**PRINCE OLAGUNSOYE OYINLOLA**

**V.**

**CHIEF (ENGR.) ADEBAYO DAYO AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 6TH DAY OF NOVEMBER, 2013

CA/A/84/2013

**LEX (2013) - CA/A/84/2013**

OTHER CITATIONS

2PLR/2013/155

(2013) LPELR-21565(CA)

**BEFORE THEIR LORDSHIPS**

AMIRU SANUSI, JCA

JOSEPH TINE TUR, JCA

TINUADE AKOMOLAFE-WILSON, JCA

**BETWEEN**

PRINCE OLAGUNSOYE OYINLOLA - Appellant(s)

AND

1. CHIEF (ENGR.) ADEBAYO DAYO

2. ALHAJI SEMIU SODIPO (For and on behalf of the officers of the Ogun State Executive Committee of the People Democratic Party)

3. PEOPLES DEMOCRATIC PARTY

4. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) - Respondent(s)

**ORIGINATING STATE**

FEDERAL HIGH COURT ABUJA JUDICIAL DIVISION (A. Abdu-Kafarati, J- Presiding)

**REPRESENTATION**

AWA U. KALU, SAN with T. OYEKUNLE, Esq.; E.S. OSIAJE; C.I. OBIDIKE; EMENIKE CHIMA, Esq. and CHIDIEBERE DIM - For Appellant

AND

R.A. OLUYEDE, Esq. with TINA ETO, Esq. - For 1st and 2nd Respondents

J.N. EGWUONWU, Esq. with HENRY MICHAEL-IHUNDE, Esq.; NACHAMADA SHALTHA, Esq. - For the 3rd Respondent

B. ANAGENDE, Esq. with I.S. VEMBE - For the 4th Respondent

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

CONSTITUTIONAL LAW:- Supremacy of the constitution - Whether vested and accrued rights of a person cannot be taken away by anybody, authority or Court without prior hearing

**PRACTICE AND PROCEDURE ISSUES**

APPEAL:- Issues for determination - Whether issues formulated for determination can, for the purpose of convenience be merged and treated together where they overlap or are prolix

ACTION - ABUSE OF COURT PROCESS:- What constitutes - Duty of courts to put a stop to an abuse of legal process

JUDGMENT AND ORDER:- Consequential order made subsequent to a judgment which detracts from the judgment or contains extraneous matters – Whether an order made within jurisdiction

JUDGMENT AND ORDER:- When a declaratory judgment or order is made –Whether a party is entitled to any relief not asked for- Whether a party can be denied a relief simply because he has applied for it under the wrong law

JURISDICTION:- Meaning of - Jurisdiction of the Federal High Court - Whether filing an action in a wrong Judicial Division is fatal to its determination

JURISDICTION:- Definition of forum-shopping - Whether counsel must state appropriate jurisdiction in a plea to the jurisdiction - Remedy of the aggrieved party where objection to the jurisdiction of the Court is raised but over-ruled

INTERPRETATION OF STATUTES:- Order 7 rule 11 of the Court of Appeal Rules, 2011

WORDS AND PHRASES:- “Justiciability” – “Subject to” – Meaning

**MAIN JUDGMENT**

JOSEPH TINE TUR, J.C.A. (DELIVERING THE LEADING JUDGMENT):

Prince Olagunsoye Oyinlola is the appellant in this appeal, Chief (Engineer) Adebayo Dayo is the 1st Respondent while Alhaji Semiu Sodipo is the 2nd Respondent. The Peoples Democratic Party is the 3rd Respondent and the 4th Respondent is the Independent National Electoral Commission. The 1st and 2nd Respondents took out an Originating Summons. "For and on behalf of the officers of the Ogun State Executive Committee of the Peoples Democratic Party" before the Federal High Court Abuja on 13th day of August, 2012 in Suit No.FHC/ABJ/504/2012 in which the 1st respondent was described as the Chairman and 2nd respondent, the Secretary of the Ogun State Executive Committee of the Party, a political party registered under the Constitution of the Federal Republic of Nigeria, 1999 by the 4th respondent. The 1st and 2nd respondents sought in the Court below the determination of the following questions, namely:

"1. Whether the candidacy of the 1st Defendant as a nominee of the South West Zonal Chapter of the 2nd Defendant and his consequent election to the office of National Secretary of the 2nd Defendant, at the National Convention of the 2nd Defendant in March, 2012, were not invalid, null and void by reason of the order and judgment of the Federal High Court made respectively on the 27th of April, 2012 in Suit No.FHC/L/CS/282/2012 and 2nd May, 2012 in Suit No.FHC/L/CS/347/2012 nullifying the South West Zonal Congress of the 1st Defendant conducted in March, 2012 from which the 1st Defendant emerged or ought to have emerged.

2. Whether the candidacy of the 1st Defendant for and his consequent election to the position of National Secretary of the 2nd Defendant, at the National Convention of the 2nd Defendant in March, 2012, were not invalid, null and void by reason that he was not a valid nominee of the South West Zone of the 2nd Defendant to which the position had been zoned in accordance with the Constitution of the Party.

3. Whether the candidacy of the 1st Defendant for the position of National Secretary of the 2nd Defendant and his consequent election to that position at the National Convention of the 2nd Defendant in March, 2012 were not invalid, null and void in the combined circumstances of the order and judgment of the Federal High Court made respectively on the 27th of April, 2012 in Suit No.FHC/L/CS/282/2012 AND 2nd May, 2012 in Suit No.FHC/L/CS/347/2012, the provisions of the Constitution of the 1st Defendant for zoning of party offices, enforcement of the zoning policy of the 1st Defendant and the provisions of Section 223 of the Constitution of the Federal Republic of Nigeria, 1999."

The respondents jointly sought declaratory reliefs in respect of Suit No.FHC/L/CS/282/2012 to wit:

"1. A DECLARATION that the candidacy of the 1st Defendant as a nominee of the South West Zonal Chapter of the 2nd Defendant and his consequent election to the office of National Secretary of the 1st Defendant, at the National Convention of the 1st Defendant in March, 2012, were invalid, null and void by reason of the order of the Federal High Court made on the 27th of April, in Suit No.FHC/L/CS/282/2012 nullifying the South West Zonal Congress of the 2nd Defendant conducted in March, 2012 from which the 1st Defendant emerged or ought to have emerged.

2. A DECLARATION that the candidacy of the 1st Defendant for and his consequent election to the position of National Secretary of the 2nd Defendant, at the National Convention of the 2nd Defendant in March, 2012 were invalid, null and void by reason that he was not a valid nominee of the South West Zone of the 2nd Defendant to which the position had been zoned in accordance with the Constitution of the Party.

3. A DECLARATION that the candidacy of the 1st Defendant for the position of National Secretary of the 2nd Defendant and his consequent election to that position at the National Convention of the 2nd Defendant in March, 2012 were invalid, null and void in the combined circumstances of the order of the Federal High Court of 27th April, 2012 in Suit No.FHC/L/CS/282/2012, the provisions of the Constitution of the 2nd Defendant for zoning of party offices, enforcement of the zoning policy of the 2nd Defendant and the provisions of Section 223 of the Constitution of the Federal Republic of Nigeria, 1999.

4. AN ORDER of this honourable Court removing the 1st Defendant from the office of National Secretary of the 2nd Defendant.

5. AN ORDER of this honourable Court directing the 3rd Defendant to rectify the records of the 2nd Defendant by deleting the name of the 2nd Defendant as the National Secretary of the 2nd Defendant and replacing same in accordance with the provisions of the Constitution of the 1st Defendant with a candidate nominated at a valid congress of the South West Zonal Chapter of the 1st Defendant and this within 21 days of the order of the Court."

Preliminary objection to the hearing of the Originating Summons by the lower Court on grounds of lack of jurisdiction was raised by the appellant and the 3rd respondent. On the 11th day of January, 2013 his Lordship, A. Abdu-Kafarati, J; dismissed same, holding that the Federal High Court had the jurisdiction to entertain the Originating Summons, and same did not constitute an abuse of Court process. His Lordship proceeded to hear the summons on the merit before granting reliefs to the 1st and 2nd respondents now the subject of this appeal.

Being aggrieved by the judgment the appellant filed two Notices of Appeal. The first was dated 14th day of January, 2013. The appellant withdrew this Notice of Appeal on 10th October, 2013 when this appeal came up for hearing and it was struck out. The appellant relied on the Notice of Appeal dated 21st, January, 2013 and adopted the brief filed on 6th day of March, 2013 when the appeal came up for hearing. The 1st and 2nd respondents adopted their brief dated 3rd day of June, 2013 but filed on 14th day of May, 2013 with a deeming order of 30th September, 2013. This prompted the learned silk appearing for the appellant to file a reply Brief dated 4th day of October, 2013 deemed on 7th October, 2013. The 3rd respondent's Counsel adopted the brief dated 22nd day of April, 2013 but filed on 29th April, 2013 with a deeming order made on 30th September, 2013. The 4th respondent's brief dated 26th day of June, 2013, filed on 27th June, 2013 was also adopted. I shall set out the facts that led to the institution of the Originating Summons in the Court below by the 1st and 2nd respondents. They are garnered from the affidavit and documentary exhibits accompanying the originating summons.

The Chapter of the South West Zone of the Peoples Democratic Party held a Zonal Congress in Osogbo, Osun State on 21st March, 2012 for the purpose of electing Zonal officers, one of whom would be presented as a candidate at the party's National Convention for appointment as National Secretary of the Party to be held on the 24th day of March, 2012.  The Zonal Convention was accordingly held. While some officers were hand picked by the hierarchy of the party others were elected. The 1st and 2nd respondents, aggrieved by the exercise, instituted two separate actions by way of originating summons before the Federal High Court, Lagos, in Lagos State. The first was Suit No.FHC/L/CS/282/2012 and the parties were:

"1. Chief Dayo Soremi

2. Engr. Bayo Dayo

3. Hon. Taiwo Abisekan (Applicants)

(For and on behalf of the officers of the Harmonized Executive Committee of the Peoples Democratic Party in Ogun State)

AND:

1. Peoples Democratic Party

2. Alhaji Abubakar Kawu Baraje

3. Alhaji Tajudeen Oladipo

4. Mr. Uche Secondus

5. Mr. Olusola Oke

6. Prof. Rufai Ahmed Alkali."  (Respondents)

The appellant was not a party in this suit. In the second summons, namely, FHC/L/CS/347/2012 the parties were:

"1. Chief (Engr.) Adebayo Bayo

2. Alhaji Semiu Sodipo      (Plaintiffs)

AND:

1. Peoples Democratic Party

2. Alhaji Bamanga Tukur

3. Prince Olagunsoye Oyinlola

4. Bode Mustapha."    (Respondents)

The appellant was the 3rd respondent.

In Suit No.FHC/L/CS/282/2012 Abang J., of the Federal High Court, Lagos after a hearing, nullified the congress from which the appellant had emerged as a nominee for the office of National Secretary and was on the 24th March, 2012 appointed the National Secretary of the Party.

Then came Suit No.FHC/L/CS/347/2012 before Archibong J., in which the appellant was the 3rd defendant. His Lordship granted orders similar to those of Abang, J.

The affidavit in support of the originating summons in the Court below reads as follows:

“1(c) Subsequently on the 2nd of May, 2012 this Honourable Court, per Archibong, J; delivered its judgment in Suit No.FHC/L/CS/347/2012, which included an order nullifying the South West Zonal Congress of the 1st Defendant conducted on the 21st of March, 2012.

(d) That shown to me is a copy of the enrolled order of the judgment of 2nd May, 2012 in Suit No.FHC/L/CS/347/2012 is exhibited hereto as Exhibit PDP3.

(e) That not only has the 2nd Defendant refused to comply with the various prohibitory and mandatory orders contained in the order of 27th April, 2012 in Suit No.FHC/L/CS/282/2012 and the judgment of 2nd May, 2012 in Suit No.FHC/L/CS/347/2012, it has allowed the 1st Defendant to take steps that are calculated to ridicule the judicial system and to make the Federal High Court appear supine and irrelevant.

6. That I am further informed by the 1st Plaintiff at the place, time, date and circumstances stated above as follows:

(a) On the 3rd of May, 2012, a letter was received by the 1st Plaintiff signed by the 1st defendant commencing disciplinary processes against the 1st Plaintiff, inter alia, for commencing Suit No.FHC/L/CS/347/2012 against the 1st Respondent. Shown to me is a copy of the said letter is exhibited hereto as Exhibit PDP4.

(b) On the 5th of May, 2012 the 1st and 2nd defendants by the agency of one Olisah Metuh, National Publicity Secretary of the 2nd defendant, issued a press release which was published on the 2nd Respondent's website and in the National Tribune Newspaper of 5th May, 2012 indicating that they did not regard the Federal High Court as a competent Court and that they would not obey the orders of any Court apart from the Supreme Court of Nigeria. Shown to me is a copy each of the press release as published on the Internet and in the Nigerian Tribune are exhibited hereto as Exhibits "PDP5 and 6".

(c) On the 17th of May, 2012 the 3rd Respondent by a letter of the same date address to the Ogun State Independent Electoral Commission introduced three nominees of Chief Obasanjo, whom the 1st Defendant described in his letter as members of the South West Zonal Working Committee as the Caretaker  Committee charged by the 2nd Defendant's National Executive Committee to supervise the activities of the 2nd Defendant in Ogun State including the conduct of fresh congresses for election of new officers despite the judgment of this honourable Court of 2nd May, 2012. Shown to me is a copy of that letter is exhibited hereto as Exhibit "PDP7."

(d) That the 1st Defendant had lost the authority to issue letters as the National of the 2nd Defendant as from the 27th of April, 2012 and his defiance acts in this regard were deliberate contempt of Court.

7. That I am informed by the said plaintiff's Counsel at the place, time, date and circumstances mentioned above whom I verily believe as follows:

(a) That it is necessary to this application as sought having regard to the valid and subsisting Court orders.

(b) That is in the interest of justice that the said orders of Court mentioned above be obeyed by the defendant.

(c) That now shown to me is the drawn up enrolled certified order of Court of 16/3/2012 which is hereby exhibited and marked as Exhibit "PDP8.

8. That I depose to this affidavit in good faith believing same to be true and correct to the best of my knowledge and information and accordance with the Oaths Act, 1990."

Bem Anagende, a Legal Practitioner in the Law Firm representing the appellant deposed to a Counter-affidavit in opposition to the Originating Summons  in Suit No.FHC/ABJ/CS/504/2012 on 22nd day of October, 2012 as follows:

"1. That I am a Counsel in the firm of noble Crest Solicitor of Counsel to the 3rd defendant herein and by virtue of which I am very familiar with the facts of this case giving rise to these depositions.

2. That I have read through the entirely of the plaintiff's affidavit in support of the originating summons and I make bold to state that the statements therein made are substantially false.

3. That specifically, contrary to paragraph 3(b) of the affidavit in support of the affidavit in support of the originating summons, the deponent therein, Abimbola Okuwoga (Miss) was NEVER elected at the 2nd defendant's state congress in Ogun State or indeed any other.

5. That the foundation of the plaintiff's case is marred with falsehood by the deponent of the sole affidavit in support of the originating summons.

6. That I know as a fact that it will occasion grave injustice to the 3rd defendant if honourable Court relies on the affidavit of the plaintiffs herein when same contained substantial falsehood.

7. That the interest of justice will be better served if this suit fails.

8. That I know as a fact that the 3rd defendant has always been and will always respect and obey orders of Courts of competent jurisdiction.

9. That I depose to this affidavit bonafide, believing the facts to be true and correct and in accordance with the Oaths Act in force."

No attempt was made in the Counter-affidavit to specifically deny or disparage the facts deposed to by Miss Abimbola Okuwoga in support of the originating summons. In my humble opinion, the Counter-affidavit was lacking in credibility. See Bank of Baroda vs. Mercantile Bank Ltd. (1987) 3 NWLR (Pt.60) 233 at 240, 242. In view of the above his Lordship in the Court below granted the reliefs against the appellant as prayed hence this appeal.

ISSUES FOR DETERMINATION

The issues for determination as formulated by the learned silk on behalf of the appellant reads as follows:

"(i) Whether having regard to the circumstances, the Court below had jurisdiction to hear and determine the suit subject matter of this appeal? (Grounds 1 and 2).

(ii) Whether the case as constituted was justiceable? (Grounds 3 and 4).

(iii) Whether the suit does not constitute an abuse of Court process? (Grounds 7 and 8).

(iv) Whether the fair hearing rights of the appellant were violated in any material particularly by the Court below (Grounds 5 and 6)."

The 1st and 2nd respondents formulated the following issues for determination:

"1. Whether the Court below had the requisite jurisdiction to adjudicate upon the originating summons proceeding, subject matter of this appeal. (Grounds 1, 2 and 3 of the Notice and grounds of appeal dated 21st January, 2013).

2. Was the learned trial Judge right in granting the claims of the 1st and 2nd Respondents in the Court below (Grounds 4, 7 and 8 of the notice and grounds of appeal dated 21/1/2013?

3. Was the appellant's right to fair hearing violated or breached by the decision of the Court below enforcing the two judgments in that the two judgments in FHC/L/CS/282/2012 and FHC/L/CS/347/2012 not being a party to the two suits mentioned above?

4. Did the 1st and 2nd Respondent's claim constitute an abuse of Court processes? (Ground 9) (sic 8) of the Notice and grounds of appeal dated 21st January, 2013."

The 3rd respondent couched the following issues for determination:

"1. Whether the lower Court was competent to entertain the suit as constituted.

2. Can the appellant raise the issue of the validity of his nomination and election as the National Secretary of the Peoples Democratic Party (PDP) in this appeal when that issue has been dealt with by a Court of competent jurisdiction and there is no appeal against that judgment?

(3) Does the suit before the lower Court constitute an abuse of the process of Court?

(4) Was the appellant's right to fair hearing denied in any manner by the lower Court?"

The 4th respondent's issues are set out at page 4 of the brief as follows:

"1. Whether the lower Court was competent to entertain the suit as constituted.

2. Can the appellant raise the issue of the validity of his nomination and election as the National Secretary of the Peoples Democratic Party (PDP) in this appeal when that issue has been dealt with by a Court of competent jurisdiction and there is no appeal against that judgment?

3. Does the suit before the lower Court constitute an abuse of the process of Court?

4. Was the appellant's right to fair hearing denied in any manner by the lower Court?"

It is permissible in law to treat issues raised by an appellant which may dispose of the multiple issues raised by the respondents and vice versa. See Attorney-General of the Federation vs. Abubakar (2007) 10 NWLR (Pt.1041) 1 at paragraphs "E-G". Besides, where the issues formulated for determination overlap or are prolix, they can, for the purpose of convenience, be merged and treated together by the learned Counsel or the Court. See Anie vs. Uzorka (1993) 8 NWLR (Pt.309) 1 at page 16 paragraph "G" to page 17 paragraph "G". In the light of the above I shall consider together the issues formulated by the learned silk on behalf of the appellant taking issues one and two together in the determination of this appeal.

ISSUES ONE AND TWO:

The argument on issues one and two is that the originating summons as constituted in the Court below was not justiceable, that the Court lacked the jurisdiction to have granted the reliefs to the 1st-2nd respondents on the grounds that neither the parties nor the reliefs claimed fell within the ambit of the provisions of Section 251(p)(g) and (r) of the Constitution of the Federal Republic of Nigeria, 1999. The dispute involved the nomination/appointment of a National Secretary of the Peoples Democratic Party and no more. The learned silk urged this Court to determine issues 1 and 2 in favour of the appellant.

ISSUES THREE AND FOUR:

The argument by the learned silk on issue three and four is that the originating summons in the lower Court constituted an abuse of Court process. The reasons are that Suit No.FHC/L/CS/282/2012 and No.FHC/L/CS/347/2012 by the Federal High Court were predicated on Suit No.FHC/L/CS/1248/2011. The appellant had secured a stay of execution in respect of Suit No.FHC/L/CS/1248/2011 before the Court of Appeal vide Exhibit "D." By implication, this constituted a stay of execution of the judgment/orders in Suit Nos.FHC/L/CS/282/2012 and FHC/L/CS/347/2012 pending the determination of the two appeals. The Notices of Appeal are Exhibits "A", "B" and "C" respectively. Thus the actions in the lower Court which sought to enforce the judgments/orders in Suit No.FHC/L/CS/282/2012 and FHC/L/CS/347/2012 (CA/L/515/2012) in disregard to the pending appeals constituted an abuse of the Court processes. The learned silk further contended that the appellant's right to fair hearing was breached within the meaning of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 citing Amanchukwu vs. F.R.N. (2009) 8 NWLR (Pt.1144) 475 at 484 given the circumstances of what transpired in the Court below. That the judgment delivered by Charles Archibong J., (as he then was) in Suit No.FHC/L/CS/347/2012 had been stayed by the Court of Appeal. But that delivered by Abang J., - FHC/L/CS/347/2012 had nothing to do with the appellant because he was not a party thereto. The learned silk urged this Court to hold that the proceedings in the Court below constituted a departure from the guidelines on fair hearing. Issues 3 and 4 should be resolved in favour of the appellant, and the appeal allowed.

1ST-2ND RESPONDENTS: ISSUES ONE AND TWO

Dr. A. Nwaiwu, SAN of Counsel to the 1st and 2nd respondents replied that the learned trial Federal Judge had the requisite jurisdiction to entertain the originating summons. That the issues for determination were justiciable. The lower Court was merely enforcing the declaratory judgments/orders by Abang and Archibong J.J., in their respective judgments. The learned silk further argued that the Notices of Appeal filed against the judgments had been withdrawn by notices filed on 31st January, 2013 and 7th February, 2013 respectively. The appeals were accordingly deemed dismissed, citing Order 11 rules 1 and 5 of the Court of Appeal Rules, 2011 read together with the authority of Isa Motors Ltd. vs. Okonkwo (2010) NWLR (Pt.1217) 524 at 541 paragraphs "B"-"C". In the circumstance it was legitimate for the learned Federal Judge, Abdu-Kafarati, J., to enforce the orders in the two judgments. This is because the appellant's presentation as a nominee of the South West Chapter of the Peoples Democratic Party for the office of the National Secretary of the party was in violation of the orders made by Abang and Archibong, J.J. in their respective judgments. Accordingly the claims were justiceable. Issues one and two should be resolved against the appellant.

ISSUES THREE AND FOUR:

The learned silk submitted on issue three and four that the appellant's right to fair hearing had not been breached since the two judgments had nullified the proceedings of the Zonal Congress of the party held in Osogbo in March, 2012. Moreover, at the time the lower Court granted reliefs to the 1st and 2nd respondents no appeals nor orders for stay of execution against the two judgments were pending in the Court of Appeal, Lagos. The 1st and 2nd Respondents had the legal right to have sought the enforcement of the orders contained in the two judgments.  On the whole the learned silk urged that issues three and four should be determined against the appellant.

3RD RESPONDENT: ISSUES ONE AND TWO

The learned silk that settled the 3rd Respondent's brief argued that as the appellant did not appeal against the judgments delivered by Abang and Archibong J.J., the 1st and 2nd Respondents could invoke originating summons to enforce the orders of their Lordships, citing a number of decided authorities and Chief Afe Babalola, OFR, SAN, in his book titled "Enforcement of Judgment" page 2 read together with Section 6(6)(a) and 287(3) of the Constitution of the Federal Republic of Nigeria, 1999 in support of his argument.

It was argued that the validity of appellant's nomination/appointment as the National Secretary of the Peoples Democratic Party had been settled by the judgments of Abang and Archibong, J.J., sitting in different Courts of competent jurisdiction. In view of suits No.FHC/L/CS/282/2012 and FHC/L/CS/347/2012 it was belated for the appellant to challenge his removal from office, citing Eyo vs. Ekpenyong (2012) 11 NWLR (Pt.1311) 316 at 324 paragraph "B"-"C". The appellant was bound by the plea of estoppel per rem judicatam, citing Ebba vs. Ogodo (2000) 10 NWLR (Pt.675) 387 at 405 paragraphs "A"-"H"; Odjeuwedgbe vs. Echanokpe (1987) NWLR (Pt.52) 633 and Onyebuchi vs. INEC (2002) 8 NWLR (Pt.769) 417 at 435-436 paragraph "H"-"A". Learned silk urged that issues one and two should be resolved against the appellant.

ISSUES 3 AND 4:

The learned silk's submission on issues three and four is that the enforcement of the orders/judgments did not constitute an abuse of process, citing Section 6(6)(a) and 287(3) of the Constitution of the Federal Republic of Nigeria, 1999. The right of the appellant to fair hearing was also not breached as he was heard before the lower Court granted the reliefs in favour of the 1st and 2nd respondents. On the whole the learned silk urged that issues three and four should be resolved against the appellant.

4TH RESPONDENT:

The 4th respondent's Counsel's argument is that the appellant ought to have brought to the attention of the lower Court the order of the Court of Appeal staying the execution of the two judgments. This was by attaching them to a Counter-affidavit, citing Section 59 of the Evidence Act, 2011 as amended. But that was not done. Nothing therefore foreclosed the lower Court from enforcing the orders in the two judgments. Counsel cited the authority of Shell Petroleum Development Company Ltd. vs. Amadi (2011) 26 WRN 1 at 26 wherein it was held by the Supreme Court that an appeal does not automatically act as a stay of execution. Moreover, no stay of execution is usually granted in a declaratory judgment, argued learned Counsel. The appeal should be dismissed.

ISSUES ONE AND TWO:

I shall consider together all the issues argued by the learned silk on behalf of the appellant as the answer to one issue leads to another.

Annexed to the Originating Summons filed in the Federal High Court, Abuja in Suit No.FHC/ABJ/CS/505/2012 on the 13th day of August, 2012 is the Constitution of the Peoples Democratic Party duly authenticated by the then National Chairman of the Party - Prince Vincent Ogbulafor, OFR and Alhaji Abubakar Kabiru Baraje then National Secretary on 22nd day of April, 2009. See pages 11-62C of the printed records. Article 2 of the Constitution provides that "Subject to the provisions of the Constitution of the Federal Republic of Nigeria, this constitution shall be supreme and its provisions shall have binding force on all members and organs of the party".

The Constitution of the Peoples Democratic Party is subject to, subordinate or subservient to the authority or control of the Constitution of the Federal Republic of Nigeria, 1999. For further meaning of the phrase "subject to" see Idehen vs. Idehen (1991) 7 SCNJ (Pt.2) 196 at 215-216; Ezenwosu vs. Ngonadi (1992) 3 SCNJ 59/72 and Olatunbosun vs. NISER (1988) 3 NWLR (Pt.80) 25 at 46.

The Federal Constitution being supreme, the provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria, including registered political parties.

Section 6(6)(a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999 reads as follows:

"6(6) The judicial powers vested in accordance with the foregoing provisions of this section:-

(a) Shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law;

(b) Shall extend to all matters between persons or between government or authority and to any person in Nigeria and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and delegations of that person;

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

"Article 6 paragraph 6.1 of the Constitution of the Party provides that, "The party shall be a democratic organization and shall pursue its objectives without regard to race, creed, ethnic affiliation, gender or age." Where the conduct of the zonal congress of the party in the South West Zone fell short of what may be classified or termed "democratic," that constituted an infraction or a violation of a fundamental principle upon which the party was founded or came into being, and further breached paragraph 2(d) of the preamble to the Constitution of the Party which is:

"(d) to establish under the law and the Constitution of the Federal Republic of Nigeria, a moral social order which will result in the spiritual regeneration of the nation and to defend the sanctity of democracy through the firm enforcement of a strict code of conduct among the members of the party and political office holders..."

The 1st and 2nd respondents had no option than to exercise their constitutional and legal rights to seek redress in a Court of law to ventilate their grievances. But that must be before a Court of competent jurisdiction. Jurisdiction must be vested in a Court of justice before the rights of the parties can be determined. See Kalu vs. Odili (1992) 6 SCNJ (Pt.1) 76 at 90.

In the case of the Federal High Court, the subject matter and the proper parties must be present to enable the Court to adjudicate over the matters in controversy. Though the Federal High Court is a superior Court of record under Section 6(5)(c) of the Constitution of the Federal Republic of Nigeria, 1999, its jurisdiction is governed by the provisions of  Section 251(1)(p),(g) and (r) of the Federal Constitution. See PDP vs. Sylvia & 2 Ors. (2012) All FWLR (Pt.637) 608; NEPA vs. Edegbero (2002) 12 SC (Pt.11) 119; Nospectco Oil & Gas Ltd. vs. Olorunnimbe (2012) 10 NWLR (Pt.1307) 11 at 157; Omotosho vs. Abdullahi (2008) 2 NWLR (Pt.1072) 526 at 547, cited by the learned silk appearing for the appellant. Where objection to the jurisdiction of the Court is raised but over-ruled, the remedy is for the aggrieved party to proceed to an appellate Court to set aside the judgment or orders.

Awa Kalu, SAN the learned silk appearing for the appellant with a team of Counsel argued that the lower Court had no jurisdiction to entertain the summons and to grant relief to the 1st and 2nd respondents. The learned silk appearing for the 1st - 2nd, and 3rd respondents submits otherwise. In S. M. Timitimi & Ors. vs. Chief Amabebe & Anor. (1953) 14 WACA 374, Coussey, J.A. held at page 376 that:

"In the first place want of jurisdiction is not to be presumed as to a Court of superior jurisdiction; nothing is out of its jurisdiction but that which specially appears to be so. On the other hand an inferior Court, such as a Native Court, is not presumed to have any jurisdiction but that which is expressly provided.

Jurisdiction, when used in the context we are considering it, means the power or authority to judge. A Court is said to be of competent jurisdiction with regard to a suit or other proceeding when it has power to hear or determine it or exercise any judicial power therein. It must be remembered that jurisdiction derives from the Crown and in Nigeria is conferred, so far as affects Native Courts, by ordinances and orders constituting those Courts and giving them powers."

Thus, whereas it may be presumed that a superior Court of record is clothed with jurisdiction, namely, the power or authority to adjudicate over a given subject matter until the contrary is proved, the same presumption does not avail an inferior Court of record since they are usually created by statute. See Nunku vs. Inspector General of Police 15 WACA 23; Onitiri vs. Benson (1960) 5 FSC 150. Inferior Courts of record do not have nor can they exercise inherent powers and sanctions of a Court of law under Section 6(6)(a) of the Constitution of the Federal Republic of Nigeria, 1999. That is the exclusive preserve of the superior Courts of record, example, the Federal High Court whose jurisdiction is now under attack. See Agu vs. Odofin (1992) 3 SCNJ 161 at 172 lines 30-36; Chief Iro Ogbu vs. Chief Ogburu Urum (1981) 4 SC 1 at 6-7; 12-13; Akilu vs. Fawehinmi (1989) 3 SCNJ 1 at 49-51 and State vs. Onagoruwa (1992) 2 SCNJ (Pt.1) 1 at 19 lines 23-29.

One must not lose sight of the fact that it is the principal, but not the ancillary claims or reliefs that confer jurisdiction on a Court of justice. See Raymond S. Dongtoe vs. Civil Service Commission, Plateau State (2001) 4 SC (Pt.1) 43 at 56; Din vs. Attorney-General of the Federation (1988) 4 NWLR (Pt.87) 147 and Bornu Radio TV vs. Basil Egbuona (1991) 2 NWLR (Pt. 171) 81 at 89.

A careful examination of questions 1-3 on the originating summons will show that they are founded on Suit No.FHC/L/CS/282/2012 decided by Abang J., on 27th day of April, 2012 and Suit No.FHC/L/CS/347/2012 of 2nd May, 2012 by Archibong, J. Both are to enforce suit No.FHC/L/CS/1248/2011 by originating summons. In Falobi vs. Falobi (1976) 1 NMLR 169 at 177-178 Fatayi-Williams, JSC (as he then was) held that "In our view, if a relief or remedy is provided for by any written law (or by the common law or in equity for that matter), that relief or remedy, if properly claimed by the party seeking it, cannot be denied to the applicant simply because he has applied for it under the wrong law. To do so would be patently unjust. Moreover, the objection to the application of the provisions of Section 12 of the Infants Law in the particular circumstances of the case in hand, while it appears to be correct, is of a purely technical nature, and the Western State Court of Appeal should not have refused to do substantial justice between the parties upon a pure technicality. (See G.B. Ollivant vs. Vanderpuye (1935) 2 WACA 369, 370." The declaratory reliefs sought in the lower Court are equitable in nature. Equity follows the law, and looks at the intent rather than the form. Equity acts in personam. In Parkin vs. Thorold (1852) 16 Beav.59, Romilly M.R. held at page 66 that:

"Courts of Equity make a distinction in all cases between that which is matter of substance and that which is matter of form; and if it finds that by insisting on the form, the substance will be defeated, it holds it to be inequitable to allow a person to insist on such form, and thereby defeat the substance."

In Snell's Equity, 31st edition, page 106 to 107 paragraph 5.24 appears the following statement of the law:

"Another aspect of the maxim is shown by equity's impatience with mere technicalities... it is also "a principle of equity that the Court does not require unnecessary formalities to be gone through" and so equity will avoid circuity of action by holding valid a transaction which although unauthorized, could lawfully have been effected by going through the two or more separate transactions."

See Sprange vs. Lee (1908) 1 Ch.424 at 430 per Neville J., Re Lord Gisborough's S.E. (1921) 2 Ch.39; Re Collard's W.T. (1961) Ch.293.

No law prohibits enforcement proceedings to be commenced by originating procedure since there are already in existence suits No.FHC/L/CS/282/2012 of 27th April, 2012 and FHC/L/CS/347/2012 of 2nd May, 2012. See Order 3 rules 6 and 7 of the Federal High Court (Civil Procedure) Rules, 2009. In Jarvis Motors (Harrow), Ltd. & Anor. vs. Carabolt & Anor. (1964) 3 All E.R. 89 Ungoed-Thomas J., (as he then was) held at page 91 lines "B"-"G" that:

"...What is not expressly forbidden is permitted."

Moreover, in Chike A. Akunnia vs. Attorney-General, Anambra State (1977) All NLR 118 Idigbe, JSC held at page 128 that "...The end result of an action, whatever its nature and no matter how framed, is that the party who approaches the Court obtains the order he seeks; the order he seeks may be declaratory or executory. It is executory where the order declares the rights of the parties before the Court and then proceeds to enjoin the defendant to act in a certain way. It is declaratory where it merely proclaims the existence of a legal relationship, but contains no specific order to be carried out by, or enforced against, the defendant. In the first class of order (executory) it is necessary to have the assistance of the law enforcement agencies to carry out the order, if the order of the Court is disregarded; there is hardly any need for this in the second class of order (declaratory) (See Zamir On Declaratory Judgment, 1962 edition, page (1))."

Were questions 1-3 in the originating summons justiciable? Yes. The learned authors of Blacks Law Dictionary, 9th edition, define "Justiciability" as "The quality or state of being appropriate or suitable for adjudication by a Court", and "Justiciable", as "(of a case or dispute) properly brought before a Court of justice; capable of being disposed of judicially." See pages 943 and 944. In holding that the subject matter in controversy is justiciable, I once again refer to Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999 which confers inherent powers and sanctions of a Court of law in this case, the Federal High Court to determine "...all matters between persons or ...authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person".

Whether Abang and Archibong J.J., were right or wrong to have entertained the originating summonses are issues to be canvassed before the Court of Appeal, Lagos Division where those appeals are without evidence to the contrary, pending. I shall be careful in this appeal not to say anything to pre-empt their outcome. In Mostyn vs. Fabrigas (1775-1802) All E.R Rep.266 Lord Mansfield, C.J. held at page 269 that:

"In every plea to the jurisdiction, you must state another jurisdiction."

In other words, it is not enough to argue that a particular Court had no jurisdiction to entertain any proceedings. Counsel has to further show which other court, authority, tribunal or person had the jurisdiction to entertain the proceedings. There is only one Federal High Court in Nigeria headed by a Chief Judge and such number of judges as may be prescribed by an Act of the National Assembly. See Section 249(1), (2)(a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999.  Section 19(1) of the Federal High Court Act Cap.F12, Laws of the Federation of Nigeria, 2004 provides that, "(1) The Court shall have and exercise jurisdiction throughout the Federation and for that purpose the whole area of the Federation shall be divided by the Chief Judge into such number of Judicial Divisions or part thereof by such name as he may think fit."

The filing of an action in a wrong Judicial Division is not fatal to its determination; it is merely an irregularity. See Ajibade vs. Theodora (1992) 6 SCNJ (Pt 1) 44. The fact that Abang and Archibong J.J., sat in the Federal High Court, Lagos Division at different times and made various orders in favour of the 1st and 2nd respondents is no good reason to argue that enforcement proceedings ought not to have been commenced before the Federal High Court, Abuja. However, if care is not taken this liberty to commence actions in any Judicial Divisions will lead to abuse of legal process. And this is precisely what is now happening, namely, Counsel/parties go "forum-shopping."

Forum-shopping is the practice of choosing the most favourable judicial division in which a claim may be heard. For example, a plaintiff may engage in forum-shopping by filing a suit in a Judicial Division with a reputation where the learned Judge awards heavy costs or damages to the successful party, or where the judge, belongs to the same religious affiliation, has a soft spot for a political party or they belong to the same social or sporting club, etc.

The causes of forum-shopping are never closed. This is not different from Judge-shopping. Judge-shopping is the practice of filing several suits or applications in a Court or a district with multiple judges hoping that one or more of the suits or applications may be assigned to a particular judge that may be favourable to the plaintiff. Subsequently the plaintiff on getting his wish is non-suited or the other suits are withdrawn and struck out.If the liberty of filing a suit or an application in any Judicial Division of the Federal High Court is not to be used as an abuse of legal process, the determinant consideration should always be "forum convenience". The Court in which an action should most appropriately be brought, considering the best interests and convenience of the parties, the witnesses, example, cost of litigation.

The opposite of this doctrine is "forum-non convenience" should be the paramount consideration. This is the doctrine that though a Court may have jurisdiction, the Judicial Division in which the suit was filed was most unsuitable hence the Court may divest itself of jurisdiction, if for the convenience of the litigants and the witnesses, it appears that the action should proceed in another forum. See Order 2 rules 3-4 of the Federal High Court (Civil Procedure) Rules, 2009.

The situation where proceedings that ought to be commenced or enforced in Lagos Judicial Division is instituted or enforced in Abuja, etc, do not consider the best interest of the parties and the witnesses. The end result is congestion of the Federal High Court, Abuja Division and subsequently the Court of Appeal, Abuja Division. In Obi vs. INEC (2007) All FWLR (Pt 378) 1716 Aderemi JSC held at page 1160 paragraph "F"-"G" that:

"...jurisdiction should be examined not when it is invoked but when the cause of action arose."

The three questions for determination and the reliefs claimed in the originating summons are to be examined to determine the cause of action. See Ogbimi vs. Ololo (1993) 7 SCNJ (Pt. 2) 44 7; Bello vs. Attorney General of Oyo State (1986) 5 NWLR (Pt 5) 828; Attorney General, Kwara State vs. Olawale (1993) 1 SCNJ 208 and Samuel Osigwe vs. PSPLS Management Consortium Ltd & 13 Ors (2009) NMLR 58 at 68 paragraph 20.

There was no prayer to enforce suit No.FHC/L/CS/347/2012 of 2nd May, 2012 on the face of the originating summons. "Enforcement" is the act or process of compelling compliance with a law, mandate, command, decree, agreement, or a judgment, etc. See Blacks Law Dictionary, 9th edition, page 608. Section 287(3) of the Constitution of the Federal Republic of Nigeria, 1999 provides as follows:

"(3) The decisions of the Federal High Court, a High Court and of all other Courts established by this constitution shall be enforced in any part of the Federation by all authorities and persons, and by other Courts of law with subordinate jurisdiction to that of the Federal High Court, a High Court and those other Courts, respectively."

The question of a Judge of a Judicial Division of the Federal High Court being subordinate to another, as contended by Awa Kalu, SAN of Counsel to the appellant, does not arise. Besides it is the nature of the proceedings and orders made by Abang and Archibong, J.J., that ought to determine the procedure to commence enforcement proceedings in the Court below. Whether the Court could grant any of the reliefs or remedies sought is entirely another issue. For a Court may have jurisdiction to adjudicate but lack the authority to grant the kind of reliefs an applicant is seeking.  In Madukolu & Ors. vs. Nkemdilim (1962) All NLR (Pt.2) 581 Bairamian, F.J., held at page 590 that:

"If the Court is competent, the proceedings are not a nullity; but they may be attacked on the ground of irregularity in the conduct of the trial; the argument will be that the irregularity was so grave as to affect the fairness of the trial and the soundness of the adjudication. It may turn out that the party complaining was to blame, or had acquiesced in the irregularity; or that it was trivial; in which case the appeal Court may not think fit to set aside the judgment. A defect in procedure is not always fatal."

I shall consider grounds five and six in the Notice of Appeal dated 21st day of January, 2013 filed by Otunba Kunle Kalejaiye, SAN on behalf of the appellant to see if the proceedings in the lower Court were so irregular that the learned Federal Judge should have declined jurisdiction or ought not to have enforced the judgments. The grounds read as follows:

"GROUND FIVE:

The learned trial Judge erred in law and violated the rights of the appellant to fair hearing guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) when he held "the two judgments in FHC/L/CS/282/2012 and FHC/L/CS/347/2012 had nullified the South West Zonal Congress of the 2nd defendant and for that reason Prince Olagunsoye Oyinlola could not have emerged as a candidate or Peoples Democratic Party National Secretary of the said illegal congress. He could not have been a nominee of the South West Zonal Congress of the 2nd defendant as the said congress was nullified and by extension, he cannot be the national Secretary of the 2nd defendant" when the appellant was appointed at the National Convention of the party on his own merit.

PARTICULARS OF ERROR IN LAW:

(1) The learned trial Judge refused, failed and neglected to consider the undisputed evidence before the Court that runs contrary to the holding.

(2) The Court was bound to consider the totality of the evidence before it before arriving at its conclusion and this was not followed in the holding of the Court quoted above.

(3) The Court misconstrued and misunderstood the evidence on records all of which pointed to the conclusions different from that quoted above.

(4) Failure to consider evidence favourable to the appellant occasioned a grave miscarriage of justice.

GROUND SIX:

Te learned trial Judge erred in law and violated the rights of fair hearing of the appellant guaranteed by Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) when he made order enforcing the judgment in FHC/L/CS/282/2012 and FHC/L/CS/347/2012 against the appellant when the appellant was not a party to the suits neither was he a judgment debtor in the two suits against whom the judgments could be enforced.

PARTICULARS OF ERROR IN LAW:

(1) The power of the Court to enforce a judgment given by any Court of law can only be against parties to the judgment.

(2) The enforcement of the judgment against the appellant is a breach of the appellant's right to fair hearing under Section  36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) when he was not a party to the judgment being enforced."

The learned silk submitted in paragraph 3.53 page 18 of the appellant's brief to wit:

"...The other judgment which was by Abang, J., simply had nothing to do with the Appellant because he was not a party thereto. How then could a trial based on such faulty foundation be fair? We urge this Honourable Court to hold on the basis of the foregoing that the totality of the proceeding in the Court below constituted a departure from fair hearing guidelines. We therefore urge that this issue be resolved in favour of the appellant."

The above submission is supported by the affidavit deposed to by Miss Abimbola Okuwoga, Executive Assistant on Litigation Matters in the Law Firm of Dr. Amaechi Nwaiwu, SAN which reads as follows:

"1. That I am informed by the said plaintiff's Counsel whom I verily believe at the place, time, date and circumstances mentioned above as follows:

(a) On the 27th of April, 2012 the Federal High Court held that its order of 16th February, 2012 in Suit No.FHC/L/CS/282/2012 had been breached in the conduct of the congress, and made consequential orders including an order nullifying the South West Zonal Congress, setting aside and nullifying "the election of officers at the National Convention of the 1st Respondent involving only those that emerged as purported delegates from South West Zonal Congress."

(b) That on the basis of this order the candidacy of the 1st Defendant was nullified as a nominee or delegate of the South West Zonal Congress. Shown to me is a copy of the Ruling and order of this Honourable Court of 27th April, 2012 in Suit No.FHC/L/CS/282/2012 is exhibited hereto as Exhibit PDP2-PDP2A."

A declaratory judgment or order is usually made when the proper parties or their privies are in the proceedings. In Ikebife Ibeneweke & Anor. vs. Peter Egbuna (1964) 1 WLR 219 (See Privy Council Decisions 1841-1973 by Olisa Chukwura S.A.N., 1980 edition, page 941 at 945) Viscount Radcliffe held that, "...generally speaking, a Court is not disposed to make declarations of right about matters of law when it is apparent that the declaration asked for concerns other interested parties who are not presently before the Court. Where the judgment is inter parties, as most judgments are, persons not formally before the Court will not be bound in law by such a declaration, but it is inconvenient and, sometimes, embarrassing for them to have such declarations pronounced in their absence. In England any difficulty of this kind can normally be avoided through the exercise of the power which the Court possesses to make representation. In Nigeria the Court can make such orders only where the person nominated has in fact been authorized for that purpose by the persons interested. This difference between the two systems could warrant some difference in their practice and lead to a rather freer use of the powers of the Court in Nigeria than in England. However that may be, there has never been any unqualified rule of practice that forbids the making of the declaration even  when some of the  persons interested in the subject of the declaration are not before the Court, see London Passenger Transport Board vs. Moscrop (1942) A.C. 332 at page 345; 58 TLR 120; (1942) 1 All E.R. 97; H.L. (E); ("except in very special circumstances") New York Life Assurance vs. Public Trustee (1924) 2 Ch.101; 40 TLR 430, C.A."

Also in Husson vs. Husson (1962) 3 All E.R.. 1056 Lyell J., held that:

"...A person cannot be held guilty of contempt in infringing an order of the Court of which he knows nothing. As a note (2) to R.S.C., Order 42, rule 7, in the ANNUAL PRACTICE (1963) Edn. at page 1004) indicates, a distinction is to be drawn between mandatory and prohibitory injunctions. An order requiring a person to do an act must be served on him. If it is not served, committal proceedings for breach of the order do not lie. If, however, the order is to restrain the doing of an act, the person restrained may be committed for breach of it if he in fact has notice of it, either by his presence in Court when it is made, or by being served with it, or notified of it by telegram or in any other way. There is evidence that the husband was in Court when the injunction restraining him from molesting the wife was made. A breach of that order has been proved and the husband will be committed to prison forth with."

Moreover, the Supreme Court has held in a plethora of authorities that no party is entitled to any relief not asked for. See Nigeria Housing Development Society vs. Mumuni (1977) 2 SC 57 at 81; Egri vs. Uperi (1974) 1 NMLR 22; Njoku vs. Eme (1973) 5 SC 293 at 300. In Mangibo vs. Oguide & Anor (2009) 1 NMLR 359 Galadima, JCA (as he then was) held at page 362 that:

"...The position of the law is that a judge does not grant that which is not sought for or prayed for. The Court is not a "Father Christmas" or a charitable organization. See Ekpenyong vs. Nyong (1975) 2 SC 71; Makanjuola vs. Balogun (1989) 3 NWLR (Pt.108) 192 and Carlen (Nig.) Ltd. vs. Unijos (1994) 1 NWLR (Pt.323) 631 at 668."

Every applicant or respondent is bound by the declaratory reliefs he seeks in an originating summons, suit or an application, etc. See Okoya vs. Santili (1990) 3 SCNJ 83 at 126-127 and Commissioner for Works, Benue State vs. Devcon Construction Co. Ltd. (1988) 3 NWLR (Pt.83) 407 at 420. That a Court acts without jurisdiction when it grants to a party a relief not asked for is settled in Ekpenyong vs. Nyong (1975) 2 SC 71 where the Supreme Court held at page 80 that: "Secondly, we think that, as the reliefs granted by the learned trial Judge were not those sought by applicants, he went beyond his jurisdiction when he purported to grant such reliefs. It is trite law that the Court is without the power to award to a claimant that which he did not claim."

The next question is whether the proceedings in the lower Court constituted an abuse of Court process.

What constitutes an abuse of Court process is dependent on the facts and circumstances of each case. The circumstances are not closed. But generally speaking, the acts may be summarized as the improper and tortious use of a legitimately issued Court process to obtain a result that is either unlawful or beyond the scope of the process. In Restatement of Torts, 1977, 2nd edition, page 682 the learned authors stated that:

"One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which  it is not designed is subject to  liability to the other for harm caused by  the abuse of process."

In Alade vs. Alemuloke (1988) 2 SC (Pt.1) 1 there were three concurrent judgments, namely, the Ibadan City No.1 Grade "A" Customary Court; the Ibadan Judicial Division of the Oyo State High Court, and the Ibadan Judicial Division of the Court of Appeal, all against the appellant. Nevertheless, the appellant, without leave, appealed to the Supreme Court. Learned Counsel to the respondents raised objection to grounds 3, 4 and 6 which involved questions of mixed law and fact but filed without leave contrary to Section 213(3) of the 1979 Constitution. The appellant's learned Counsel then applied for adjournment to regularize the position. The Supreme Court refused to grant what the Court called such an "aimless and purposeless adjournment" (page 5). Oputa, JSC asked the following question at page 5-6 of the judgment thus:

"...What was the need of granting an adjournment to an appellant to ask for leave to resuscitate issues of fact already decided by three Courts? That will be an abuse of process..."

Thus even an application for adjournment in certain circumstances, or the filing of some kind of appeals to the Supreme Court may, depending on the facts and circumstances of each case, constitute an abuse of Court process.

In considering whether stay of execution of these judgments had been granted by the Court of Appeal, Lagos Division pending their determination, I shall refer to the argument of learned Counsel in the Court of Appeal, Lagos Division which I reproduce:

"Otunba Kalejaiye: We have an affidavit of service.

Court: We have looked at the proof of service and we are satisfied that the 4th Respondent has been duly served on 20/6/12.

Otunba Kalejaiye: We have an application for stay of proceedings dated 16/4/12. We wish to withdraw same.

Oluyede: No objection.

Bello: No objection.

Court: Motion filed on 16/4/12 for stay of proceedings is hereby struck out having been withdrawn.

Otunba Kalejaiye: We have a motion filed on 18/6/12.

Court: Motion stood down to allow all process come before us.

SGD.

H.M. OGUNWUMIJU

Justice, Court of Appeal

25/6/2012."

When all the processes were before the Court, the following argument ensued in that Court:

"Same representation as already recorded.

Otunba Kalejaiye: We have an application dated 18/6/12 for stay of execution of the judgment of the trial Court delivered on 27/1/12 subject of this appeal. We are asking for stay of contempt proceedings arising from the judgment aforesaid. We filed 10 paragraphs affidavit and several exhibits. I move in terms of the application.

Oluyede: We oppose the application. We filed a 13 paragraphs affidavit today. We attached 6 exhibits. We urge the Court to dismiss the application as incompetent. The prayers are vague and ambiguous. The appeal is the foundation of this application, the orders sought do not relate to the appeal on which this motion is brought. Paragraph 7 of the affidavit in support of the application shows that there are different suits involving the parties.

The application lacks merit since it relates to an appeal that does not raise any recondite issue or issue of jurisdiction. The notice of appeal is exhibited to the application. The applicants are serial contemnors. Exhibit "A2" is the judgment of the Court. See paragraph 8 of the counter affidavit shows a list of contemptuous utterances by the applicants. They must not be allowed to make the Court a toothless bulldog. I urge the Court to dismiss the application.

Bello: We do not oppose this application. I urge the Court to grant this application.

Otunba Kalejaiye: We submit that the prayers are not vague and ambiguous.

They are concise and encompasses the peculiar circumstance of this case. Paragraph 8(v) of the counter affidavit where they admitted that 3 different suits were instituted to enforce the judgment delivered on 27/1/12. To date they are still filing actions. The only way to get an efficacious order is to take into consideration the peculiar circumstances of this case. Paragraph 8(iv) & (v) of the counter affidavit and Exhibit "D" attached to the affidavit in support of this application page 1 states that Suit FHC/L/CS/282/2012 was filed to enforce FHC/L/CS/1248/11. The law is clear that all the application for stay has to show exceptional circumstances. The law has recognized a protection of the res and a bonafide complaint on jurisdiction as exceptional circumstances. None of the parties is an agency of the Federal Government. They brought an action against the IG but have no special claim against him. The Federal High Court has no jurisdiction in this matter. See PDP vs. Sylvia Consolidated Appeals SC.28 and SC.09 delivered on 20/4/12, Olunloyo vs. Adeniran (2001) 14 NWLR (Pt.734) page 699 at 714-715.

A judgment ex facie null ought not to be enforced and is a good ground to stay. I urge the Court to take into consideration the peculiar circumstances of this matter. We urge the Court to grant a stay.

Court: Ruling stood down.

SGD.  
H.M. OGUNWUMIJU

Justice, Court of Appeal

25/6/12."

The proceedings before the Court of Appeal, Lagos Division shows in clear terms that numerous suits were filed to enforce the judgment in suit No. FHC/L/CS/1248/2011. How did their Lordships resolve the impasse?

Their Lordships in the Court of Appeal, Lagos Division ruled as follows:

"Court: We have considered all processes filed in support of this application and all the arguments of learned Counsel on both sides. The applicants have argued that because of the plethora of cases that are an offshoot of the first case and in which there are contempt proceedings, they constitute exceptional circumstances to warrant a grant of the stay of execution of the judgment of the trial Court and all other contempt proceedings emanating from other suits filed by the parties. Learned Respondent Counsel had tried to convince us that the appellants are serial contemnors who should not have our ears. We have considered the arguments. It is trite that the principles that should guide Court in application for stay of execution have been reiterated in many decisions of this Court. Basically the Court of appeal should not deprive the successful litigant of the fruit of his judgment unless there are strong and special circumstances to do so. See UBN vs. Odusote (1994) 3 NWLR (Pt.331) page 129 at 152; Okafor vs. Nnanfe (1987) 18 NSCC 1195-1199; (1987) 4 NWLR (Pt.64) page 129; NNPC vs. Famfa Oil Ltd. (2009) 12 NWLR (Pt.1156) page 462 at 479-481. The factors to be considered in granting a stay depends on the circumstances of each case. This discretion must take into consideration the competing rights of the parties to justice. Thus an unsuccessful litigant must show exceptional and special circumstance seriously pleading and showing that the balance of justice obviously weights in favour of stay.

The ours (sic) is on the applicant to show us that a refusal would be unjust and inequitable. Let us took at the circumstances of this case. The applicant's have appealed against the judgment delivered on 27/1/2011 by the trial Court. The appeal has been entered in this Court. The main ground of appeal is that the trial Court has no jurisdiction to hear the case because none of the parties is an agency of the Federal Government. The Respondents have also filed new actions based on the judgment of 27/1/11. The peculiar facts of this application not seriously disputed by the Respondents is that if stay is not granted, the applicants may face contempt proceedings at the trial Court. In fact learned Respondent Counsel made the fact that the applicants are serial contemnors an issue while opposing this application we quite appreciate the sentiments relating to the protection of the dignity and power of the Court as expressed by Respondent Counsel. However we shall not be ruled by our emotions in this matter. We think prudence and the balance of justice weighs heavily in favour of the applicants who may find themselves behind bars if no stay is granted. We are compelled to this view because the applicants have so far made every to ensure the hearing of the appeal. The argument that the order is nebulous or vague also has to be considered in the context of the peculiar circumstances of this case. Peradventure the first judgment of the trial Court is set aside, would all other judgments predicated on it not fall like a pack of cards? There is the issue of the jurisdiction of the Federal High Court to be considered on appeal.

We are firmly convinced that the balance of justice lies in the stay being granted. The res in this case cannot be destroyed by either party but the liberty of any of the applicants if taken by contempt proceedings cannot be easily restored. An order of stay of execution or further execution of the judgment and orders of Hon. Justice C.E. Archibong of the Federal High Court, Lagos in Suit No.FHC/L/CS/1248/2011 delivered on 27/1/2011 is hereby made. All contempt proceedings shall stay to abide the outcome of the appeal in the said suit. Order as prayed."

My understanding of the ruling of the Court of Appeal, Lagos Division in motion No.CA/L/38/M/2012 of 25th day of June, 2012 is that since all the numerous suits filed by the respondents were to enforce the judgment in suit No.FHC/L/CS/1248/2011, and there is a challenge to the jurisdiction of the Federal High Court, Lagos to entertain that suit, an order of stay of execution, inclusive of all other contempt proceedings founded on that judgment were stayed pending appeal. The stay of execution affected suit No. FHC/L/CS/282/2012 of 27th April, 2012, suit No.FHC/L/CS/347/2012 of 2nd May, 2012 and suit No.FHC/L/CS/1248/2011 of 27th January, 2011. Surprisingly, his Lordship held in the lower Court as follows:

"On the whole the two preliminary objections are dismissed I hold that this court has jurisdiction to entertain the plaintiffs suit.

On the merit of the plaintiff's case. Having carefully considered all the processes filed and the submissions of learned counsel the issue that calls for determination are two as formulated by the learned Silk for the plaintiffs. These issues are:

1. The propriety on otherwise of the candidacy of the 1st defendant for the position of National Secretary of the 2nd defendant at the National convention of the 2nd defendant in March, 2012 and his consequent election to that position in view of the order and judgment of the Federal High Court Lagos made respectively on the 27th April, 2012 in suit No FHC/L/CS/282/2012 and 2nd May, 2012 in Suit No FHC/L/CS/347/2012.

2. Whether in the circumstance of the above mentioned valid and subsisting court orders and the defendant's disobedience to the said orders he (the 1st defendant) must not vacate the office of National Secretary of the 2nd defendant.

The orders in suit No: FHC/L/CS/282/2012 and FHC/L/CS/347/2012 are very clear. The effect among other things is the nullification of the South -West Zonal Congress on the defendant which purportedly produced the 1st defendant as the candidate for the position of National Secretary of Peoples Democratic Party Zoned to the South-West, which was conducted in breach of the judgment in Suit No. FHC/L/CS/1248/2011 of 27th January, 2011.

The two judgments in FHC/L/CS/282/2012 and FHC/L/CS/347/2012 had nullified the South-West Zonal Congress of the 2nd defendant and for that reason Prince Olagunsaye Oyinyola could not have emerged as a candidate in Peoples’ Democratic Party National Secretary at the said illegal congress. He could not have been a nominee of the South-West Zonal congress of the 2nd defendant as the said congress was nullified and by extension he cannot be the National Secretary of the 2nd defendant.

An Order of court must be obeyed whether valid or otherwise until set aside. By allowing the 1st defendant to occupy the office of the National Secretary of the 2nd defendant, the defendant herein acted in violation of the orders in the two suits mentioned above i.e. the orders of 27th April, 2012 and 2nd May, 2013 respectively. Their conduct amounts to criminal contempt and they may be liable for committal to prison. It should be emphasized that an act of disobedience to an order of court renders those in disobedience to sanctions by the court and it also renders any step taken by those in disobedience invalid.

In the instant case the various letters written by the 1st defendant seeking to override the orders mentioned above constitute criminal contempt and interference with the admission of justice by his flagrant disobedience to the orders of 27th April; 2012 and 2nd May, 2012 made in FGC/L/CS/282/2012 and FHC/L/CS/347/2012 respectively the 1st defendant is not fit to continue in the office of National Secretary of the 2nd defendant and is not worthy of recognition by the 3rd defendant.  Furthermore, all actions by the 2nd defendant where the 1st defendant serve as National Secretary may be affected by the continued stay of the 1st defendant in the office of the National Secretary.

All the submissions by the defendants do not address the issues in this originating summons.

From the above findings all the three questions posed for determination are answered in the affirmative. In the same vein the three declaratory orders in reliefs 1-3 and the orders sought in reliefs 4 and 5 are granted as prayed.

That is the judgment of this Court. "

His Lordship came to the following conclusion at page 630 lines 3-15 of the printed records:

"I have considered the submissions of learned counsel on this point. From the processes filed particularly Exhibit "D" attached to the 1st defendant's preliminary objection, it is clear that the order of stay of execution was in respect of the judgment in suit No.FHC/L/CS/1248/2011 which suit was different from suit No.FHC/L/CS/282/2012 and FHC/L/CS/347/2012 in which judgment was before given the ruling of the Court of appeal. It is therefore my considered opinion that the two decisions in suit Nos.FHC/L/CS/282/2012 and FHC/L/CS/347/2017 are not within the contemplation of the order/ruling of the Court of appeal of 25th June, 2012. For this reason I hold that the plaintiff's (sic) does not constitute an abuse of court process. The objection on this point is overruled. "

In my opinion, for the 1st and 2nd respondents to institute multiple applications to enforce a single judgment is a gross abuse of Court process. The consequential orders made by his Lordship in the lower Court were made without jurisdiction. In Frederick Obayagbona & Anor vs. D. Obazee & Anor. (1972) 5 SC 247 the Supreme Court held per Sowemimo, JSC (as he then was) at page 254-255 that:

"...All the "consequential orders" made by the learned trial Judge were not part of the claims before him and they do not necessarily follow as a result - thereof or constitute an inference. A consequential order therefore made subsequent to a judgment which detracts from the judgment or contains extraneous matters is not an order made within jurisdiction because at that stage, having determined the rights of the parties, by giving judgment for plaintiffs as claimed the Judge has become functus officio except for any act permitted by law or rules of Court. We therefore upheld the contention of Appellant's Counsel on these grounds."

In Okorodudu & Anor. vs. Okoromadu & Anor. (1977)11 NSCC 105, having failed to secure amendments to their pleadings in suit No.W/8/73, the plaintiffs proceeded to achieve what they had failed to obtain by amendments by filing therein suit No.W/117/73 against the defendants while suit No.W8/73 was  still pending in that Court. The Supreme Court held at page 109 of the judgment thus:

"There is one aspect of this case which calls for comment. It concerns an abuse of judicial process. Bearing in mind that it has been the practice of this Court not to exercise its discretion to take points suo motu unless it thinks in the circumstances of the case that justice demands it: Odiase & Anor. vs. Agho & Ors. (1972) 1 All NLR (Pt.1) 170, we think an abuse of judicial process calls for the exercise of our discretion... We consider the conduct of the plaintiffs in this regard as a flagrant abuse of judicial process of the Court."

To crown it all, Order 7 rule 11 of the Court of Appeal Rules, 2011 provides that, "An appeal shall be deemed to have been brought when the notice of appeal has been filed in the registry of the Court below." Order 4 rule 10 of the Rules further provides that "An appeal shall be deemed to have been entered in the Court when the record of proceedings in the Court below has been received in the Registry of the Court." When an appeal has been filed in the Court of Appeal, Lagos and the appeal has been entered, Order 4 rule 11 of the Rules reads as follows:

"11. After an appeal has been entered and until it has been finally disposed of, the Court shall be seized of the whole of the proceedings as between the parties thereto, except as may be otherwise provided in these Rules, every application therein shall be made to the Court and not to the Court below, but any application may be filed in the Court below for transmission to the Court."

In Vaswani Trading Company vs. Savalakh & Company (1972) 12 SC 77 where Coker, JSC held at page 82 that:

"...All rules governing stay of actions or proceedings, stay of execution of judgments or orders and the like, are but corollaries of this general principle and seek to establish no other criteria than that the Court, and in particular the Court of Appeal, should at all times be master of the situation and that at no stage of the entire proceedings is one litigant allowed at the expense of the other or of the Court to assume that role. In Sanni vs. Otesanya (supra), in circumstances not dissimilar, this Court ordered the setting aside of the Writ of Possession already executed and returned the parties to the original status quo pending the determination of the substantive motion for stay of execution..."

The Supreme Court further referred to Section 24 of the Supreme Court Act which provided that the filing of Notice of Appeal per se would not operate as a stay of execution. Nevertheless, Coker, JSC held at page 84 to 85 of the judgment as follows:

";...but it is equally correct to point out that the section does not prescribe in favour of any execution being carried out during the pendency of an appeal. Indeed, by its provisions it postulates that during the pendency of an appeal the Supreme Court has got the jurisdiction to accede to an application for a stay of execution conditionally or otherwise. The section does not give any licence, directly or indirectly, for the issue and execution of any processes which may ultimately be offensive. The section simply de-limite the scope of the statutory position of the parties after the filing of a Notice of Appeal. Clearly therefore to employ this section as a spring-board for the issue and process of an inopportune execution would be an abuse of the process of the Court..."

Every trial Court or an appellate Court has the duty to put a stop to an abuse of legal process. In West Minister Bank, Limited & Anor. Vs. Edwards & Anor. (1942) A.C. 529 Viscount Simon L.C. held at pages 533-534 as follows:

"Moreover, the question was not in issue. There are, of course, cases in which a Court should itself take an objection of its own motion, even though the point is not raised by any of the parties before it. A Court is not required to entertain a case which is brought before it only by collusion or other abuse of process... Again, a Court not only may, but should, take objection where the absence of jurisdiction is apparent on the face of the proceedings. Thus, an appellate Court not only may, but must, take the objection that it has no jurisdiction to hear an appeal if it is apparent that no right of appeal exists. Vaughan Williams L.J. in Norwich Corporation vs. Norwich Electric Tramways Co., Ld. (3), formulated the proposition thus: "If the Court in any case is itself satisfied that it has no jurisdiction to entertain the application made, it is its duty, in my opinion, to give effect to that view, taking, if necessary, the initiative upon itself," and as that case shows, this rule applies even though  the objection might have been taken but was not, by the Court below."

Lord Wright also held at pages 536-537 of the judgment as follows:

"Now, it is clear that a Court is not only entitled but bound to put an end to proceedings if at any stage and by any means it becomes manifest that they are incompetent. It can do so on its own initiative, even though the parties have consented to the irregularity, because, as Willes J. said in City of London Corporation vs. Cox (3), in the course of giving the answers of the judges to this House, "mere acquiescence does not give jurisdiction." In Farquharson vs. Morgan (4) Lord Halsbury states that principle thus: "It has been long settled that, where an objection to the jurisdiction of an inferior Court appears on the face of the proceedings, it is immaterial by what means and by whom the Court is informed of such objection. The Court must protect the prerogative of the Crown and the due course of the administration of justice by prohibiting the inferior Court from proceeding in matters as to which it is apparent that it has no jurisdiction." That was a case of prohibition, but I think the general principle applies equally to the duty of the Court to take the objection when it becomes apparent in the course of proceedings before it in an appeal. This was the view of a Divisional Court, composed of Bray and Lush J.J., in Simpson vs. Crowle (1) and I agree with it. These two authorities last cited were County Court cases, but it is clear that the same principle applies on appeals from the High Court or from any Court. The broad principle is stated and illustrated by Vaughan Williams L.J. in Norwich Corporation vs. Norwich Electric Tramways Co., Ld. (2), cited by the Lord Chancellor, where it was seen on looking at the record and the Act under which the proceedings were taken that the Court's jurisdiction had been ousted. That was a case of what Willes J. (3) called a patent, as distinct from a suggested, defect. In the latter case the defect is not apparent from the record, but is something collateral or extrinsic."

The Court of Appeal, Lagos Division had ruled that the appeals against suit No.FHC/L/CS/1248/2011 of 27th January, 2011 were still pending, hence the need to grant a stay of execution. The respondents ought to have attached credible evidence to show when the appellants' withdraw the Notices of Appeal paving way for them to apply to enforce these judgments. There is no such evidence before me.

I shall lastly consider if there was a breach of fair hearing. The law is that, vested and accrued rights of a person cannot be taken away by anybody, authority or Court without prior hearing. See Oyeyemi vs. Commissioner For Local Government, Kwara State & Ors. (1992) 2 SCNJ (Pt.2) 266 at 278-279; Ojo vs. Governor of Oyo State (1989) 1 NWLR (Pt.95) 1; Wilson vs. Attorney-General of Bendel State (1985) 1 NWLR (Pt.4) 574. The enforcement of suit No.FHC/L/CS/282/2012 of 27th April, 2012 infringed the appellant's right to fair hearing under Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999. To set aside the rights acquired at the Zonal Congress of the Party, the appellant should have been given a hearing.

I shall now consider what order to make to meet the justice of the case. I shall refer to Section 15 of the Court of Appeal Act, 2004 which reads as follows:

"15. The Court of Appeal, may from time to time, make any order necessary for determining the real question in controversy in the appeal, ... and, generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as Court of first instance ..."

Where abuse of legal or Court processes has been established, the remedy is to allow the appeal. See Alade vs. Alemuloke (supra) at page 23. And to ensure that such proceedings are no longer employed to infringe upon the rights and liberty of the citizen, I shall dismiss the enforcement proceedings in the lower Court. The appeal is allowed. The proceedings in the lower Court are dismissed. The appellant is entitled to N50,000.00 cost against the 1st and 2nd respondents.

"EDITOR'S   NOTE-   JUDGMENT OF SANUSI, J.C.A. AND AKOMOLAFE-WILSON J.C.A. NOT AVAILABLE IN THIS VERSION. UPDATED VERSION   OF THE  JUDGMENT WILL  BE  PUBLISHED  AS   SOON   AS   THE OUTSTANDING CONTRIBUTIONS  ARE  AVAILABLE."