

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDING AT MAITAMA  
BEFORE HIS LORDSHIP: HON. JUSTICE S. U. BATURE.**

**COURT CLERKS: JAMILA OMEKE & OTHERS.  
COURT NO: HIGH COURT NO. 34.  
CASE NO: SUIT NO. FCT/HC/CV/919/2020.  
DATE: 02<sup>ND</sup> JUNE, 2020.**

**BETWEEN:**

**ALL PROGRESSIVE GRAND ALLIANCE (APGA).....PLAINTIFF**

**AND**

**FIDELITY BANK PLC.....DEFENDANT**

**JUDGMENT**

By an originating summons dated 27<sup>th</sup> day of January, 2020 and filed same day, the Claimant herein, prayed the Court seeking for the determination of the following questions:

- (1) Whether or not the Defendant can validly place a freeze Order on the Claimant's Account number 4010278117 domiciled at Plot 267 Tafawa Balewa way Central Business District Abuja branch of the Defendant, merely "as a result of a pending suit involving the customer"

- (2) Whether or not the Defendant can validly place a freeze order on the Claimant's Account Number 4010278117 without any Court order, but as a result of suit No. HOR/MISC/6/2019. GAMALIEL AKPOTABOR OGHENER VOWHO & ANOR V. DR. MIC ADAMS & ORS. Involving the parties and pending before the High Court of Delta State.
- (3) Whether or not the pendency of suit NO. HOR/MISC/6/2019. GAMALIEL AKPOTABOR OGHENER VOWHO & ANOR V. DR. MIC ADAMS & ORS. Without more, is sufficient reason to warrant the Defendant to place a freeze order on the claimant's account Number 4010278117 domiciled at Plot 267 Tafawa Balewa way, Central Business District, Abuja branch of the Defendant.
- (4) Whether or not the freeze order placed by the Defendant on the Claimant's Account Number 4010278117 without a Court Order, amounted to a breach of the banker – customer relationship between the Claimant and Defendant for which the Claimant is entitled to damages.

The Claimant also seeks the following Reliefs upon determination of the above questions. The reliefs sought are as follow:-

1. A declaration that the freeze Order placed by the Defendant/on the Claimant's Account Number 4010278117 without a Court

Order, amounted to a breach of the banker – customer relationship between the Claimant and the Defendant.

2. A declaration that the pendency of suit No. HOR/MISC/6/2019. GAMALIEL AKPOTABOR OGHENER VOWHO & ANOR V. DR. MIC ADAMS & ORS before the High Court of Delta State, without more is not a sufficient and valid reason for the Defendant to place a freeze Order on the Claimant's Account Number 4010278117 domiciled at Plot 267 Tafawa Balewa way Central Business District Abuja, branch of the Defendant.
3. A Declaration that the freeze Order placed by the Defendant on the claimant's Account Number 4010278117 domiciled at Plot 267 Tafawa Balewa way Central District Abuja, branch of the Defendant without any Court Order, was invalid, unlawful, null and void and of no effect.
4. An Order setting aside the freeze Order invalidly and unlawfully placed by the Defendant on the claimant's Account Number 4010278117 domiciled at Tafawa Balewa way Central Business District Abuja, branch of the Defendant without any Court Order.
5. An Order directing the Defendant to unfreeze and/or remove forthwith the freeze Order it purportedly placed on the Claimant's Account Number 4010278117, without any Court Order.

6. An Order of perpetual injunction restraining the Defendant from further placing any freeze Order on the Claimant's Account Number 4010278117 of interfering in any manner whatsoever with the Claimant's operation of the said Account; except pursuant to a Court Order.
7. General Damages of ₦500,000,000.00 (five Hundred Million Naira only) in favour of the Claimant and against the Defendant for the freeze Order unlawfully placed by the Defendant on the claimant's operation of the said account Number 4010278117 without any Court Order and in breach of the banker – customer relationship between the parties.
8. Such further or other Order (s) as the Honourable Court may deem fit to make in the circumstances pursuant to its inherent jurisdiction to grant consequential reliefs.

In support of the originating summons is an affidavit of 27 paragraphs deposed to by one Labaran Maku, CON, National Secretary of All Progressives Grand alliance (APGA), the Claimant herein, Exhibits marked Exhibits APGA 1 – 8, as well as a written address also dated 27<sup>th</sup> January, 2020.

In opposition to the originating summons, the Defendant filed a Counter Affidavit of 26 paragraphs deposed by one Itote A. Damisa, a legal practitioner in the Law firm of P.O. ERIVWODE & CO, Counsel to the Defendant in this matter, Exhibits and a written address dated 2<sup>nd</sup> day of March 2020.

The Claimant also filed a reply Affidavit in support of the originating summons comprising of 5 paragraphs deposed to by one Loveth Idris, a Litigation Secretary in the office of the National Legal adviser of all Progressives Grand Alliance (APGA), the Claimant herein, as well as a written address on points of Law dated 13<sup>th</sup> day of March 2020.

In further opposition to the originating summons, the Defendant herein also filed a motion on Notice with motion No. M/6081/2020. By the Motion on Notice dated 2<sup>nd</sup> day of March, 2020 and filed on the 4<sup>th</sup> day of March 2020, the Defendant/Applicant herein prayed the Court for the following Orders:-

- (1) An Order striking out this suit for constituting an abuse of Court process.
- (2) And for such further Order further Order(s) as this Honourable Court may deem fit to make in circumstances.

The Motion on Notice which is brought pursuant to Order 15 Rule 18 (1) (d) of the F.C.T. High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court, is predicated on eight grounds namely:-

- (a) The subject matter of this suit is already subject of litigation before the High Court of Delta State sitting in Orerokpe and the parties are the same as in the instant case.
- (b) The Plaintiff and its assistant National Secretary approached the High Court sitting in Orerokpe, Delta state via application for leave for Order of judicial review to wit: Mandamus, prohibition and injunction amongst others. The said act with suit No. HOR/MISC/6/2019 is still pending before the High Court of Delta State, Orerokpe Judicial division.
- (c) The Plaintiff alongside its Assistant National Secretary also filed an application on notice before the High Court of Delta State sitting in Orerokpe praying the Court amongst other reliefs for an Order prohibiting the Managing Director of Fidelity Bank, his servants and privies from recognizing and or accepting or dealing with the present mandate signature of All Progressive Grand Alliance, APGA, Account No: 4010278117, of Fidelity Bank until a proper decision and or directive is communicated to the Management of Fidelity

- Bank from the caretaker Committee of the party, and same was served on the Defendant/Applicant.
- (d) The Respondents to the Plaintiff's applications referred to above are Dr. Mic Adams, Independent National Electoral Commission, Inspector General of Police and the Managing Director, Fidelity Bank Plc (applicant herein).
  - (e) The Defendant/Applicant upon receipt of service of the Court processes referred to above notified the Plaintiff and proceeded to preserve the res by placing a no debit Order on the Plaintiff's account pending the determination of the High Court sitting in Delta state so as not to render whatever outcome that may be reached nugatory.
  - (f) Rather than pursue its action voluntarily initiated by them in Delta State to a logical conclusion, the Plaintiff approached this Honourable Court seeking interpretation of its own actions thereby abusing the processes of this Honourable Court.
  - (g) The Plaintiff's Counsel herein is deeply involved in the matter pending in Delta State in that he has filed an application for joinder on behalf of one Ozonkpu Dr. Victor Ike Oye in the said matter but nonetheless proceeded to initiate this action before this Honourable Court in gross abuse of our judicial process.

- (h) The Plaintiff's action in presenting this suit is a gross abuse of Court process in that the same Plaintiff is in one breath asking the Defendant to prevent dissipation of its funds and in another breath seeking to punish the Defendant for preventing its funds from unlawful dissipation.
- (i) The Plaintiff is not permitted to toy with our judicial processes by filing actions it does not intend to defend and thereafter proceed to file another thereby picking and choosing which action to defend or not.
- (j) The Defendant being a lawful corporate entity who was served with Court processes has a duty to take steps necessary to protect the sanctity and dignity of the Court and prevent foisting a situation of helplessness otherwise known as *fait accompli* on the Court.
- (k) All that the Plaintiff is seeking in this action is to sanction the Defendant for upholding the sanctity and the pendency of an action the Plaintiff itself instituted.
- (l) The interest of justice demands that this action be struck out as a gross abuse of Court process and a deliberate attempt to undermine the integrity and dignity of our Courts.

Likewise, in support of the motion on notice is an Affidavit of 8 paragraphs deposed to by one Itote. A. Damusa, a legal practitioner



in the law firm of P.O. Eriwode & Co, Counsel to the Defendant/Applicant in this matter, Exhibits, and a Written Address in Support of the Motion on Notice dated 2<sup>nd</sup> day of the Motion 2020.

In opposition to the Motion on Notice of the Defendant/Applicant, the Claimant/Respondent filed a Counter Affidavit of 20 paragraphs deposed to by Labaran Maku, CON, National Secretary of All Progressives Grand Alliance (APGA) the Claimant herein, an Exhibit marked Exhibit APGA 9, as well as a written address in opposition to the Motion on Notice. The said address is dated 10<sup>th</sup> day of March, 2020.

The Defendant/Applicant further filed a reply on points of Law to the Claimant's address in opposition to the Motion on Notice seeking to strike out this suit as an Abuse of Court process.

Now, having carefully perused the originating summons, the response of the Defendant, all the processes filed in both sides, and the various addresses in support and in opposition to same, it is pertinent that the Motion on Notice seeking the Court to strike out this suit be taken first.

In the written address in support of the Motion on Notice, the Applicant formulated a lone issue for determination thus:-

***“Whether this suit constitutes abuse of the processes of this Honourable Court and if yes whether this Honourable court can grant the reliefs Sought in this Application.”***

In arguing the issue, the Learned Defendant/Applicant’s Counsel Peter Erivwode Esq. submitted that Courts should not be sympathetic to unmeritorious claims whose only motive is to waste precious judicial time and respectfully urged the Court to so hold in this case.

That abuse of Court process may occur when a party improperly uses judicial process to the harassment, irritation and annoyance of his opponent, and to interfere with the administration of justice. That a clear example is where two similar processes are used against the same party in respect of the exercise of the same right and subject matter. Reliance was placed on the case of N.I.C. V. F.C.I. CO. ltd (2007) 2 NWLR (pt. 1019) P. 610,s PP. 630, paragraphs F - H, paragraphs B – E.

Submits, that abuse of Court process generally means that a party in a litigation takes a most irregular, unusual and precipitated action in the judicial process for the sake of action quasi action with the aim of wasting valuable litigation time. Hence, an action which could be avoided. Counsel cited the case of MANSON V. HALLIBURTON ENERGY SERVICES LTD. (2001) 2 NWLR(Pt.1018) P. 211, P. 228, paragraphs B – C per Thomas J.C.A.

That in the instant case, the Plaintiff's action is a gross abuse of judicial process in that the claim of the Plaintiff to wit: operation of its Bank account domiciled with the Applicant is already a subject of litigation in suit No. HOR/MISC/6/19 between same sets of litigants and same subject matter. That being the case, the present action is a gross abuse of Court process. Counsel submits that in the case pending in Delta State, the Plaintiff in this case is a co-Plaintiff and all the Defendants in that case are officers of the Plaintiff save for the Applicant. That how can the Plaintiff drag the Applicant before a Court sitting in Delta seeking an Order prohibiting the Applicant from recognizing its mandate signature and turn around to sue the Defendant for not allowing it draw from the same account? It is submitted that the Plaintiff is not permitted to drag the Applicant before the High Court of Delta and turn around to approach this Court all in relation to its account maintained with the Applicant.

It is submitted that the question calling for this Court's determination in this matter is the same issue already pending before another Court.

It is submitted that there is nothing more left for this Court to determine as Courts are not inclined to entertaining academic issues. Reliance was placed on the cases of ABUBAKAR V. YAR'ADUA (2008) 1 FWLR 601 (SC); MAMMAN V. FRN (2013) LPELR – 20082 (SC).

It is further submitted, that the sole reason the Applicant is dragged before this Court is its refusal to disregard the pendency of the action in Delta State by allowing the Plaintiff to draw from its account contrary to the Plaintiff's own claim before the Court sitting in Delta. That what the Plaintiff could not achieve in the street, may it not achieve through this Court. That the Applicant deserves commendation for respecting the sanctity and pendency of a matter voluntarily filed by the Plaintiff and it behoves on the Plaintiff to put its house in order rather than proceeding against the Applicant in this matter. That the aim of the action is to unjustifiably use the instrumentality of this Court to achieve its aim which in itself is an abuse.

That this Honourable Court can grant the reliefs sought, since the Applicant has shown that this suit is an abuse of Court process.

Reliance was placed on the provision of Order 15 Rule 18 (1) (d) of the Rules of this Honourable Court.

Learned Counsel further submitted that the Law is now set in stone that abuse of Court process occurs where a Claimant institutes multiple actions on the same subject matter between or against the same parties on the same issues during the pendency of another same suit. On this, Reliance was placed on the case of R – BENKAY NIGERIA LTD V. CADBURY NIGERIA LTD (2012) LPELR – 7820 (SC) PP 22 – 23, paragraphs D – A, per NGWUTA, JSC.

Learned Counsel finally urged the Court to hold that this suit is an abuse of Court process and to grant all the Reliefs sought.

Meanwhile, in the Claimant/Respondent's written address in opposition to this Motion on Notice, Learned Claimant/Respondent's Counsel Ifeanyi Mbachii Esq, adopted the issue for determination formulated by the Defendant/Applicant in its written address and proceeded to argue on same.

In his submissions, Learned Counsel submitted that this Honourable Court is humbly invited to carefully examine the subject matter and reliefs sought in the Delta State suit (Exhibits APGA 3 and POE 2) vis – a – vis the subject matter and reliefs sought in the instant suit, so

as to see that this suit is never an abuse of Court process. They are as follows:-

- (a) That the cause of action and subject matter of the Delta State suit is for the enforcement of the default judgment of another Delta State High Court sitting in Kwale, regarding the resolutions reached by APGA at its National Executive Committee (NEC) meeting of 14<sup>th</sup> May 2019.
- (b) That the cause of action and subject matter of the instant suit however is whether Fidelity Bank can validly Freeze APGA's account without any Court Order, but merely on the basis of "a pending suit involving the customer."
- (c) That while the Delta State suit arose from an intra - party dispute among APGA members, the instant suit is a Banker/Customer dispute arising from a premature and arbitrary freezing of a customer's account without any Court Order, and contrary to an existing Banker/Customer relationship between APGA and Fidelity Bank.
- (d) That the 5 reliefs sought in the Delta State suit and the 7 reliefs sought in the instant suit are distinct and different, and the outcome of both cases, if successful, would be different.
- (e) That the parties in both suits are different. APGA is the Lone party in both suits. Fidelity Bank Plc is not even a party in

the Delta State suit because the Bank is not the same in Law with its Managing Director sued in the Delta State suit.

- (f) That the cause of action and grievances in both suits are distinct and different. More importantly, APGA has demonstrated through Exhibits APGA 4, APGA 9 and POE5 that APGA did not authorize the institution of the Delta State suit in the name of the party.

It is submitted that the foundation of the Defendant's contention that this suit is an abuse of process is anchored on APGA being a purported Co - Plaintiff in the Delta suit. That to the Defendant's imagination, it was APGA that filed an Application for judicial Review in Delta State and asked the Court to freeze its account in Fidelity Bank. That the contention is an assault to common sense. The following questions were asked.

- (a) Why will APGA, a registered and No. 3 Political Party in Nigeria go all the way to Orerokpe, an obscure Town in Delta State to file a suit asking the Court, inter alia, to direct Fidelity Bank to freeze APGA Account?
- (b) Is it not obvious from other reliefs sought in the Delta suit that the suit is an extension of intra - party rancor among

APGA members, arising from a judgment of another Delta State High Court sitting in Kwale?

- (c) APGA National Secretariat is in Abuja, APGA'S Account is domiciled with Fidelity Bank branch in Abuja. If APGA wants its Account frozen, will the National Chairman and National Secretary of APGA (as co - signatories to the Account) not simply write Fidelity Bank in Abuja and make the request? Why file an action in faraway Owerri?

Learned Counsel submitted appreciating the Defendant's effort in annexing the motion filed by APGA to have its name struck out of the Delta suit. That the Motion on Notice and Article 13 (23) of APGA constitution (Exhibits APGA 9 and POE 5) have pulled down the foundation of Defendant 's contention that because it was APGA that prayed the Court in Delta State to place a freeze Order on its Account, that this suit is therefore an abuse of Court process.

Counsel further submitted, that if Fidelity Bank truly thinks it was APGA that asked the Court in Delta State to freeze its account, what about the contents of Exhibit APGA 4 attached to the Originating summons? That by Exhibit APGA 4, the National leadership of APGA wrote Fidelity Bank on 13/01/2020 and demanded Fidelity Bank to unfreeze APGA's Account immediately." That in the said letter, APGA



drew Fidelity Bank's attention to Relief No. (d) in the substantive Application for Judicial review seeking to freeze APGA's Account and reminded Fidelity Bank, and Fidelity Bank equally responded as shown in Exhibit APGA 4, as well as exclusive APGA 5 and APGA 6, letters written by Fidelity Bank in response to the issue.

Learned Counsel submitted thus, that in the light of the said correspondences, it would amount to mischief and freak advocacy for the same Fidelity Bank to turn around and taunt the Claimant by contending that this suit is an abuse of process because it was APGA that asked the Delta State High Court to freeze APGA's Account. On this Counsel referred the Court to paragraphs 5 (b), (c), (f), (g) and (j) of the affidavit in support of Motion to strike out this suit, as well as in paragraphs 2.06 and 2.09 of the Defendant's/Applicant's written address.

It is submitted further, that before the instant suit was filed on 27/1/2020, APGA had duly notified Fidelity Bank that it wasn't APGA as customer of the Bank that filed the suit in Delta State, as shown in Exhibit APGA 4. Hence, long before this suit was filed, Fidelity Bank had been appraised of the true situation in the Delta State suit. Counsel put the question. Did the Bank remove the freeze

Order it placed on APGA's Account? To which, he replied in the negative. And that the Account remains frozen.

Counsel argued that failure of Fidelity Bank to heed to its Customer's request to remove the freeze Order in APGA's Account is a Banker/Customer dispute that necessitated the commencement of the instant suit. That this suit cannot be an abuse of process.

Learned Counsel submitted that the suit in Delta state is an internal strife among APGA members and for the Reliefs sought in this suit it is clearly a Banker/Customer dispute.

On the concept of abuse of court process, Reliance was placed on the cases of Chief victor Umeh & Anor. V. Prof. Maurice Iwu & Ors (2008) 8 NWLR (Pt. 1089) 225; Umeh V. Iwu (2007) 6 NWLR (Pt. 1030) 416.

On the strength of the above cited Authorities, Counsel submitted that none of the ingredients that grounds an abuse exists in this suit and urged the Court to so hold.

Counsel also referred the Court to paragraph 3.01 of the Defendant/Applicant's written address. Also, that by Exhibit POE5 adduced by the Defendant/Applicant in support of their Application,

Fidelity Bank is aware that APGA has disowned the Delta State suit and that APGA has filed a motion to strike out its name from the suit as shown in ground 2 of APGA's Motion.

Learned Counsel submitted that it is Fidelity Bank that is guilty of abuse of Court process by freezing a customer's account on a basis of a pending suit only and not a Court Order, and has therefore ridiculed the Judicial process when it did not wait for the Delta State High Court to determine the substantive Application for judicial Review still pending before the Court.

Finally, Counsel urged the Court to dismiss the Defendant/Applicant's Motion on Notice and to grant the Reliefs sought by the Claimant in the originating summons.

In the Defendant/Applicant's reply on point of Law, Learned Counsel submitted that the Claimant is a Co - Plaintiff in the action in Delta State and same point was made succinctly and that this Court should not be misled into believing that the Claimant herein is not a party to that suit.

Counsel submitted that the process filed before the Court in Delta are before the Court and their contents speak for themselves, hence the failed attempt by the Claimant to explain itself out of that suit is

totaling unavailable. That the competence to sue or otherwise as it relates to the action in Delta State is not for this Court to determine.

It is submitted further that ALL PROGRESSIVE GRAND ALLIANCE is one and if it is the intention of Claimant to unbundle its party, it can only do so by due process of Law and not through this action. That there's no distinction whatsoever between the Claimant in this case and the 2<sup>nd</sup> Plaintiff in the case in Delta and as such this action is nothing but an abuse of Court process, and urged the Court to so hold.

On whether the subject matter in the two suits is the same, Learned Counsel submitted that the submission of Claimant's Counsel on this issue is not only strange but a deliberate attempt to mislead this Honourable Court.

That relief (d) of Exhibit POE2 which touches on the claimant's account with the Defendant as annexed by the Defendant to its application is the sole reason the Claimant sued the Defendant in Delta state and this action inures from that same account. That there is nothing before this court relating to a judgment of the High Court in Delta State sitting at Kwale thereby leaving this Court to speculate on what was decided in that case.

Counsel submitted, that the Law is now well established beyond per adventure that address of Counsel no matter how well crafted will not take the place of evidence.

Reliance was placed on the cases of ADUA V. ESSIEN (2010) 14 NWLR (PT. 1213) 141 at 167; ATAMAH V. EBOSELE (2010) ALL FWLR (Pt.1928) at 19394; ANGADI V. PDP (2018) LPELR - 44375 (SC).

On the issue of whether the managing director fidelity Bank PLC is different from the defendant herein counsel submitted that on Claimant Counsel's submission that the parties in both actions are not the same in that it was the Managing director of Fidelity Bank Plc that was sued in Delta State and not the Bank. Counsel submitted that the above submission of the claimant is misleading in that the Managing Director of the Bank was sued in his official Capacity as the chief executive officer of the Bank and the Relief claimed thereat was against the Bank and not the Managing director. That put differently, it was not a personal action against the Managing Director of the Bank as the Claimant wants this court to believe.

It is submitted further, that Exhibits APGA 4 and APGA 9 annexed by the Claimant are not licence to disregard pendency of the action initiated by the Claimant itself.

Counsel submitted that an attempt at denigrating Orerokpe will not detract from the fact that the Claimant's action is still pending there till date.

On whether Exhibit POE5 and Article 13 (23) of the Claimant's Constitution (Exhibit APGA 9) pulled down the case of the Defendant, Counsel submitted that Exhibit POE5 is the clearest indication that this suit is an abuse of Court process. That the Claimant ought to have filed that application and have its name struck out a long time ago instead, it prefers to proceed against the Defendant for respecting the pendency of its action in Court. That the fact that it has now filed that application is a conclusive proof that this suite is nothing but a clear abuse.

Counsel submitted that this Court has no business with the Claimant's constitution in that interpretation of its contents is not the issue before the Court, quite apart from the fact that there is nothing in Article 13 (23) of the APGA constitution conferring exclusive powers to sue on its National Legal adviser of the Claimant.

On whether the case in Delta State is an intra party matter, it is submitted that the case in Delta is not an intra - party matter in that

no Court has jurisdiction to entertain inter- party matter, even more so where there is no evidence before the Court to that effect.

On whether the decision in Victor Umeh & Anor V. Prof Maurice Iwu & Ors applies to this case, Learned Counsel submitted that the decision in Umeh's case is unavailing to the Claimant in this case in that there is no such thing as the Claimant seeking in one breath to restrain the Defendant and in another breath seeking a gold digging Relief against the Defendant for upholding the pendency of the earlier action. That contrary to Claimant's submission, Umeh's case supports the position of the Defendant in that it espoused the components of abuse of Court process which have been shown to exist in the instant case. Counsel submitted that as rightly found by the Supreme Court in Umeh's case relied upon by the Claimant, the disposal of the suit in Delta would dispose of the issue in this case hence this suit is nothing but abuse of Court process, and urged the Court to so hold.

On competency of the Application for judicial Review, Counsel submitted that Claimant's submissions on this issue can only be suitable for the High Court sitting in Delta State and not this Honourable Court.

That the jurisdiction of this Court is circumscribed and same cannot be extended by the Claimant.

That duty to uphold the integrity of Courts is contributory hence as Counsel, must take steps necessary to prevent abuse of the judicial process at all times.

Finally, Counsel urged the Court to uphold their submissions and grant the Applicant as prayed.

Now, having carefully considered the submissions for and against the Motion on Notice, I believe that the sole issue for determination as formulated by the Defendant/Applicant is apt, and it is hereby also adopted by the Court.

The main contention of the Defendant/Applicant as distilled from the grounds predicated this motion on Notice is that the subject matter of this suit is already subject of Litigation before the High Court in Delta State in suit NO. HOR/MISC/6/2019, between the same parties in this suit and on the same issues.

In particular I would refer to ground (C) of the said grounds predicated this Motion on Notice and it provides as follows:-



***“The Plaintiff alongside its Assistant National Secretary also filed an application on Notice before the high Court of Delta State sitting in Orerokpe praying the Court amongst other reliefs for an Order prohibiting the Managing Director of Fidelity Bank, his servants and privies from recognizing and or accepting or dealing with the present mandate signature of all Progressives grand alliance APGA, Account No: 4010278117, of Fidelity Bank until a proper decision and or directive is communicated to the management of Fidelity Bank from the Caretaker Committee of the party and same was served on the Defendant/Applicant.”***

While the Plaintiff/Respondents on the other hand contend that in the instant case non of the ingredients that grounds an abuse of process exists in this case, the cause of action and subject matter as well as the parties in the suit in Delta State and this suit are not the same.

The question to ask here is what constitutes an abuse of Court process?

In the case of DREDGING INTERNATIONAL SERVICES (NIG) LTD V. ABSEA OILS LTD (2019) LPELR – 49179 (CA), per JOMBO – OFO, J.C.A., PP. 12 – 14, paragraphs C – A, the Court held as follows:-

***“On what therefore constitutes an abuse of Court process? The Law is settled that what constitutes an abuse of Court process is the multiplicity of suits or proceedings by the parties in respect of the same subject matter and issues whether in the same Court or different Courts.....”***

It was equally held by the Court of Appeal in the case of HONEYWELL FLOUR MILLS PLC V. ECOBANK (2019), per George will, J.C.A., at pp 32 – 47, paragraphs A – B, as follows:-

***“.....Now, the term ‘abuse of Court process’ is often seen to be synonymous with multiplicity of suits, but though that in a way is a correct preposition of the Law, yet abuse of Court process is much more than mere multiplicity of suits. In other words, multiplicity of suits is not the only way by which abuse of Court process could be constituted. Simply put, and for lack of a precise or concise definition, the term ‘abuse of***

*process of Court process' denotes the improper use of the process of Court to achieve unlawful ends or the employment of the judicial process to the annoyance or irritation or injury of the person or another and thus it can safely pass as a doctrine of Law without any precise or concise definition. This is rightly and arguably so because what would constitute or amount to abuse of court process is very diverse, imprecise and thus subject to infinite or indefinite considerations. In considering whether or not an action constitutes an abuse of Court process, the court is to critically consider the peculiar circumstances of the affected case, whether the act of the party complained of, constitutes an abuse of Court process.....”*

I shall first of all move to consider whether the subject matter in suit NO:HOR/MISC/6/2019 pending before High Court of Delta State Orerokpe, judicial division is the same with the subject matter now pending before this Honourable Court.

It is the submission of the Learned Counsel to the Claimant/Respondent on this issue that the subject matter of the action in Delta State relates to a default judgment of another Court

in Delta State sitting in Kwale and that the subject matter is a mere Banker – Customer dispute arising from a premature freezing of a customer’s account without a Court Order.

I have taken a critical look at the Four questions for determination in this originating summons. All the said questions relate to the freeze Order placed by the Defendant/Applicant on the Claimant’s Account No: 4010278117 domiciled at Plot No. 267, Tafawa Balewa way Central Business District, Abuja, branch of the Defendant, without any Court Order but merely “as a result of a pending suit involving the Customer”

In the Counter – Affidavit of the Claimant/Respondent in opposition to this Motion, particularly paragraph 9, it is averred as follows:-

***“The grievance of APGA that led to the commencement of the instant suit is simple and straight forward. Fidelity Bank jumped the gun in prematurely freezing APGA’s Account without any Court Order thereby overreaching the high Court of Delta State and extra judicially granting Relief No (d) sought in the substantive Application for Judicial Review. To my***

***knowledge, the instant suit does not amount to abuse of the judicial process”.***

On the other hand, it is the submission of the Learned Defendant/Applicant’s Counsel, as seen in the reply address that relief (d) of Exhibit POE2 which touches on the Claimant’s Account with the Defendant as annexed by the Defendant to its application is the sole reason the Claimant sued the Defendant is Delta State and this action inures from that same account.

Having considered the above arguments, it would be proper to consider the said Reliefe No. (d) of Exhibit POE2, and for the purpose of clarity, I hereby reproduce same here under, it is as follows:-

***“An Order of the Honourable Court prohibiting the Manager of Fidelity Bank, and his privies from recognizing and/or accepting or dealing with the present mandate signatory of: All Progressives Grand Alliance, APGA, Account NO. 4010278117, of Fidelity Bank, until a proper decision, and directives is communicated to the Management of Fidelity Bank, from the Caretaker Committee of the party”.***

Therefore, going by the above content of Relief No. (d) of Exhibit POE2, read along with paragraph 9 of the Claimant/Respondent's Counter – Affidavit to this motion, there's no doubt that the subject matter in the suit in Delta State is the same with the subject matter of this suit now pending before this Court. I so hold.

It brings me next to the issue as to whether the parties in this suit are the same parties in the suit pending before the High court of Delta State, Orerokpe judicial division in suit No: HOR/MISC/6/2019.

In the Defendant/Applicant's supporting Affidavit to this motion on notice particularly paragraph 5 (b) (d) it is averred as follows:-

Paragraph 5 (b):

***“The Plaintiff on record and its Assistant National Secretary approached the High Court sitting in Orerokpe, Delta State via Application for leave for Order of judicial review to wit: mandamus, prohibition and injunction amongst others. The said action with suit No: HOR/MISC/6/2029 is still pending before the High Court of Delta State, Orerokpe Judicial Division”.***

Paragraph 5 (d):

***The Respondents to the Plaintiff's applications referred to above are Dr. Mic Adams, Independent National Electoral Commission, Inspector general of Police and the Managing Director, Fidelity Bank Plc (Applicant herein).***

However, on the part of the Claimant/Respondent, it is averred in paragraph 13 (e) of their Counter Affidavit in opposition to this Motion on Notice as follows:-

***"Parties in both suits are different. APGA is the lone party in both suits. Fidelity Bank Plc is not even a party in the Delta State suit because the Bank is not the same in Law with its Managing Director sued in Delta State suit."***

Likewise, it is submitted in the Claimant/Respondent address in support of the Counter – Affidavit in opposition to this Motion on Notice particularly paragraph 3:8 that before the instant suit was filed on 27/01/2020, APGA had duly notified Fidelity Bank that it wasn't APGA as customer of the Bank that filed the suit in Delta State. That this is clear from Exhibit APGA 4 reproduced therein.

I have taken a careful look at Exhibit APGA 4, which is a letter written by APGA National Organizing Secretary Ifeanyi Mbaeri, demanding the Defendant unfreeze the Claimant's Account. I have also looked closely at all the Exhibits attached by both the Defendant/Applicant and the Claimant/Respondent. What is evident is that in all the Court processes filed in the suit in Delta State, particularly suit No: HOR/MISC/6/2019, All Progressives Grand Alliance, (APGA) is listed therein as the 2<sup>nd</sup> Plaintiff/Applicant.

Now although I have considered Claimant/Respondent's contention that there was no authorization given by APGA leadership before the suit was initiated going by Exhibit APGA 9, the party's constitution, I would have to agree with the Learned Counsel to the Defendant/Applicant, that competency or otherwise of the action in Delta State is not for this Court's, determination.

Whatever the argument is, the bottom line is going by the Court processes of the suit in Delta, the Plaintiff herein and the Co - Plaintiff/Applicant in suit No HOR/MISC/6/2019 are one and the same. I so hold.

On whether the Managing Director Bank Plc is different from the Defendant in this suit, it is instructive to note that in the suit in Delta



State, one of the Respondents is the Managing Director, Fidelity Bank Plc, listed therein as the 4<sup>th</sup> Respondent.

Now, the question to ask here is whether the Managing Director, Fidelity Bank Plc, and Fidelity Bank Plc the Defendant herein, are the same Defendants in the two suits?

It is the argument of the Claimant that it was the Managing Director that is sued in Delta and not the Bank (the Defendant in this suit) as such they not the same.

The Managing Director Fidelity Bank Plc as the Chief executive officer is no doubt responsible for steering the business affairs of the Bank. Therefore unless it can be shown that the said Managing Director was sued not in his official capacity, the argument of the Claimant's would hold no water.

In the instant case it has not been shown that the M.D of Fidelity Bank was not sued in his official capacity, therefore the arguments of the Claimant's is hereby discountenanced on this issue. I so hold.

I have also considered that there's a Motion on Notice filed by the National Legal Advicer of APGA Sly Ezeokenwa Esq. on 13/02/2020

(i.e Exhibit POE 5) seeking to strike out APGA's name from the Delta State suit.

However, there's nothing before this Court to show that the name of APGA has been struck out, as it seems the matter is still pending before the Delta State High Court.

Likewise, I've considered the Authority heavily relied upon by the Claimant's in urging the Court to hold in their favour. I. e, the case of VICTOR UMEH & ANOR V. PROF MAURICE IWU & ORS. (Supra).

This Honourable Court very much appreciates Claimant's submissions in support of their position. Indeed, the above cited authority has greatly assisted this Honourable Court in considering the following before arguing at its decision.

That is whether the disposal of the suit in Delta will completely dispose of the issue in this suit.

Here, it must be borne in mind that the same Claimant in the suit in Delta State is seeking for a freeze Order in its account is also the same Plaintiff herein seeking for this Court's Order amongst other Reliefs for unfreezing of the said account.

Indeed, this issue was aptly stated by the Defendant/Applicant in its supporting Affidavit, in paragraph 5 (h) where it averred thus:-

***“The Plaintiff’s action in presenting this suit is a gross abuse of Court process in that the same Plaintiff is in one breath asking the Defendant to prevent dissipation of its funds and in another breath seeking to punish the Defendant for preventing its funds from unlawful dissipation.”***

In paragraph 5 (k) it is averred thus:-

***“All the Plaintiff is seeking in this action is to sanction the Defendant for upholding the sanctity and the pendency of action the Plaintiff itself initiated.”***

Therefore, in view of all the peculiar facts and circumstances of this matter, I cannot do otherwise but agree with the Defendants on this issue. Parties or litigants and Counsel in general should not use tools at their disposal to ridicule the judicial process. For to file matters before two Courts of co – ordinate jurisdiction, on the same subject matter, between the same parties, and then run around while both are pending and file a Motion to strike out its name after initiating

the 2<sup>nd</sup> process, seems to me as one eating and having his cake at the same time. Such should not be allowed by this Honourable Court as multiplicity of actions is seen as a form of abuse of Court process. On this premise, I refer to the case of SILHOUTTE – TRAVELS & TOURS LTD V. LEADERS & CO. LTD PUBLISHERS OF THIS DAY NEWSPAPER (2017) LPELR – 42982 (CA) per, OHO JCA, PP 23 – 27, paragraph A – B, where the Court held as follows: -

***“Usually, the category of what amounts to an abuse of process is not closed. An abuse can manifest in a variety of ways one of which is the multiplicity of actions between the same parties, on same issue, seeking the same Relief. A Court of Law frowns at such multiplicity of actions for the following reasons (1) This may result in the ridicule of the judicial system (2) This issue of ridicule may stem from the fact that there may be the possibility of conflicting judgments and orders emanating from multiple actions. (3) it amounts to a waste of Judicial Resources.....”.***

Therefore, flowing from the above, it is my humble opinion, that entertaining the present suit could lead to the possibility of having conflicting judgments and orders in this suit and suit No:

HOR/MISC/6/2019s, now pending before the Honourable Court in Delta State.

On the proper order to make where the Court finds that its process is abused, such as in this case, I refer to the Case of :

ZIKLAGSIS NETWORKS LTD V. ADEBIYI & ORS. (2017) LPELR 42 899 (CA).

***“In the eyes of the Law therefore, a process initiated in abuse of the process of Court is devoid of any competence or life and thus ought to be terminated by the Court, even in limine if so called upon by the party being put through the inevitable task of defending or opposing a process steeped in the abuse of the process of Court”.***

In the instant case, I’ve considered the fact that the instant suit is an abuse of Court process, the Defendant/Applicant has applied for this suit to be struck out.

I refer to paragraph 5 (L) of its supporting affidavit, where it is averred as follows:-

***“The interest of Justice demands that this action be struck out as a gross abuse of Court process and a deliberate attempt to undermine the integrity and dignity of our Courts”.***

In view of the reasons given earlier and having found that this suit is an abuse of Court process, the sole issue for determination is hereby resolved in favour of the Defendant/Applicant against the Claimant/Respondent.

Consequently, therefore, this Motion on Notice is found to be meritorious and the preliminary objection is hereby sustained.

The two Reliefs sought therein are accordingly granted as prayed.

Therefore this suit with suit No: FCT/HC/CV/919/2020, be and is hereby struck out for being an abuse of Court process.

**Signed**  
**Hon. Justice S. U. Bature**  
**(Presiding Judge)**  
**02/06/2020.**

Defendant/Applicant's Counsel: we are grateful to your lordship for the industry put into this RULING.

**Signed**  
**Hon. Justice S. U. Bature**  
**(Presiding Judge)**  
**02/06/2020.**