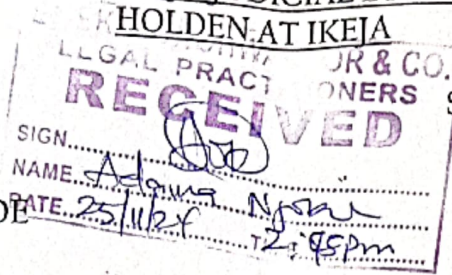


IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION

HOLDEN AT IKEJA



SUIT NO.ID/7480GCM/2023

BETWEEN

1. HON. ABAYOMI ODE
2. MRS HENRIETTA ODE CLAIMANTS /RESPONDENT

AND

1. LEKKI GARDENS LIMITED DEFENDANT/RESPONDENT
2. MERIDIAN PARK ESTATE DEFENDANT/APPLICANT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 43 RULES 1 ORDER 58 RULES 1 OF THE
HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2012 AND
UNDER THE INHERENT JURISDICTION OF THE COURT

TAKE NOTICE that this Honourable Court shall be moved on the ___ day of _____ 2024 at 9 O'clock in the forenoon or so soon thereafter as counsel may be heard on behalf of the Judgment Debtors/Applicant for the following orders::

AN ORDER of stay of execution of the judgment of this Honourable Court delivered in this suit on 9th October, 2024, including AN ORDER for stay of execution of the order of this Honourable Court directing the 2nd Defendant to deliver a unit of 4 - Bedroom terrace duplex with 1 room boys' quarters (Off Plan Basis) at The Paradise Court by chevron to the Claimants/Respondents; quashing the letter dated 7th August, 2023 for being mischievous, illegal and a nullity and payment of the sum of #250,000 (Two Hundred and Fifty Thousand Naira) as being cost of the litigation pending the hearing and final determination of the appeal lodged against the afore-said judgment.

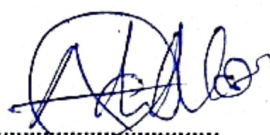
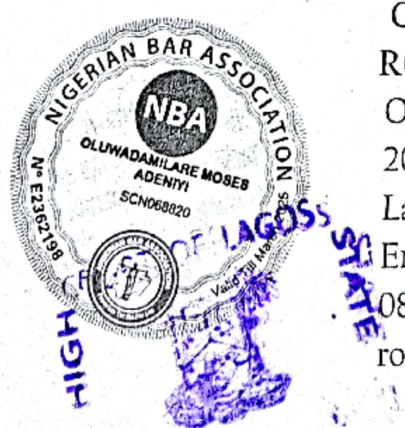
AND for such further and other orders as this Honourable Court may deem fit to make in the circumstances.

FURTHER TAKE NOTICE that the grounds upon which the application is brought are

1. This Honourable Court by its judgment delivered in this suit on 9th October, 2024 granted in favour of the Claimant against the 2nd Defendant reliefs 1 and 2 sought by the Claimant in this suit including the sum of #250,000 (Two Hundred and Fifty Thousand Naira) as being the cost of this litigation.

2. The Honourable Court in its judgments substantially ordered that the property described as a unit of 4 - Bedroom terrace duplex with 1 room boys' quarters (Off Plan Basis) at The Paradise Court by chevron be delivered to the Claimants by the 2nd Defendant.
3. The 2nd Defendant, dissatisfied with the said judgment has lodged an appeal to the Court of Appeal, Lagos Division against same.
4. The property commanded by the Court order to be delivered to the Respondent does not exist.
5. The grounds of appeal contained in the Notice of Appeal filed by the 2nd Defendant/Applicant raise substantial, cogent, arguable recondite issues of Law with high probability of success.
6. The 2nd Defendant is desirous of expeditiously pursuing the appeal within the time limited by the court of Appeal Rules.
7. The circumstance of the case together with the depositions contained in the affidavit in support of this motion and the grounds of appeal as contained in the notice of appeal exhibited to the affidavit in support of this motion disclose special circumstance to warrants an order of stay of execution of the judgment in this pending the final determination of the appeal lodged against it.
8. Unless stay of execution of the judgment of the court is ordered, the pending appeal will be seriously prejudiced and a fait accompli will be foisted on the Court of Appeal.

Dated this 21st day of Nov, 2024

O.M. ADENIYI, ESQ
 RONKE AKINOLA & CO
 Onafeko House, 4th Floor,
 200, Igbosere Road,
 Lagos Island, Lagos
 Email: ronkeakinolaandco@gmail.com
 08137378496
 ronkeakinolaandco@gmail.com

FOR SERVICE ON:

The Respondents

Date: _____
 OFFICE, Ikeja

Emeka Onohwakpor Esq.,
Emeka Onohwakpor & Co.,
Counsel to the 1st and 2nd Claimants/Respondents
20, Adebola Street, Off
Adeniran Ogunsanya Street,
Surulere, Lagos
08022903889

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA

SUIT NO.ID/7480GCM/2023

BETWEEN

1. HON. ABAYOMI ODE
2. MRS HENRIETTA ODE CLAIMANTS /RESPONDENT

AND

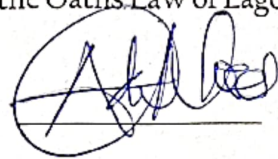
1. LEKKI GARDENS LIMITED DEFENDANT/RESPONDENT
2. MERIDIAN PARK ESTATE DEFENDANT/APPLICANT

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE

I, Adeniyi Moses, male, Christian, Nigerian Citizen of No. 200, Igbosere Street, Lagos Island, Lagos State do hereby make oath and say as follows: THAT;

1. I am a Counsel working with the firm of Ronke Akinola & Co solicitors to the 2nd Defendant/Applicant herein by virtue which I am conversant with the facts of this suit and all facts deposed to herein are within my knowledge unless otherwise stated.
2. I have the consent of my employers and the Applicants to depose to this affidavit.
3. The claimants in this suit commenced this action by their Originating Summons dated 28th September, 2023 and praying this Honourable Court for the following reliefs as contained in their originating processes.
4. The 2nd Defendant filed a Counter affidavit and the Claimant subsequently filed a further affidavit and a reply albeit out of the time required under the Rules of the Court.
5. The judgment in this suit was delivered by this Honourable court on the 9th October, 2024 and the Honourable Court granted substantially all the prayers of the claimants. A copy of the said judgment is herewith attached and marked exhibit AA1.
6. The 2nd Defendant being dissatisfied with the judgment in exhibit AA1 and has lodged an appeal against the said judgment. Copy of the Notice of Appeal and Treasury Receipt showing the lodgment of the said Appeal are herewith attached and marked exhibit AA2 and AA3 respectively.

7. I verily believe that the Notice of Appeal filed on behalf of the defendant is competent and same contains arguable grounds and raises recondite points of law.
8. I believe that the Claimant will go ahead to enforce the judgment of this Honourable Court unless restrained by this Court pending the determination of the Appeal already filed by the Applicants.
9. I verily believe him that there is a need to obtain an order for stay of execution of the judgment of the court delivered on the 9th October, 2024 from this Honourable court so as not to render nugatory the substantive appeal.
10. It is in the interest of justice to grant this application.
11. I make this affidavit in good faith and in accordance with the Oaths Law of Lagos State.



DEPONENT

SWORN TO at the High Court of Lagos State,

Ikeja, this 21st day of Nov, 2024

BEFORE ME
Commissioner For Oaths
High Court of Lagos, Ikeja
Akinwande O. P. P.
COMMISSIONER FOR OATHS

STATE OF LAGOS
HIGH COURT
Ikeja

Sign: _____ Date: _____
CASH OFFICE, IKEJA

IN THE HIGH COURT OF LAGOS STATE
HOLDEN AT IKEJA JUDICIAL DIVISION
TODAY WEDNESDAY THE 6TH DAY OF OCTOBER 2024
BEFORE HON. JUSTICE Y. R. PINHEIRO
SITTING AT COURT 38 GENERAL CIVIL DIVISION IKEJA

SUIT NO: 157/2023/DCM/2023

BETWEEN:

1. HON. ABAYOMI ODE
2. MRS. HENRIETTA ODE

APPLICANTS

AND

1. LEKKI GARDENS LIMITED
2. MERIDIAN PARK ESTATE

RESPONDENTS

Certified True Copy

JUDGEMENT

The Applicants commenced this suit vide an Originating Summons dated 28th September 2023. Additionally, the Applicants filed a Motion on Notice for an Order of Interlocutory Injunction also dated 28th September 2023. In response, the Respondents filed a Motion on Notice for an Order striking out the name of the 1st Respondent from the suit, dated 6th February 2024. As directed by the Court, all the applications were taken simultaneously.

I shall proceed with the Respondents/Applicants' Motion on Notice dated 6th February 2024 as it pertains to the parties in this suit.

By the said Motion, the Respondents/Applicants are seeking an Order of this Honourable Court striking out the name of the 1st Defendant/Applicant from this suit on the ground that this action discloses no reasonable cause of action against the 1st Defendant.

11/10/24

HIGH COURT OF LAGOS STATE
JUDGE
CLERK
COURT OFFICE, IKEJA

3. The 2nd Respondent shall pay the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) to the Applicants being the cost of the action.


[Handwritten Signature]
HON. JUSTICE Y. R. PINHEIRO
SIGNED *[Handwritten Signature]*
HON. JUSTICE Y. R. PINHEIRO

09/10/2024

Parties: Absent

Appearances: ABIOLA OGUNLEYE, appearing for the Applicants

O. A. ADENIYI with I. A. UMOH, appearing for the Respondents

CR 3200
204 98
HIGH COURT OF LAGOS STATE


Sign: *[Handwritten Signature]* Date: *15-10-2024*
CASH OFFICE, IKEJA

Certified True Copy

[Handwritten Signature]
Davies Okunmi
COMMISSIONER FOR OATHS
HIGH COURT, IKEJA
15/10/24

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA

SUIT NO.ID/7480GCM/2023

BETWEEN

1. HON. ABAYOMI ODE
2. MRS HENRIETTA ODE CLAIMANTS /RESPONDENT

AND

1. LEKKI GARDENS LIMITED DEFENDANT/RESPONDENT
2. MERIDIAN PARK ESTATE DEFENDANT/APPLICANT

WRITTEN ADDRESS IN SUPPORT OF MOTION ON NOTICE

1. The Claimant instituted this action by a Originating Summons dated 28th September, 2023.
 2. The Defendant filed a Counter affidavit in its defence and the Claimant filed a reply albeit out of time prescribed by the Rules of the Court.
 3. The Honourable granted substantially the claims of the claimants.
 4. The Applicant has now filed an appeal against the decision of the Honourable court as well as the instant application seeking injunctive reliefs pending appeal.
 5. The application is supported by a 11 paragraph affidavit which is attached to the application.
2. Issue for Determination
- Whether this Honourable Court ought not to grant this application?
3. Argument
- 1.1 Reliance is placed on the affidavit of Adeniyi Moses filed herein.
 - 1.2 We humbly contended that this Honourable Court has the inherent power stay its judgment and the grant of the instant application is at discretion of your Lordship. This Honourable Court has the unfettered jurisdiction to grant a stay of execution of its judgment. We respectively refer your Lordship to the provisions of Order 54, Rule 1 of the High Court of Lagos State Civil Procedure Rule 2012. See also the cases of Milad, Ekiti State vs. Aladeyelu (2006) All FWLR (Pt.33) 1755; Incar (Nigeria) Plc

vs BolexEnt. (Nig.) Ltd.(1996) 8 NWLR (Pt.469) 687; Amachree vs. Isokariari (1995) 5 NWLR (Pt.396) 457, Sodehinde vs. Registered Trustees of Ahmadiyya Movement (1980) 1-2 SC 163.

1.3 It is humbly submitted that, by the decision of the supreme court in the *locus classicus* case of Sodeinde V. Registered Trustees of the Ahmadiya Movement-in-Islam, the Supreme Court per Idigbe, JSC settled the issue as follows:

"I find it difficult, therefore, to subscribe to the view that a court becomes stripped of its jurisdiction to control the proceedings to the extent of preserving the subject matter of litigations, should it become necessary to do so, as soon as the court dismisses the proceedings or actions under a judgment under appeal pending the determination of the appeal appears to me to be original motion which the court whose judgment is under appeal can entertain".

"I would therefore like to conclude this judgment by making it quite clear that the High Court does not lose its jurisdiction to entertain applications for stay of proceedings or actions under its judgment orders or decisions under appeal to the Court of Appeal"

- 1.4 There is a competent appeal on which the motion for stay pending appeal is predicated. We respectfully refer the Court to paragraph 6 and 7 and Exhibits 'AA2' and 'AA3'. It follows that the application for injunction pending appeal is competent.
- 1.5 It is submitted that the application can be entertained in the absence of a pending appeal upon an undertaking or a genuine showing by the applicant that an appeal will be filed subsequently.
- 1.6 We respectfully submit that the applicant has demonstrated in this application that the requirements for the granting stay of execution pending appeal have been satisfied.
- 1.7 It is conceded that an application for injunction pending appeal is often granted upon established principles. But like all other discretionary remedies, these principles work merely as guides and would not deprive the court of the exercise of its discretion in the matter. We refer the Court to paragraphs 5, 6, 7, 8, 9, 10, 11 and 13 of the Affidavit in Support.
- 1.8 In *Onuzulike V. Commissioner for Special Duties* (1990) 7 NWLR (PT 161) 252 it was held that in granting an injunction or stay of execution pending appeal amount there are some vital conditions to satisfy before the grant of the order. The conditions given by the Court are:
- a. There must be special circumstances.
 - b. The grounds of appeal must be substantial, arguable or recondite point of law.

- c. The grounds of appeal must raise substantial legal issues to be determined
- d. It is right to put matters on a status quo and that it will be equitable to maintain the status quo or preserve the 'res' if the appeal is to have any meaning.

Special Circumstances

1.9 In *Oluwadare V. University of Ilorin & 2 others* (2009) 17 NWLR Pt. 1169 Pg.1 @ 22 the Court of Appeal stated that the special circumstances that warrants the grant of injunction or stay of execution pending appeal are where when execution will;

- a) Destroy the subject matter of the proceedings;
 - b) Foist upon the court a situation of complete helplessness;
 - c) Render nugatory any order or orders of the Court of Appeal;
 - d) Paralyse in one way or the other the exercise by the litigant of his constitutional right of Appeal; or
 - e) Provide a situation in which even if the Appellant succeeds in his appeal, there could be no return to the *status quo*
- 1.10 The Applicants has demonstrated in paragraphs 8, of the affidavit in support that the Respondents possess the power to carry out the execution of the Judgment of this Honourable Court.

1.11 Without an order of stay restraining the Respondents pending the appeal filed herein in the court of appeal the Respondents will go ahead and compel the performance of what is even impossible for the Applicant to do and therefore foist upon the Court of Appeal a fait accompli.

1.12 To allow the execution of the judgment of the Court would put the defendants in a situation of irreparable loss.

Grounds of Appeal raises substantial, arguable or recondite point of law.

1.13 The onus is on the Applicant contending that his grounds of appeal raise substantial, arguable or recondite point of law to establish same.

1.14 In *Olojede V Olaleye* (2010) 4 NWLR (PT1183) Pg 1 @61 it was held that

"A recondite point of law such as can constitute a special circumstance for a purpose of a stay of execution is not a point of law which is a difficult point in an area of law on which there is no previous authoritative decision. Rather, it is one which having regard to the substance of the appeal, if a stay is not granted and the case eventually decided in favour of the appellant, the resultant circumstances would have made it wise that a stay should have been granted. Such a situation may arise in a diversity of circumstances."

- 1.15 The notice of appeal contains grounds of appeal and it is our submission that all the grounds are arguable and substantial grounds of law.
- 1.16 We further submit that in circumstances such as this where the Applicants have shown substantial grounds of appeal, it is only fair to both sides that a stay should be ordered.
- 1.17 Although the court is required to consider the chances of the applicants on appeal, we Submit that at this stage all that is required is to convince the court that there are substantial arguable grounds of appeal and not that the appeal must succeed.
- 1.18 My Lord, if a stay of execution is refused and the Respondents execute the judgment of this Court and the Applicants appeal succeed at the Court of Appeal, this Court and the complete hopelessness and there could be no return to the status quo. More worrisome is the facts that a greater injustice would have been occasioned to the Applicants, in view of the fact that the property ordered by the Court to be delivered by the Applicant does not exist.
- 1.19 In view of our arguments above, we respectively contend that the Applicant has satisfied all the requirements for the grant of the instant application.

2. SUMMARY

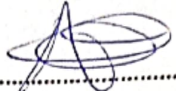
- 2.1 The jurisdiction to grant an order of injunction and a stay of execution of its judgement pending the determination of an appeal in a suit before the court has been firmly stated by the Supreme Court in *Sodeinde V. Registered Trustees of Ahmadiya (Supra)*. This has thus put the jurisdiction of the court in respect of this order beyond any doubt.
- 2.2 The purpose of the order is to maintain the *status quo* and protect the *res* from being disposed off while the litigation continues at the court of appeal and to enable the Applicants to exercise their constitutional right of fair hearing at the appellate court.

5. CONCLUSION

5.1 We therefore urge this Honourable Court to grant this application as prayed.

Dated this 21st day of Nov, 2024




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FOR SERVICE ON:

The Respondents

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