**NIGERIA DEPOSIT INSURANCE CORPORATION**

**V.**

**UNION BANK OF NIGERIA PLC. & ANOR**

IN THE COURT OF APPEAL OF NIGERIA

ON THURSDAY, THE 12TH DAY OF FEBRUARY, 2015

CA/L/444/2013

**LEX (2015) - CA/L/444/2013**

**OTHER CITATIONS**

3PLR/2015/109 (CA)

(2015) LPELR-24316(CA)

**BEFORE THEIR LORDSHIPS**

AMINA ADAMU AUGIE, JCA

SAMUEL CHUKWUDUMEBI OSEJI, JCA

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, JCA

**BETWEEN**

NIGERIA DEPOSIT INSURANCE CORPORATION [Provisional Liquidator of Fortune International Bank Plc. (In Liquidation) - Appellant(s)

AND

1. UNION BANK OF NIGERIA PLC.

2. COWRIE BUSINESS SOLUTIONS LIMITED - Respondent(s)

**REPRESENTATION**

EMEKA NGIGE (SAN) with OBIORA A. EGWUATU, Esq., Mrs. U. NWADIALO-DAVID, and AUGUSTINE EGWUATU, Esq. - For Appellant

AND

C. O. TOYIN PINHEIRO (SAN) with C. A. CHANBANG, Esq. and IFEOLUWA ADEBAMBO, Esq. - For the 1st Respondent.

OLADAPO AKINOSU, Esq., with ADEGOKE ADEDOYIN, Esq. - For the 2nd Respondent -For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

ADMINISTRATIVE AND GOVERNMENT LAW - STATUTORY BODY - NIGERIAN DEPOSIT INSURANCE CORPORATION: Status of the Nigerian Deposit Insurance Corporation as statutorily designated provisional liquidator vis a vis companies it is liquidating or managing – Whether NDIC is a privy of a company of any company it is liquidating – Where the NDIC derives its powers to act as a provisional liquidator

BANKING AND FINANCE – DISTRESSED BANK/FINANCIAL INSITUTION:- Liquidation process – Revocation of the licence of the financial institution by the Central Bank of Nigeria pursuant to its powers under the Banks and other Financial Institution Act [BOFIA], and Section 40(1) of the NDIC Act, 2006 – Effect – Whether removes legal powers to sue and be sued - Whether the NDIC is statutorily deemed to have been automatically appointed by the Federal High Court as the "provisional liquidator" once licence is revoked Conditions the NDIC must satisfy under Section 40(2) of the NDIC Act to remove the provisional nature of NDIC's status as liquidator

BANKING AND FINANCE :- Banking practices – Grant of loan by way of overdraft secured by legal mortgage over property – Recovery of loan where debtor goes into liquidation – Where debtor’s provisional liquidators is the Nigerian Deposit Insurance Company – How treated - Relevant considerations

COMMERCIAL LAW – CONTRACT:- Where a contract is entered into by a non-juristic person – Whether such a contract is null and void

COMPANY LAW – INSOLVENCY AND WINDING UP:- Liquidator – Whether cannot be a "successor" of entity under liquidation – Distinction between liquidation and dissolution of a company - Where a bank or corporation ceases to operate or closes its business – Whether that does not determine the legal existence of such a bank

COMPANY LAW - POWERS OF THE NIGERIAN DEPOSIT INSURANCE CORPORATION: The role and powers of the Nigerian Deposit Insurance Corporation as Provisional Liquidators – Basis of powers - Whether NDIC acts as a privy of a company over which it is acting as a provisional liquidator

COMPANY LAW - PROVISIONAL LIQUIDATOR: Duty of a provisional liquidator over the assets, liabilities, court actions of company in liquidation – Primary purpose of a provisional liquidator – Legal status of an organisation under a provisional liquidation – Relationship between provisional liquidator and company in liquidation

COMPANY LAW - WINDING UP OF A COMPANY: Meaning and implication of winding up of a company

CONSTITUTIONAL LAW – RIGHT TO BRING ACTION:- Duty of Court to uphold same – Abuse of court process – Whether multiplicity of actions is automatically deemed as abuse of court processes

DEBTOR AND CREDITOR – INSOLVENCY - WINDING UP AND LIQUIDATION UNDER NDIC REGIME:- Meaning and implication of a debtor company – Appointment of a provisional liquidator – Purpose of and legal role of liquidator – Changed legal status of company under liquidation - Whether NDIC acts independently or as a privy of a company over which it is acting as a provisional liquidator

DEBTOR AND CREDITOR – INSOLVENCY – WINDING UP:- Legal status of a liquidator in relation to the company in liquidation - Whether a person cannot be appointed a Liquidator or a Receiver in respect of his own property – Whether a company in liquidation can never be appointed a liquidator to wind up the affairs of that company

DEBTOR AND CREDITOR – INSOLVENCY – WINDING UP:- Provisional liquidator – Role under Section 41 (1) (a) of the NDIC Act – Whether strictly limited to realizing assets of company in liquidation which is deemed not wound up – Whether the NDIC can invoke any of the powers of a liquidator under Section 425 of Company and Allied Matters Act, CAMA

DEBTOR AND CREDITOR – INSOLVENCY – WINDING UP:- Vesting of assets in NDIC under Section 424 of CAMA – Power of NDIC to dispose of the property vested in thereby or exercise its power under Section 425 of CAMA to sell property of the bank for satisfaction of its debts – Condition precedent for exercise thereof

INSURANCE AND REINSURANCE – NDIC:- Security of deposits in a banking institution – Role of the Nigerian Deposit Insurance Company – Legal basis - How treated

REAL ESTATE/LAND LAW:- Mortgaged property of debtor under provisional liquidation – Right of sale – When exercise thereof can be challenged – Right of liquidator to maintain separate suit regarding same property from suit initiated by debtor in liquidation – Relevant considerations

**PRACTICE AND PROCEDURE ISSUES**

ACTION - "ABUSE OF COURT PROCESS":- Definition of "abuse of court process" – How determined - Whether institution of multiple actions on the same subject amounts to abuse of court process – Requirements for sustaining an action based on abuse of court process

ACTION - PARTIES TO AN ACTION:- Meaning of parties to an action

EVIDENCE - ESTOPPEL:- Meaning of estoppel - How established – When the court would refuse to uphold a claim based on estoppel – Interlocutory judgments and the doctrine of estoppel

JUDGMENT AND ORDER – BINDINGNESS OF COURT JUDGMENT - PRIVIES AND THIRD PARTIES:-Whether previous proceedings are binding on privies of parties thereto – Effect of previous proceedings on third parties in new proceedings based on the same subject matter

INTERPRETATION OF STATUTE:- Section 40(1) of the NDIC Act, 2006 - Section 41 (1) (a) of the NDIC Act - 425 of Company and Allied Matters Act, CAMA - Section 424 of CAMA

WORDS AND PHRASES - "PRIVY": Meaning of the ‘Privy’ – What it is not – Distinction between ‘Privy’ and ‘Provisional Liquidator’

**MAIN JUDGMENT**

**AMINA ADAMU AUGIE, J.C.A. (Delivering the Leading Judgment):**

This Appeal turns on a very narrow issue - the abuse of Court process, and it is hinged on a dispute over the property known as **Fortune Towers** situated at No. 27/29 Adeyemo Alakija Street, Victoria Island, Lagos, which originally belonged to Fortune International Bank Plc. **[FIB Plc]**, before it became the subject of a number of litigations in various Courts. The said **FIB Plc.**, a licensed commercial bank, maintained a banking relationship with Union Bank Plc., the 1st Respondent in this Appeal, and in the course of their relationship, the 1st Respondent granted overdraft facilities to **FIB**, which were later secured with a Deed of Legal Mortgage; the said **Fortune Towers** was pledged as collateral in the legal Mortgage.

On **16/1/2006**, the Central Bank of Nigeria revoked the License of FIB Plc. for failing to meet up with the minimum capital requirement of N25 Billion for commercial banks. An Interim Management Committee [IMC] was appointed to pilot its affairs. The Appellant later commenced a winding-up proceedings against **FIB** at the **Federal High Court**, Lagos.

On **19/1/2006**, by an order of A.R. Mohammed, J., the Appellant was appointed Provisional Liquidator to manage and control its affairs. Meanwhile, when the IMC took over the affairs of FIB, it discovered that there were disputes between the 1st Respondent and FIB, which led to suits filed at the **Federal High Court** and at the **Lagos State High Court**.

In **Suit No.FHC/L/CS/1321/2005** filed at the Federal High Court, FIB was Plaintiff and the 1st Respondent [Union Bank] was Defendant, and FIB claimed as follows in the Writ of Summons dated 16/12/2005 -

*1.* ***A Declaration*** *that the unilateral deduction of the sum of N82,700.00 as legal charges for the perfection of legal mortgage over the Plaintiffs property with Land Certificate number 14/14/75 situate, lying being and known as 27/29 Adeyemo Alakija Street, Victoria Island, Lagos is wrongful; illegal, null and void.*

*2.* ***A Declaration*** *that the refusal of the Defendant to set off the Plaintiffs N250,000,000.00 Treasury Bill deposited with the Defendant as clearing collateral in order to reduce the current account outstanding balance and the consequent interest burden on the resultant overdrawn balance is illegal, null and void.*

*3.* ***A Declaration*** *that the plaintiff does not owe the Defendant the sum of N2,700,000,000.00.*

*4.* ***A Declaration*** *that the charging of illegal and arbitrary interest on the overdrawn balance of the Plaintiff with the Defendant over and above the CBN's approved interest rate is null and void.*

*5.* ***A Declaration*** *that the Mortgage held by the Respondent over the Plaintiffs property with Land Certificate number 14/14/75 situate, lying being and known as 27/29 Adeyemo Alakija Street, Victoria Island, Lagos cannot be foreclosed by the Defendant in the circumstances of this case.*

*6.* ***An order*** *setting aside the said sum of N82,700,000.00 debited by the Defendant from the Plaintiffs account as legal charges for perfection of legal mortgage over the plaintiffs property and the interest thereon.*

*7.* ***An order*** *setting aside the said arbitrary interest and charges on the Plaintiffs property and the interest thereon.*

*8.* ***An order of injunction*** *restraining the Defendant by itself privies, agent, officer or assigns from selling, assigning, appointing receiver or otherwise foreclosing the Plaintiff's right over the mortgaged property with Certificate number 14/14/75 situate, lying, being and known as 27/29 Adeyemo Alakija Street, Victoria Island, Lagos."*

FIB also filed an Application dated 29/12/2005 praying for the following -

*(1)* ***An Order of Interlocutory Injunction*** *restraining the Defendant by itself or through its agents, privies, officers and or assigns from seeking to appoint or appointing a receiver under the Mortgage Deed or selling or attempting to sell the Plaintiff/Applicant's property with land Certificate No.14/14/75 and situate at No.27/29 Adeyemo Alakija Street, Victoria Island, Lagos or taking benefit of the Mortgage Deed pending the hearing and determination of the Substantive suit.*

*(2)* ***An Order*** *of the Court appointing an external auditor to audit the accounts of the Plaintiff with the Defendant which is the subject matter of this suit*"

In his **Ruling** delivered on **27/3/2007**, Olomojobi. J., held as follows -

"*I have gone through the processes filed in this suit - - In the Applicant's letter dated 18/8/2004 to the Respondent bank, the Applicant authorized the Respondent to debit its account in respect of the perfection of Deed of legal Mortgage. The letter is better reproduced hereunder –*

*“ As provided in the Mortgage Deed the Mortgagee i.e. the Respondent became the beneficial owner of the property until all moneys which are the subject of the security are paid. Clause 6 empowers the Respondent Bank to exercise its statutory power of sale on default of payment of the moneys due from the Applicant after it had demanded for same. Also, Clause 7 provides that the statutory power to appoint a Receiver may be exercised at any time after payment of the moneys secured has been demanded and the applicant had defaulted in paying its debt.*Clauses 6 and 7 are reproduced hereunder –

*“From the Respondent's letter dated 22/7/2004, and the Applicant's letter dated 18/8/2004, read with clauses 6 and 7 of exhibit D- the Deed of legal Mortgage, I am of the humble view that the Applicant has no legal right in the property situate at Number 27/29, Adeyemo Alakija Street, Victoria Island Lagos- the subject matter of this action and I so hold*".

Dissatisfied with the Ruling of Olomojobi, J., of the Federal High Court, FIB appealed to this Court with a Notice of Appeal dated 28/3/2007.

While Suit No. FHC/L/CS/1321/2005 at the Federal High Court was still pending, Fortune Towers was invaded by thugs and hoodlums, which prompted FIB to file Suit No: ID/1098/2007 at the Ikeja High Court of Lagos State, against UBN Property Co. Ltd. and the 1st Respondent herein [Union Bank], as the 1st and 2nd Defendants; it claimed as follows-

*a. A Declaration that the invasion and entering of the Claimant's property - - -4/14/75 located, lying and being at No. 27/29 Adeyemo Alakija Street, Victoria Island Lagos and issuing and circulating of a Notice dated 14/8/2007 to all tenants by the Defendants is unlawful, illegal, unconstitutional, null and void.*

*b. An Order of perpetual injunction restraining the Defendants, its agent, servant, privies, officers or any other person howsoever from invading, entering, issuing or circulating notices or otherwise dealing with the Claimant's property - at No. 27/29 Adeyemo Alakija Street, Victoria Island, Lagos.*

*c. General damages in the sum of N1,000,000.00 against Defendants*.

FIB also filed an Application dated 5/9/2007 for an Order of Injunction, and the Defendants, including Union Bank, the 1st Respondent herein, filed their own Application dated 14/9/2007, praying for the same Order. In his Ruling delivered on 29/11/2007, Marsh, J ordered as follows -

*1. The Claimant's Application lacked merit and same is accordingly dismissed.*

*2. Interlocutory Injunction is granted in favour of the Defendants Respondents/Applicants restraining the Claimant/Respondent, its Agents, Servants, Detectors, Officers or Privies from interfering with the 2nd Defendant's exercise of its powers conferred under the Deed of Legal Mortgage dated 30/8/2004 - or otherwise, interfering with the Defendants Management and Control of the properly situate at No. 27/29, Adeyemo Alakija Street Victoria Island, Lagos, Lagos State (the subject matter of the Legal Mortgage) pending the final determination of this suit.*

*3. Interlocutory Injunction is granted in favour of the Defendants/Respondents/Applicants restraining the Claimant/Respondent, their agents, servants, Directors or privies from collecting rents and or service charge and or managing the property or providing security or carrying out any management activities and services in the property known as "Fortune Towers" No. 27/29, Adeyemo Alakija Street Victoria Island, Lagos, Lagos State pending the final determination of this suit.*

*4. Order is granted to the Defendants/Respondents/Applicants directing the Commissioner of Police, Lagos State, their Deputies and other Officers under his command to assist the 2nd Defendant in the exercise of its power under the Deed of Legal Mortgage aforesaid concerning the property known as "Fortune Towers" ...in such a way as to avoid a breach of public peace pending the final determination of this suit."*

FIB appealed against this Ruling, and by an Application dated 1/6/2011, it prayed the Lagos State High Court for stay of execution of the Orders.  
In a Ruling dated 25/1/2012, Idowu, J., held as follows in refusing same -

"...*The Applicant is merely employing tactic and gimmicks intended to deprive the Respondent from enjoying the fruit of the Judgment he obtained. Thus, his Application could not succeed even if considered on the merit. The Respondent has also raised a germane issue, which is that the Judgment in issue has even been executed, which ... the Applicant also alluded to in his Application. Even if this Court was inclined to so doing, it cannot lay restraint on an already completed act, thus the execution of the property shows that there is nothing to stay any longer. Further, it is trite law that there must be an end to litigation, in view of the foregoing; the Applicant's Application for stay of execution hereby fails in its entirety and is hereby REFUSED*".

The 2nd Respondent, Cowrie Business Solutions Ltd., was not a party to the suit at the Lagos State High Court, however, by an Application dated 14/4/2010, it applied to be joined "*as a proper and necessary party*", and its reason for joining is as averred in the supporting Affidavit, as follows -

*d. NDIC filed a suit in the Federal High Court against the Claimant Bank seeking an Order winding up the said Claimant Bank. The Court in the Suit No. FHC/L/CP/36/2006 made a winding up Order against the Claimant Bank and NDIC was appointed the Liquidator of the defunct Claimant Bank.*

*e. Thereafter, the Claimant Bank unsuccessfully filed this present Suit against the 2nd Defendant at the Lagos State High Court Suit No. ID/1098/2007 seeking injunctive Orders against the 2nd Defendant from selling the said property, while the 2nd Defendant also asked for Counter Orders of injunction in the Suit herein. A copy of the Court's Order in favour of the 2nd Respondent in that case is hereto attached and marked as Exhibit 'CBS 1'.*

*f. The Claimant Bank was represented by the firm of Ade Oyebanji & Co.*

*g. Sometime in July 2007, the 2nd Defendant herein sold the mortgaged property to the party sought to be joined in this Suit and subsequently, the 2nd Defendant handed over the possession of the building to the ... Applicant in April 2008. A copy of a letter ... evidencing sale of the mortgaged property is hereto attached, exhibited and marked as Exhibit 'CBS2*'.

Its Application was granted by Marsh, J., and by the order of Court made on 27/11/2011, the 2nd Respondent herein was made a party in that suit.  
Meanwhile, the 1st Respondent Bank sent a letter dated 25/1/2010 to "All Tenants" in Fortune Towers, wherein it informed them as follows-

"*Take Notice that pursuant to the power of Sale conferred on us by the Act, the Deed of Legal Mortgage dated 30/8/2004 made in our favour by FIB ... we, Union Bank ...have since sold the above-mentioned mortgaged property to Cowrie Business Solutions Ltd., to recover the monies due and owed to us by the said FIB. In furtherance of the said sale and pursuant to the exit of the Interim Management Committee [IMC] from the premises, we have handed over possession of the property to Cowrie Business Solutions Ltd., the purchaser. You are, therefore, expected to co-operate with them in the preservation and maintenance of the property by discharging as and when due, all financial obligations, including payment of rent, service/diesel charges to the new owners of the property*".

In a letter dated 23/2/2010 addressed to Messrs. Obi Ezeakor & Co.. Estate Surveyors & Valuers, the 1st Respondent Bank reiterated that -

"*The Bank as an unpaid Mortgage under the Deed of Legal Mortgage dated 30/8/2004 ... has sold the above property to Cowrie Business Solutions Ltd., and duly handed over the property over to them... In view of the termination of appointment of the IMC under whose authority you acted with regard to the management of the property, we expect you to co-operate fully with the new owners*".

The law firm of Udochi Iheanacho Partnership, also wrote to the Tenants, informing them about the sale of Fortune Towers to the 2nd Respondent, and issued a Notice to Quit dated 1/12/2010 to FIB/NDIC that reads-

"*We UDOCHI IHEANACHO PARTNERSHIP Agent and Solicitors to UNION BANK OF NIGERIA PLC - Mortgagee and COWRIE BUSINESS SOLUTIONS LTD. - Purchaser/Owner of the property known as "FORTUNE TOWERS" SITUATE AT No. 27/29 Adeyemo Alakija Street, Victoria Island Lagos, and on whose instructions and authority we hereby give you this statutory notice to quit and deliver up the entire office space on the 8th floor which you are in occupation of at the said Fortune Towers whether as Tenant of Sufferance or Tenant at Will upon the expiration of six months forthwith beginning from the date of this Notice to expire on the 30th day of June 2011*".

At this point, the Appellant as Provisional Liquidator of the said FIB Plc. filed the action that led to this appeal at the Federal High Court, wherein they claimed as follows in the Statement of Claim dated 31/5/2011-

*(1) A DECLARATION that the disposition by means of sale or assignment by the 1st Defendant to the 2nd Defendant sometime in the month of July 2007 of all that piece of land, building and appurtenances situate, lying and being at No 27/29 Adeyemo Alakija Street Victoria Island Lagos, Lagos State and registered under the Federal Certificate of Occupancy No 14/14/75 otherwise known as "FORTUNE TOWERS" when the said property forms part of the assets of FIB Plc. (in Liquidation) whilst a winding up proceedings in Suit No FHC/L/CP/36/2006 - NDIC V. FIB Plc. is pending and a provisional liquidator duly appointed by the said Court is ineffectual, illegal, unlawful, null and void.*

*(2) A DECLARATION that the disposition by means of sale or assignment by the 1st Defendant to the 2nd Defendant on or about... July 2007 of all that piece of land, building and appurtenances ... and situated at No. 27/29 Adeyemo Alakija Street Victoria Island, Lagos State and registered under the Federal Certificate of Occupancy No. 14/14/75 otherwise known as FORTUNE TOWERS when the 2nd Defendant was yet to be incorporated as a limited liability company is illegal, unlawful, null and void.*

*(3) IN ALTERNATIVE TO RELIEFS (1) & (2) above.*

*A DECLARATION that the disposition or alienation by the 1st Defendant of all that property ...at No. 27/29 Adeyemo Alakija Street, Victoria Island, Lagos, Lagos State otherwise known as "FORTUNE TOWERS" to the 2nd Defendant when proceedings are pending in Suits Nos: FHC/L/CP/1321/2005 - FIB V. Union Bank of Nigeria Plc. FHC/L/CP/36/2006 - NDIC V. FIB Plc., Appeal No. CA/L/478/2007- FIB Plc. V. Union Bank is contrary to the doctrine of lis pendens and pro tanto unlawful, illegal, null and void;*

*(4) AN ORDER of the Court setting aside the purported disposition by the 1st Defendant to the 2nd Respondent on or about 27/7/2007 of all that property...at No. 27/29 Adeyemo Alakija Street, Victoria Island Lagos and registered... under the Federal C of O ...otherwise known as "FORTUNE TOWERS".*

*(5) AN ORDER setting aside the Notice to Quit dated 1/12/2010 (sic) issued for and on behalf of the Defendants by the law firm of Udochi Iheanacho Partnership and addressed to "FIB/NDIC" and all other notices purporting to seek recovery of possession of the aforesaid property;*

*(6) AN ORDER OF INJUNCTION restraining the Defendants, their servants, agents, privies and assigns from disturbing the Plaintiff, its agents and assigns in the performance of their statutory duties as Provisional Liquidator of FIB Plc., as it relates to the management and exercise of all possessory rights over the said property until the said bank is fully and finally wound up by Order of the Court*

*(7) The costs of prosecuting this suit including the sum of N20,500,000 (Twenty Million Five Hundred Thousand Naira) charged by the Claimant's Solicitors (Emeka Ngige & Co) as professional fees.*

*(8) AND for such Order or further Orders as the Honourable Court may deem fit to make in the circumstances.*

The Appellant also filed an Interlocutory Application dated 15/7/2011 for-

*1. AN ORDER of Interlocutory Injunction restraining the 1st and 2nd Defendants/Respondents whether by themselves, their servants, agents, privies or assigns or howsoever from proceeding with recovery of premises of the property situate lying and being at No. 27/29 Adeyemo Alakija Street, Victoria Island, Lagos otherwise known as "Fortune Towers" which property is now subject of litigation in this Suit No FHC/L/CS/663/11 or in any way or manner disturbing or obstructing the plaintiff from exercising its functions as Provisional Liquidator charged with responsibility of preserving and managing the assets of FIB Ltd. (sic) pending the hearing and determination of this suit.*

*2. AN ORDER setting aside the service of Form E- Notice of Owners Intention to Recover Possession" served on the 1st and 2nd Defendants/Respondents on 1/7/2011 in respect of property known and called Fortune Towers situate at No. 27/29 Adeyemo Alakija Street Victoria Island, Lagos.*

*3. ALTERNATIVELY, AN ORDER directing the maintenance of status quo ante bellum by the Respondents pending the hearing and determination of the suit.*

The Grounds for the said Interlocutory Application are as follows -

*(i) The service by the 1st and 2nd Respondents on the Plaintiff/Applicant of Form E - "Notice of Owners Intention to Recover Possession" of the property ...known as FORTUNE TOWERS when there is already pending proceedings in this Hon. Court is an act calculated to undermine the authority of the Court and is in breach of the doctrine of lis pendens.*

*(ii) The Hon. Court reserves the power to grant an Order of interlocutory injunction to prevent the foisting of a fait accompli on the Court.*

*(iii) The act of the Respondents continuing with the process of recovering possession of the premises when there is a pending litigation over the property is contemptuous of the Hon. Court.*

*(iv) Irreparable damage will be inflicted on the Plaintiff unless the prayers sought are granted.*

*(v) The balance of convenience is in favour of granting the Application than refusing it.*

*(vi) There are serious issues to be tried in the substantive suit.*

*(vii) The Application is brought timeously.*

*(viii) The Court can in the alternative direct parties to maintain the status quo in this Suit as at 30/5/2011.*

The 1st Respondent filed a 37-paragraph Statement of Defence dated 6/9/2011, wherein it averred as follows in paragraph 35 thereof -

"*The 1st Defendant shall urge the Court to dismiss this action for palpable abuse of Court process in every material particular*-

PARTICULARS OF ABUSE

*a. That upon the appointment of the Plaintiff as Provisional Liquidator of FIB Plc., the Plaintiff herein automatically became privy to pending Suit filed by FIB Plc., especially Suit No. FHC/L/CS/1321/2005 and thus bound by the Orders, Ruling and decisions made in the said Suit.*

*b. That the Plaintiff being a privy of FIB Plc., and by filing this Suit in 2011, which inter-alia seeks to prevent the 1st Defendant from exercising its power under the mortgage concerning the property in question, this action constitutes contemptuous efforts at undermining the decision of this Court given on 3/7/2007, which expressly stated that FIB Plc., (a privy of the Plaintiff) has no legal interest in the said property.*

*c. That the Plaintiff as an entity, which at all times material to this action, was aware and privy to the suit filed by FIB Plc. (a privy of the Plaintiff) at Lagos State High Court in Suit No. LD/1098/2007, which Suit inter-alia sought to prevent the 1st Defendant taking the benefit of the aforesaid mortgage is bound by the Order of the Court made on 29/11/2007, which Order did not only dismiss the prayers of FIB Plc., but further restrained the said bank from interfering with the management of the property or preventing the 1st Defendant from realizing its right under the said Mortgage.*

*d. The Plaintiff being aware of the above decisions and a privy of FIB Plc, but nevertheless filed the above action seeking to reverse Orders and Rulings of Courts of coordinate jurisdiction has not commenced this action bona fide in so far as any Court decision on this action raises the possibility of this Court giving contradicting decisions, hence a recipe for undermining the dignity and integrity of the Courts generally.*

*e. The Plaintiff having been appointed provisional Liquidator since 2006 ought as a matter of law to have applied to join the proceedings or take over its prosecution or defence as may be necessary and by electing to stand by while the actions are being prosecuted or defended by FIB will be bound by the outcome of such proceedings as privy of FIB Plc.*

The 2nd Respondent filed its Statement of Defence and a 23-paragraph Counter-claim dated 9/11/2011, wherein it sought the following reliefs -

*i. Compensation for the use of the office space in the Fortune Towers by the Plaintiff totaling 982 square metres at the rate of N32,000 per square metes per annum with effect from 1/7/2007 and the sum of N38,000 per square per annum from 1/1/2010 until the delivery up of possession*

*ii. Accrued and outstanding service charge, PHCN bills and Diesel consumed on the premises from 1/4/2010 to 30/9/2011- N4,978,666.01*

*iii. The rent on the property (Fortune Towers) which the Plaintiff deprived the 2nd Respondent from receiving on the property and being the sum of N1,290,576,730.25 [N1.2b] with interest at the rate of 15% per annum with effect from 1/8/2007 on a total of 7634.29 square metres.*

*iv. The Plaintiff's cost of funds in the sum of N150,000,000 [N150m]*

*v. The cost of repairs to the elevators in the sum of N25,000,000 [N25m]*

*vi. The cost of replacement of the 1000 KVA Generator in the sum of N30,000,000.00 [N30m]*

*vii. Costs of the action.*

*viii. Damages for breach of duty in the sum of N100,000,000 [N100m]*

*ix. General Damages in the sum of N50,000,000 [N50m]*

*x. An inquiry as to damages.*

Beyond the respective pleadings, the 1st Respondent filed an Application dated 17/9/2012 wherein it prayed the lower Court for the following -

"*An Order of the Honourable Court dismissing the Plaintiffs Suit No. FHC/L/CS/663/2011 on the ground inter-alia that the Suit constitutes an abuse of Court process*".

The Grounds of the Application are as follows -

*a. That the ownership, management and control rights in respect of the property situate at No. 27/29 Adeyemo Alakija Street, Victoria Island, Lagos, which is known as "Fortune Towers" being subject matter of existing litigations between the parties herein and privies in Suit No. FHC/L/CS/1321/2005 as well as Suit No. ID/1098/2007 the institution of this action constitutes an abuse of Court process.*

*b. That the decisions of both the Federal High Court and Lagos High Court in Suit No. FHC/L/CS/1321/2005 and Suit No. ID/1098/2007 which declared that FIB Plc., no longer has further interest in the said property and which decisions are subsisting and binding, the institution of this action by the Plaintiff constitutes an abuse of Court process.*

*c. That having regard to the decision of the Court in the above Suit No. FHC/L/CS/1321/2005 and Suit No. ID/1098/2007 which held that FIB Plc. has no further interest in the subject matter of this Suit the Plaintiff herein being a privy of the said FIB Plc. lacks the necessary locus and competence to institute this action and in the process seek to re-litigate the same matter in respect of the same subject matter.*

*d. That the institution of this action by the Plaintiff whilst the proceedings in Suit No. FHC/L/CS/1321/2005 as well as Suit No. ID/1098/2007 are pending and whilst FIB Plc., continue to engage in frantic attempts at appealing the decisions in respect of the same subject matter, the present action constitutes multiplicity of actions at the instance of the same party or privies bordering on the same subject matter, hence an abuse of Court process.*

The Application is supported by a 10-paragraph Affidavit deposed to by one Hakeem Omogbolahon Oseni, a litigation Officer in the law Firm of C.O. Toyin Pinheiro & Co, and he averred as follows in paragraph 8 -

"*That the present suit by the Plaintiff is designed to re-open matters relating to the property called "Fortune Towers" situate at No. 27/29 Adeyemo Alakija Street, Victoria Island, Lagos, which are subject of litigation between FIB Plc. and Union Bank Plc., and their privies as per Suit No. FHC/L/CS/1321/2005 and Suit No. ID/1098/2007.*"

The Appellant filed a 22-paragraph Counter-Affidavit deposed to by one Augustine Egwuatu, a Legal Practitioner, who averred in paras. 14 to 19-

*14. That contrary to paragraph 8 of the Affidavit in support of Motion, this present Suit was prompted by the 2nd Defendant's attempt to evict the Plaintiff from the 8th floor of Fortune Towers where the Plaintiff uses as its administrative office notwithstanding the fact that Suit No. FHC/L/CS/1321/2005 and Suit No. ID/1098/2007 and Appeals Nos: CA/L/487/2007 and CA/L/70/2012 are still pending in Court Attached herewith and marked Exhibit "G" and "H" respectively are the Notice to Quit and Notice of Owners Intention to Recover Possession served on the Plaintiff/Respondent by the 2nd Defendant.*

*15. That I verily believe that the 2nd Defendant does not have any legal interest over Fortune Towers until these suits pending in Court are determined to finality.*

*16. That further to paragraph 8 of the Affidavit in support of Motion, the Orders made in the Suits pending in Court were made pending the final determination of the Suits which have not been finally determined.*

*17. That neither the Plaintiff nor the 2nd Defendant is a party in Suit No. FHC/L/CS/1321/2005 and Suit No. ID/1098/2007. The reliefs sought in these Suits are totally different from the reliefs sought in this present Suit.*

*18. That I reiterate that the Plaintiff/Respondent's position as Provisional Liquidator of FIB Plc. was not an issue in the said Suit No. FHC/L/CS/1321/2005 and Suit No. ID/1098/2007 except Suit No. FHC/L/CS/825/2009 Union Bank Nigeria Plc. V. NDIC.*

*19. That I verily believe that this Suit does not constitute an abuse of Court process to the earlier Suits. The parties, reliefs and facts are not the same. The cause of action is equally not the same.*

Except for the 2nd Respondent, the Appellant and 1st Respondent filed and adopted their Written Addresses on 22/1/2013; the 2nd Respondent, who did not file any processes, supported the said Application; and the learned trial Judge, Okechukwu Okeke, J., delivered his Ruling on the 27/3/2013, wherein he held as follows in dismissing the Appellant's Suit-

"*The learned SAN for the Plaintiff/Respondent had argued strongly that the parties are not the same. It must be observed that the principal parties in the Suits are FIB Plc. now represented by the liquidator and Union Bank. The issue for determination in all the Suits is who between FIB and Union Bank has right over the property known as No.27/29 Adeyemo Alakija Street, Victoria Island, Lagos". The present Plaintiff who is not a party to the contract between Union Bank (1st Defendant) and Cowrie Business Solutions Ltd. (2nd Defendant) cannot question the terms of the contract or capacity of the parties thereto. The decisions of both the Federal High Court in Suit No. FHC/L/CS/1321/2005 and the Lagos High Court in Suit No. ID/1098/2007 that FIB Plc. no longer has interest in the property are subsisting and binding. The suit is a clever attempt to circumvent the import of the decisions of Courts of co-ordinate jurisdiction. I hold that this suit is an abuse of Court process and it is hereby dismissed*".

The Appellant filed two Notices of Appeal but abandoned the first Notice of Appeal dated 28/3/2013 and relied on the second Notice of Appeal dated 3/5/2013 in its Brief of Argument prepared by Emeka Ngige (SAN) and Obiora Atuegwu Egwuatu, Esq., wherein it formulated the following two issues for determination from the three Grounds of Appeal therein-

*1. Whether the Court below was right when it dismissed the Appellant's suit for allegedly being an abuse of Court process?*

*2. Whether the Court below considered and attached the requisite weight to the documentary evidence placed before it by the Appellant before arriving at its decision?*

The 1st Respondent, however, submitted in its Brief of Argument settled by Kolade Obafemi, Esq., that one issue calls for determination; that is –

"*Was the Learned Trial Judge right in coming to the conclusion that Suit No. FHC/L/CS/663/2011 constitutes an abuse of Court process"?*

The 2nd Respondent formulated two issues in its own Brief prepared by Dapo Akinosun, Esq., Mrs. V.O.M. Longe, and Seun Lawal, Esq.; that is -

*i. Can the Appellant (who for all intent and purposes is the provisional liquidator of Fortune International Bank Plc.) not be regarded as a privy in law to Fortune International Bank Plc.?*

*ii. Having regards to the various suits instituted by both the Appellant and Fortune International Bank Plc., was the trial Courts Ruling of 27th March, 2013 holding that the Appellants suit constituted an abuse of the process of court valid?*

From all indications, parties are idem on the key issue for determination - whether the lower Court was right to dismiss the Suit for being an abuse of Court process; other issues are easily subsumed under that umbrella.

The Appellant's contention is that the lower Court was wrong to have shut it out from the temple of justice by dismissing its suit for being an abuse of Court process; it referred us to the law on the subject, citing *Okafor v. A-G Anambra State (1991) 6 NWLR (Pt.200) 659; Saraki V. Kotoye (1992) 9 NWLR (Pt. 264) 156, M.V Sheep V. MV 'S' Arab (2006) 15 NWLR (Pt.69/) 622, Ogoejeofo v. Ogoejeofo (2006) 3 NWLR (Pt.966) 205, Abubakar V. B.O. & A.P Ltd. (2007) 18 NWLR (Pt.1066) 319 and Jimoh V. Starco (Nig.) Ltd. (1998) 7 NWLR (Pt.558) 523.*

It relied heavily on **Chief** *Victor Umeh V. Prof. Maurice Iwu (2008) 8 NWLR (Pt.1089) 255*, which it set out in detail at pages 11-15 of its Brief. In Victor Umeh's Case, the 3rd and 4th Respondents sued the 1st and 2nd Respondents at the Federal High Court, seeking declaratory/injunctive reliefs to stop them from interfering with the affairs of the 4th Respondent - All Progressives Grand Alliance [APGA]. The Appellants applied and were subsequently joined as the 3rd and 4th Defendants to the said Suit. The 3rd and 4th Respondents and 2 others instituted another suit against the Appellants and 12 others at the High Court of the Federal Capital Territory, seeking inter alia a declaration that the Defendants, including the Appellants, were no longer members or national officers of APGA. The 1st and 2nd Respondents were not parties but upon their Application, they were joined as 15th and 16th Respondents. But pursuant to a motion for discontinuance of action against them, their names were struck out.

Following the discontinuance of action against them in that Court, the Appellants filed a Suit at the Federal High Court against them that was struck out for being an abuse of Court process as the subject matter was the same as that pending at the FCT High Court. Thereafter, the 3rd and 4th Respondents filed the Suit at the Federal High Court that led to the decision relied on by the Appellant in this appeal. The Appellants were not parties to the suit but they applied and were joined as parties. As soon as they were so joined, they filed an Application to dismiss the suit as an abuse of Court process. Adah, J. (as he then was) held thus -

"*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 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, raising the issue of abuse to end the matter in limine is in itself odious to the principles of quality 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 Defendant 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 bona fide 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*".

On appeal to this Court, Adekeye, JCA (as he then was) held as follows -

"*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 - - The Suit - - 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*".

On a further appeal to the Supreme Court, Chukwuma-Eneh JSC, held -

"*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 ... The bottom line ... in regard to abuse 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. 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 matter of using Court process which is obviously lacking in bona fide leads to the irritation and annoyance of the other party and thus impeding due administration of justice ...Therefore, to sustain a charge of abuse of process there must co-exist inter alia:*

*(1) A multiplicity of suits*

*(2) Between the same opponents*

*(3) On the same subject matter*

*(4) On the same issues.*

*All these pre-conditions are mutually inclusive as they are conjunctive*".

He reproduced the said decision of Adah, J. (as he then was), and held-

"*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 - - 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 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 ... On the question of the same subject matter ...the instant Suit No. FCT/ABJ/CS/278/2005 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 person**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 on 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)"*.

Applying these principles to this case, the Appellant submitted that the parties, issues and reliefs sought in suit No. FHC/L/CS/1321/2005 and Suit No. ID/1098/2007 is not same as in suit No. FHC/L/CS/663/2011; that the 1st Defendant in Suit No. ID/1098/2007 is not a party to this Suit while it is not a party in that suit; and that in determining issues of this nature, the court will consider contents of the first process vis-a-vis the second process to see whether they are aimed at achieving the same purpose, and if they are not, there is no abuse of Court process, citing *Agwasim V. Ojichie (2004) 10 NWLR (Pt. 882) 613*, *Umeh's case* (supra).

It further argued that parties are allowed to air their grievances in Court because when there is a right there must be a remedy; that it was not asking the trial Court to determine who owned Fortune Towers but to set aside its purported sale to the 2nd Respondent; that any decision made in this Suit will not contradict decisions reached or be reached in Suits No: FHC/L/CS/1321/2005 and ID/1098/2007: that it is not "*principal parties*" but parties that must be the same to constitute an abuse of Court process; 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 or a subject matter may activate different rights to action; that different suits can originate from the same subject matter but with different right, reliefs and parties, citing *C.O.M. Inc. V. Cobham (2006) 15 NWLR (Pt.1002) 283*; and that even if the suits revolve around Fortune Towers, as "the same subject matter", different rights and causes of action had arisen, therefore, it cannot be an abuse to ventilate any grievance on the infringement of such rights.

The 1st Respondent, however, contends that the Appellant went on a theoretical voyage of the general principles of law on abuse of Court process and has not really applied the principle to the facts of this case. It submitted that the parties are agreed as to the following facts -

*I. That the crux of the complaint in the various suits between the parties relates to the property situate at No. 27/29, Adeyemo Alakija Street, Victoria Island, Lagos and known as "Fortune Towers".*

*II. That FIB in Suit No. FHC/L/CS/1321/2005 filed an application for injunction to stop it exercising its powers granted by the Deed of Legal Mortgage.*

*III. That in the Ruling of Hon. Justice Olomojobi dated 27/3/2007; the findings (reproduced earlier in this Judgment) were made.*

*IV. That Hon. Justice L.G.A. Marsh in the said Suit No. ID/1098/2007 made the orders (reproduced earlier in this Judgment).*

*V. That against the said Orders, there is also evidence of a Notice of Appeal filed by FIB Plc. and the Application for stay of execution of the said Order refused by the High Court of Lagos State as per the Ruling of Hon. Justice Idowu dated 25/1/2012 (reproduced earlier in this Judgment).*

*VI. And that there is also evidence that the Appellant who claims to be the appointed Liquidator of FIB Plc. had in 2011 filed Suit No. FHC/L/CS/663/2011 and make the claim in respect of this same property (reproduced earlier)*.

It further argued as follows at page 13 of its Brief of Argument -

"... *A Court faced with the above admitted facts cannot but come to an irresistible conclusion that Suit No. FHC/L/CS/663/2011 constitutes an abuse of Court process. There is no way the Court will adjudicate on the matters raised in this Suit without reversing or revisiting the earlier orders of the Federal and State High Courts made in Suit No. FHC/L/CS/1321/2005 and Suit No.- ID/1098/2007... The Court below was right in holding that the present suit was an attempt to circumvent the previous orders of a court of coordinate jurisdiction. This is so as whatever order the Court below would make in the proceeding will have direct impact of either reversing or revisiting the earlier orders made concerning the same property by courts of competent, coordinate and concurrent jurisdiction*".

It submitted that in arriving at a decision, the court will look at the motive for instituting the action and see whether there has been a proper use of judicial process or whether it is calculated to annoy, irritate or undermine the integrity of the Court; that there is no doubt that the Appellant was aware of the suits and orders made therein so has a duty to respect the proceedings and not to commence fresh proceeding to undermine the existing actions and the orders made; and that its intention in filing the action was to achieve a reversal of the earlier orders of the court made in both suit No. FHC/L/CS/1321/2005 and suit No. ID/1098/2007.

It also argued that the Appellant's clever attempt to distinguish the claims made in the said suits amounts to making a distinction without any difference; that it shied away from the fact that in the cases cited, there were no existing court orders for which the suits were seeking to overreach; and that as Liquidator, it ought to have elected to prosecute the Appeals rather than seek a reversal of the orders in another Suit. The 1st Respondent also cited the following authorities on the subject – *Abubakar v. Bebeji Oil and Allied Product Ltd. (2007) 18 NWLR (Pt.1066) 319*, where the Supreme Court per Ogbuagu, JSC, observed -

"*There is abuse of process of court where the process of the Court has not been used bona fide and properly. The circumstances in which abuse of Court process can arise has been said to include the following;-*

*(a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue or multiplicity of action on the same matter between the same parties even where there exists a right to begin that action.*

*(b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.*

*(c) Where two similar processes arc used in respect of the exercise b an action of same right e.g. a Cross-appeal and a Respondent? Notice.*

*(d) Where an application for adjournment is sought by a party to an action to bring an application to Court for an application to Court for leave to raise issues of fact already decided by Court below.*

*(e) Where there is no iota of law supporting a Court process or where it is premises on frivolity or recklessness. The abuse lies in the inconvenience and inequalities involved in the aims and purposes of the action-*".

Agwasim v. Jichie (supra), where the Supreme Court stated that-

"*It is trite law that the abuse of judicial process is the improper use of the judicial process by a party in a litigation. It may occur in various ways, such as instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue or a multiplicity of action on the same matter between the same parties*".

*A-G, Fed. V. A-G, Abia State (2001) 11 NWLR (Pt.725) 689*, where the Supreme Court per Karibi-Whyte, JSC, stated the law as follows -

"*It is an abuse of the process of the Court when a party improperly uses the machinery of the judicial process to the irritation and annoyance of his opponent and effective administration of justice ... the abuse lies in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the Defendant and interfere with the due administration of justice ... the abuse does not lie in the exercise of the right of action per se which is constitutionally guaranteed. It is the improper, irregular and unconscionable manner of the exercise of the right which is oppressive, reckless and vindictive*".

It also set out decisions in *Dingyadi V. INEC & Ors. (2010) 7-12 SC 105*, *Ferdinand Oil Mills Plc. V. UBA Plc & Ors.(2010) 1 NWLR (Pt.1776) 583, Arubo V. Aiyeleru (1993) 3 NWLR (Pt. 279) 126 and NIM Bank Ltd. V. Union Bank (2004) 1 SC (Pt. 1) 143*, and submitted that the suit is a clever attempt by the Appellant to re-litigate matter/issues relating to Fortune Towers, which have been decided by the Federal High Court and Lagos State High Court, and to subject to further adjudication the same issues, despite the earlier Court orders, is abuse of court process.

The 2nd Respondent also cited Dingyadi V. INEC & Ors. (supra) and Agwasim V. Jichie (supra), and canvassed similar arguments but it added that the Appellant's actions amounts to forum shopping because it seeks a Court in which to obtain a favourable Judgment not withstanding losing the same issues before the other Courts of coordinate jurisdiction.

It argued that the reliefs sought by the Appellant, a privy in law to FIB Plc., who has been adjudged as not having any legal interest in the subject matter of this suit, constitutes a gross abuse of the processes of the Court; and that its Suit is geared towards reversing the earlier orders, which expressly restrained FIB from interfering with its managements rights, and is calculated to overreach them; that Courts of coordinate jurisdiction cannot sit not on appeal or review each others decision, citing *Mogrey V. Ikpotor (2001) 12 NWLR (Pt. 727) 336, Nworgu V. Njoku (2001) 14 NWLR (Pt.734) 739*, that the lower Court saw through its not-so-legally-appropriate attempt to reintroduce matters already litigated before other Courts of coordinate jurisdiction and between same parties, and to submit the same issues for adjudication amounts to an abuse of court process, citing Arubo V. Aiyeleru (supra), that the Appellant's action seeks to embarrass, annoy and irritate the Respondents, and it is willing to obtain Judgment in its favour no matter the cost and irrespective of the multiplicity of the actions it has instituted. It further argued as follows-

"*It leaves one to wonder what would happen in the face of the possibility of the Federal High Court and State High Court giving contradictory Judgments in respect of the issues presently pending before them. The absurdity of the present action is further heightened when one gives consideration to the contemporaneous existence of this suit in respect of the same subject matter. What happens where all three Courts give conflicting Judgments in respect of the same subject pending before them? How would the parties fare in the face of this glaring possibility? How would the conflicting Judgments be enforced where all the parties are brandishing the Judgment that goes in their favour? Would there ever be an end to this debacle? If so, when? Clearly, the Trial Court was mindful of these posers which can have far reaching implications on the eventual turn out of the entire dispute amongst the parties...*".

The 2nd Respondent had a lot more to say along the same lines, and the Appellant countered the arguments of the Respondents in its Reply Brief to 1st Respondent's Brief and Reply Brief to the 2nd Respondent's Brief, which I will refer to wherever necessary in this Judgment. At this point, we need to look at the facts of this case vis-a-vis the law on the subject, and parties have presented this court with more than enough authorities.

The bottom line is that there is an abuse of Court process 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 - see *Umeh & Ors V. Iwu & Ors (supra).* In simple terms, it is an action, which is one (or more) too many - see *Ntuks V. NPA (2007) 13 NWLR (Pt. 1050) 392.*

In this case, parties are not disputing the fact that the suits in question revolve around "Fortune Towers", and the bone of contention is whether the three suits are against the same opponent and on the same issues. As regards the issue of same opponent, the lower Court held as follows -

"*It is beyond argument that the NDIC Provisional Liquidator of Fortune International Bank Plc. (in liquidation) is a privy of FIB Plc. The Plaintiff herein to all intents and purposes steps into the shoes of Fortune International Bank in liquidation. It cannot acquire any right over and above the rights of the Bank in liquidation"*.

The Appellant's contends that it cannot be "privy of FIB Plc." It referred to the definition of "*privy*" in Black's Law Dictionary. 7th Ed., and argued that it owes its authority to the Court; that it is not a creditor of FIB Plc., and until FIB Plc. is finally wound up under the relevant provisions of CAMA, it cannot be described as its " privy"; and that its interest is to perform its statutory legal duties as regulated and controlled by the said Court.

The 1st Respondent argued to the contrary that the Appellant is a privy of FIB Plc. and that the existing suits and orders are binding on it. It referred us to the definition of "*privy*" in Black's Law Dictionary. 6th Ed. and *Agbogunleri v. Depo (2008) 3 NWLR (Pt.1074) 236-237* as follows-

"*But, who is a privy? In Ababio v. Kanga (1932) 1 WACA 253 at p.254, a privy was defined as that person whose title is derived from and who claims through a party. It may also imply identity of successive interest or persons having interest in property. There are said to be three kinds of privies:-*

*a. Privies in blood, such as testator and heir*

*b. Privies in law such as testator and executor or in the case of intestate succession, a successor and administrator.*

*c. Privies in estate, such as Vendor and Purchasers; Lessor and Lessee etc See Nwosu v. Udeaja (1990) 1 NWLR (Pt.125) 188*."

It is its contention that the Appellant as Liquidator of FIB Plc. falls within the definition of successor and administrator in the above stated case.

This is the 2nd Respondent's Issue 1, and it also contends that the Appellant as Provisional Liquidator to FIB Plc. is regarded in law as its privy and it can bind the bank by any actions or steps taken on its behalf. It argued that a Provisional Liquidator steps into the shoes of a company under liquidation and can institute and defend an action on behalf of and in the name of a bank under liquidation; and for all intents and purposes, it would be deemed to be a privy to the bank under liquidation. It referred to the definition of "*privy*" in *Lawal V. Salami (2002) 2 NWLR (Pt.75) 685* and Black's Law Dictionary. 6th Ed., and reiterated the point being made that the Appellant as Provisional Liquidator is a privy in law to FIB Plc.

It also argued that there is no question that a Provisional Liquidator, who is appointed by a Court to manage the affairs of a bank that is under liquidation, is a privy to such a bank; and that the Provisional Liquidator becomes a partaker in the affairs of the company in liquidation thereby deriving a vested interest in its administration. It further submitted that -

"*The question to ask is at this point is from where did the Appellant derive its power to institute this action at the lower Court? Certainly, the Appellant did not just assume its role to serve as a Liquidator for FIB Plc. by an automatic stroke of legal maneuver. Thus, the Appellant's arguments in denying its status as being a privy to FIB Plc. as particularly relating to the institution of this suit ... is unsupported by any known and existing legal principle or judicial decision*".

It referred to *NDIC V. FMB (1997) 2 NWLR (Pt. 49) 735*, on the process of appointing a Provisional Liquidator, and further argued as follows -

"*The powers conferred - - on the Appellant after its appointment as a Provisional Liquidator are those that ordinarily would have been exercisable by the company in liquidation had it not been for the fact of its financial distress leading to its being liquidated. The question - to ask here is, "Would it have been legally possible for the NDIC and FIB Plc. to institute separate actions in Court on the question of the affairs of FIB Plc. after the appointment of NDIC as a Provisional Liquidator? To proffer an answer in the positive would be to inordinately stretch the position of the law to an impossible limit. That is exactly what the Appellant's argument - - suggests! By any stretch of imagination, this could not have been within the realms of possibility because NDIC has now stepped into the shoes of FIB Plc. which is now legally incapable of taking any steps on the affairs of the company... NDIC having been appointed the Provisional Liquidator to FIB Plc. steps into the shoes of the Bank, derives its title to institute an action on its behalf and thereby cloaks itself with the mantle of a privy in law whose actions and activities would be deemed to be that of the defunct FIB Plc"*.

To resolve this issue, and even the Appeal itself, we must look at the role and powers of the Appellant as Provisional Liquidator vis-a-vis a "privy", whose title is derived from and who claims through a party; it also implies "identity of successive interest or persons having interest in property" see Arabio V. Kanga (supra) and Agbogunleri V. Depo (supra).

A liquidator, on the other hand, has a distinct identity in relation to the company in liquidation - see *Vico Agro Allied Industries Ltd. V. Orient Bank (1998) 1 FBTLR 11*, wherein Agbaje, JSC, observed as follows-

"...A Liquidator or a Receiver performs his functions in relation to the properties of another person other than himself. The corollary to this - - is that a person cannot be appointed a Liquidator or a Receiver in respect of his own property. In other words, a company in liquidation can never be appointed a liquidator to wind up the affairs of that company".

The liquidator is defined in CAMA, and includes provisional liquidator - see *NDIC V. F.M.B. (Ltd.) (1997) 4 NWLR (pt. 501) 519 SC*, where the Supreme Court per Belgore, JSC (as he then was) categorically stated –

"In the absence of any separate definition for "provisional liquidator, all powers of a liquidator are excisable by provisional liquidator.

Getting down to the basics; the first step in the liquidation process is the revocation of the licence of the financial institution by CBN pursuant to its powers under the Banks and other Financial Institution Act [BOFIA], and Section 40(1) of the NDIC Act, 2006, specifically provides as follows -

"Whenever the licence of an insured institution is revoked by CBN, the corporation shall act as liquidator of such failed insured institution with powers conferred on a liquidator under CAMA ... and shall be deemed to have been appointed liquidator by the Federal High Court for the purpose of that Act".

In other words, NDIC is statutorily deemed to have been automatically appointed by the Federal High Court as the "provisional liquidator". NDIC is also required to apply to the Federal High Court for an order to wind up the affairs of the failed insured institution - see Section 40(2). Once the Federal High Court grants the Petition of NDIC, and issues an order for the winding-up of the failed insured financial institution, the said provisional nature of NDIC's status as liquidator is thereby removed.

In this case, the provisional nature of the Appellant as liquidator is very much in place because FIB Plc. has not been wound-up, and the role of the Appellant as Provisional Liquidator is essentially to realize the assets of FIB Plc.- see Section 41 (1) (a) of the NDIC Act. To this end, it may utilize any of the powers of a liquidator under Section 425 of CAMA.

The vesting of assets in NDIC is provided for in Section 424 of CAMA, therefore, upon the application of NDIC, the Court may direct that all or any part of the property of the bank in liquidation shall vest in NDIC, and NDIC may bring or defend in its name any action or legal proceeding, which relates to the property of the bank so vested, for the purpose of recovering same and winding up the bank. In effect, NDIC may dispose of the property vested in it by Section 424 of CAMA or exercise its power under Section 425 to sell property of the bank for satisfaction of its debts.

So, the Appellant was standing on very firm ground when it challenged the sale of Fortune Towers by the 1st Respondent to the 2nd Respondent.

More importantly, the Appellant as Liquidator of FIB Plc. cannot be a "successor" of FIB Plc. because the liquidation of a company is not the same thing as dissolution of a company. The Supreme Court made that distinction in Re: Amolegbe (2014) 8 NWLR (Pt. 1408) 76 SC, where the Applicant sought an order to substitute Bank of Credit and Commerce International [BCCI] with NDIC because the banking licence of BCCI, which subsequently became known as African International Bank [AIB] had been revoked by CBN and NDIC is deemed to have been appointed the provisional liquidator with power to defend any legal proceeding on behalf of BCCI. In opposing the Application, NDIC argued inter alia that a company remained in existence until it is dissolved, and if any party ought to be substituted, it ought to be AIB: that it was a Liquidator to AIB, which was still in existence, and could still be sued as a company in liquidation; and that it had nothing whatsoever to do with the Applicant.

In agreeing with NDIC, the Supreme Court adopted the decision of M.D. Muhammad, JCA (as he then was) in C.C.B. Ltd. V. O'Silvawax International Ltd. & Ors. (1999) 7 NWLR (Pt. 607) 97, as follows -

"*It is my considered view that the revocation of licence of the 1st Respondent by CBN on 16/1/1998 did not necessarily remove the "life" so to say of the 1st Respondent thereby making it incapable of suing or being sued or barring it from becoming an Appellant or Respondent in the appeal process. The revocation of the licence could have indicated an ill-disposition, an acute and serious ailment. It did not go beyond that to herald or constitute the death of the 1st Respondent.  
The bank remained alive possessing its legal personality as sick as it could have been and as indicated by the revocation of its licence*".

I.T. Muhammed, JSC, who delivered the lead Judgment, held as follows-

"*I take it that the change of name of the 1st Respondent to AIB has lawfully and effectively been sanctioned by the Corporate Affairs Commission.*

*Therefore, from that effective date up to the final completion of the processes of its winding up, AIB is a successor to BCCI. It must, in law inherit all its credits and debits including all legal proceedings for or against BCCI. Another thorny issue in the Application is the attempt by the Applicant to enrope the NDIC to subrogate the BCCI. ...Section 40 of the NDIC Act makes provision for the powers of NDIC to act as liquidator to failed insured institutions ... Section 425 of the CAMA provides inter alia for the following -*

*(1) The liquidator in a winding up by the Court shall have power with the sanction either of the Court or of the committee of inspection, to-*

*(a) Bring or defend any action or other legal proceeding in the name and on behalf of the company".*

*By looking soberly at the provision of Section 425(1) (a) set out above, one may ask: whether the NDIC as provisional liquidator of the 1st Respondent can bring or defend any action or other legal proceeding in the name and on behalf of the 1st Respondent. It is clear from the same provision that a liquidator in a winding up by the Court (which the NDIC is by law deemed to have been so appointed) can bring or defend any action or other legal proceedings in the name and on behalf of the Respondent (to subrogate AIB) subject only to the condition i.e. sanction of the Court or committee of inspection to conduct such legal proceedings. In other words, where no sanction of either of the Court or of the committee of inspection is sought and obtained by the liquidator, no legal action or proceedings can be brought or defended by the liquidator. The Applicant herein did not produce any evidence to show that the provisional liquidator has obtained such sanction of the Court or of the committee of inspection to bring or defend any action or other legal proceedings in the name and on behalf of the 1st Respondent. There is, therefore, no way the Applicant can enrope NDIC as provisional liquidator to conduct any legal proceedings whether for or against the 1st Respondent****.***

In this case, the 2nd Respondent asked where the Appellant derived its power to institute the action at the lower Court, and answered as follows-

*"Certainly, the Appellant did not just assume its role to serve as a Liquidator for FIB Plc., by an automatic stroke of legal maneuver. Thus, the Appellant's arguments in denying its status as being a privy to FIB Plc. is unsupported by any known and existing legal principle or judicial decision*".

But to the contrary, the Appellant's argument is supported by statute and the decision of the Supreme Court in *Re: Amolegbe* (supra). It derived its authority to serve as liquidator from the Federal High Court: not FIB Plc. and any decision by the Appellant to sue or defend an action in the name or on behalf of FIB Plc. must be authorized by the Federal High Court.

The 2nd Respondent also asked the question -"*would it have been legally possible for NDIC and FIB Plc. to institute separate actions in Court on the question of the affairs of FIB Plc. after the appointment of NDIC as a Provisional Liquidator?*" To which it answered as follows-

"*To proffer an answer in the positive would be to inordinately stretch the position of the law to an impossible limit... By any stretch of imagination, this could not have been within the realms of possibility because NDIC has now stepped into the shoes of FIB Plc. which is now legally incapable of taking any steps on the affairs of the company... NDIC having been appointed the Provisional Liquidator to FIB Plc. steps into the shoes of the Bank, derives its title to institute an action on its behalf and thereby cloaks itself with the mantle of a privy in law whose actions and activities would be deemed to be that of the defunct FIB Plc*".

Obviously, its answer in the negative cannot withstand the decision in *Re: Amolegbe**(supra)*. FIB Plc.may be very ill and actually facing death but it still has life in it; it is not yet dead; and its legal personality is intact - see*Oredola Okeya Trading Co. & Anor. V. BCCI & Anor. (2014) LPELR-22011(SC),*where the Supreme Court per Muhammad, JSC, observed-

"Winding up of a company involves the liquidation of the Company - so that assets are distributed to those entitled to receive them. Campbell Black says, liquidation is quite distinguishable from dissolution, which is the end of a corporation. Liquidation may precede or follow dissolution - thus, mere revocation of banking license of a bank, without more, as claimed by the Applicant cannot bring to an end the juristic life of a bank or corporation.

Likewise, where a bank or corporation ceases to operate or closes its business that does not determine the legal existence of such a bank - -".

The Appellant as the Provisional Liquidator has statutory powers to take possession of and protect the assets of FIB Plc. - see *Provisional Liquidator of Tapp Industries Ltd. & Anor. V. Tapp Industries Ltd. & Ors. (1995) 5 NWLR (Pt. 393) 9,* where Iguh, JSC, adopted the observation of the learned authors of Palmer's Company Precedent 17th Ed.; as follows-

"The provisional liquidator is now under a statutory duty to take into his custody all the property of the company. Subject to this, the duties of an interim Provisional Liquidator, that is to say, of a provisional liquidator after the presentation of the petition, but before a winding up Order depend ...- on the terms of the order appointing him. Most commonly, his powers are restricted to taking possession of and protecting the assets of the company. Whatever his powers under the order appointing him, the interim provisional liquidator should be careful to keep within them. Thus, if these powers are restricted to carrying on business, he should carry on the business, and must not think that he has a discretion to stop the business; but he can, of course, apply to the Court for directions if he finds that it is expedient to stop. So, where his power is restricted to taking possession and protecting the assets, it becomes his duty to Eke possession of and protect the assets accordingly, he should therefore take possession by himself or his agents and do all that is necessary to protect them".

To all intents and purposes, the Appellant as the Provisional Liquidator is well armed by the law to do battle in Court; with its own shoes on its feet.

So, the Appellant and FIB Plc. are able to wear separate shoes. FIB Plc. has not been wound-up, and can stand on its feet in its own shoes, and the Appellant is wearing the shoes of the liquidator appointed to realize assets of FIB Plc. and apply the proceeds in payment of its debts, etc.

In effect, and using the words of the 2nd Respondent contrariwise, the Appellant as Provisional Liquidator to FIB Plc. is answerable to the Federal High Court and cannot step into its shoes without authorization; the Appellant does not derive its power to institute an action in the name or on behalf of FIB Plc. from the Bank directly but only through the Court; and to hold that as Provisional Liquidator of FIB Plc., the Appellant has thereby cloaked itself with the mantle of a privy, whose actions/activities would be deemed to be that of FIB Plc. "would be to inordinately stretch the position of the law to an impossible limit", which this Court cannot do.

And yes; it is legally possible for them to institute separate actions in Court on the question of the affairs of FIB Plc. after the appointment of the Appellant as the Provisional Liquidator- see *Re: Amolegbe (supra)*, where the Supreme Court per Fabiyi, JSC, very aptly stated as follows -

*"It was established that BCCI transmuted to AIB Ltd., whose licence was revoked. It can sue and still be sued. There is no winding up order by the Court. It is alive ... The 2nd Respondent - NDIC cannot be compelled to take on the functions of BCCI, which has passed on...".*

In this case, FIB Plc. was still alive, and competent to sue and be sued.  
The lower court assumed that the revocation of its licence had killed it, and the Appellant stepped into its shoes, which is a wrong assumption; the Appellant is not and cannot be a successor in title or heir to FIB Plc. and the lower Court was wrong to hold that the parties were the same.

Be that as it may, even if the Appellant and FIB Plc. are the same or interchangeable as parties, to constitute an abuse of Court process, the issues raised in the three different suits must all be the same -see *Umeh V. Iwu* *(supra)*, where Onnoghen, JSC, observed as follows -

"*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 ... 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/278/2005, 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*".

In this case, the lower Court concluded as follows -

"*The issue for determination in all the suits is who between FIB and Union Bank has right over the property known as No. 27/29 Adeyemo Alakija Street Victoria Island, Lagos". The present Plaintiff who is not a party to the contract ... cannot question the terms of the contract or capacity of the parties thereto.*

*The decisions of - the Federal High Court in suit No.FHC/L/CS/1321/2005, and the Lagos High Court in suit No. ID/1098/2007 that FIB Plc. no longer has interest in the property are subsisting and binding*".

The Appellant's contention is that the lower Court was wrong because it was not asked to determine who owned Fortune Towers but to set aside the sale of same to the 2nd Respondent, and any decision in this suit will not contradict decisions reached or will be reached in the other suits.

The 1st Respondent's position is that the contemporaneous existence of this suit in respect of the same subject matter, creates a great possibility of conflicting judgments being given, and a process, which is designed to achieve this purpose, will constitute an abuse of Court process.

The Appellant argued in its Reply Brief that the 1st Respondent's arguments rest on *res judicata* but it has not stated that the orders of the lower courts are based on the issues or reliefs claimed in this case; that it is settled that different suits can emanate from the same subject matter but with different rights and reliefs, citing *C.O.M. Inc. V. Cobham* (supra).

It referred us to the law on the doctrine of *res judicata* and argued that the earlier rulings being interlocutory decisions cannot constitute estoppel against it; and that the decisions in those suits are not final decisions but were made pending the final determination of the suits.

The 2nd Respondent contends that the Appellant/FIB's strategy is configured in such a way as to pray the courts for the same reliefs by not using exactly the same words; that the Appellant did not demonstrate any justification for its suit and that its re-introduction of these issues and reliefs in this suit constitutes a gross abuse of the process of the court; and that a careful consideration of its issues/reliefs and its end result, if compared with the earlier suits, are the same. It further argued that -

"...*The Appellant's contention that the claims in the different suits are not the same is at best a hypothetical proposition. This is because all the sets of facts and the reliefs that the Appellant seeks to canvass in the different Courts can be relied on and argued in the same action in one single court. To litigate its supposed grievances in different Courts is an abuse of the process of the Court. The trial Court was by all means correct in dismissing the Appellant's case as being an abuse of the process of Court. In all, the 2nd Respondent submits that this Appeal lacks merit and must be dismissed*." (Highlight mine)

The Appellant canvassed same arguments on the subject of *res judicata* and abuse of Court process in its Reply Brief to 2nd Respondent's Brief, but added inter alia that the said "multiple suits" is not purely in respect of the property known as "Fortune Towers", and that the 2nd Respondent's refusal to set out the reliefs sought in the three suits smacks of mischief.

It pointed out the different claims in different suits and further submitted-

***"****My lords, can it therefore be truthfully said that the claims in the three suits were "configured in such a way as to pray the Courts for the same reliefs by not using exactly the same words" as contended by the 2nd Respondent in its brief? The obvious answer is No. - Even if it is conceded that all the suits revolve around the property called Fortune Towers, different rights and causes of action had arisen. It therefore cannot be an abuse to ventilate any grievance on the infringement of such right. See C.O.M. V Cobham (supra)*".

In the circumstances of this case, I will have to agree with the Appellant. It is clear from reliefs sought in the different suits (which I set out earlier), that the Appellant and FIB Plc. pursued different agendas in the Courts.

In Suit No.FHC/L/CP/1321/2005 filed at the Federal High Court before its licence was revoked, FIB Plc. claimed declaratory/injunctive reliefs that relates to sundry charges/interests deducted by Union Bank during the perfection of the legal mortgage over Fortune Towers, etc.

In Suit No ID/1098/2007 filed at the Lagos State High Court after its licence was revoked, FIB Plc. claimed declaratory/injunctive reliefs hinged on the invasion of Fortune Towers by thugs and hoodlums and the issuance of a Notice to tenants by the 1st Defendant and Union Bank.

In its suit No. FHC/L/CS/663/2011 filed at the Federal High Court, which led to this appeal, the Appellant claimed the following reliefs -

- *A declaration that the sale of Fortune Towers belonging to FIB Plc while winding-up proceedings was pending and it had been appointed provisional liquidator, is ineffectual, illegal, unlawful, null and void*

*- A declaration that the sale of Fortune Towers by the 1st Respondent to the 2nd Respondent in July 2007 when it was yet to be incorporated as a limited liability company, is illegal unlawful, null and void.*

*- In the alternative, a declaration that the sale of Fortune Towers when the earlier suits and the Appeals were pending, is contrary to the doctrine of lis pendens, and pro tanto unlawful, illegal, null and void.*

*- An order setting aside the sale of the property to the 2nd Respondent*

*- An order setting aside the Quit Notice dated 1/12/2010 and all other notices purporting to seek recovery of the said Fortune Towers-*

*- An order of injunction restraining the Respondents, their servants, agents etc., from disturbing it in the performance of its statutory duties as provisional liquidator until the bank is fully and finally wound up.*

The Appellant submitted that it is settled that where a contract is entered into by a non-juristic person such a contract is null and void, citing *Trans Bridge Co Ltd. V. Survey International Co. Ltd. (1986) 17 NSCC 1084,* that it uses the 8th floor of Fortune Towers as its operational office in respect of its duties as provisional liquidator of FIB Plc.; and that as the Supreme Court held in *Saraki V. Kotoye (1992) 9 NWLR (PT.264) 156-*

"*A party cannot be said to be abusing the process of Court by exercising a constitutional right*".

Let me make it clear; we are not concerned with whether the Appellant's claim against the 2nd Respondent is true or not, the question before us is simply whether the issues for determination in the suits are the same, and from what we can see, the issues in the said suits are not the same.

The subject matter is the same - Fortune Towers, but as the Appellant rightly submitted, a subject matter may give rise to different rights see C.O.M. Inc. V. Cobham (supra), where Omokri, JCA, very aptly stated –

*"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. An act can give rise to different suits. A subject matter may very well give rise to different rights. In other words, different suits can emanate from the same subject matter but with different rights and reliefs".*

In this case, FIB Plc. had its own grievances against the 1st Respondent that includes the "*unilateral deduction of the sum of N82, 700.00 as legal charges for the perfection of legal mortgage over [Fortune Towers], and "the charging of illegal and arbitrary interest on [its] overdrawn balance*." which it took to the Federal High Court and the invasion and entering of (Fortune Towers) etc., which it challenged at the Lagos State High Court.

The said suits are still pending and yet to be determined, and appeals filed against the interlocutory Rulings of the two Courts are still pending.

The Appellant in its position as Provisional Liquidator of FIB Plc. has its grievance against the 1st Respondent for selling Fortune Towers to the 2nd Respondent while a winding up proceeding was pending and a provisional liquidator duly appointed, and when as Appellant alleged, the 2nd Respondent was yet to be incorporated as a limited liability company.

The respective suits are, undoubtedly, founded on separate and distinct causes of action that have given rise to separate and distinct reliefs see Umeh V. Iwu (supra), where Chukwuma-Eneh, JSC, further held thus,

"*The aforesaid two suits are founded on two separate and distinct causes of action. They have given rise to two separate and distinct reliefs.. I have 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. To establish whether or not there is an abuse of court process 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. 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 the Appellant's main contention"*.

In this case, both Respondents contend that the Appellant's suit is an attempt to re-litigate matters and issues relating to Fortune Towers that have been resolved in the earlier suits, but the Appellant is not FIB Plc., and since Fortune Towers was sold to the 2nd Respondent while the said suits were still pending, it cannot be accused of multiplying any actions simply to annoy, harass and annoy the Respondents, which is what the abuse of Court process is all about - see *A-G, Fed. V. A-G, Abia State* *(supra)* where the Supreme Court per Karibi-Whyte, JSC, explained that-

*“It is an abuse of the process of the Court when a party improperly uses the machinery of the judicial process to the irritation and annoyance of his opponent and effective administration of justice... the abuse lies in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the Defendant and interfere with the due administration of justice... the abuse does not lie in the exercise of the right of action per se which is constitutionally guaranteed. It is the improper, irregular and unconscionable manner of the exercise of the right which is oppressive, reckless and vindictive"*.

The Appellant also argued in its Reply Briefs to both Respondents' Briefs that although the Respondents did not specifically mention res judicata, their arguments rests on same, and it dealt with the issue in some detail. But the fact is that the Respondents never raised it, and even if they did, it is settled that for estoppel to be established, whatever determination is made in the first proceedings must be the same question arising in the latter proceedings. Where the question in the second proceedings is not the same as that decided in the first, there can be no estoppel - see *Mohammed V. Olawunmi & Ors (1993) 3 NWLR (Pt. 288) 384 SC.*

In this case, the disposition of assets of FIB Plc. was not an issue in the suits filed by FIB Plc. itself at the Federal and State High Courts, and their respective Rulings did not touch on the sale of Fortune Towers. Thus, the Lower Court erred when it concluded that the Appellant's suit "*is a clever attempt to circumvent the import of the decisions of Courts of co-ordinate jurisdiction*", which is, certainly, not the situation in this case.

In the circumstances, the appeal succeeds and is hereby allowed.  The decision of the Lower Court in its Ruling of 27/3/2013 is set aside, and the Suit is sent back for hearing on the merits. No order as to costs.

**SAMUEL CHUKWUDUMEBI OSEJI, J.C.A.:**

My Lord AMINA ADAMU AUGIE JCA has afforded me the opportunity of a prior perusal of the lead judgment just delivered.

The bone of contention is whether the suit filed in the lower Court by the Appellant constitutes an abuse of court process as held by the learned trial Judge.

There are numerous authorities on what constitutes abuse of judicial process, one of the prominent ones is *SARAKI VS KOTOYE (1992) 9 NWLR (PT 254) 156 at 188-189* where the Supreme Court per Karibi Whyte JSC set out the guiding principles as follows:-

"The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. It's one common feature is improper use of Judicial process by a party in litigation to interfere with the due administration of Justice.

It is recognized that the abuse of process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is regarded generally as an abuse when a party improperly uses the issue of 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 issue. See; *Okorodudu v. Okoromadu (1997) 3 SC 27; Oyegbola v. Esso West Africa Inc. (1996) 1 ALL NLR 170, (1966) 2 SCNLR 35*. Thus the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. 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; such as instituting different actions between the same parties simultaneously in different courts, even though on different grounds. See; Harriman v. Harriman (1989) 5 NWLR (PT.119)

The term "abuse of court process" was also defined by the Supreme Court inDINGYADI VS INEC (2001) 44 NSCQR 301 at 340 as follows:-

"The term "abuse of court process" connotes simply the misuse of court process and it includes acts which otherwise interfere with the course of justice. Clearly the acts includes where without reasonable ground, a party institutes frivolous, vexations and oppressive actions and also by instituting multiplicity of actions or is on a frolic act of forum shopping, i.e. seeking for a favourable court to entertain a matter. ....."  
See also *IKINE VS EDJERODE (2001) 12 SC (PT 11) 9, CBN VS AHMED (2001) 5 SC (PT 11) 146; ODE Vs BALOGUN (1999) 10 NWLR (PT 622) 214; AMAEFUNA VS THE STATE (1988) 2 NWLR (PT.775) 156.*

In the instant case the appellant assumed the status of a provisional liquidator of the fortune International Bank Plc by virtue of Section 40(1) of the NDIC Act. It is this status conferred on the appellant by law that empowers it to apply to the Federal High Court for an order to wind up the affairs of a failed insured financial institution by virtue of Section 40 (2) of the NDIC Act. It is only and until such order is sought and obtained that the NDIC assumes the full status of a liquidator with powers to proceed with the winding up of a failed insured financial institution. Hence, the primary purpose of having a provisional liquidator is to preserve the company's assets and prevent the Directors from dissipating such assets before a winding up order can be made. See *PROVISIONAL LIQUIDATOR OF TAPP INDUSTRIES LTD VS TAPP INDUSTRIES LTD & ORS (1995) 5 NWLR (PT.393) 9*.

At it presently stands, only the Banking licence of fortune International Bank Plc was revoked. That does not however extinguish its existence as a limited liability company capable of suing and being sued over its assets and liabilities. The appellant therefore stands independent of the Fortune International Bank Plc and as such cannot be held to be in a privy relationship with it. In the circumstances the Appellant can institute an action on its own and independent of any existing suit filed by the Fortune International Bank Plc and this will be far from constituting an abuse of court process as erroneously held by the lower Court.

For this and the more comprehensive reasons contained in the lead judgment, I also hold that this appeal has merit and it is accordingly allowed.

The ruling of the lower Court delivered on 27-3-2013 is hereby set aside and the suit is remitted to the lower Court for hearing and determination on the merit.

**ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, J.C.A.:**

I had the opportunity of reading the draft judgment of my learned brother, AMINA ADAMU AUGIE JCA and I agree with the reasoning and conclusion reached therein except to emphasise that the issue of abuse of court process has arisen again. The term 'multiple suits' which ordinary leads to abuse of court process has to be closely examined with a broom stick to pigeonhole the last action within the definition of 'privy'.

The term 'parties' includes but is not limited to the 'principal persons' named as 'parties' on the writ of summons; it also extends to 'privies' of such parties. See *AGUOCHA v EZENWA AGUOCHA [2005] 1 NWLR (PT.906) 165; ODIETE & ORS v. V. O. OKOTIE & ORS [1973] 1 NMLR 175*.

A privy has been defined as that person who derives his title under a party and who claims therefrom. The Black's Law Dictionary (7th ed.) classifies the three types of privies as:

a) Privies in blood; such as testator and heir;

b) Privies in law; such as testator and executor or in the case of intestate succession, a successor and administrators;

c) Privies in estate; such as vendors and purchasers, lessor and lessee etc.

See *NWOSU v UDEAJA [1990] 1 NWLR (PT.129) 188; AGBOGUNLE v DEPO [2008] 3 NWLR (PT.1074) 217 at 296 -227; ABABIO v. KANGA (19832) 1 WACA 253 - 256.*

It is trite that a person and all his privies are bound by the judgment given in previous proceedings in which he was a party. In the same vein, an estoppel cannot bind persons who were not parties or privies of those parties. Where an issue has been canvassed and adjudicated upon by a court of competent jurisdiction between the parties, it is binding on them in a subsequent suit. See *FADIORA & ANOR v. FESTUS GBADEBO & ANOR (1978) 3 SC 219; EZEWANI V. ONWORDI (1986) 4 NWLR (PT. 33) 27; INTERCONTINENTAL BANK PLC V FASICAL TRAVEL AGENCY LTD (2005) LPELR 7510 (CA)***.**

The contention in the instant case is that Nigerian Deposit Insurance Corporation (NDIC) is privy to Fortune International Bank Plc (FIB). This is apparently an erroneous contention because by virtue of Section 423 and 424 of the Companies and Allied Matters Act 2004 and Section 41(1) of Nigerian Deposit Insurance Corporation (NDIC) Act, the NDIC is a provisional liquidator with all the powers vested thereon for the sole purpose of bringing or defending in its name any action or legal proceeding which relates to the property of a bank so vested, for the purpose of recovering same and winding up the bank. In Section 425 of CAMA, it is authorized to sell the property of the bank for satisfaction of its debts and settle creditors. Thus the Appellant is a provisional liquidator appointed by the Federal High Court. See *OREDOLA OKOYA TRADING Co & ANOR v BANK OF CREDIT & COMMERCE INT. & ANOR (2014) LPELR - 22011 (SC); C.C.B LTD V. O'SILVAWAX INT. LTD (1999) 8 NWLR (PT.607) 97; NDIC V. FMBN (1997) 4 NWLR (PT.501) 519; VICO AGRO ALLIED IND. LTD V. ORIENT BANK (1998) 1 FBTLR 113****.***

Fortune International Bank Plc has ceased to operate by virtue of its bank license being revoked, but it does not end the juristic life of a bank. It continues as an entity.

The Respondent in this case by contending this issue of privy have indirectly raised the doctrine of Res Judicata - which constitute an absolute bar to a subsequent action involving the same claims, parties or their privies and cause of action. In this case, the Nigerian Deposit Insurance Corporation (NDIC) cannot be a party or privy to Fortune International Bank Plc by virtue of its appointment as a provisional liquidator. It is in fact a midwife solely responsible for bringing the baby to birth safely and hand over the baby to its owners - the creditors - but nothing more.

More so, NDIC is a distinct body aside from FIB Plc. FIB PLC is still accorded legal personality in law, even though NDIC is appointed as a provisional liquidator to wind it up. See *CO-OPERATIVE AND COMMERCE BANK (NIGERIA) LIMTTED v. ALEX O. ONWUCHEKWA [2000] 3 NWLR (PT. 647) 67*, where the court stated that the fact of winding -up of a company or the appointment of a liquidator does not by itself result in the death of a corporate body thereby removing its legal personality. To this effect NDIC cannot be a privy to FIB PLC as a provisional liquidator more so, that FIB PLC is still accorded legal personality in law until it is dissolved. See also, the case of *OREDOLA OKEYA TRADING CO. & ANOR V. BANK OF CREDIT AND COMMERCE INTERNATIONAL & ANOR (SUPRA)*

Simply put the Appellant's present suit was instituted while acting in furtherance of its statutory position to secure the assets of Fortune International Bank Plc for the creditors. This in essence is the statutory duty of Nigerian Deposit Insurance Corporation (NDIC) and therefore the Appellant's suit is for the preservation of the assets of Fortune International Bank Plc and is sharply different from the other suits.

In an action for abuse of court process which raises such defence as it relates to the instant case, one must examine the different rights and reliefs; trace the root of parties/privies emanating from the same subject matter in order not to fall into grave error. See *C.O.M. INC v COBHAM [2006] 15 NWLR (PT.1002) 283; CHIEF VICTOR UMEH V. PROF MAURICE IWU [2008] 8 NWLR (PT.1089] 243 - 244.*

Protecting a statutory right cannot be tantamount to an invitation and annoyance of the opponent and affecting administration of justice. More importantly, for an objection on abuse of court process arising from multiplicity of action viz-a-viz the issue of res judicata, the following conditions must co-exist inter-alia:

a. Parties and their privies as the case may be are the same in the present case as in the previous case;

b. The issues and subject matter are the same in the previous suit as in present suit;

c. That the adjudication in the previous case was given by a court of competent jurisdiction;

d. That the previous decision finally decided the issues between the parties.

See *CHIEF VICTOR UMEH V. PROF MAURICE IWU (SUPRA); AKANYEPE V. AKANYEPE (2009) 11 NWLR (PT. 1190) 217 - 243; OYEROGBA V. OLAOPA (1998) 13 NWLR (PT. 583) 509.*

Here, it is evident that the Appellant is not a privy of the parties in the earlier matter, hence the parties are not the same and the issues adjudicated in the two proceedings differs sharply. The trial judge missed this point and thereby arrived at a wrong conclusion when he generally glossed over the issues.

For this and other reasoning expressed in the lead judgment, I too set aside the ruling of **OKEKE J.** of the Federal High Court Lagos delivered on 27/3/2013 and abide by the orders in the lead judgment.