

**SUPREME COURT OF NIGERIA**  
29TH FEBRUARY, 2008. SC. 60/2007  
**CORAM:- A. I. KATSINA-ALU, G. A. OGUNTADE,**  
**W. S. N. ONNOGHEN, I. T. MUHAMMAD,**  
**C. M. CHUKWUMA-ENEH, JJSC**

- |                             |                   |
|-----------------------------|-------------------|
| 1. CHIEF VICTOR UMEH        | ..... APPELLANTS  |
| 2. ALHAJI SANI SHINKAFI     |                   |
| AND                         |                   |
| 1. PROF MAURICE IWU         |                   |
| (CHAIRMAN INEC)             |                   |
| 2. INDEPENDENT NATIONAL     |                   |
| ELECTORAL COMMISSION (INEC) | ..... RESPONDENTS |
| 3. CHIEF CHEKWAS OKORIE     |                   |
| 4. ALL PROGRESSIVES GRAND   |                   |
| ALLIANCE (APGA)             |                   |
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ACTIONS - Abuse of court's process - Definition - Conditions that ground abuse are not closed - It denotes multiplicity of suits - Against same opponent on same issues - And court's attitude is to strike out such suit (H1)

ACTIONS - Appeals - Abuse of court's process - Factors that constitute abuse - Such as same parties - Are not available in the present suit - As rightly held by the Court of Appeal (H2)

ACTIONS - Abuse of Court's process - Subject matter in both suits under consideration - Are not same - As to ground abuse of process (H3)

ACTIONS - Multiplicity - Motive - Whether the suits are overreaching and vexatious - Are amongst factors court will consider - In finding abuse of court's process - Instant suit is not vexatious (H4)

**FACTS**

This interlocutory appeal is centered on the issue of abuse of court's process. Three separate suits were pending at a stage. But

one of them was struck out by the trial court and it was thereby laid to rest as there was no appeal. The 3rd/4th respondents and some others have been the plaintiffs in the suits against varied defendants, some of whom were joined by court order. The tussle is in respect of national leadership of All Progressive Grand Alliance (4th respondents), and whether the 1st and 2nd respondents have the powers to impose the appellants as acting national leaders of the party.

Because there was a pending suit before the Federal Capital Territory High Court, appellants contended vide a motion that the present suit filed before the Federal High Court Abuja, is an abuse of court's process. The trial court refused to sustain the contention. Appellants' appeal to the Court of Appeal was dismissed. Still aggrieved, they have further appealed to the Supreme Court.

**HELD** (Unanimously dismissing the appeal per **CHUKWUMA-ENEH JSC**)

***Abuse of court's process - Definition***

1. From the number of suits being bandied about in this appeal, the plaintiffs (3rd and 4th respondents) have instituted a number of the suits in the leadership tussle in the 4th respondent ( i.e. APGA). This has generated question of abuse of court process. The appellants have in this regard observed to the effect that categories of situations and conditions that ground abuse of process are not closed. And I agree. In other words the list is inexhaustible as each incident of abuse of court process has to be established from the circumstances of each particular case as exemplified in the suit of Anyaduba v. NRT. Co. Ltd. (1990) 2 S.C. 10; (1990) 1 NWLR (Pt. 127) 397 at 407. Along side this premise particularly, with respect, must be noted the fact that it is settled law that generally abuse of process contemplates multiplicity of suits between the same parties in regard to the same subject-matter and on the same issues. *Ogoejefo v. Ogoejefo* (supra) and *Okafor v. Attorney-General of Anambra State* (supra). The bottom line of these authorities in regard to abuse of process is that to institute an action during the pendency of another suit claiming the same relief is an abuse of court process and the only course open to the court is to put an end to the suit. It does not matter whether the suit is on appeal, the subsequent action would constitute an abuse of process. The

attitude of the courts is to strike out the suit filed in abuse of process. Abuse of court process therefore simply in practical sense denotes a situation where a party has instituted a multiplicity of suits against the same opponent in respect of the same subject matter and on the same issues. This manner of using court process as obviously lacking in bona fide leads to the irritation and annoyance of the other party and thus impeding due administration of justice. (p. 1186 F)

***Abuse of court's process - Factors that constitute abuse***

2. Therefore, to sustain a charge of abuse of process as in the instant suit there must co-exist inter alia (1) a multiplicity of suits (2) between the same opponents and (3) on the same subject matter; and (4) on the same issues. On this question of having the same parties in both suits the court below has observed thus:

*"I have looked through the facts on printed record and circumstances of initiating the suits before the Federal Capital Territory High Court and the Federal High Court, Abuja, it is apparent that the end result of the two suits are meant to have an impact on APGA but the 3rd respondent has grievance towards those he considered to be dissident factors in the party which suit is before the Federal Capital Territory High Court as FCT/HC/CV/278/2005. The Suit No. FHC/ABJ./CS/478/2005 before the Federal High Court, is against the Chairman INEC and INEC, the 1st and 2<sup>nd</sup> respondents challenging their intermeddling with the affairs of the party by giving recognition to the appointment of Chief Victor C. Umeh, as the Ag. National Chairman of APGA in the letter dated 28/6/2006, contrary to the Constitution of the party 1999, Constitution of the Federal Republic of Nigeria and the Electoral Law. I cannot identify a multiplicity of action here or abuse of the judicial process. Parties are permitted to air their grievance at the law courts as when there is a right there must be a remedy", (underlining mine for emphasis)*

I agree with this brilliant finding; it has captured at once the principles on abuse of process. It cannot be faulted. (p. 1187 E)

***Abuse of Court's process - Subject matter in both suits***

3. On the question of the same subject matter in both aforesaid suits - the instant Suit No. FHC/ABJ/CS/478/2005, as per the record has

been instituted to challenge the 1st and 2nd defendants/respondents on their power to attempt to confer recognition of National Chairman or Acting National Chairman of the 2nd plaintiff/4th respondent to any other persons but the 1st plaintiff/3rd respondent contrary to the party's Constitution and an order of injunction. The Suit  
 B No. FCT/HC/CV/278/2005, on the other hand is founded on a declaration that the 1st to 11th defendants are no longer members of the party and on the expulsion of the 1st and 14th defendants from the party. Again, the subject matter in either of the two suits is not the  
 C same. It is difficult to see how the charge of abuse of court process can be made to stand on these facts; it cannot. (p. 1188 H)

### ***ACTIONS - Multiplicity - Motive***

4. The point has to be made, all the same, that on the facts particularly or the question of the plaintiffs filing the two aforesaid suits contemporaneously there is no evidence of overreaching. Nor can the appellant be heard to complain of want of bona fides in filing both suits. The plaintiffs have showed reasonable causes of action in the two suits. I have expatiated on these above. This is not a case where  
 E the granting of the reliefs in one suit will appease in satisfaction the wrongs alleged in the other suit or where all reliefs accruing from a cause of action are being claimed in more than one action. It is my view therefore and in this regard I agree with the 3rd and 4th respondents that to establish whether or not there is an abuse of court  
 F process, the purpose and aim of the person exercising the right to institute more than one action, the court should ask itself whether the person has multiplied his actions simply to irritate, harass and annoy the opponent and if he has acted from improper motives or wanting  
 G in bona fides. On this premise, care would have been taken of cases as the instant one. See: Christian Outreach Ministries Inc. v. Cobham (2006) 16 NWLR (Pt. 1002) 283 at 306 - 7. There is no proof that the plaintiffs have intended to irritate or annoy the defendants by filing this action. The instant suit cannot therefore be said to be vexatious. (pp. 1189 F/1190 C)  
 H

### ***NOTABLE POINT OF INTEREST*** ***ONNOGHEN JSC***

*1. When abuse of court's process will arise*

It is settled law that for there to be an abuse of court process, there must exist a multiplicity of suits between the same parties on the same subject matter and on the same issues which pre-conditions are mutually inclusive as they are conjunctive. In the case of *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264) 156 at 188 - 189, this court held *inter alia* that "the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. The abuse lies in the multiplicity and manner of the exercise of the right, rather than the exercise of the right per se. The abuse consists in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the adversary, and interfere with the administration of justice."

Inherent in the above statement of the law and in addition to the earlier stated pre-conditions that must exist before an abuse of court process can be said to have occurred, is the fact that the suit so instituted in abuse must be lacking in bona fide - there must be an improper use of the court or judicial process by the plaintiff to the annoyance or chagrin of the other party - usually the defendant(s) - so as to circumvent the due administration of justice. (p. 1200 H)

**REPRESENTATION**

P. N. Ikweto, SAN., (with him; C. I. Mbaeri, I. Bozimo and P. N. Nwankwo), for the Appellants.

R. O. Yusuf, for the 1st and 2nd Respondents.

Chief Chris Uche, SAN., (with him: O. Uzoho, S. Umoh, M. Igwe and N. Wuyep), for the 3rd and 4th Respondents.

**CASES REFERRED TO**

*Ojah v. Ogboni* (1996) 6 NWLR (Pt. 454) 272

*Martins v. C.O.P.* (2005) NWLR (Pt. 925) 614 at 634

*Ogbu v. Wokoma* (2005) 7 S.C. (Pt. II) 123; (2005) 14 NWLR (Pt. 944) 11 at 140

*Minister for Works and Housing v. Thomas Nig. Ltd.* (2002) 2 NWLR

- (Pt. 752) 740 at 780 and 785  
Dumez Nig Plc, v. UBA Plc. (2006) 14 NWLR (Pt.1000) 515 at 526  
Agwasim & Anor. v. Ojichie & Anor. (2004) 4 S.C. (Pt. II) 160; (2004) 10 NWLR (Pt. 882) 613 at 624E  
Theophilus Nnama & Qrs v. George Nwanebe & Ors, (1991) 1 NWLR  
B (Pt. 172) 181 at 190  
The Royal Bank of Scotland Ltd, v. Citrusdal Investment Ltd. (1971) 3 AER 558 at 562  
Thomas Launches Ltd, v. Corporation of the Trinity House of Deptford Strond (1961) 1 AER 26 at 32-33  
C Okorodudu v. Okoromadu (1977) 3 S.C. (Reprint) 13; (1977) NSCC (Vol. 11) 105 at 109  
Ukachukwu v. UBA (2005) 18 NWLR (Pt. 956) 1 at 63  
Saraki v. Kotoye (1992) NWLR (Pt. 264) 156 at 188  
D Minister of Works v. Thomas (Nig.) Ltd. (2002) 2 NWLR (Pt. 752) 740  
Arubo v. Aiyeleru (1993) 3 NWLR (Pt.280) 126  
Ogoejeofe v. Ogoejeofe (2006) 1 S.C. (Pt. I) 157; (2006) 3 NWLR (Pt. 966) 205 at 220  
E Okafor v. A-G Anambra State (1991) 7 S.C. (Pt. II) 138; (1991) 6 NWLR (Pt. 200) 659 at 681

### **STATUTES REFERRED TO**

- F Constitution of the Federal Republic of Nigeria 1999 ss. 222(a), 251 (1)(p)(q) (r) and 257  
Electoral Act, 2002

### **LEAD JUDGMENT BY CHUKWUMA-ENEH JSC**

- G This interlocutory appeal is against the decision of the Court of Appeal, Abuja Judicial Division (i.e. the court below) delivered on 20/10/06, dismissing the appellants' appeal to the effect that this action does not constitute an abuse of process of court; it therefore affirmed the decision of the trial court.  
H The appellants here i.e.-the 3rd and 4th defendants at the trial court being aggrieved by the decision have appealed to this court by a notice of appeal dated and filed on 18/12/2006. Containing two grounds of appeal.

From the beginning, at the trial court, the 3rd and 4th respondents herein as plaintiffs commenced this action as per Suit No FHC/ABJ/CS/478/2005, against the 1st and 2nd respondents only (that is as defendants) seeking the following reliefs jointly and severally:

*“(i) A declaration that pursuant to Article 18(i) of the Constitution of the All Progressives Grand Alliance herein on record as the fourth respondent, the third respondent (first plaintiff) has, is entitled to and enjoys a constitutional guaranteed chairmanship of the party for an initial four year term commencing from 10th January, 2003 till 10th January, 2007, which term at the time of the institution of the action is still unexpired and which is also renewable at the option of the third respondent.*

*(ii) A declaration that the first and second respondents as defendants at the trial court lack the competence under the Constitution of the Federal Republic of Nigeria, 1999; the Electoral Act, 2002 and the Constitution of the fourth respondent to interfere in any manner whatsoever with the position of the first plaintiff herein third respondent as the National Chairman of the second plaintiff herein fourth respondent and also lacks the power to change or attempt to change the leadership of the fourth respondent which is a registered political party.*

*(iii) A declaration that the provision of the Electoral Act, 2002 does not empower the defendants herein as the first and second respondents to confer recognition on any other person as the National Chairman or Acting National Chairman of the second plaintiff contrary to the provisions of the second plaintiff’s Constitution.*

*(iv) A declaration that the defendants are not entitled to ignore and cannot ignore the list of names and addresses of the national officers of the political party registered with them.*

*(v) An injunction restraining the defendants from recognizing or continuing to recognize or deal with the leadership of the second plaintiff except with the first plaintiff as guaranteed by the second plaintiff’s Constitution. See pages 10-11 of volume one of the records of appeal.”*

The appellants have by an application dated and filed on 14/11/2005, applied to be joined as parties to the suit. The trial court on 8/5/2000, so ordered; they were joined as 3rd and 4th defendants to

this suit by the trial court. The other crucial suit in this matter is as per Suit No. FCT/HC/CV/278/2005.

I must emphasise that in Suit No. FCT/HC/CV/278/2005, filed on 31/1/2005, the 3rd and 4th plaintiffs/respondents herein have jointly with one Dr. Hassan Bello and Barrister Maxi Okwo, as plaintiffs sued the appellants and thirteen others at the High Court of the Federal Capital Territory seeking inter alia the following reliefs:

*"(i) A declaration that the defendants are no longer members or national officers of the first plaintiff.*

*(ii) A declaration that the second, third and fourth Plaintiffs are duly and only National Chairman, Deputy-National Chairman (North) and Deputy-National Chairman (South) respectively of the first plaintiff.*

*(iii) A declaration that the first defendant is not the National Chairman of the first plaintiff.*

*(iv) An injunction restraining the first to the eleventh defendants from parading themselves as national officers of the first plaintiff.*

*(v) An injunction restraining the first to the fourteenth defendants from parading themselves as members of the first plaintiff.*

*(vi) A declaration nullifying the purported suspension or expulsion of the second, third and fourth plaintiffs from the first plaintiff. See pages 186-188 of the records of appeal."*

As it appears, undoubtedly, this matter has long and complex history particularly in keeping track of the changing titles of the parties in these suits. This has not made following this matter any easier. However the two cases (that is FCT/HC/CV/278/2005 and FHC/ABJ/CS/478/2005), mentioned above seem to me to form the crux of the contention in the dispute between the parties. Nonetheless for completeness of case profiles in this matter there is one other suit that is hinged to this dispute to wit: Suit No. FHC/ABJ/CS/346/2005; its fate will manifest in the course of this judgment.

In Suit No. FHC/ABJ/CS/346/2005, filed on 29/6/2005, by the 3rd and 4th respondents as plaintiffs against the 1st and 2nd respondents as defendants, the plaintiffs have sought a number of declaratory and injunctive reliefs. I must early enough in discussing this matter recall that in Suit No. FCT/HC/CV/278/2005, the 3rd and 4th defendants/respondents in this suit were joined as 15th and



16th defendants as per the record. However by notice of discontinuance the names of the said 15th and 16th defendants were removed without affecting the subject matter and character of the suit, which remained intact. Hot on the heels of having withdrawn against the 15th and 16th defendants in Suit No. FCT/HC/CV/278/2005, the 3rd and 4th respondents as the plaintiffs filed yet another Suit No. FHC/ABJ/CS/346/2005 and again against the 1st and 2nd defendants/respondents herein. This suit as per the record has been struck out as an abuse of process by Nyako, J. There is no appeal against this decision. Rather the 3rd and 4th plaintiffs/respondents have filed the instant action i.e. FHC/ABJ/CS/478/2005. Chief Victor Umeh and Alhaji Sani Shinkafi (the appellants) herein by the order of the trial court have been joined as 3rd and 4th defendants to the aforesaid suit.

As can be gathered from the foregoing, a fierce tussle to control the soul of the party (APGA) is raging between the plaintiffs on the one hand and the 3rd and 4th defendants on the other. The 3rd and 4th defendants having in the instant matter raised the issue of an abuse of process vis-a-vis Suit No FCT/HC/CV/ 278/2005, I think, restricts my discussion to the two suits aforesaid.

No sooner the 3rd and 4th defendants/appellants were joined as parties in Suit No. FCT/ABJ/CS/478/2005, than they filed an application in the trial court praying to dismiss the instant suit as an abuse of process or alternatively to strike out the suit for lack of jurisdiction as per pp. 165-166 of Vol. 1 of the record. Their grounds for the application are:

*“(a) In Suit No. FCT/HC/CV/278/05. All Progressive Grand Alliance (APGA) & 3 Ors. v. Chief Victor Umeh & 3 Ors. the same plaintiffs herein brought an action against the same defendant in the G suit before the High Court of the FCT Abuja.*

*(b) The subject matter of Suit No. FCT/HC/CV/278/2005 referred above, pending before the High Court of the FCT, Abuja is on all fours with the subject matter of this present suit.*

*(c) Suit No.FCT/HC/CV/278/05; referred to above is past heard the plaintiffs having closed their case, the suit is adjourned for the conclusion of defence witness.*

*(d) Consequently, the present suit constitutes a gross abuse of*

*process and the Honourable Court is without jurisdiction to entertain same."*

If I may repeat, the trial court heard the parties' respective submissions on the application and in a considered ruling dismissed the application with these poignant words at p. 66 of Vol. 11 of the record :-

*"In the instant case two cases had hitherto been filed by the plaintiffs against the defendants but these cases from the evidence before the court were discontinued before this present action was filed. The situation where a party will file an action and discontinue and refile in a situation such as has manifested in this case is not in any manner tantamount to an abuse. There is no disclosed intention as a fact before the court to use the process of court improperly in the annoyance of the defendants. I therefore hold that there is no abuse of process in this case. The objection is therefore dismissed."*

Aggrieved by the decision, the defendants filed a notice of appeal dated 30/10/2006. Parties in accordance with the rules of the court below filed and exchanged their respective Briefs of Argument. The plaintiffs' Brief of Argument is dated 29/11/2006, while the 3rd and 4th defendants' Brief of Argument is dated 7/12/2006. The appeal before the court below was heard on 13/12/2006 and on 14/12/2006, the court below delivered its judgment; in dismissing the appeal it opined in these words:

*"It is apparent that the end result of the two suits are meant to have an impact on the leadership of the 4th respondent the party - APGA but the 3rd respondent has his grievance towards those he considered to be dissident factors in the party which suit is before the Federal Capital Territory High Court as FCT/HC/CV/278/05. The Suit FHC/ABJ/CS/478/05, before the Federal High Court is against the Chairman INEC and INEC, the 1st and 2nd respondents challenging their intermeddling with the affairs of the party by giving recognition to the appointment of Chief Victor C. Umeh, as the Ag. National Chairman of APGA in the letter dated 28/6/06, contrary to the Constitution of the party 1999 Constitution of the Federal Republic of Nigeria and the Electoral Law. I cannot identify any multiplicity of action here or abuse of the judicial process. Parties are permitted to air their grievance at the law courts as when there is a right there*

*must be a remedy. Falobi v. Falobi (1976-9) 10 S.C. 1, (1976) 9-10 S.C (Reprint) 1; Bello v. A-G Oyo State (1986) 5 NWLR (Pt. 44) pg. 828.*” (underlining supplied)

The above underlined phrase has constituted the crux of the controversy in this appeal. The court below all the same, rallied round to the conclusion at p.242 of the record by dismissing the application as lacking in merit and affirmed the decision of the trial court. The 3rd and 4th defendants still dissatisfied with decision have appealed by a notice of appeal dated 18/12/2006, with leave of the court below granted on 9/3/2007, to this court. Parties have in accordance with the rules of this court filed and exchanged respective Briefs of Argument. The 3rd and 4th defendants/appellants herein have raised two issues for determination to wit:

*“a. Whether this suit which is meant to have the same impact as the earlier Suit No. FCT/HC/ CV/278/2005, on the leadership of the 4th respondent constitutes an abuse of process.*

*b. Whether the court below correctly examined the case presented before it and reached the right conclusion on the issues submitted to it.”*

The 1st and 2nd defendants/respondents have raised a lone issue for determination to wit:

*“Whether the Court of Appeal was right to hold as it did hold that the action in Suit No.FCT/HC/CS/ 478/2005, that precipitated to this appeal does not amount to an abuse of the judicial process.”*

The 3rd and 4th plaintiffs/respondents on their part also raised two issues for determination to wit:

*“Whether the court below was right in holding that the 3rd and 4th respondents’ suit did not constitute an abuse of court process and dismissing the appeal.*

*Whether the ruling of Nyako, J., on a Preliminary Objection in Suit No. FCT/ABJ/CS/346/2006, wherein the appellants were not parties, constitute an issue estoppel as to bar the 3rd and 4th respondents from instituting the instant suit.”*

The arguments of the parties as per their respective Briefs have been rather unnecessarily tedious otherwise on the parties’ showing this is a very simple matter. The argument on the case of the 3rd and 4th defendants/appellants, if I may sum up, is that the Suit No. FCT/

HC/CS/478/05, being on all fours with FCT/HC/ CV/278/05, in regard to the subject matter, the parties and the issues constitutes a gross abuse of court process and thus, the court lacks the jurisdiction to entertain the same. They have again made heavy weather of the innocuous view of Adekeye, JCA., as expressed in the lead judgment  
 B to the effect that, “it is apparent that the end result of the two suits are meant to have an impact on the leadership of the 4th respondent the party-APGA”. It is urged on the court that on the abundant credible evidence on the printed record, the court below in error has found  
 C no multiplicity of action amounting to an abuse of court process. The guiding principles in this respect it is submitted are as encompassed in the cases of Ojah v. Ogboni (1996) 6 NWLR (Pt. 454) 272, Martins v. C.O.P. (2005) NWLR (Pt. 925) 614 at 634, Ogbu v. Wokoma (2005) 7 S.C. (Pt. II) 123; (2005) 14 NWLR (Pt. 944) 11 at 140, Minister  
 D for Works and Housing v. Thomas Nig. Ltd. (2002) 2 NWLR (Pt. 752) 740 at 780 and 785 and Dumez Nig. Plc, v. UBA Plc. (2006) 14 NWLR (Pt.1000) 515 at 526. The appellants have also submitted that in as far as the parties, the subject matter and the issues are congruent in the two suits that it is manifestly perverse to hold that  
 E the instant suit does not constitute an abuse of court process. This court it is urged should rightly intervene to avoid a miscarriage of justice.

On the general attitude of courts to abuse of court process the appellants have referred to renowned cases to elucidate on the same.  
 F See - Agwasim & Anor. v. Ojichie & Anor. (2004) 4 S.C. (Pt. II) 160; (2004) 10 NWLR (Pt. 882) 613 at 624E, Theophilus Nnama & Qrs v. George Nwanebe & Ors, (1991) 1 NWLR (Pt. 172) 181 at 190, The Royal Bank of Scotland Ltd, v. Citrusdal Investment Ltd. (1971)  
 G 3 AER 558 at 562, Thomas Launches Ltd, v. Corporation of the Trinity House of Deptford Strond (1961) 1 AER 26 at 32-33, Okorodudu v. Okoromadu (1977) 3 S.C. (Reprint) 13; (1977) NSCC (Vol. 11) 105 at 109 and Ukachukwu v. UBA (2005) 18 NWLR (Pt. 956) 1 at 63. On whether striking out Suit No.FHC/HC/CS/346/2005,  
 H as an abuse of court process constitutes an issue estoppel vis-a-vis the instant suit:, the appellants have relied on the cases of Hunter v. Chief Constable of West Midlands Police (1981) 3 WLR 906, Aro v. Fabolude (1983) ANLR 67 at 79 and Fashanu v. Adekoya (1974) 6 S.C. (Re-

print) 72; (1974) 1 ANLR, to substantiate their submissions that it does constitute an issue estoppel. The appellants have therefore, urged the court to dismiss the suit for being an abuse of process.

The 1st and 2nd defendants/respondents, have argued that the instant suit is an abuse of process as the appellants have featured in all the suits either as original parties or have been joined as parties. B They have submitted that the 3rd and 4th plaintiffs/ respondents with improper motive commenced Suit No. FHC/ ABJ/CS/478/2005, as an abuse of court process during the pendency of Suit No. FCT/HC/ CV/278/2005, and rely on Saraki v. Kotoye (1992) NWLR (Pt. 264) C 156 at 188, per Karibi-Whyte, JSC., and Minister of Works v. Thomas (Nig.) Ltd. (2002) 2 NWLR (Pt. 752) 740. Also see: Arubo v. Aiyeleru (1993) 3 NWLR (Pt.280) 126, per Nnaemeka-Agu, JSC., citing Wills\_v. Earl of Beauchamps (1886), to buttress the point on multiplicity of action as grounding the abuse. The court is urged to D allow the appeal and dismiss the action before the trial court. I must subjoin here that the 1st and 2nd defendants/respondents have not appealed the decision of the court below yet they are here urging that the appeal be allowed. They have not been challenged on this ground. And ask shouldn't they be supporting the judgment instead? E I say no more on this matter.

The 3rd and 4th plaintiffs/respondents as per their Brief of Argument have argued that an examination of Suit No. FCT/ABJ/ HC/ CV/278/2005: Chief Chekwes Okorie of All Progressives Grand Alliance & 3 Ors. v. Chief Victor Umeh & 13 Ors. and the instant Suit F No. FCT/ABJ/CS/478/2005: Chief Chekwes Okorie & Anor. v. Professor Maurice Iwu & 3 Ors., has showed that the suits are not the same as to the parties and the subject matter and the issues to ground an abuse of process. See Oguejiofor v. Oguejiofor (2006) 1 S.C. (Pt. G I) 157; (2006) 3 NWLR (Pt. 966) 205 at 220 and Okafor v. A-G Anambra State (1991) 7 S.C. (Pt. II) 138; (1991) 6 NWLR (Pt. 200) 659 at 681. And so, there is no multiplicity of action. The point has also been taken that from different suits though of the same subject H matter may emanate different rights and reliefs; and that the question of multiplicity of action in such instances is completely non-sequitur See: Christian Outreach Ministries Inc. v. Cobham (2006) 15 NWLR (ft. 1002) 283 at 305-307. They submit there is no intention

to harass, annoy or irritate the appellants by the filed suits. They have also adverted to Sections 251(1) (p) (q) (r) and 257 of the 1999 Constitution and the case of *NEPA v. Edegbero* (2003) 9 WRN 1, in withdrawing against the 1st and 2nd defendants/respondents in Suit No. FCT/NC/CV/278/2005, being Federal agencies and could not be sued in the FCT High Court. They further submit that the cases of *Agwasim v. Thomas and Dumez Nig. Plc. v. Ojichie* referred to above as to where the same parties seek the same reliefs against the same opponents. On the question of concurrent finding of fact they have relied on the cases of *Amadi v. Orisakwe* (2005) 1 S.C. (Pt. I) 35; (2005) 7 NWLR (Pt. 711) 206, *Ezeonwu v. Onyechi* (1996) 3 NWLR (Pt. 438) 499 and *Amadi v. NNPC* (2000) 6 S.C. (Pt. I) 66; (2000) 10 NWLR (Pt. 674) 76, in contending that the court cannot intervene here against the concurrent findings of the lower courts without showing element of perversity in the instant suit.

Again, they have contended that there is no basis to raise a plea of issue estoppel when the appellants are not parties in the Suit No. FHC/ABJ/CS/346/2005, and have referred to Chief Christmas Egba v. Chief Melford Appah (2005) 10 NWLR (Pt. 934) 464 at 481 CA and *Muda Anwoyi v. Shodeke* (2006) 6 S.C. 38; (2006) 13 NWLR (Pt. 996) 34 and 50-51, on the principle governing issue estoppel. Lastly, they contend that the issue estoppel must be final (that is given on the merits of the case) as against what has happened here where the Suit No. FHC/ABJ/C5/f346/2005, has been merely struck out. See *Oyede v. Olusesi* (2005) 16 NWLR (Pt. 951) 341. It is on this note that the 3rd and 4th plaintiffs/respondents have urged the court to dismiss the appeal and to affirm the concurrent decisions of the courts below.

I think, if I may, to underscore the point in dealing with this appeal, a resume of the crucial suits filed by the plaintiffs so far will clearly show whether the subject matters, parties, and issues are the same in both Suits No. FHC/ABJ/CS/478/2005 and FCT/ HC/CV/ 278/2005, in order to sustain a charge of abuse of court process leveled against Suit No. FHC/ABJ/CS/478/2005, see: *Okafor v. Attorney-General of Anambra State* (supra). The record has showed that Suit No. FHC/ABJ/CS/478/2005, has been instituted by a Writ of Summons dated 23/9/2005, by the 3rd and 4th respondents herein

as plaintiffs at the Federal High Court against the 1st and 2nd respondents herein as the only defendants. At this stage of the proceedings the appellants have not become parties to the said suit when the 1st and 2nd respondents have sought by an application to strike out the said Suit No. FHC/ABJ/ CS/478/2005, as an abuse of process vis-a-vis Suit No. FCT/HC/ CV/278/2005; the application has however been dismissed. The 3rd and 4th defendants, the appellants herein have applied by an application dated 14/11/2005, to be joined to the instant suit as parties and as per the record they have been joined as 3rd and 4th defendants in the suit. The 3rd and 4th defendants immediately have thereafter filed an application to dismiss the said suit as constituting an abuse of court process just as 1st and 2<sup>nd</sup> defendants/respondents did earlier, by contending that having regard to the number of suits so far filed by the plaintiffs against the defendants the institution of the instant action has been done with improper motive to annoy, irritate and embarrass the defendants. This application has also been dismissed. The record has showed that the 3rd and 4th defendants have appealed to the court below which also dismissed the appeal hence they, i.e. the 3rd and 4th defendants, have now appealed to this court by a notice of appeal dated 18/12/2006. Briefs of Argument from both sides of the suit have been filed and exchanged. I will court back to this matter later.

That said, the plaintiffs in the earlier Suit No. FCT/HC/CV/ 278/ 2005: All Progressives Grand Alliance & 3 Ors. against Chief Victor Umeh & 13 Ors., have challenged the continued impersonation by the 1st to 11th defendants and 1st and 14th defendants as National Officers and members of the party respectively. It has to be noted that the 1st and 2nd respondents herein have not been parties to this suit *ab initio* but on the plaintiffs' application have been joined as 15th and 16th defendants; as per the record so as to be bound by the decision.

However, during the pendency of the aforesaid case, the 4th respondent received the 1st respondent's letter withdrawing the recognition accorded him (the 1st plaintiff/3rd respondent) as the National Chairman of the party and according recognition to the 3rd defendant/1st appellant herein i.e. Chief Victor Umeh, as the acting National Chairman of APGA. The 3rd and 4th respondents as plain-

tiffs have therefore instituted yet another Suit No. FHC/ABJ/CS/346/2005, by Originating Summons questioning the competence of the 1st and 2nd respondents to do so. The said suit has now been struck out as an abuse of court process on grounds of multiplicity of action. In regard to Suit No. FCT/HC/CV/278/2005, the appellants have  
 B been joined as 15th and 16th defendants but the trial court has granted it without adverting to the fact that they are Federal agencies not subject to the jurisdiction of the FCT High Court. Hence the plaintiffs, 3rd and 4th respondents have applied in Suit No. FCT/HC/CV/  
 C 478/ 2005, to discontinue against the 15th and 16th defendants as they are Federal agencies not subject to the jurisdiction of the FCT High Court. Having cleared that out of their way, the 3rd and 4th respondents as plaintiffs have instituted the instant Suit No. FCT/ HC/ CV/478/2005, against the 1st and 2nd defendants/respondents  
 D herein; in short challenging the competence of the 1st and 2nd defendants/respondents' action in dealing with the Recognition of National Chairman or Acting National Chairman in regard to any other persons contrary to the party's Constitution and the 1999 Constitution. An office the 1st plaintiff/3rd respondent still holds.

E The point has rightly been taken regard to Suit No. FCT/ HC/ CV/478/2005, that apart from joining of the 3rd and 4th defendants/ appellants to the said suit the record has showed that no consequent amendments of the Statement of Claim reflecting the said joinder of  
 F the appellants as 3rd and 4th defendants to the suit have been effected; indeed no claims or reliefs have in fact been sought against them.

***From the number of suits being bandied about in this appeal, the plaintiffs (3rd and 4th respondents) have instituted  
 G a number of the suits in the leadership tussle in the 4th respondent ( i.e. APGA). This has generated question of abuse of court process. The appellants have in this regard observed to the effect that categories of situations and conditions that ground abuse of process are not closed. And I agree. In other  
 H words the list is inexhaustible as each incident of abuse of court process has to be established from the circumstances of each particular case as exemplified in the suit of Anyaduba v. NRT. Co. Ltd. (1990) 2 S.C. 10; (1990) 1 NWLR (Pt. 127)***



**397 at 407. Along side this premise particularly, with respect, must be noted the fact that it is settled law that generally abuse of process contemplates multiplicity of suits between the same parties in regard to the same subject-matter and on the same issues. Ogojeifo v. Ogojeifo (supra) and Okafor v. Attorney-General of Anambra State (supra). The bottom line of these authorities in regard to abuse of process is that to institute an action during the pendency of another suit claiming the same relief is an abuse of court process and the only course open to the court is to put an end to the suit. See: Aruko v. Aiyeleru (supra). It does not matter whether the suit is on appeal, the subsequent action would constitute an abuse of process. The attitude of the courts is to strike out the suit filed in abuse of process. Abuse of court process therefore simply in practical sense denotes a situation where a party has instituted a multiplicity of suits against the same opponent in respect of the same subject matter and on the same issues. This manner of using court process as obviously lacking in bona fide leads to the irritation and annoyance of the other party and thus impeding due administration of justice. See Okorodudu v. Okoromadu (1977) 3 S.C 21; (1977) 3 S.C (Reprint) 13.**

**Therefore, to sustain a charge of abuse of process as in the instant suit there must co-exist inter alia (1) a multiplicity of suits (2) between the same opponents and (3) on the same subject matter; and (4) on the same issues.** It is against the backdrop of these conditions that one has on the issue of abuse of process in the instant matter to scrutinize the aforesaid suits - No. FCT/HC/CS/278/2005: All Progressives Grand Alliance & 3 Ors. v. Chief Victor Umeh & 13 Ors. and Suit No. FHC/ABJ/CS/478/2005: Chief Chekwes Okorie & Anor. v. Professor Maurice Iwu & 3 Ors. Certainly the parties are not the same and it is particularly so when the appellants are no longer parties in the Suit No. FCT/HC/CS/278/2005. **On this question of having the same parties in both suits the court below has observed thus:**

***"I have looked through the facts on printed record and circumstances of initiating the suits before the Federal Capital Territory High Court and the Federal High Court, Abuja, it***

*is apparent that the end result of the two suits are meant to have an impact on APGA but the 3rd respondent has grievance towards those he considered to be dissident factors in the party which suit is before the Federal Capital Territory High Court as FCT/HC/CV/278/2005. The Suit No. FHC/ABJ./CS/478/2005 before the Federal High Court, is against the Chairman INEC and INEC, the 1st and 2<sup>nd</sup> respondents challenging their intermeddling with the affairs of the party by giving recognition to the appointment of Chief Victor C. Umeh, as the Ag. National Chairman of APGA in the letter dated 28/6/2006, contrary to the Constitution of the party 1999, Constitution of the Federal Republic of Nigeria and the Electoral Law. I cannot identify a multiplicity of action here or abuse of the judicial process. Parties are permitted to air their grievance at the law courts as when there is a right there must be a remedy”, (underlining mine for emphasis)*

*I agree with this brilliant finding; it has captured at once the principles on abuse of process. It cannot be faulted.* If I may recall, the appellants according to the record, have been joined as 15th & 16th defendants to Suit No.FCT/HC/CS/278/2005. The joinder, however, has to be revoked when the plaintiffs discontinued against them i.e. 15th & 16th defendants. Interestingly enough, the appellants have taken the issue of multiplicity of suits as an abuse of process vis-a-vis the instant suit when the appellants are no longer parties to one of the suits i.e. FCT/HC/CV/278/2005. They cannot run away from that fact to hinge their entire case on the finding that as the two suits have an impact on the leadership tussle of the 4th respondent (APGA) the instant suit without more constitutes an abuse of process. It is doubtful if they can make out a case of abuse of process on these peculiar facts. But without deciding the point, I have however to express the reservation on their right to initiate the instant application this time when there is a big question mark hanging on its competence. As the application has not been challenged on this ground I say no more on it except to wait for an opportunity when counsel's address is drawn to such an issue.

I now go on to demonstrate that moreso on the merits the charge of abuse of process here cannot stand. ***On the question of***

***the same subject matter in both aforesaid suits - the instant Suit No. FHC/ABJ/CS/478/2005, as per the record has been instituted to challenge the 1st and 2nd defendants/respondents on their power to attempt to confer recognition of National Chairman or Acting National Chairman of the 2nd plaintiff/ 4th respondent to any other persons but the 1st plaintiff/3rd respondent contrary to the party's Constitution and an order of injunction. The Suit No. FCT/HC/CV/278/2005, on the other hand is founded on a declaration that the 1st to 11th defendants are no longer members of the party and on the expulsion of the 1st and 14th defendants from the party. Again, the subject matter in either of the two suits is not the same. It is difficult to see how the charge of abuse of court process can be made to stand on these facts; it cannot.***

On whether the two suits have raised the same issues, it goes without much debating of the point that this is not so. Based on the above careful appraisal of the two suits, the contending issues in both suits are not the same. There can be no doubt therefore, that the conditions I have set out above to guide my discussion on abuse of process in this matter are non-existent in the two suits and therefore this issue has to be resolved against the appellants and in favour of the respondents. I have not found any abuse of court process or the facts of the aforesaid two suits even though in the end they may have their roots in the tussle for leadership of the 4th respondent (i.e. APGA).

***The point has to be made, all the same, that on the facts particularly or the question of the plaintiffs filing the two aforesaid suits contemporaneously there is no evidence of over-reaching. Nor can the appellant be heard to complain of want of bona fides in filing both suits. The plaintiffs have showed reasonable causes of action in the two suits. I have expatiated on these above. This is not a case where the granting of the reliefs in one suit will appease in satisfaction the wrongs alleged in the other suit or where all reliefs accruing from a cause of action are being claimed in more than one action.*** See: Savage v. Uwaechia (1972) 3 S.C. (Reprint) 206; (1972) 1 ANLR (Pt. 1) 251. The aforesaid two suits are founded on two separate and

distinct causes of action. They have given rise to two separate and distinct reliefs as I have showed herein. I have in my discussion also showed that there is no ground contending that the disposal of any of the suits will completely dispose of the issues for determination in the other suit. And so, any pronouncement in the instant suit will have no effect whatsoever on Suit No. FCT/HC/CV/278/2005. This is so even though the 15th and 16th defendants may be interested in the result of Suit No. FCT/HC/CV/278/2005. Besides, even more importantly, the 3rd and 4th respondents/plaintiffs in the instant case have in spite of the joinder of 15th and 16th defendants made no claims, that is to say, have sought no reliefs against the 15th and 16th defendants in the said suit. ***It is my view therefore and in this regard I agree with the 3rd and 4th respondents that to establish whether or not there is an abuse of court process, the purpose and aim of the person exercising the right to institute more than one action, the court should ask itself whether the person has multiplied his actions simply to irritate, harass and annoy the opponent and if he has acted from improper motives or wanting in bona fides. On this premise, care would have been taken of cases as the instant one. See: Christian Outreach Ministries Inc. v. Cobham (2006) 16 NWLR (Pt. 1002) 283 at 306 - 7. There is no proof that the plaintiffs have intended to irritate or annoy the defendants by filing this action. The instant suit cannot therefore be said to be vexatious.*** It is on the foregoing grounds that I dismiss unequivocally the appellants' main contention in this appeal to the effect that the court below or having expressed the view that the end result of the two suits "are meant to have an impact on the leadership of the 4th respondent, APGA", it should have proceeded to a finding of an abuse of court process. The submission has ignored totally the legal conditions to ground abuse of court process as I have maintained above. Having found on issue one that the appellants' case in this regard is a hopeless one, which has clearly decided the appeal, I find no merit in discussing the other issues herein. This is so as my findings and conclusions above have more or less pulled the rug from underneath the feet, as it were, of the other issues in this suit. Again, the appellants have not showed any grounds to interfere with the concurrent find-

ings of the courts below. The decision on the facts and law is not perverse to say the least.

In the final analysis, therefore, the appeal is unmeritorious and is hereby dismissed. The decisions of the courts below are hereby affirmed. This being an intra-party affair, I make no order as to costs.

B

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### **KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment delivered by my learned brother, Chukwuma-Eneh, JSC. I agree with it and for the reasons he has given I also would dismiss the appeal and affirm the decisions of the courts below. I also make no order as to costs.

C

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### **OGUNTADE JSC**

I have had the advantage of reading in draft a copy of the leading judgment by my learned brother, Chukwuma-Eneh, JSC. I agree with his reasoning and conclusion. I would also dismiss this appeal as unmeritorious. I make no order as to costs.

D

E

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### **ONNOGHEN JSC**

The issues for determination as identified by learned senior counsel for the appellants, PI.N. Ikwueto, SAN., in the appellants Brief of Argument filed on 29/37 07 and adopted in argument on the 6th day of December, 2007, are as follows:-

F

*"a. Whether this suit which is meant to have the same impact as the earlier Suit No. FCT/HC/CV/278/05, on the leadership of the 4<sup>th</sup> respondent constitutes an abuse of process.*

G

*b. Whether the court below correctly examined the case presented before it and reached the right conclusion on the issues submitted to it."*

I hold the considered view that having regards to the facts of the case, only one issue calls for determination in this appeal particularly as appellants' issue 2 can conveniently be dealt with in their issue 1. In fact you cannot determine whether there is an abuse of

H

court process without looking at the facts allegedly constituting the abuse; so both must go hand in glove. It is with the above in mind that I proceed to consider the appeal.

The facts of this case, which are relevant to the appeal, are not in dispute at all. On the 31st day of January, 2005, prior to the institution of the action; Suit No. FHC/ABJ/CS/478/2005; the present 3rd and 4th respondents instituted Suit No. FCT/HC/CV/ 278/2005, together with one Dr. Hassan Bello and Barrister Maxi Okwu, as plaintiffs at the High Court of the Federal Capital Territory against the present appellants and twelve others seeking the following reliefs to wit:

*“(i) A declaration that the defendants are no longer “members or national officers of the first plaintiff.*

*(ii) A declaration that the second, third and fourth plaintiffs are the duly and only National Chairman, Deputy-National Chairman (North) and Deputy-National Chairman (South), respectively of the first plaintiff.*

*(iii) A declaration that the first defendant is not the National Chairman or Acting National Chairman of the first plaintiff.*

*(iv) An injunction restraining the first to eleventh defendants from parading themselves as national officers of the first plaintiff.*

*(v) An injunction restraining the first to the fourteenth defendants from parading themselves as members of the first plaintiff.*

*(vi) A declaration nullifying the purported suspension or expulsion of the second, third and fourth plaintiffs from the first plaintiff.”*

Later in the proceedings, the present appellants were joined in the suit as defendants but the reliefs claimed remained as above stated. However, on the 13th day of September, 2005, a motion for discontinuance of the action against the present first and second respondents, who were then the 15th and 16th defendants in the suit, was filed which application was duly granted as a result of which the names of the 15th and 16th defendants in that suit and 1st and 2nd respondents in the instant appeal were struck out of the proceedings. It is important to note that Suit No. FCT/HC/ CV/278/2005, still pends and is part heard.

Following the discontinuance of the action against the 15th

and 16th defendants, who were, in any event initially not sued by the plaintiffs therein but were joined by the court upon an application, the respondents herein filed Suit No. FHC/ABJ/CS/ 346/2005, at the Federal High Court against the 1st and 2<sup>nd</sup> respondents in the instant appeal which suit was on the 8th day of September, 2005, struck out by that court on the ground that it constitutes an abuse of court process as the subject matter therein was held to be the same as in Suit No. FCT/HC/CV/278/2005, pending before the High Court of the Federal Capital Territory, Abuja. There is no appeal against that ruling; our attention has not been drawn to the existence of any such appeal. B C

The reliefs claimed in the said Suit No. FHC/ABJ/CS/346/ 2005, which was filed on 29/6/2005, are as follows:-

(i) A declaration that the defendants are incompetent and lack the power to interfere with the leadership of the first plaintiff by the second plaintiff, or to change or attempt to change the leadership of the first plaintiff or to recognize the dissident faction of the first plaintiff as its leadership. D

(ii) A declaration that the provisions of the Electoral Act, 2002, do not empower the defendants to deal with or confer recognition on a rival and dissident group who had not employed democratic means to effect change of leadership of a political party. E

(iii) A declaration that the defendants are not entitled to ignore the list of names and addresses of the national officers of a political party registered with them and deal with persons not so registered. F  
It was after the striking out of the said Suit No. FHC/ABJ/ CS/346/ 2005, that the present Suit No. FHC/ABJ/CS/478/2005, was instituted claiming the following reliefs:-

*"1. A declaration of this Honourable Court that pursuant to Article 18(i) of the Constitution of the All Progressive Grand Alliance, the first plaintiff has, is entitled to, and enjoys a constitutionally guaranteed chairmanship of the party for an initial fair-hear term commencing from the 10th January, 2007, which term is still unexpired, and which term is optionally renewable. H*

*2. A declaration of this Honourable Court that the defendants lack the competence under the Constitution of the Federal Republic of Nigeria, 1999, the Electoral Act, 2002 and the Constitution of the*

*All Progressive Grand Alliance, (APGA), to interfere in any manner whatsoever with the position of the 1st plaintiff as the National Chairman of the 2nd plaintiff, and lack the power to change or attempt to change the leadership of the 2nd plaintiff's political party.*

3. A declaration of this Honourable Court that the provisions of Part III of the Electoral Act, 2002 do not empower the defendant to deal with and/or attempt to confer recognition on any other person as National Chairman or, Acting National Chairman of the 2nd plaintiff contrary to the provisions of the party's Constitution duly lodged and registered with the defendant as required and stipulated by the Constitution of the Federal Republic of Nigeria, 1999.

4. A declaration of this Honourable Court that the defendants are not entitled to ignore and cannot ignore the list of names and addresses of the national officers of a political party registered with them pursuant to Section 222(a) of the Constitution of the Federal v. Republic of Nigeria, 1999.

5. A declaration of this Honourable Court that the defendants are not entitled to violate the provisions of the Constitution of the plaintiffs, duly registered with the commission in accordance with Section 222(c) of the Constitution of the Federal Republic of Nigeria, 1999 relating to the democratic mode of change of leadership of a political party.

6. An order of injunction restraining the defendants by themselves, agents, or servants from interfering or further interference in any manner whatsoever with the leadership of the 2nd plaintiff by the 1st plaintiff.

7. An order of injunction restraining the defendants by themselves, agents, or servants from continuing to recognize or deal with any other leadership of the 2nd plaintiff, except that of the 1st plaintiff as guaranteed by the 2nd plaintiff's Constitution duly registered with the 1st defendant as required by the Constitution of the Federal Republic of Nigeria, 1999."

The appellants were, originally, not parties to the action but were subsequently joined by the court upon their application for joinder but the reliefs claimed in the action remained as reproduced supra. It is the reliefs claimed supra that are said to be in abuse of court process in view of the reliefs claimed in FCT/HC/CV/278/2005, ear-



lier also reproduced in this judgment.

The facts on which the appellants relied in moving the trial court on the issue of abuse of court process are as deposed to in paragraphs 4-18 of the affidavit in support of the motion to be found at pages 168 - 171 of the record as follows:-

*“4. That following the suspension and subsequent expulsion<sup>B</sup> of Chief Chekwas Okorie, the 1st plaintiff/respondent as a member of APGA, Chief Victor Umeh, the 3rd defendant was installed as the Acting National Chairman of APGA and duly recognized by the Independent National Electoral Commission (INEC), the 2nd defendant on record.<sup>C</sup>*

*5. That as a result of the state of affairs deposed to in paragraph (4) above, Chief Chekwas Okorie, the 1st plaintiff/respondent, instituted Suit No. FCT/HC/CV/278/2005, All Progressive Grand Alliance & 3 Ors. v. Chief Victor Umeh & 13 Ors. at the High Court<sup>D</sup> of the FCT Abuja.*

*6. That Suit No. FCT/HC/CV/278/2005, referred to above which was filed on 1/2/2005, was for the High Court of the FCT, to determine who is at the helm of affairs in APGA.*

*7. That hereto annexed as Exhibit 1, is a certified copy of the<sup>E</sup> Writ of Summon/Statement of Claim, dated 31/1/05 and filed on 1/2/05, in Suit No. FCT/HC/CV/278/05, referred to above.*

*8. That pursuant to an application for joinder by the plaintiffs in the suit referred to above, the High Court of the FCT made an order for joinder on 7/7/05, whereupon the plaintiffs amended their<sup>F</sup> Writ of Summons/Statement of Claim to include the Independent National Electoral Commission (INEC) and Prof. Maurice Iwu, as 15th and 16th co-defendants respectively.*

*9. That hereto annexed as Exhibit 2, is a certified copy of the<sup>G</sup> Amended Writ of Summons/Statement of Claim dated 12/7/05 and filed on 14/7/07, in Suit No. FCT/HC/CV/278/ 2005, referred to above.*

*10. That surprisingly, the plaintiffs in the suit referred to above filed a motion seeking to discontinue the above suit as against the<sup>H</sup> 15th and 16th defendants only, who had just been joined as co-defendants.*

*11. That hereto annexed as Exhibit 3, is a copy of the Notice of Discontinuance dated 12/9/05 and filed on 13/9/05.*

12. That though Suit No. FCT/HC/CV/278/05, referred to above was subsequently discontinued as against the Independent National Electoral Commission (INEC) and Prof. Maurice Iwu; and despite further amendment to the Statement of Claim in the suit, the subject matter and bone of contention remained the same i.e. who is at helm of affairs at APGA.

13. That hereto annexed as Exhibit 4, is a copy of the last Amended Statement of Claim filed on 30/11/2005 in Suit No. FCT/HC/CV/278/05, referred to above.

14. That ten days after the plaintiffs in the suit above discontinued their action against INEC and Prof. Maurice Iwu, they filed this present suit against them, over the same subject matter.

15. That Chief Victor Umeh, and myself applied to be joined in this present suit as co-defendants because the subject matter of this suit and Suit No. FCT/HC/CV/278/05, APGA & 3 Ors. v. Umeh & 13 Ors., aforementioned is substantially the same.

16. That hearing in Suit No. FCT/HC/CV/278/05, aforementioned has already reached an advanced stage and is adjourned next for the conclusion of the last witness for the defence.

17. That I was informed by or lead counsel P.I.N. Ikwueto, SAN., in our office on 5/7/06 and I verily believe that:

i. The parties and subject matter of Suit No. FCT/HC/CV/278/05, aforementioned pending before the High Court of the FCT, Abuja and this present suit are substantially the same.

ii. The High Court of the FCT, Abuja and this Honourable Court are courts of coordinate jurisdictions.

iii. The commencement of this suit before this court by the same plaintiffs against the same defendants over the same subject matter amounts to a gross abuse of court process, in view of the pending Suit No.

FCT/KHC/CV/278/05, before the High Court of the FCT, Abuja sitting at Kubwa.

This Honourable Court has a duty to protect its processes from gross abuse and violation by rampaging litigants.

18. That it will be in the interest of justice to grant this application."

In dismissing the application, the learned trial Judge at pages

231 - 232 of the record of appeal held as follows:-

*“The bottom line of an abuse of court process is a situation where a litigant will choose to use the legal process improperly to annoy and embarrass another through filing of multiple actions in one or different courts against the same parties on the same issues. In this present case, the situation complained of is where the plaintiff and some of the parties in this instant case have been having a legal battle before the FCT, High Court over the leadership tussle in the 2nd plaintiff. The processes of the other court showing the earlier case filed were annexed to this case. The issues involved are similar but the parties are not the same. The 1st and 2nd defendant against who this action was originally directed were not in the earlier case. The 4 applicants were joined in this case because they applied to be joined as interested parties. Since they saw this suit before the court and secured the leave of the court to join the issue, raising the issue of abuse to end the matter in limine is in itself ; odious to the principles of equality and justice. It is more abusive of the courts process for a party to seek to join the suit and stand on the basis of his being joined in the suit to say that the suit is an abuse of the process of this court. I do not believe from the facts of this case that there is any abuse of the process in this case. The 1st and 2nd I defendants sued in this court were not sued before the FCT, High Court and it is worthy of note that this court is the court that has jurisdiction to entertain the suit against the 1st and 2nd defendants, and not the FCT, High Court. To shut down this case therefore will orchestrate injustice to the bonafide suit filed by the plaintiffs in this instant case. I hold therefore that this application is with all respect lacking in merit. It is hereby dismissed.”*

The appellants were dissatisfied with the above ruling of the court and consequently appealed to the court below, which held, inter alia as follows :-

*“It is the duty of the court to guide against any improper use of its machinery and curb any excesses which may result in an abuse of judicial process. I have looked through the facts on printed record and the circumstance of initiating the suits before the Federal Capital Territory, High Court and the Federal High Court, Abuja. It is apparent that the end result of the two suits are meant to have an*

impact on the leadership of the 4th respondent, the party APGA but the 3rd respondent has his grievance towards those he considered to be dissident factors in the party which suit is before the Federal Capital Territory High Court as FCT/HC/CV/278/05. The Suit FHC/ & ABJ/CS/478/05, before the Federal High Court, is against the Chairman INEC and INEC, the 1st 35 and 2nd respondents challenging their intermeddling with the affairs of the party by giving recognition to the appointment of Chief Victor C. Umeh, as the Ag. National Chairman of APGA in the letter dated 28/6/06, contrary to the Constitution of the party, 1999, Constitution of the Federal Republic of Nigeria and the Electoral Law. I cannot identify any multiplicity of action here or abuse of the judicial process. Parties are permitted to air their grievance at the law courts as when there is a right there must be a remedy. *Falobi v. Falobi* (1976-9) 10 S.C. 1; (1976) 9-10 S.C. (Reprint) 1; *Bello v. A-G Oyo State* (1986) 5 NWLR (Pt. 44) pg 828.”

It is against the above judgment that the appellants have further appealed to this court.

The learned senior counsel for the appellants submitted, while arguing issue 1, that there was no concurrent findings by the lower courts in that while the trial court found that the issues involved in the two suits are similar yet declined to find any abuse of process in the instant suit, the court below concluded that it cannot identify any multiplicity of action or abuse of process; that even if there was concurrent findings, this court should intervene in view of what learned senior counsel described “as the peculiar circumstances of this case” which includes the fact that the lower court in its decision completely overlooked the decision of the Court of Appeal, in *Hon. Minister for Works & Housing v. Thomas Nig. Ltd.* (2002) 2 NWLR (Pt. 752) 740 at 785, to the effect that the existence of additional parties in one case as against the other case is immaterial in the determination of the issue of abuse of court process; that where matters involving the same issues are raised contemporaneously in two different courts, it is desirable and in the interest of justice that they be heard in only one of the two courts for which he cited and relied on *Dumez Nig. Plc. v. UBA Plc.* (2006) 14 NWLR (Pt. 1000) 515 at 526, the fact that the lower court had found that the end result of the two cases are

meant to have an impact on the leadership of the 4th respondent; that the two suits are concerned with the same subject matter and thus amount to abuse of court process, relying on *A-G. of Ondo State v. A.G. of Ekiti State* (2001) 5 9-10 S.C. 116; (2001) 17 NWLR (Pt. 743) 706 at 771, *Amobi v. Nzegwu* (2005) 12 NWLR (Pt. 938) 120 at 143. B

On issue 2, learned senior counsel submitted that the claims in Suit No. FHC/ABJ/CS/346/2005, and the instant case are the same in all material particulars and that since the trial court had decided that the said Suit No. FHC/ABJ/CS/346/2005, was in abuse of court process, the parties are bound thereby and cannot relitigate or contest the same issue in any subsequent litigation, for which learned senior counsel cited and relied on *Fidelitas Shipping Co. Ltd. v. Vio Exportchled* (1966) 1 QB 630 at 640, *Aro v. Fabolude* (1983) All NLR 67 at 79. *Arubo v. Aiyeleru* (1993) 1 NSCC (Vol. 24) 255 at 265, and that the principle of *issue estoppel* applies notwithstanding the fact that the earlier suit was struck out (not determined on the merit) and urged the court to resolve the issues in favour of the appellants and allow the appeal. C D

On their part, learned counsel for the 1st & 2nd respondents submitted, in their Brief of Argument deemed filed on 6/12/07, that “the crux of the series of actions filed at different courts and at different times is in the main, a challenge of the action of both the first and second respondent in granting recognition to the first appellant while the ancillary issues border on the illegality of the 1st appellant in carrying out the functions and exercising the powers of the National Chairman .....” that the parties are also substantially the same as well as the reliefs claimed and relying on the case of *Saraki v. Kotoye* (1992) NWLR (Pt. 264) 188, *Agwasim v. Ojichie* (2004) 4 S.C. (Pt. 11) 160; (2004) 10 NWLR (Pt. 882) 613, *Arubo v. Aiyeleru* supra at 126, learned counsel though representing 1st and 2nd respondents, urged the court to resolve the issues in favour of the appellants and allow the appeal. E F G

On the other hand, learned senior counsel for the 3rd and 4th respondents, in their Brief of Argument deemed filed and served on 17/7/07, submitted that the lower courts were right in holding that the suit does not constitute an abuse of court process having regard H

to the reliefs sought and the parties thereto; that for there to be an abuse of court process, there must exist, simultaneously, a multiplicity of suits between the same parties and on the same subject matter and on the same issues, relying on the case of Plateau State v. A-G. of the Federation (2006) 1 S.C. (Pt. I) 1; (2006) 3 NWLR (Pt. 967) 346 at 393, Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156 at 188-189, Ogoejeifo vs Ogoejeifo (2006) 1 S.C. (Pt. I) 157; (2006) 3 NWLR (Pt. 966) 205 at 220, that it is not the law, that once a party files another suit before another court on the same subject matter, there is an abuse of court process as an act can give rise to different suits and a subject matter may give rise to different rights, relying on Christian Outreach Ministries Inc. v. Cobham (2006) 15 NWLR (Pt. 1002) 283 at 305 - 307, that the issue in Suit No. FCT/HC/ CV/27 8/2005, is whether the defendants therein can continue to parade themselves as officers/members of the All Progressives Grand Alliance, and claiming to have suspended/expelled the 2nd, 3rd and 4th plaintiffs, without due process, despite having themselves been expelled by the 1st plaintiff in accordance with due process, while on the other hand the issue in the instant case is whether the 1st and 2nd respondents, who are not parties to the earlier suit, could, in view of the clear provisions of the relevant Electoral Act, 1999, Constitution and Constitution of the party (APGA) claim to have the competence to interfere in the internal affairs of a registered political party etc; that since the claims of the plaintiffs/3rd and 4th defendants are not justiciable in the High Court of the Federal Capital Territory, the two courts do not have concurrent jurisdiction over the claims of the plaintiffs and as such the authorities cited and relied upon by his learned friend are not applicable to the facts of the instant case; that the appellants have not shown why this court should interfere with the concurrent findings that the action does not constitute an abuse of process; that the appellants not being parties to Suit No. FHC/ABJ/CS/ 346/2005, which was struck out and of a different subject matter with the instant case, it cannot constitute an issue estoppel as contended by the appellants and urged the court to dismiss the appeal.

It is settled law that for there to be an abuse of court process, there must exist a multiplicity of suits between the same parties on the same subject matter and on the same issues which pre-conditions

are mutually inclusive as they are conjunctive. In the case of Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156 at 188 - 189, this court held inter alia that *“the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. The abuse lies in the multiplicity and manner of the exercise of the right, rather than the exercise of the right per se. The abuse consists in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the adversary, and interfere with the administration of justice.”* B C

Inherent in the above statement of the law and in addition to the earlier stated pre-conditions that must exist before an abuse of court process can be said to have occurred, is the fact that the suit so instituted in abuse must be lacking in *bona fide* - there must be an improper use of the court or judicial process by the plaintiff to the annoyance or chagrin of the other party - usually the defendant(s) - so as to circumvent the due administration of justice. As stated earlier in this judgment, the lower courts have held that there is no abuse of court process E

in the instant case. The question is whether they are right in so holding.

It is an undisputed fact that the parties in the two cases are not the same, as the 1st and 2nd respondents, against whom a substantial part of the reliefs in the instant case have been made are no longer parties in Suit No. FCT/HC/CV/278/2005, neither are there any claims therein against them. Another very important fact is that the High Court of the Federal Capital Territory, Abuja before which the said Suit No. FCT/HC/CV/278/2005, pends has no jurisdiction over the 1st and 2nd respondents against whom the 3rd and 4th respondents, in the instant case, have the claims as stated in their reliefs earlier reproduced in this judgment. The simple question to ask is whether if it is held, as urged upon this court by learned senior counsel for the appellant and 1st and 2nd respondents, that the present case constitutes an abuse of court process and consequently is struck out, what would become of the claim of the 3rd and 4th F G H

respondents against the 1st and 2nd respondents which claims cannot be vindicated, in the suit at the High Court of the Federal Capital Territory, since that court has no jurisdiction over the 1st and 2nd respondents?. Would such a holding do justice between the parties particularly as it is clear that the Federal High Court before which the instant case pends has no concurrent jurisdiction with the High Court of the Federal Capital Territory, as regards the 1st and 2nd respondents?

From the reliefs claimed in the two suits, it is very clear that though they relate to the leadership of the 4th respondent, they are definitely not the same neither can they be tried at the High Court of Federal Capital Territory, for the reasons earlier stated. It is therefore, under the circumstance not correct to say that the two suits are pending before courts of concurrent jurisdiction and therefore subject to the principles of abuse of court process. It is very clear that whereas in Suit No. FCT/HC/ CV/27 8/2005, the 3rd respondent seeks to ventilate his grievance against those considered to be dissident groups within the party, in the instant case the 3rd and 4th respondents are proceeding against the 1st and 2nd respondents who are the Chairman of INEC and INEC respectively, challenging their alleged intermeddling or interference with the internal affairs of the 4th respondent by giving recognition to the appointment of the 1st appellant as Chairman of the 4th respondent contrary to the constitutional provision of the 4th respondent, the 1999, Constitution and the 2002, Electoral Act. Clearly, there is no abuse of court process known to law, having regards to the facts of this case. There is nothing at all to show that the instant suit was instituted to annoy the appellants neither do the facts and circumstances of its institution show any lack of bona fide on the part of the 3rd and 4th respondents.

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Chukwuma-Eneh, JSC., a copy of which I had the privilege of a preview, that I agree that the appeal is without merit and should be dismissed. I therefore order accordingly and abide by the consequential orders made in the said leading judgment including the order as to costs.  
Appeal dismissed.



**MUHAMMAD JSC**

At the Federal High Court, Abuja Judicial Division (trial court), the 3rd and 4th defendants as applicants, filed a Motion on Notice praying for an order dismissing Suit No. FHC/ABJ/CS/478/2005, between the 2nd plaintiff therein (All Progressive Grand Alliance (APGA) & 3 Ors. and Chief Victor Umeh, joined by order of court) as 3rd defendant & 13 Ors. The grounds upon which the prayer was sought were listed on the Motion on Notice as follows: -

(a) In Suit No. FCT/HC/CV/278/05, All Progressive Grand Alliance (APGA) & 3 Ors. v. Chief Victor Umeh & 13 Ors., the same plaintiffs herein brought an action against the same defendants in the suit, before the High Court of the FCT, Abuja.

(b) The subject matter of Suit No. FCT/HC/CV/ 278/05, referred to above pending before the High Court of the FCT, Abuja is on all fours with the subject matter of this present suit.

(c) Suit No. FCT/HC/CV/278/05, referred to above is part heard, the plaintiffs having closed their cases, the suit is adjourned for the conclusion of defence witness.

(d) Consequently, the present suit constitutes a gross abuse of process and the Honourable Court is without jurisdiction to entertain same.

Submissions on the affidavit evidence were taken from the parties by the learned trial Judge. After considering the affidavit evidence and the submissions by the parties, the learned trial Judge found the application lacking in merit and he dismissed it.

The applicants were dissatisfied and they appealed to the Court of Appeal, Abuja Division (the court below). After having reviewed the case, the grounds of appeal and parties Briefs of Arguments, the court below dismissed the appeal and affirmed the decision of the trial court.

Further aggrieved, the appellants appealed to this court. Parties settled Briefs of Arguments. The appellants set out two issues in their Brief of Argument. These are:

*“a. Whether this suit which is meant to have the same impact as the earlier Suit No. FCT/HC/ CV/278/05, on the leadership of the*

4th respondent constitutes an abuse of process.

b. Whether the court below correctly examined the case presented before it and reached the right conclusion on the issues submitted to it.”

1st and 2nd respondents set out one issue:

B “Whether the Court of Appeal was right to hold as it did that the action in Suit No. FHC/ABJ/CS/1178/2005, that precipitated to this appeal does not amount to an abuse of the judicial process.”

3rd and 4th respondents formulated two issues, viz:

C “1. Whether the court below was right in holding, that the 3rd & 4th respondents’ suit did not constitute an abuse of court process and dismissing the appeal.

2. Whether the ruling of Nyako, J., on a Preliminary Objection in Suit No. FHC/ABJ/CS/346/2005, wherein the appellants were not D parties, constitute an issue estoppel as to bar the 3rd and 4th respondents from instituting the instant suit.”

The issues formulated by the parties appear to be the same except issue 2 from the 3rd and 4th respondents, which is on issue estoppel.

E The terms “abuse of court process” and “abuse of judicial process”, are one and the same thing. I once observed that:

“Abuse of court process simply means that the process of the court has not been used bona fide and properly. It also connotes the employment of judicious process by a party in improper use to the irritation and annoyance of his opponent and the efficient and effective F administration of justice.

See the case of Expo Ltd. v. Pafabs Enterprises Ltd. (1999) 2 NWLR (Pt. 591) 449 at 462. It is a multiplicity of same action in same court or even before another court or courts being pursued simultaneously G by the plaintiff/ applicant as the case may be. The claim(s) relief (s) may be worded differently, but it still amounts to an abuse of process where the substance or the end result of the two or more actions is the same. Thus, where by the grant of one relief/claim, in favour of the plaintiff/applicant, the aim of the plaintiff/applicant would have H been achieved, this will amount to an abuse of process if same question is placed before the same or another court, it follows therefore that where two courts (or even the same court) are faced with substantially the same question, it is always desirable to be sure that, that

question is litigated before only one of these courts several authorities are in support of that principle of law. In *Egwasim & Anor. v. Ofichie & Anor.* (2004) 10 NWLR (Pt. 882) 613 at 624, Tobi, JSC, had this to say:

*"A litigant has no right to pursue pari passu two processes which will have the same effect in two courts at the same time, with a view of obtaining victory in one of the processes or in both. The two processes were in law not available to the appellants simultaneously. Only one was available and the choice of these two was exclusively the appellants....one of the processes is clearly an abuse of the judicial process."*

See further. *A.G. of Ondo State v. A.G. of Ekiti State* (2001) 9-10 S.C. 116; (2001) 17 NWLR (Pt. 743) 706 at 771 *Amobi v. Nzegwu* (2005) 12 NWLR (Pt. 938) 120 at 143.

In order to appreciate the issue involved in the appeal on hand, one needs to have a closer look at the facts giving rise to the appeal. By a Writ of Summons dated 23/09/2005, the 3rd and 4th respondents herein, as plaintiffs at the trial court commenced the suit against the 1st and 2nd respondents as the only defendants then. The appellants were not parties therein. The 1st and 2nd respondents filed a Motion on Notice dated 17/11/2005, praying the trial court to strike out the suit for constituting an abuse of court process. After hearing arguments of counsel for the respective parties, the Motion on Notice was dismissed on 20/ 12/2005.

In the suit from which this appeal stemmed, the 3rd and 4th respondents made the following claims against the 1st and 2nd respondents/defendants jointly and severally:

*"1. A declaration that pursuant to Article 18(i) of the Constitution of the All Progressive Grand Alliance, herein on record as the fourth respondent, the third respondent (first plaintiff) has, is entitled to and enjoys a constitutional guaranteed chairmanship of the party for an initial four year term commencing from 10th January, 2003, till 10th January, 2007, which term at the time of the institution of the action is still unexpired and which is also renewable at the option of the third respondent.*

*2. A declaration that the first and second respondents as defendants at the trial court lack the competence under the Constitu-*

tion of the Federal Republic of Nigeria, 1999; Electoral Act, 2002, and the Constitution of the fourth respondent to interfere in any manner whatsoever with the position of the first plaintiff herein third respondent as the National Chairman of the second plaintiff herein fourth respondent and also lacks the power to change or attempt to change the leadership of the fourth respondent which is a registered political party.

3. A declaration that the provision of the Electoral Act, 2002 does not empower the defendants herein as the first and second respondents to confer recognition on any other person as the National Chairman or Acting National Chairman of the second plaintiff, contrary to the provisions of the second plaintiff's Constitution.

4. A declaration that the defendants are not entitled to ignore and cannot ignore the list of names and addresses of the national officers of the political party registered with them.

5. An injunction restraining the defendants from recognizing or continuing to recognize or deal with the leadership of the second plaintiff except with the first plaintiff as guaranteed by the second plaintiff's Constitution. See pages 10 - 11 of Volume one of the records of appeal."

Now, by a Motion on Notice dated 17th November, 2005, and 2nd respondents prayed the trial court to dismiss or strike out the suit on the ground that it constituted an abuse of court process. The 3rd and 4th respondents filed a counter-affidavit in opposition to the Motion on Notice. In their affidavit in support, the 1st and 2nd defendants/respondents through one John Samuel, who is in the employment of the 2nd defendant and had the consent and approval of the defendants to depose to the affidavit, averred, *inter alia*, as follows:

"3. The 2nd defendant is an agency of the Federal Government established by the Constitution of the Federal Republic of Nigeria, 1999 whose duties include monitoring the Operation and Finances of Political Parties.

4. I know as a fact that the plaintiffs sued the defendants at the Federal High Court, Abuja in Suit No. FHC/ABJ/CS/346/2005, on the same facts as this present suit. A copy of the originating summons is attached as Exhibit INEC1.

5. I also know as a fact that the plaintiffs applied and got the defendants joined in Suit No. FCT/ HC/CV/278/2005, at the FCT, High Court in respect of the same subject matter. A copy of the application and written address in respect of same by counsel to the plaintiffs are attached as Exhibits INEC 2 and Exhibit INEC 3 respectively.

6. I know as a fact that the same Suit No. FHC/ABJ/CS/346/ 2005, at the Federal High Court, Abuja was struck out for abuse of court process. B

7. I further know as a fact that after the defendants had filed their Statement of Defence and other processes in Suit No. FCT/ HC/278/2005, the plaintiffs withdrew the case against them. The Motion on Notice for leave to discontinue is attached as Exhibit INEC 4. C

8. I was informed by Helen Mark, Esq., counsel for the defendants which information I verily believe to be true that the multiplicity of suits on the same subject matter against the defendants is aimed at causing annoyance to the defendants and is an abuse of the process of this court.” D

The respondents filed a counter-affidavit and through one Oby Aziwe, (Mrs.), a legal practitioner in the chambers of Chief Chris Uche, SAN., learned counsel for the plaintiffs/respondents, averred to the following facts: E

“3. That I have seen the Motion on Notice brought by the defendants/applicants together with the accompanying affidavit for dismissing or striking out of this suit, and I state that paragraphs 4 to 9 of the said affidavit are not true, but mere misrepresentation of the state of affairs, and are accordingly denied. F

4. That I know as a fact that the present suit is the only suit in existence in any court of law by the plaintiffs against the defendants G in this matter.

5. That I know as a fact that the said Suit No. FHC/ ABJ/CS/ 346/2005, is not in existence, having been struck out before the filing of the present suit.

6. That I also know as a fact the defendants are not parties in the said Suit No. FCT/HC/CV/278/2005, having been long withdrawn and their names struck out therefrom before the filing of the present suit. H

7. *That I know the present suit is not an abuse of court process as there is no multiplicity of suits on same subject matter as contended by the defendants, but only one suit in existence against them.*

8. *That the present suit deals with the right or powers of the defendants under the Constitution of the Federal Republic of Nigeria, the Electoral Act and the Constitution of a political party to interfere with an unilaterally change in the leadership of a registered political party.*

9. *That it is in the interest of justice that this suit is heard on its merits by this Honourable Court, the defendants having filed their defence and the matter now ripe for hearing.*

10. *That this application by the defendants is brought in bad faith and is only a delay tactic to frustrate the scheduled commencement of hearing."*

D After taking arguments from the learned counsel for the respective parties, the learned trial Judge, Nyako, J., held that the suit did not constitute an abuse of court process and dismissed the application.

E On 6th February, 2006, hearing commenced on the substantive suit with the examination-in-chief of the 1st plaintiff, 3rd respondent as P.W.I. Before P.W.I, could conclude his evidence, another Motion on Notice was filed dated 14th November, 2005, praying the trial court to join the appellants as 3rd and 4th defendants and to strike out the 2nd plaintiff as a party to the suit. The trial court heard arguments on the Motion on Notice and at the end, granted the prayer for joinder of the appellants as 3rd and 4th defendants whereas the prayer to strike out the name of the 2nd plaintiff was refused.

G On 26th May, 2006, the plaintiffs filed and served on the parties an Amended Writ of Summons and Statement of Claim reflecting the names of the appellants as the 3rd and 4th defendants respectively. The reliefs originally sought however remained the same notwithstanding the joinder. The trial court in the end, held that there was no abuse of process and dismissed the objection.

H Further appeal to the court below did not yield any positive result.

In this court, after having reviewed the records of proceedings

of the two courts below; the grounds of appeal filed, the submissions of learned counsel for the respective parties and the prevailing law, I am of the firm view that:

“(i) the two suits under reference namely: Suit Nos. FCT/HC/278/2005, between: All Progressive Grand Alliance & 3 Ors. & Chief Victor Umeh & 13 Ors. and the instant Suit No. FHC/ABJ/CS/478/2005, between : Chief Chekwes Okorie & Anor. & Prof. Maurice Iwu & 3 Ors. from their facts, reveal that the parties are not the same, and the latter suit is in no way an abuse to the former.

I am fortified in my view by the holding of the court below where it observed:

“I have looked through the facts on printed record and the circumstance of initiating the suits before the Federal Capital Territory High Court and the Federal High Court, Abuja. It is apparent that the end result of the two suits are meant to have an impact on leadership of the 4th respondent the party APGA, but the 3rd respondent has grievance towards those he considered to be dissident factors in the party which suit is before the Federal Capital Territory High Court as FCT/HC/CV/278/2005. The Suit No. FHC/ABJ/CS/478/2Q05. before the Federal High Court is against the Chairman INEC and INEC. the 1st and 2nd respondents challenging their intermeddling with the affairs of the party by giving recognition to the appointment of Chief Victor C. Umeh, as the Ag. National Chairman of APGA in the letter dated 28/6/2006, contrary to the Constitution of the party, 1999, Constitution of the Federal Republic of Nigeria and the Electoral Law. I cannot identify any multiplicity of action here or abuse of the judicial process. Parties are permitted to air their grievance at the law courts as when there is a right there must be a remedy.” (Underlines are for emphasis)

(ii) the subject matter of the suits between the parties were never the same for instance, the issue presented by the four plaintiffs in Suit No. FCT/HC/CV/278/2005, is whether the fourteen defendants therein could continue to parade themselves as officers/members of the All Progressive Grand Alliance, the 1st plaintiff and claiming to have suspended/expelled the 2nd -4th plaintiffs without following due process. The issue presented at the trial court, on the other hand, by the two plaintiffs is on whether the 1st and 2nd de-

*fendants, i.e. Prof. Maurice Iwu and the INEC (who were not parties in suit No. FCT/HC/CV/278/2005), could claim to have the competence to interfere in the internal affairs of a registered political party to the extent of according recognition to the 1st appellant as the Acting National Chairman of that party while the matter was subjudice.*

*B I can hardly see multiplicity of the actions in so far as the parties, the subject matter and the issues are markedly different.*

*(iii) it is common ground that the 1st and 2nd respondents are Federal Government Agencies. That being the case, by the provision of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 and the case law, it would be improper for the 3rd and 4th respondents to proceed against them in the FCT, High Court. This is not a forum shopping as argued by learned SAN., Mr. Ikweto, for the appellants. It is the right step taken in the right direction by the 3rd and 4th respondents.”*

*D For these and the more detailed reasons given by my learned brother, Chukwuma-Eneh, JSC. I too find no merit in this appeal. I dismiss the appeal. I make no order as to costs.*

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