

Case Review: SPDC VS. Amadi & Ors

Ibraheem, Ojo Tajudeen
Acting Dean
Faculty of Law
Adekunle Ajasin University
Akungba Akoko, Ondo State, Nigeria

Abstract

An essential attribute of law is that it is dynamic, evolving to meet prevailing social norms and standards. This article briefly examines the concept of stay of execution of the Judgment of a Court as espoused by the Nigerian Supreme Court in the case of SPDC vs. Amadi & ors. [2011] Vol. 5-7 (Pt. 1) MJSC 1. Special attention is given to the factors which the Courts will consider in granting or refusing an application for a stay of execution. Although the article focuses on the case of SPDC vs. Amadi, copious references are made to other similar and equally relevant judicial authorities as the need arises. The contents of this article reflect the current position of the law as it applies to stay of execution in Nigeria.

Key words: stay of execution, RES, Judgment, appeal, discretion, court, special circumstances.

1. The Dynamics of the Law

Law, as we all know, is not static. A law which is outdated is more or less useless to the society in which it exists. Over the centuries, the phenomenon known as law has gradually evolved to meet prevailing circumstances. This dynamism of the law is necessary in order to maintain its relevance to the society. Sometimes, the law gives place to judicial precedents in the form of case law. Over time, new principles, rules and laws have also either been developed or imported into the legal systems of various countries to meet up with societal changes and developments. The need to do justice in deserving cases is another principle behind the development of new laws. A stay of execution is one of such innovations. It was developed by the courts of equity as a result of the need to do justice in deserving cases where the common law provided no remedy.

2. Facts of the Case

SPDC vs. AMADI & ORS¹

This is a case for possession of land. The defendant/applicant was a tenant of the plaintiff/respondent. The defendant/applicant made extensive developments on the land. The defendant/applicant subsequently obtained a Statutory Certificate of Occupancy in its own name in respect of the said land. A Statutory Certificate of Occupancy is in all respects, evidence of title to or ownership of land. The plaintiff/respondent brought an action on the grounds of a breach of the terms of the lease agreement and challenge to title. The plaintiff/respondent prayed the court for a declaration that he was the owner of the parcel of land in question, a declaration that the defendant/applicant was his tenant, and an order of forfeiture against the defendant/applicant in respect of the said land. The plaintiff/respondent obtained judgment at the High Court. The defendant/applicant applied for a stay of execution of the judgment pending the determination of its appeal. The application for stay of execution pending appeal was refused by both the trial and appellate courts whereupon it further appealed to the Supreme Court. The defendant/applicant prayed the Supreme Court for the following reliefs, among others:

1. An order of staying the execution of the judgment pending the determination of the appeal.
2. An order of injunction to preserve the *RES* pending the determination of the appeal.

There were separate Affidavits in support of both applications. Learned Counsel for the 1st and 2nd set of Respondents opposed both applications by filing Preliminary Objections and Counter-Affidavits.

¹ [2011] Vol. 5-7 (Pt. 1) MJSC 1

Counsel to the other Respondents also opposed both applications and associated themselves with the submissions of learned Counsel for the 1st and 2nd set of Respondents.

Both applications were moved together and learned Counsels in addition to the written addresses made oral submissions in support and against the applications.

The affidavits filed by the defendant/applicant listed the developments it had made on the land as follows:

- (a) About two hundred and forty three fully and tastefully furnished four and three bedroom bungalow housing units within the Shell Residential Area.
- (b) Fully detached guest houses comprising of fully and tastefully furnished 120 rooms within the Shell Residential Area.
- (c) A couple of management offices and conference offices within the Shell Residential Area.
- (d) A specially maintained full size football pitch within the Shell Residential Area.
- (e) A fully equipped children's clinic.
- (f) A dedicated power generating station run on gas turbines.
- (g) Mega water treatment plant with highly advanced technologies.
- (h) Various Olympic size lawn tennis courts.
- (i) Fire station with state of the art equipment.
- (j) High power data communication station for satellite, internet and telecommunication.
- (k) Police post.
- (l) Three mega supermarkets.
- (m) Olympic size swimming pool.
- (n) A specially maintained full size Golf Course.

And in paragraph 21 of one of the affidavits, it was deposed that:

"The Shell Residential Area is serviced and maintained by over 1500 (one thousand five hundred) employees and contract staff (of whom 90% are Nigerians) who will immediately be thrown out of employment once this application is refused."

The issue before the court was whether the Supreme Court can grant the two applications. After due consideration of the circumstances of the case, both applications were unanimously granted.

3. What Is A Stay of Execution?

A stay of execution is a temporary delay in the carrying out of a court order. Although the Courts of Law in Nigeria, by their institutional and jurisdictional set up, operate both the principles of common law and the doctrine of equity, a party urging the Court to invoke its equitable jurisdiction in his favour, when seeking an equitable remedy, must satisfy the Court, by proving some facts articulated by the Law, why the particular equitable remedy should be granted.

A stay of execution is an interim order and does not possess the attribute of finality. It is an order for suspension of rights which a Court had declared in favour of a respondent and of course, the preservation of property pending the determination of an appeal from a Judgment in respect of that right and/or property. It only prevents the plaintiff or beneficiary of the judgment from putting into operation the machinery of the law i.e. the legal process of warrants of execution and so forth.² The aim of a stay of execution is to protect the RES from destruction.

The need for a stay of execution may also arise where a third party who was not a party to the original suit is affected by the judgment in that suit.³ Where a court of law gives judgment or an order against a person who is not a party to the case, such a person has the remedy of availing himself of the provisions of Section 243 of the 1999 Constitution by seeking the leave of the court to appeal against the judgment or order as a person interested.⁴ He will obtain this leave if and only if he is able to satisfy an appellate court that he is an interested party. Where a party who is not a signatory to a consent judgment is affected by it, the remedy available to the party the consent judgment so wrongly affected is to appeal against the judgment with leave of court.

² TSA Ind. Ltd vs. Kema Inv. Ltd [2006] Vol. 3 MJSC 1

³ Okonkwo vs. UBA [2011] Vol. 7 MJSC 1

⁴ Bello vs. INEC [2010] Vol.3 (Pt. III) MJSC 1 Page 6, para 3

Alternatively, he can have the judgment set aside by a court of competent original jurisdiction.⁵ In both cases the third party has the right to apply for a stay of execution.

4. Factors That Guide the Court in Granting/Refusing a Stay of Execution

The general rules or guiding principles in respect of the discretion of the court to either grant or refuse an application for stay of execution pending appeal are not exhaustive. The broad basis for the existence of the power to grant a stay is equity and justice between the parties and more importantly, that the appeal, if it succeeds, will not be rendered nugatory.

4.1 It is first of all, a discretion of the court

It is not the law that once there are arguable grounds of appeal the court must grant a stay of execution. When a judgment or order of a lower court is not manifestly illegal or wrong, it is the right of a court of appeal to presume that the order or judgment appealed against is correctly or rightly made until the contrary is proved or rightly established. For this reason, the court of appeal and indeed any court, will not make a practice of depriving a successful litigant the fruits of his success unless under very special circumstances.⁶ The exercise of this power is entirely at the discretion of the Court. As with all discretionary powers, it must be exercised judicially and judiciously. That is to say with correct and convincing reasons. The exercise of this discretion calls for the Judge considering the rules governing the issue and not acting arbitrarily or as he likes.

It is trite law that a party who seeks equity must do equity. An applicant who fails to observe this golden rule and brings dirty hands to the Court cannot enjoy the equitable discretion of the Court in their favour since it is a rule that those who come into a Court of Justice to seek redress must come with clean hands.⁷ An appellate Court or another panel of the same Court will not readily substitute its own discretion for the one already exercised by another panel unless the discretion was wrongly exercised.⁸ It is only where a trial court exercised a discretion under a wrong principle or mistake of law or under a misapplication of the facts or took into account irrelevant or extraneous matters, thereby giving rise to injustice, that an appellate court will not abdicate its duty to interfere with the exercise of that discretion, in order to correct or prevent the injustice.⁹ A different panel of the Court of Appeal can however grant a stay of execution if satisfied that the earlier panel exercised its discretion wrongly.¹⁰ If the request for stay and the subject matter of the appeal have the same substratum such that the grant of the one would dispose of the other, the stay of execution will be granted. A discretion to grant or refuse a stay must take into account the competing rights of the parties to justice.¹¹ A discretion that is biased in favour of an applicant for stay but does not adequately take into account the Respondent's equal right to justice is a discretion that has not been judicially or judiciously exercised.¹²

The main question to be resolved is whether from the facts disclosed in the affidavit (s) in support of the application, the grounds of appeal filed against the verdict of the court as well as the circumstances of the case, the applicants have made a case warranting the exercise of the court's discretion in their favour. The grant of stay of execution involves a consideration of the chances of the applicant's ability to satisfy the judgment debt if the appeal is unsuccessful and the general rule to maintain the status quo between the parties is also an important consideration.¹³ It is not in every case where grounds of appeal raise substantial points of law that a stay will be granted.¹⁴ The courts will also consider the chances of the points of law so raised on appeal. When the chances of success are virtually nil, such a ground of law will be unavailing.¹⁵

⁵ Alpha Properties International Ltd vs. NDIC & 2 Ors (2005) 8 CLRN CA Page 97 See also Jonesco vs. Beard (1930) A.C, Woluchem vs. Dr Charles Inko-Tariah Wokoma (1974) 3 SC 153

⁶ NNPC vs. Famfa Oil Ltd [2009] Vol. 6 (Pt. II) MJSC 30 [p. 45] paras. E-G

⁷ Datec Int'l (Nig) Ltd vs. Universal Insurance Co. Ltd (2006) 4 CLRN CA, Page 115, P.117, lines 30 – 37.

⁸ Datec Int'l (Nig) Ltd vs. Universal Insurance Co. Ltd (supra). See also Akaniwon vs. Nsirim (1997) 9 NWLR 9 Pt. 520 255.

⁹ TSA Industries Ltd vs. Kema Inv. Ltd (supra)

¹⁰ Datec Int'l (Nig) Ltd vs. Universal Insurance Co. Ltd (supra)

¹¹ Olunloyo vs. Adediran [2001] Vol. 8 MJSC 120

¹² NNPC vs. Famfa Oil Ltd (supra) [p. 46] paras. A-B, paras. B-F. See also Okafor & 2 Ors. vs. Nnaife (1987) Vol. 18 NSCC 1195; Fatoyinbo vs. Osadeyi [2002] Vol. 10 MJSC 140

¹³ Franchal Ltd vs. NAB Ltd [2000] 20 WRN 105 SC

¹⁴ Fatoyinbo vs. Osadeyi (supra), Odujinrin vs. Wema Bank (2010) 1 MJSC (Pt II) p. 39

¹⁵ TSA Ind. Ltd vs Kema Inv. Ltd (supra); Martins vs. Nicannor Food Co. Ltd & anor (1988) 2 NWLR (Pt 74) 75 @ 80.

4.2 It presupposes the existence of a judgment and a pending appeal against that judgment sought to be stayed

An application for a stay of execution of Judgment presupposes the existence of a Judgment of a Court of law the execution of which has to be stayed. It is also coterminous with the pendency of an appeal. It is also not as a matter of course, in the sense that the appellant has a duty to apply for it in the first place. An application for a stay of execution naturally underscores the presence of a valid notice of appeal containing competent grounds in the case.¹⁶

The mere lodgment of an appeal, without more does not operate as a stay of execution.¹⁷ Merely the record of proceedings being in possession of [the appeal] court [without more] is no ground for granting a stay of execution.¹⁸ The most the possession of record of appeal does is that granting a stay of execution would not occasion undue delay, because the appeal is with the exchange of briefs of argument ripe for hearing.

4.3 The existence of special circumstances warranting a stay

The fundamental principle that the judgment creditor is entitled to the fruits of his litigation can only be defeated by special circumstances which render it inequitable for him to enjoy the benefit of his victory.¹⁹

The applicant must show special and exceptional circumstances clearly showing the balance of justice in his or her favour.²⁰ The appellant/applicant in SPDC vs. Amadi (supra) had been able to show its huge investments in the RES known as the Shell Residential Area. There were also a large number of people on the land who would all be asked to leave if the stay was refused. This, in the opinion of the Supreme Court, amounted to special, exceptional and strong reasons why the application should be granted.

The special circumstances which the courts will take into account are, as a general rule, such circumstances which go to the enforcement of the judgment and not those which go merely to its correctness.

Special circumstances which have received judicial approval are when execution would²¹

- 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 appeal Court.
- d. Paralyze in one way or the other, the execution by the litigant of his constitutional right of appeal.
- e. Provide a situation in which even if the appellant succeed in his appeal there could be no return to the status quo

Where a judgment involves money the terms upon which the court would grant a stay are easier to determine than in other judgments where the RES is perishable or prone to alteration. The court would consider whether it would be difficult to secure the refund of any money involved from the respondent, if the appeal succeeds, for which purpose the financial ability of the Respondent is taken into account.²²

It has been held that the fact that an appellant has wonderful, substantial, impressive and arguable grounds of appeal, without more, is not a special circumstance for granting a stay.²³

The onus is on the party applying for a stay pending appeal to satisfy the court that in the particular circumstances of his case, a refusal of stay would be unjust and inequitable.²⁴ The fact that one of the parties is a government agency does not give it any special status. Parties are equal before the court and in law.²⁵

¹⁶ Air France vs. Gregory Okwudiafor (2006) 12 CLRN CA, Page 26

¹⁷ Olunloyo vs. Adeniran (supra)

¹⁸ Franchal Ltd vs. NAB Ltd (supra); Fawehinmi vs. Akilu (1990) 1 NWLR (Pt. 127) 450 @ 460.

¹⁹ Franchal Ltd vs. NAB Ltd (supra)

²⁰ Fatoyinbo vs. Osadeyi (supra)

²¹ SPDC vs. Amadi (supra); Olunloyo vs. Adediran (supra)

²² NNPC vs. Famfa Oil Ltd, (supra) [p. 66] paras. C-G; UNIPORT vs. Kraus Thompson Organization Ltd. (1999) 11 NWLR (Pt. 625) 91; Gov. of Oyo State vs. Akinyemi (2003) 1 NWLR (Pt. 800) 1

²³ TSA Ind. vs. Kema Inv. Ltd (supra)

²⁴ NNPC vs. Famfa Oil Ltd (supra) [P. 46 paras. B-D]

²⁵ Ibid. per Aderemi JSC [pp 59-60] paras. A-D

The grounds of appeal must raise serious/crucial issue of such importance as to attract the attention of the court. Land is not a perishable RES as it will still be available after the determination of the appeal. A consideration of the convenience of the appellant alone (i.e. poverty or hardship) cannot be special circumstances within the contemplation of the law.²⁶ Also, poverty or impercuniosity per se is not a valid ground for the grant of stay of execution of judgment.

Where the appeal is against a judgment where the applicant for a stay had admitted liability in the trial court, such application is without merit and will be refused.²⁷

Where grounds exist suggesting a substantial issue of law to be decided on the appeal in the area in which the law is to some extent recondite, either side may have a decision in its favour.

A patently flawed judgment, i.e. one given in lack of jurisdiction, amounts to special grounds for granting a stay. This is based 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 consequences of hardship imposed on the judgment debtor.²⁸

The Applicant/Appellant's affidavit had been able to show huge investments on the RES known as the Shell Residential Area. If a stay had not been granted, its activities would have been crippled. Everybody on the land would have been asked to leave. This amounted to special, exceptional and strong reasons in the circumstances of the case.

4.4 The judgment sought to be stayed must be an executory order

Declaratory judgments are final orders which declare the rights of the parties. Such judgments cannot be stayed. However, further orders made along with a declaratory judgment, may be subject to a stay of execution. It is wrong to refuse to consider an application for stay or refuse to grant it simply because the reliefs sought in the trial Court and most of the reliefs granted were declaratory. It is the duty of the Judge considering an application for stay of execution to examine a judgment and see if it was a declaratory judgment with orders that cannot be stayed. A stay of execution is not granted against a declaratory judgment or a judgment on admission. This is because there is nothing to stay.²⁹

4.5 Preservation of the RES

The RES is the subject matter of the judgment sought to be stayed. One important consideration is the preservation of the RES and the maintenance of the "status quo ante" so that if the appellant succeeds on appeal, he or she would not have a hollow judgment.³⁰ The effect of refusal of the application on the appellant if he subsequently wins the appeal is of particular importance.

According to the Supreme Court in SPDC vs. Amadi (supra),

"If a stay of execution is not granted the beneficiaries of the judgment would go into the Shell Residential Area (The RES) driven by all kinds of desires and the end is best imagined. The RES may be destroyed before the appeal is determined. A return to the status quo ante bellum in the event the appellant wins would be impossible and that will be bad for the stream of justice which must be kept pure at all times. The court would then be presented with a fait accompli before its judgment is delivered."

Where a judgment sum is to be shared by many people, the judgment creditor must show that the sum can be repaid. In other words, where it would render the appeal nugatory, the applicant has the duty of showing exceptional circumstances which point conclusively to the fact that the balance of justice weighs in favour of the grant of a stay.³¹

²⁶ Fatoyinbo vs. Osadeyi (supra); see also Ajomale vs. Yaduat (No. 2) (1991) 5 NWLR (Pt. 191) 266 @ 285 [P. 148] paras. E-G

²⁷ Franchal Ltd vs. NAB Ltd (supra) per Mohammed JSC [p 128] para 5; See Balogun vs. Balogun (1969) 1 All NLR 349 per Karibi-Whyte JSC [p 126] Para 15-20

²⁸ Olunloyo vs. Adediran (supra)

²⁹ SPDC vs. Amadi (supra) para 4, page 7

³⁰ Fatoyinbo vs. Osadeyi

³¹ SPDC vs. Chief N. Y Allaputa (2005) 12 CLRN CA Page 50

There must be some collateral circumstances and in some cases inherent matters which may, unless the order of 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 the order of the court of appeal or paralyze 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.³²

An applicant for stay of execution bears the burden of showing that the grant of stay of execution will not result in the determination of the issue subject matter of the appeal and there will be no injustice to the respondent.³³ Refusal of grant of stay in a matter involving land will not result in the destruction of the land in dispute nor render any judgment of that court on the pending appeal nugatory. Real property is not a perishable RES. An appellate court can re-order recovery of possession where an appeal in respect of possession of property succeeds.³⁴ The stay in *SPDC vs. Amadi* was granted after due consideration of the developments which SPDC had made on the property. These developments could be destroyed, as against the land itself which exists forever.

4.6 The circumstances of the particular case

A judgment creditor is entitled to have the benefits of the fruits of his judgment. And so, a court of appeal should not grant a stay of execution unless there are special or strong circumstances for doing so.³⁵ The grant of a stay of execution is not a matter of course. The grounds upon which the courts would grant a stay of execution depend entirely on the circumstances of each particular case. The courts should never do anything to deprive or deny a successful party from reaping the fruit of his victory.³⁶ There must be special exceptional circumstances warranting a stay of execution.³⁷ An order for stay will be granted where from the nature of the case, justice demands that the status quo be maintained until the final determination of the appeal.³⁸

In addition, the principles guiding the exercise of discretion to grant or refuse a stay of execution of a judgment for the payment of mesne profit and recovery of possession must take into account the following:

- a) Competing interests of the parties
- b) A stay is never used as a substitute for obtaining the judgment which a trial court has denied a party. A court will not grant a stay 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. In other words, the court will provide adequate protection to the judgment given to a successful litigant.
- c) An appeal court can re-order recovery of possession where an appeal in respect of possession of property succeeds.³⁹

He who seeks equity must do equity. He who comes to equity must come with clean hands. Equity and law demand that a tenant should pay his rents as at and when due during the period of occupation of the said premises to his landlord. In *TSA Ind. vs. Kema Inv. Ltd*⁴⁰ which was a suit for possession, payment of mesne profits and rents due for example, the Nigerian Supreme Court stated as follows:

*“The appellant was granted a conditional stay. From all indications, the appellant had never wanted the substantive suit to go on. ... The appellant is still in possession of the premises/warehouses. They will not vacate and they will not pay the rent due and overdue. ... The appellant wants an unconditional stay of execution so that it will continue being in possession of the premises without paying the rent due to the Respondent as even ordered by the Court below. This attitude, no doubt, is not equity and/or justice.”*⁴¹

³² NNPC vs. Famfa Oil Ltd, [P. 45 paras. A-E]. cf. Vaswani Trading Co. vs. Savalakh & Co. (1972) All NLR 922

³³ Franchal Ltd vs. NAB Ltd (supra)

³⁴ TSA Ind. vs. Kema Inv. Ltd (supra); Ajomale vs. Yadaut & ano. (1991) 5 SCNJ 178 @ 188

³⁵ NNPC vs. Famfa Oil Ltd (supra)

³⁶ Odujinrin vs Wema Bank Plc (supra) Page 41, para 2

³⁷ Ibid. per Oguntade JSC [pp 42-43] paras. C-F

³⁸ NNPC vs. Famfa Oil (supra) [pp. 58-59] paras. E-G

³⁹ TSA Ind. Ltd vs. Kema Inv. Ltd (supra) [Pp. 16 – 17] paras C - A

⁴⁰ [2006] Vol. 3 MJSC 1

⁴¹ TSA Ind. vs. Kema Inv. Ltd, p 14, paras E - F

It is submitted that the same conclusion would be arrived at where the applicant has employed various tactics to delay/frustrate the hearing of the suit. Such a party should not expect the court to grant him a stay of execution under those circumstances.

5. A Judgment which has been Stayed Can Still be Enforced in Other Ways

The existence of an appeal seeking for an order staying execution of a judgment does not preclude a judgment creditor from seeking to use some other legal method to enforce the judgment.⁴² There is a clear distinction between execution of judgments and other methods of enforcing judgments such as garnishee proceedings. The distinction is brought out by the definition of writ of execution in Section 19 of the Sheriffs & Civil Process Act.⁴³ Writ of execution includes writ of attachment & sale, writ of delivery, writ of possession and writ of sequestration. It excludes garnishee proceedings. The distinction is further made clear by the learned authors of Atkin's Court Forms⁴⁴ thus:

*“Garnishee proceedings or attachment of debts is a method auxiliary to that of execution of the enforcement of a Judgment or order for the payment of money which is not for payment of money into Court enabling the Judgment creditor to attach money due to the Judgment debtor from a 3rd person called the garnishee, who must be within jurisdiction.”*⁴⁵

Enforcement of Judgment by garnishee proceedings while stay of execution is pending does not amount to abuse of Court process.⁴⁶

A garnishee order nisi cannot operate as a bar to an order for stay of execution. A garnishee is essentially a 3rd party being indebted to the Judgment debtor or having custody of his money and who at the instance of the Judgment creditor is being called upon to pay the Judgment debt from his indebtedness to the Judgment debtor or from the credit of the Judgment debtor.⁴⁷

If it is desired that a stay of execution should be a bar to every method by which a court's judgment can be executed, the necessary legislation (s) must be put in place to that effect. Where there is dissatisfaction with the state of the law as it exists, and a desire for a change thereof is expressed by the people, it is the duty of the legislature which made the law in the first place to effect the needed reforms by amendment thereto. The duty both to make and amend laws so made belong exclusively, by constitutional arrangement, to the legislature.⁴⁸ That is the doctrine of separation of powers.

6. Conclusion

In the course of this article, the author has examined the concept of stay of execution as is applicable under Nigerian law. The writer has been able to show that although the grant or refusal of a stay of execution is entirely at the discretion of the Court, there are some factors which the Court must consider in arriving at a decision. This article has sufficiently examined these factors. The exercise of the court's discretion notwithstanding, the duty of the Court remains to do justice according to the law.

⁴² Purification Techniques (Nig.) Ltd vs. AG Lagos Re Eko International Bank & 30 Ors (2005) 4 CLRN CA Page 127

⁴³ Cap. S6 LFN 2004

⁴⁴ Volume 19, 2nd Edition, paragraph 21 on page 47

⁴⁵ Page 128, lines 10 – 34

⁴⁶ SPDC vs. Chief N. Y Allaputa (supra). See also IBWA Ltd vs. Pavex. Int. (Nig) Ltd (2000) 7 NWLR (Pt. 663) 105.

⁴⁷ Air France v. Gregory Okwudiafor (2006) 12 CLRN CA, Page 26

⁴⁸ Amoshima vs. State [2011] Vol. 6 (Pt. II) MJSC 1; page 4, para 5