this application should be granted. Particularly as the respondent has not shown anywhere in his affidavit that he is credit worthy.

In totality, though I find that the Applicant has merit and same is granted as prayed.

I make no further orders

Dated this 19<sup>th</sup> day of February, 2025

Signed:  
S.S.IBANICHUKA ,ESQ.  
19/02/2025.

