

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 23
CASE NUMBER:	SUIT NO. FCT/HC/CV/6871/2023
DATE:	20/2/2024

BETWEEN:

THE ESTATE OF MRS. FLORENCE
NGOZI AGUWA (NEE ODOR (DECEASED)).....APPLICANT
(Represented by the Administrator,
Magnus Nnaemeka Aguwa)

AND

ZENITH BANK PLC.....RESPONDENT

APPEARANCES:

O. Asekome Esq for the Applicant.

JUDGMENT

By an originating motion dated 18th day of July, 2023 and filed on same day brought pursuant to Order 43 Rule 1 of the FCT High Court (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of this Honourable Court. The Applicant herein prayed this Honourable Court for the following Orders:-

“(1). An Order of this Honourable Court directing the Respondent to furnish the Applicant with the whereabouts and details of the suspense account holding the sum of N14, 216, 107.34 (Fourteen Million, Two Hundred and

Sixteen Thousand, One Hundred and Seven Naira, Thirty Four Kobo), being the total amount contained in the account with account No. 1003005241 in the name of Mrs. Florence Ngozi Aguwa (deceased), domiciled with the Respondent which was moved into a suspense account by virtue of the erroneous closure of account No. 1003005241.

- (2). An Order of this Honourable Court directing the Respondent to remit the sum of N14, 216, 107.34 (Fourteen Million, Two Hundred and sixteen Thousand, One Hundred and Seven Naira, Thirty Four Kobo), being the total amount contained in the account with account No. 1003005241 in the name of Mrs. Florence Ngozi Aguwa (deceased), domiciled with the Respondent which was moved into a suspense account by virtue of the erroneous closure of account No. 1003005241, into account No. 0121467280, in the name of Aguwa Magnus Nnaemeka, domiciled with Messrs. GTBank Plc.**
- (3). An Order of this Honourable Court, awarding cost assessed at N500, 000.00 (Five Hundred Thousand Naira only) against the Respondent by reason of their failure, refusal and or neglect to remit the funds of the estate of Mrs. Florence Ngozi Aguwa to the Applicant.**
- (4). An for such further Orders or other Orders that this Honourable Court may deem fit to make in the circumstance of this case.”**

Filed in support of the originating motion is a 19 paragraphed Affidavit deposed to by Magnus Nnaemeka Aguwa, the Applicant in this suit. Attached to the Supporting Affidavit are annexures marked as Exhibits A, B and C respectively. Equally filed in support is a Written Address dated the 18th day of July, 2023. In the said Written Address, learned Counsel formulated a lone issue for determination which is “**whether on the strength of the affidavit evidence in support of the instant application, the Applicant is entitled to the reliefs sought.**”

In arguing the issue, Counsel submitted that it is trite law that when a person dies intestate, the interest in the deceased property tangible and

intangible assets and/or liabilities are vested in the Chief Judge of the State of residence who will now donate the power to deal with the estate of the deceased to an administrator, who upon such appointment, the administrator has the duty of bringing together, taking inventory of and distributing the estate of the deceased and proceeds thereof. Counsel cited Section 45 of the Administration of Estate Act and the case of **ADEMOLA V SODIPO (1989) 5 NWLR (Pt.121) 329 @ 354-355.**

In his further submission, Counsel stated that the grant of the letters of Administration to the Applicant confers on him (the Applicant) the legal authority to deal with the estate property on behalf of the beneficiaries. Counsel referred to the cases of **OLOWU V OLOWU (1994) 4 NWLR (Pt.336) 90 CA; AYORINDE V AYORINDE (2004) 13 NWLR (Pt.889) 83 CA and ONEWOKAE V ONEWOKAE (2007) ALL FWLR (Pt.356) 788 CA.**

In another submission, Counsel stated that anybody in possession of all or part of the estate of the deceased or the proceeds thereof must tender account of and deliver same to the administrator as this is the crux of the instant application.

Finally, Counsel submitted that the Applicant has placed sufficient material before this Honourable Court to entitle him to the grant of the reliefs sought and urge this Honourable Court to so hold and grant all the Applicant's prayers in their entirety.

In response to the originating motion, the Respondent filed a 39 paragraphed Counter Affidavit deposed to by one Praise Eseoghene, a Litigation Secretary in the law firm of Messrs. Musah Kabiru & Co. Attached to the Counter Affidavit are annexures marked as **ZB1, ZB2, ZB3, ZB4, ZB5, ZB6, ZB7, ZB8, ZB9, ZB10 and ZB11** respectively. Equally, filed in support of the Court Affidavit is a Written Address dated 31st day of October, 2023.

In the said Written Address, Counsel formulated a sole issue for determination to wit:

“Whether or not this instant application filed by the Applicant constitutes a gross abuse of Court process in view of the pending suit No. FCT/HC/CV/142/2022 MR. MAGNUS NNAEMEKA AGUWA V ZENITH BANK PLC as well as Suit No.

KDH/RAD/453/2022-VICTOR ODOR V ZENITH BANK PLC & 2 ORS.”

In arguing the issue, Counsel stated that the phrase abuse of Court process was defined as the improper and tortuous use of a legitimately issued Court process to obtain a result that is either unlawful or beyond the processes scope and the feature of abuse of process of Court is the improper use of judicial process by a party in litigation. Counsel referred the Court to the cases of **OGBORU & ANOR V UDUAGHAN & ORS (2013) LPELR-20805 (SC) and ALLANAH & ORS V KPOLOKWU & ORS (2016) 1 LPELR-40724 (SC).**

In further opposing the application, Counsel contended that in considering whether an action constitutes an abuse of Court process, the Court is to critically consider the peculiar circumstances of each case in which the issue of abuse of Court is raised to determine whether the act of the party complained of constitutes an abuse of Court process and in arriving at what constitutes an abuse of Court's process, the law has laid down some principle guiding the consideration of whether the process constitutes abuse of Court or not and to sustain the claim of abuse of process, there must co-exist the multiplicity of suit between the opponents, on the same subject matter, on the same issue and these pre conditions are conjunctive and in the instant case, **Suit No. FCT/HC/CV/142/2022 MR. MAGNUS NNAEMEKA AGUWA VS ZENITH BANK PLC as well as Suit No. KDH/KAD/453/2022 VICTOR ODOR VS ZENITH BANK PLC & 2 ORS were filed on 20th January, 2022 and 4th May, 2022** respectively and both the Applicant and the Respondent in this instant suit are parties in these earlier pending suits which have the same subject matter with the instant application. Reliance was placed on the cases of **SARAKI VS KOTOYE (1992) 9 NWLR (Pt.264) 156; OYEYEMI & ORS V OWOEYE & ANOR (2017) LPELR-42903 (SC); CPC & ANOR V OMBUGADU & ANOR (2013) LPELR-21007 (SC) and NWOSU V P.D.P & ORS (2018) LPELR-44386 (SC).**

In another submission, Counsel stated that all the Applicant's reliefs in this instant suit could have conveniently been sought for in the earlier suits, particularly **Suit No. KDH/KAD/453/2022 VICTOR ODOR V ZENITH BANK PLC & ORS** pending before the High Court of Kaduna state as the earlier pending suits have not been discontinued and to determine whether an abuse of Court process has occurred in the circumstances of this instant

suit, the Court will consider the content of the processes filed in the first suits and compare them with those filed in this instant suit in order to ascertain whether the Applicant would achieve his aim and same purpose in the instant case even as a party in the earlier suits as it is an inherent jurisdiction of the Court to resist and ward off the abuse of its process to maintain the sanctity and sacred nature of the Court. He referred the Court to Section 6(6)(a) of the 1999 Constitution and the cases of **AGWASIM OJOCHÉ (2004) 10 NWLR (Pt.882) 613 and PAPERSACK (NIG) LTD V ODUTOLA (2011) 10 NWLR (Pt.1255) 244.**

Counsel stated that to persuade any Court to hear a matter over a subject matter that is pending before a Court of coordinate jurisdiction would to say the least be unethical of a Counsel and same should be discouraged as a suit that impugns the dignity of a Court must be eschewed as same amounts to an abuse of judicial process and Counsel urged the Court to hold that the instant suit filed by the Applicant is an abuse of Court process and once a Court is satisfied that the proceedings before it amounts to an abuse of Court process, it must invoke its coercive powers to punish the party who is in abuse of its process to dismiss the case. In this respect, reliance was placed on the cases of **IGBEKE V OKADIGBO & ORS (2013) LPELR-20664 (SC), UBA PLC V EKPO (2003) 12 NWLR (Pt.834) 322, LOKPOBIRI V OGOLA (2016) 3 NWLR (Pt.1499) 328 at 367 to 388, PARA E-F, LADEJO V AJIMOBİ (2016) 10 NWLR (Pt.1519) 86 at 128, PARA A –V and PDP V SHERIFF (2017) 15 NWLR (Pt.1588) 219 at 265-266 PARAS D –G.**

Consequently, learned Counsel submitted that the Applicant is not entitled to the reliefs sought in this application.

Furthermore, Counsel stated that in specific response to paragraph 3.2 of the Written Address in support of the Applicant's originating motion that the issuance of Letters of Administration or probate can, depending on the facts and circumstances of each case, be re-visited by judicial proceedings and an appropriate order made to meet the justice of the case that is to say that the law allows minimal interference from the Courts and the issuance of Letters Administration can, depending on the facts and circumstances of each case be re-opened especially by one who is able to show by evidence that he or she ought to have been put on notice and given an opportunity to consent or object to the application or heard before the Letters of

Administration were issued. Counsel cited the cases of **UGWU & ORS V EZEANOWAI & ORS (2014) LPELR-41888 (CA) PP.61-62, PARAS C.**

In another submission, Counsel stated that compliance with the Letter of Administration procured by the Applicant following the pendency of the suit before the High Court of Kaduna State would occasioned a miscarriage of justice as the High Court of Kaduna State is yet to make a pronouncement or give judgment on the matter before it and the justice of this case demands that the Applicant herein conveniently seek the reliefs in this suit in the suit already pending in the High Court of Kaduna State were all necessary parties in relation to the subject matter of this suit and the pending **Suit No. KDH/KAD/453/2022- VICTOR ODOR V ZENITH BANK PLC & 2 ORS** preceded the said Letter of Administration of the High Court of FCT procured by the Applicant.

In conclusion, Counsel urged the Court to dismiss this application in its entirety and hold that same is incompetent and lacks merit.

On the other hand, the Applicant filed a 9 paragraphed Further and Better Affidavit deposed to by one Samuel Nwadigo a lawful attorney to the administrator of the Applicant's estate. Also filed in support is a Written Address dated the 21st day of November, 2023.

In the said Written Address, Counsel formulated a sole issue for determination to wit "whether or not this instant application filed by the Applicant constitutes a gross abuse of Court process in view of the pending **Suit No. FCT/HC/CV/142/2022 MR. MAGNUS NNAEMEKA AGUWA V ZENITH BANK PLC as well as Suit No. KDH/KAD/453/2022-VICTOR ODOR V ZENITH BANK AND 2 ORS.**

In arguing the issue Counsel submitted that the answer to the issue raised by the Respondent be determined in the negative as the learned Counsel for the Respondent argued that the instant application is an abuse of Court process and as such should be dismissed with cost.

Counsel further submitted that the Respondent did not specify the condition the Court will examine that will determine abuse of Court process to warrant this Honourable Court to determine whether the instant application is an abuse of Court process.

In another submission, learned Counsel raised relevant questions to be asked as follows:-

“Is the Applicant in the instant application a party to Suit No. FCT/HC/CV/142/2022 AND SUIT NO. KDH/KAD/453/2022, are the reliefs sought by the Claimant in both cases listed in (1) above the same reliefs sought by the Applicant in this suit, will the end result in both suits be the same as the end result in the instant application, which Counsel stated that the answers to the above questions as they affect the instant application are clearly in the negative as the points raised by learned Counsel to the Respondent go to no issue but rather buttress the case of the Applicant in the instant application and the Applicant is not a party to any of the suits sued in his personal capacity and not as a representatives of the Applicant as the Applicant cannot be said to be a party to the suits mentioned by learned Counsel for the Respondent. Counsel referred the Court to the case of AJAOKUTA STEEL COMPANY LD V GREENBAY INVESTMENT AND SECURTIES LIMITED AND ORS (2019)” SC 11661.”

Moreso, learned Counsel further submitted that the Applicant did not ratify that Mr. Magnus Nnaemeka Aguwa did not institute nor was any suit instituted against him as an agent and/or representative of the Applicant’s estate, the Applicant’s estate cannot be said to be a party to such proceedings. In this respect, Counsel cited the case of ***DR. TUNDE BAMGBOYE V UNIVERSITY OF ILORIN (1999) LPELR- SC 41/1993; GENERALLY GLOBAL SOAP AND DETERGENT IND LTD V BELLO (2013) ALL FWLR (Pt.671) 1594 (CA), PHRC v OKORO (2012) ALL FWLR (Pt.606) 466 (CA) and NIBD V OLALOMI IND. LTD (2005) 5 NWLR (Pt.761) 532 RATIO 5.***

In conclusion, Counsel urged the Court to hold and grant all the Applicant’s prayers in their entirety.

I have carefully perused the originating motion, the reliefs sought, the supporting affidavit, the annexures attached therewith and the Written Address in support. I have equally gone through the Counter Affidavit of the Respondent, the annexures attached therewith as well as the Written Address in support of the Counter Affidavit. In addition, I have studied the Further Affidavit and the Written Address.

It is my humble view that the issue for determination is whether the Applicant herein has made out a case for the grant of this application.

From a careful study of the originating motion and the supporting affidavit vis-a-vis the submission of the learned Counsel to the Applicant, it can be deduced that the fulcrum of this application is that the Applicant is seeking the Order of this Court directing the Respondent to furnish him (the Applicant) with the whereabouts and details of the suspense account holding the sum **of N14, 216, 107.34 (Fourteen Million, Two Hundred and Sixteen Thousand, One Hundred and Seven Naira, Thirty Four Kobo)**, being the total amount contained in the account of Mrs. Florence Ngozi Aguwa (deceased), with **account no. 1003005241** domiciled with the Respondent as well as directing the Respondent to remit the sum of **N14, 216, 107.34 (Fourteen Million, Two Hundred and Sixteen Thousand, One Hundred and Seven Naira, Thirty Four Kobo)**, into **account No. 0121467280**, in the name Aguwa Magnus Nnaemeka domiciled with GTBank Plc

However, the Respondent in the instant suit, submit that this instant application constitute an abuse of Court process as there were pending suits at Kaduna State High Court and High Court of the Federal Capital Territory Abuja in which both the Applicant and the Respondent in this instant suit are both parties in these earlier pending suits which have the same subject matter with the instant application.

At this juncture, the question that comes to mind is whether this instant application constitutes an abuse of Court process.

It is germane to begin by considering the meaning of the phrase abuse of Court process. The phrase abuse of Court process was defined by Black law Dictionary 9th Edition at page 11 to mean thus:

“The improper and tortuous use of a legitimately issued Court process to obtain a result that is either unlawful or beyond process’s scope. Also termed abuse of legal process, malicious abuse of process, malicious abuse of legal process, wrongful process, wrongful process of law.”

It was also given judicial definition by the Supreme Court in the case of **ADEGBANKE V OJELABI (2023) 4 NWLR (Pt.1875) pp. 522 – 523, PARAS D-A PER KEKERE EKUN J.S.C.** to mean thus:-

“Abuse of process of Court is a term generally applied to a proceeding which is wanting in bonafide and is frivolous, vexatious or oppressive. Where a party duplicates a Court process, the more current one, which results in the duplication is regarded as an abuse of the Court’s process. Abuse of process can also mean an abuse of legal procedure or improper use of legal process. An abuse of process always involves some form of bias, malice, some deliberateness, some desire to misuse or divert the system. There is said to be an abuse of the process of the Court when a party improperly uses the issue of the judicial process of the Court to the irritation and annoyance of his opponent, such as instituting a multiplicity of actions on the same subject matter, against the same opponent on the same issues.”

Furthermore, it is elementary law that for a suit to be an abuse of Court process, there must a multiplicity of suits between the same parties, on the same subject matter and on the same issue. This position of law was more elaborated by the Apex Court in the case of **COMMISSIONER OF EDUCATION IMO STATE V AMADI (2013) 13 NWLR (Pt.1370) P.151, PARAS A – B PER OGUNBIYI J.S.C** where it was held thus:-

“Where there are multiple actions between the same parties on the same subject matter, the consequential effect is an abuse of judicial process. In another words, it is a situation where a party improperly uses judicial process to the irritation, annoyance and harassment of his opponent not only in respect of the same subject matter but also where the issues are the same in the other action or actions.”

It was further held by the apex Court in the case of **COMMISSIONER OF EDUCATION IMO STATE V AMADI (supra) at Page 154 PARAS C – E PER ONNOGHEN JSC** that:-

“Multiplicity of Court process on the same subject matter before one or more Courts of competent jurisdiction and between the

same parties is what the Courts have described as improper use of the judicial process to the irritation, annoyance and harassment of the other party and therefore described as an abuse of process.”

Similarly, it was held in the case of **BI COURTNEY LTD V ASO SAVINGS AND LOANS PLC (2023) 17 NWLR (Pt.1912) p. 37, PARAS C-E PER OGBUINYA J.C.A** that:

“There are no hard and fast rules in detecting the absence or presence of abuse of Court process in any action. A court is enjoined to examine each case, predicated on its facts and circumstances, in order to ascertain if it displays an abuse of Court process or not. The factual antecedents of each case have to be matched with the negative elements of abuse of Court process. The barometer to gauge the existence of abuse Court process is the presence of multiplicity of suits bordering on the same issues and subject matter between the same parties.”

Let me purse here and apply the principle of law to the instant application as it is important to note at this juncture that the Respondent deposed in its Counter Affidavit particularly at paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 31, 32, 33, 34, 35 and 36 which for clarity and ease of reference I shall reproduced same hereunder:

Paragraph 16 read thus:

“That on 14th September, 2021, the Defendant received another letter from the Police dated 9th September, 2021, accompanied by an Order of the Senior District Court of Nasarawa State sitting in Mararaba, demanding the Respondent to transfer the said fund, N14, 216, 107.34 to a GTB Account No. 0230780257 allegedly belonging to the deceased customer. The said letter and Order of District Court, marked as Exhibit ZB5 is hereby attached.”

Paragraph 17 read thus:

“That the Respondent was at the verge of confirming the authenticity of the said order of the Senior District Court of Nasarawa State when it received on 20th September, 2021, a Writ of Summons from the High Court of Kaduna State in SUIT NO. KDH/KAD/888/2021-JECINTA ULOMA IBE (NOW JECINTA ULOMA AGHA ORJI) VS ZENITH BANK PLC & 2 ORS, instituted by Jacinta Uloma Ibe, wherein she sought for an Order of Court compelling the Respondent herein to release the Two Manger’s Cheque issued for the total sum of N14, 216, 107.34, which the Respondent had retained in view of the Police investigation, to her, with damages and cost of N11.4 Million. The Applicant herein was sued as the 3rd Defendant in the above mentioned suit. The certified true copy of the said Writ of Summons, marked as Exhibit ZB6, is hereby attached.”

Paragraph 18 read thus:

“That upon receipt of the said Writ of Summons the Respondent notified the Police of the pendency of the suit in the High Court of Kaduna State vide its letter to the Police dated 20th September, 2021. The said letter, marked as Exhibit ZB7 is hereby attached.”

Paragraph 20 read thus:

“The Respondent further states that during the pendency of SUIT NO. KDH/KAD/888/2021 at the material time, the Applicant on 20th January, 2022, filed a suit over the same subject matter vide a Writ of Summons in SUIT NO. FCT/HC/CV/142/2022-MR. MAGNUS NNAEMEKA AGUWA V ZENITH BANK PLC praying against the Respondent among other reliefs, special damages of N6, 000, 000.00 for the inconvenience and pecuniary cost incurred by him (the Applicant) in SUIT NO. KDH/KAD/888/2021, filed by Jacinta Uloma Ibe at the Court of Kaduna State, which relief could have conveniently been sought for in the suit pending in High Court of Kaduna State. The Writ of Summons, marked as Exhibit ZB8 is hereby attached.”

Paragraph 21 read thus:

“Subsequent to paragraph 20 above, the Respondent was served with yet another Writ of Summons in SUIT NO. KDH/KAD/453/2022-VICTOR ODOR VS ZENITH BANK PLC & 2 ORS, filed by the deceased customer’s biological brother, Victor Odor, on 4th May 2022, wherein the Applicant in this instant suit and Jecinta Uloma Ibe were sued alongside Zenith Bank Plc as the 2nd and 3rd Defendants respectively. The said Writ of Summons, marked as ZB 9 is hereby attached.

Paragraph 22 read thus:

“That the first SUIT NO. KDH/KAD/888/2021-JECINTA ULOMA IBE (NOW JECINTA ULOMA AGHA ORJI) VS ZENITH BANK PLC & 2 ORS, pending in High Court of Kaduna State, has been struck out.

Paragraph 23 read thus:

“However, SUIT NO. FCT/HC/CV/142/2022-MR. MAGNUS NNAEMEKA AGUWA VS ZENITH BANK PLC as well as SUIT NO. KDH/KAD/453/2022-VICTOR ODOR VS ZENITH BANK PLC & 2 ORS, wherein the Court is to determine who among Victor Odor, Jecinta Uloma and the Applicant herein is entitled to the grant of letter of administration of the estate of the deceased, are both pending in the High Court of the FCT, Abuja and Kaduna State respectively.”

Paragraph 24 read thus:

“In reply to paragraph 9 of the Affidavit in support of the originating motion, the Respondent states that notwithstanding that the Applicant is aware that the fund in issue is the subject matter of the two pending suits, FCT/HC/CV/142/2022-MR. MAGNUS NNAEMEKA AGUWA VS ZENITH BANK PLC and SUIT NO. KDH/KAD/453/2022-VICTOR ODOR VS ZENITH BANK PLC & 2 ORS pending in FCT Abuja and Kaduna State respectively, the Applicant instructed his Solicitors, Redemption Associates & Law Consult, to write to the Respondent the letter dated 26th June, 2023, demanding that the fund be remitted into the Applicant’s GTB Account No. 0121467280.”

Paragraph 25 read thus:

“In reply paragraphs 12, 13 and 14 of the Affidavit in support of the Originating motion, the Respondent vehemently refused to accede to that demand of the Applicant’s Solicitors’ letter as the said fund has been the subject of the pending litigations, even to the knowledge of the Applicant. Hence this instant application.”

Paragraph 31 read thus:

“That the multiplicity of suits over the same subject matter and the incessant invitation of the Respondent’s staff by the Nigeria Police Force over the same matter had compelled the Respondent to file an Interpleader Summons in the said SUIT NO. KDH/KAD/453/2022-VICTOR ODOR VS ZENITH BANK PLC & 2 ORS, praying the Honourable Court to Order the Respondent to deposit the fund in issue with the Court so that the Court can give same to the victorious party at the end of litigation. The Motion on Notice for the Interpleader Summons dated and filed on 21st August, 2023 marked as Exhibit ZB10, is hereby attached.

Paragraph 32 read thus:

“That the Applicant in this instant suit being the 2nd Respondent in the said Interpleader proceeding has therein joined issues with the Respondent having filed his Counter Affidavit where in paragraph 9(d), the Applicant averred that the proper order to make in the circumstance of the Interpleader application by the Court is for the funds in issue to be paid into his account, a relief same and similar with the main relief sought in this instant application. The said Counter Affidavit, marked as Exhibit ZB 11 is hereby attached.”

Paragraph 33 read thus:

“That neither the substantive SUIT NO. KDH/KAD/453/2022-VICTOR ODOR VS ZENITH BANK PLC & 2 ORS nor the Interpleader application has been determined by the High Court of Kaduna State.”

Paragraph 35 read thus:

“That I was informed by the Counsel handling this matter, Solomon Unamka Esq, that this Honourable Court and the High Court of Kaduna State are Courts of coordinate jurisdiction and as such there could be real possibility of two conflicting decisions in respect of one and same subject matter.”

Paragraph 36 read thus:

“That in view of SUIT NO. FCT/HC/CV/142/2022-MR. MAGNUS NNAEMAKA AGUWA V ZENITH BANK PLC as well as SUIT NO. KDH/KAD/453/2022 –VICTOR ODOR VS ZENITH BANK PLC & 2 ORS, this instant application is grossly incompetent as it constitutes an abuse of Court process.”

On the other hand, the Applicant deposed in the Further Affidavit particularly paragraphs 8(f), 8(g), 8(h), 8(i), 8(k), 8(q), 8(r), 8(s), and 8(t), which for ease of reference shall be reproduced as follows:

Paragraph 8(f) read thus:

“That the Respondent admitted in paragraph 22 of its Counter Affidavit that the suit filed by the said Jacinta Uloma Ibe aka Jecinta Uloma Agha Orji with Suit No. KDH/KAD/888/2021, bringing an action against the Respondent and 2 others on the strength that the Respondent did not honour the Order of the Probate Registry of the High Court of Kaduna State based on the Affidavit deposed to by Jecinta Uloma Ibe aka Jecinta Uloma Agha Orji has been struck out based on the fact that the said Jecinta Uloma Ibe aka Jecinta Uloma Agba Ibe was not the administrator neither was she the next of Kin to Florence Ngozi Aguwa Nee Odor. The Ruling of the High Court of Kaduna State delivered on the 11th day of May, 2022 is hereby attached and marked as Exhibit D.”

Paragraph 8(g) read thus:

“That the suit by the Administrator of the Applicant Estate against the Respondent in Suit No. FCT/HC/CV/142/2022 was not

for the release or non-release of the funds contained in account No. 1003005241 domiciled with the Respondent but claiming damages for the negligence of the Respondent in raising Manager's Cheques in favour of a person who was not an administrator to the Estate of the deceased neither was she the next of Kin of the deceased from the records of the Respondent."

Paragraph 8(h) read thus:

"That as a result of, Suit No. FCT/HC/CV/142/2022 has no bearing of the fact in issue as it is a personal action filed by the administrator of the Applicant Estate and not the Applicant Estate and the Applicant Estate is not a party to the said suit."

Paragraph 8(i) read thus:

"That contrary to the depositions in paragraph 23 of the Respondent's Counter Affidavit, the suit brought by Mr. Victor Odor with Suit No. KDH/KAD/453/2022 is not about who is to be granted Letters of Administration but that the Claimant in that suit is claiming the funds in account no. 1003005241 domiciled with the Respondent based on the fact that he is the Next of Kin of the deceased and not the Administrator of the deceased's estate."

Paragraph 8(k) read thus:

"That the various suits pending before the High Court of Kaduna State and before this Honourable Court have no bearing on the instant application as the issuance of Letters of Administration subsumes any litigation in respect of the Estate of the deceased or any party thereof."

Paragraph 8(q) read thus:

"That Mr. Magnus Nnaemeka Aguwa who is a party to the aforementioned suits is not one and the same with the Applicant Estate and cannot be said to be a party to same."

Paragraph 8(r) read thus:

“That contrary to the averments in paragraph 31 of the Respondent’s Counter Affidavit, the Interpleader Summons filed by the Respondent was issued after notice was given to the Respondent of the grant of Letters of Administration in respect of the Applicant Estate.”

Paragraph 8(s) read thus:

“That the actions of the Respondent to wit: the filing of the Interpleader Summons by the Respondent is an attempt to evade compliance of any Order of this Honourable Court in respect of the Applicant Estate that is not a party to any of the suits referred to by the Respondent in paragraph 31 of the Respondent’s Counter Affidavit.”

Paragraph 8(t) read thus:

“That contrary to the averments in paragraph 32 of the Respondent’s Counter affidavit, the Applicant in the instant suit is the Estate of Mrs. Florence Ngozi Aguwa (Nee Odor) deceased and not Mr. Magnus Nnaemeka Aguwa who is a Respondent to the Interpleader Summons and proceedings. Whatever averments made by Mr. Magnus Nnaemeka Aguwa in his capacity as a Respondent in the Interpleader Summons filed by the Respondent and therefore his averments cannot be that of the Applicant Estate who is the Applicant in the instant application.”

In the light of the above, a careful study of the Affidavit evidence as well as the entire exhibits attached particularly Exhibits ZB8, ZB9 ZB10 and ZB11 will reveal that the Applicant despite being aware of the pending cases in the High Court of the Federal Capital Territory and Kaduna State High Court with suit number CV/HC/CV/142/2022 and KDH/KAD/453/2022 filed on the 20th day of January, 2022 and 4th day of May, 2022 over the estate of late Mrs. Florence Ngozi Aguwa in respect of ***N14, 216, 107.34 (Fourteen Million, Two Hundred and Sixteen Thousand, One Hundred and Seven Naira, Thirty Four Kobo)*** being with the Respondent in Account Number 1003005241 . Again he went and obtained a letter of

administration which was issued to him on 15th day of May, 2023 by the probate registrar of FCT High Court afterward on the 18th day of July, 2023, he instituted this instant application claiming the sum stated above which was the subject matter and issues in the previous suits pending in FCT High Court and High Court of Kaduna State.

Moreso, a close look at Exhibits ZB8, ZB9 and ZB10 annexed to the Counter Affidavit will show that the parties are the same, issues are the same over the same subject matter particularly in ZB8, ZB9 and ZB10, all bears the hallmark of an abuse of Court process because in litigation consistency is the rule. Thus, a party over the same issue and subject matter is not allowed to approbate and reprobate at the same time as the Applicant's inconsistency in suits **FCT/HC/CV/142/2022 and KDH/KAD/453/2022 and KAH/KAD/455/2022** clearly portrays his intent to abuse the due process of the Court over the same party, same issued and subject matter **N14, 216, 107.34 (Fourteen Million, Two Hundred and Sixteen Thousand, One Hundred and Seven Naira, Thirty Four Kobo)** which were both pending in the High Court of FCT and High Court of Kaduna State both being Courts of coordinate jurisdiction between the same parties. I so hold.

In the final analysis, it is my considered opinion that the Applicant has not made out a case for the grant of this application as in the instant application constitute an abuse of Court process. I so hold.

In the light of the above, I hereby resolve the issue for determination against the Applicant in favour of the Respondent and hold very strongly that this application lacks merit and is hereby dismiss in its entirety.

No Order as to cost.

Signed:

**Hon. Justice S. U. Bature
20/2/2024.**