

J. Feyi

**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS**

**SUIT NO: FHC/L/CS/1172/2024**

**BETWEEN:**

**BARBICAN CAPITAL LIMITED ) PLAINTIFF**

**AND**

**FBN HOLDINGS PLC ) DEFENDANT**

**AND**

**CENTRAL BANK OF NIGERIA ) 3<sup>RD</sup> PARTY JOINED BY ORDER OF  
COURT MADE ON 17/7/2024**

**3<sup>RD</sup> PARTY AFFIDAVIT IN REACTION TO THE 3<sup>RD</sup> PARTY NOTICE**

**I, ORJIAKOR NWABUEZE**, Male, Christian, Nigeria Citizen of Central Bank of Nigeria of Customs Street, Tinubu Square, Lagos, do make oath and state as follows:

1. I am the Deputy Director, Banking Supervision Department of Central Bank of Nigeria.
2. I have the consent and authority of the 3<sup>rd</sup> party, Central Bank of Nigeria, hereinafter referred to as "CBN" to depose to this affidavit.
3. By virtue of my aforesaid position, I am very conversant with the facts of this case.
4. I have seen and read the Third-Party Notice issued and served on CBN at the behest of the Defendant.
5. I know as a fact that by the said 3<sup>rd</sup> Party Notice, two issues have been submitted for the consideration of this court to wit:
  - (i) Whether the approval and/or verification by the Central Bank of Nigeria is a mandatory and lawful requirement for the Plaintiff to validly acquire and retain shareholding of 5% and above in the Defendant.

- (ii) Whether the Plaintiff and the Defendant are bound by the results of the shareholding verification process carried out by the Central Bank of Nigeria as communicated to the Defendant via the Central Bank of Nigeria's letter dated 29<sup>th</sup> January, 2024.

6. On the determination of the issues posed, the Defendant sought for:

***"A declaration that the Defendant is duty bound to act in accordance with the verification process carried out by the Central Bank of Nigeria as communicated to the Defendant via the Central Bank of Nigeria's letter dated 29<sup>th</sup> January, 2024 as its statutory regulation."***

7. In reaction to the issues and declaration in the 3<sup>rd</sup> party notice, I state that, CBN is a statutory body created under the laws of the Federal Republic of Nigeria and the extant law is the CBN Act of 2007.

8. The Central Bank of Nigeria (CBN) also has and exercises statutory powers and responsibilities as vested in it by statutes particularly, the Banks and Other Financial Institutions Act, 2020.

9. In the exercise of its statutory functions and responsibilities, CBN also made regulations and guidelines.

10. I know as a fact that, in the exercise of its statutory responsibilities, CBN has been vested with regulatory and supervisory powers over banks and other financial institutions as well as specialized banks in Nigeria.

11. I know as a fact that, part of the core objects/mandates of the Central Bank of Nigeria is to ensure monetary and price stability as well as to promote a sound financial system in Nigeria.

12. I know as a fact that the Defendant herein is a commercial bank registered as a public company and carrying on business of banking under Nigerian laws and subject to the supervisory and regulatory powers of the CBN.

13. Being a public company, the Defendant's shares are open to public for subscription either by way of public offer or through investment or the capital market.

14. I know as fact that the Plaintiff company is a shareholder of the Defendant.

15. As part of its regulatory and supervisory mandate over the Defendant, the CBN at all times regulates the shareholding structure of the Defendant and all other

commercial banks to ensure compliance with all relevant laws and maintenance of sound financial environment in the banking sector.

16. I know as a fact that while any entity has the right to buy into the shares of any bank whose shares are publicly quoted, the CBN has a statutory duty to regulate the manner of shareholding of all banks in the interest of the investing public, the banks and the economy as a whole.
17. The main dispute between the parties is about the quantum of Defendant's share owned by the Plaintiff.
18. The CBN is obligated in the exercise of its regulatory and supervisory powers over banks and other financial institutions and specialized banks in Nigeria (which include the Defendant in this suit: First Bank Holding Plc) to:
  - (a) Ensure responsible conduct in the banking and financial system and institutions;
  - (b) Protect all interest of consumers of products and services of banks, specialized banks and other financial institutions;
  - (c) Promote competition in the Nigerian financial system; and
  - (d) Engender and sustain public trust and confidence in the use of financial services in Nigeria.
19. In the exercise of its regulatory and supervisory powers, the CBN at all times ensures the safety of financial institutions, shareholders and depositors' funds so as not to allow any crisis within the banking and financial system in Nigeria.
20. I know as a fact that, in the exercise of its regulatory and supervisory powers over banks and other financial institution, Companies and Allied Matters Act is not relevant to the CBN.
21. One of the several mechanisms put in place by the CBN is that, it must ensure probity, openness and correctness in terms of figures relating to shareholdings of banks, particularly when a shareholder is acquiring significant shareholding.
22. It is necessary to ensure that a shareholder who is acquiring significant shareholding in truth has genuine shares to vest him with the status of a significant shareholder.
23. In furtherance of its resolve to ensure openness and clarity with regards to the acquisition of significant shareholding in a bank, CBN made its guideline of May

2014, titled "Central Bank of Nigeria Code of Corporate Governance For Banks And Discount Houses in Nigeria", which was duly circulated to all banks and discount houses by CBN's letter of 16<sup>th</sup> May, 2014. Attached hereto as "**Exhibit A**" is a copy of the aforesaid letter with the attached guidelines.

24. I know as a fact that, by relevant legislation/regulation, such as BOFIA, 2020, a significant shareholding is such which entails 5% or more of the shares of a bank.

25. By express provision of the guidelines mentioned above, no investor can acquire equity of 5% and above without the prior approval of CBN.

26. Paragraph 3.2.1 of the aforesaid guideline is to the following effect:

***"An equity holding of 5% and above by any investor shall be subject to CBN's prior approval. Where such shares are acquired through the capital market, the bank shall apply for a no objection letter from the CBN immediately after the acquisition."***

27. Further, Central Bank of Nigeria (CBN) issued a guideline titled Corporate Governance Guideline, For Commercial, Merchant, Non-interest And Payment Service Banks in Nigeria made July 13, 2023 with effective date of 1<sup>st</sup> August, 2023 with provisions in its paragraph 20.2(b) and (c) to wit:

***"(b) CBN's prior approval and No Objection shall be sought and obtained before any acquisition of shares of a bank (including through the capital market), that would result in equity holding of five percent (5%) and above, by any investor."***

***(c) Where the CBN has an objection on any acquisition as stated in Section 20.2b above, notice of the objection shall be communicated to the bank, and the bank shall notify such investor(s) within forty-eight (48) hours."***

28. By the aforesaid guideline of 13<sup>th</sup> July, 2023, shareholders of a bank with up to 5% of shareholding must seek for the approval of the CBN to such holding. Attached hereto as "**Exhibit B**" is a copy of the said guideline with the forwarding letter thereto.

29. I also know that, by other relevant statutory laws, particularly the Banks and Other Financial Act, BOFIA 2020, no bank, except with the prior written consent

of the Governor, can enter into an agreement or arrangement which results in the transfer of a significant shareholding in the bank.

30. I know as a fact that, for any shareholder to acquire significant shareholding in the bank, the Governor of CBN must give his consent or approval for the shareholding.
31. One of the mechanisms put in place by the CBN as a supervisory and regulatory authority of banks is to verify the authenticity of the claim of acquisition of significant shareholding before the Governor gives his consent/approval to such holding.
32. The process that will lead to the satisfaction of the CBN regarding claim of significant shareholding entails the concerned shareholders, the bank and CBN to verify the claim of acquisition of the significant shareholding.
33. The process of verifying the acquisition of significant shareholding also entails the shareholder who is making claim of acquisition of significant shareholding showing and demonstrating that he/it actually purchased the shares.
34. Once the investor claiming acquisition of significant shareholding demonstrates to the satisfaction of the CBN regarding its acquisition, the necessary approval/consent is given to the verified shares.
35. I know as a fact that, a significant shareholder can only lay claim to shares which it has established to the CBN that they actually belong to it.
36. I know as a fact that, the CBN/Governor will not grant his consent/approval to a significant shareholding where the shareholder has not established the purchase or rightful ownership of those shares.
37. I know as a fact that, significant shares whose purchase have not been established to the CBN as the regulator by the shareholder claiming ownership, cannot be reckoned with as belonging to the shareholder until those shares are verified and approved by the CBN/Governor.
38. The Plaintiff has contended that it has a shareholding portfolio of 5,386,397,202 shares of the Defendant (FBN Holding Co.) which holding is more than 5% of the shareholding of the Defendant, thereby making it a significant shareholder.
39. The claim of the Plaintiff to holding shares more than 5% of the shares of the Defendant has made it imperative for the CBN, as the supervisory and regulatory body, to look into the claim and grant necessary approval and consent to the shareholdings.

40. By a letter of 10<sup>th</sup> July, 2023, Defendant (FBN Holdings Plc) wrote to the 3<sup>rd</sup> party to notify it of Plaintiff's claim of acquiring 13.3% of shareholdings of FBN Plc and requested a No Objection letter to the acquisition of the 13.3% shares claimed by the Plaintiff herein. Attached hereto as "**Exhibit C**" is a copy of the aforesaid letter.
41. By its letter of 25<sup>th</sup> July, 2023, 3<sup>rd</sup> Party requested from the Defendant herein information to enable it consider request for its No Objection to the acquisition of the Plaintiff. Attached hereto as "**Exhibit D**" is a copy of the said letter.
42. Defendant in furtherance of the demand made by the 3<sup>rd</sup> party for relevant information, caused a letter dated 25<sup>th</sup> July, 2023 to be written to Mr. Obafemi Otudeko, Managing Director of Honeywell Group Ltd., the parent company of the Plaintiff herein passing across information requested by the 3<sup>rd</sup> party to enable it consider the request regarding claim of substantial shareholding in the Defendant. Attached hereto as "**Exhibit E**" is a copy of the said letter.
43. By its letter of 27<sup>th</sup> July, 2023, Honeywell Group forwarded part of the documents/information requested to the Defendant for the attention of the 3<sup>rd</sup> party. Attached hereto as "**Exhibit F**" is a copy of the aforesaid letter, shorn of the attachments.
44. Having forwarded the documents to the 3<sup>rd</sup> party, the CBN started the verification of the shareholding to actually know whether the Plaintiff owns the shares claimed to enable it decide if consent/approval would be granted to the claim of the Plaintiff that it owned the shares amounting to significant shareholding.
45. The Plaintiff through its parent company, Honeywell Group Ltd., actively participated in the verification exercise with a view to getting the approval/consent of the CBN to its significant holding.
46. For the verification exercise, Plaintiff through its parent company submitted claim of 5,450,999,924 shares of the Defendant's shares and wanted 3<sup>rd</sup> party consent/approval for the shareholding.
47. The 3<sup>rd</sup> party in exercise of its powers as regulatory and supervisory authority and before granting the consent/approval required needed to satisfy itself that Plaintiff and the group are indeed owners of the shares put forward.
48. The 3<sup>rd</sup> party demanded from the Plaintiff and its group evidence of purchase of shares being claimed by the Plaintiff with a view to verifying the shares and

satisfying itself that the shares were actually purchased or that they belong to the Plaintiff and its Honeywell Group Ltd.

49. The verification exercise to be carried out by the CBN is to ensure compliance with the relevant statutory provisions on acquisition of shares and to ensure transparency. Attached hereto as **"Exhibit G"** is CBN's "Guidelines for Capital Verification" showing the procedure for such verification and the 3<sup>rd</sup> party (CBN) acted in line with the prescriptions of the guidelines.
50. In the course of the verification exercise, Plaintiff and its group could only provide evidence for purchase of 3,110,400,619 shares representing 8.67% of the shares of the Defendant and could not provide any evidence of purchase of the remaining 2,340,599,305 shares representing 6.52% of the shares of the Defendant being claimed by the Plaintiff and its group.
51. Whilst the verification of shares was ongoing, 3<sup>rd</sup> party having realized that necessary documents were not supplied or provided, wrote the letter of 5<sup>th</sup> January, 2024 to the Defendant notifying it of some documents/information not provided to aid the verification exercise. Attached hereto as **"Exhibit H"** is a copy of the aforesaid letter.
52. The 3<sup>rd</sup> party instructed Plaintiff and its group to provide materials/evidence to prove its purchase/ownership of the outstanding 2,340,599,305 shares to enable it verify their authenticity. The 3<sup>rd</sup> party is still expecting the Plaintiff and its group to come back with relevant materials to enable the 3<sup>rd</sup> party take a decision to grant consent/approval or not to the outstanding shares.
53. In the meantime, 3<sup>rd</sup> party by its letter of 29<sup>th</sup> January, 2024 communicated the Defendant about the outcome of the verification exercise conducted so far and specifically that only 3,110,400,619 shares (representing 8.67% of Defendant's total shares) of the total volume of shares being claimed by the Plaintiff and its group could be verified while 2,340,599,305 shares (representing 6.52% shares of Defendant's total share capital) could not be verified. Attached hereto as **"Exhibit I"** is a copy of the said letter.
54. The 3<sup>rd</sup> party (CBN) being the regulatory and supervisory authority, its decision must be given effect to by the Defendant.
55. Defendant by its letter of 28<sup>th</sup> May, 2024 communicated the Plaintiff's counsel to convey the position of the 3<sup>rd</sup> party on the verification exercise to the Plaintiff. Attached hereto as **"Exhibit J"** is a copy of the aforesaid letter.
56. Plaintiff has not challenged the outcome of the verification exercise carried out by the 3<sup>rd</sup> party as the supervisory and regulatory body.

57. In so far as the outstanding shares, being claimed by the Plaintiff, to the tune of 2,340,599,305 shares (6.52%) remain unverified, Plaintiff cannot claim any right/benefit on those shares.

58. I further know as a fact that:

- i) The Plaintiff and/or its representatives willingly and fully participated in the shares verification exercise carried out by the CBN to verify the claimed significant shareholdings by the Plaintiff;
- ii) The Plaintiff did not at any time challenge the powers of the CBN to conduct the verification exercise because it has always been aware of the CBN's statutory mandate to conduct such verifications with a view to granting approval/consent to such acquisition;
- iii) The Plaintiff deliberately concealed from this Honourable Court the fact of the verification exercise and the decision of the CBN with respect to the Plaintiff's claimed shareholdings in filing this suit;
- iv) The Plaintiff was at all times prior to the filing of this suit aware that except and until its claimed shareholdings are verified by the CBN and approval/consent is granted, it cannot lay claim to the unverified shares or the benefit and/or interest accruable therefrom; and
- v) The Plaintiff filed this suit deliberately to evade its obligation to submit to the regulatory powers of the CBN in respect of the unverified shares being claimed by the Plaintiff.

59. Plaintiff, like any other investors/shareholders, must operate within the permissible sphere prescribed by the 3<sup>rd</sup> party in giving effect to its obligation and responsibilities as enjoined by laws, regulations and guidelines.

60. I make this affidavit in good faith and in accordance with the Oaths Act.

DEPONENT

Sworn to at the Federal High Court Registry, Lagos.

This ..... day of ..... 2024.

BEFORE ME

COMMISSIONER FOR OATHS

*Official*

**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS**

**SUIT NO: FHC/L/CS/1172/2024**

**BETWEEN:**

**BARBICAN CAPITAL LIMITED ) PLAINTIFF**

**AND**

**FBN HOLDINGS PLC ) DEFENDANT**

**AND**

**CENTRAL BANK OF NIGERIA ) 3<sup>RD</sup> PARTY JOINED BY ORDER OF  
COURT MADE ON 17/7/2024**

**WRITTEN ADDRESS IN SUPPORT OF THIRD PARTY AFFIDAVIT**

**1.0 INTRODUCTION AND FACTS LEADING TO THIS ADDRESS**

1.1 The Plaintiff sued the Defendant herein by an originating Summons submitting the following questions for your lordship's determination:

***"QUESTIONS FOR DETERMINATION***

- 1. Having regard to the clear provisions of Section 105 of the Companies and Allied Matters Act, 2020, whether the Plaintiff is not a member of the defendant company by virtue of its shareholding in the defendant.***
- 2. Considering the express provisions of Sections 109, 110(1)(b) and 116 of the Companies and Allied Matters Act, 2020, whether the number of shares contained/entered in defendant's register of members/records of members relating to the plaintiff is not prima facie proof of the number of shares held by the Plaintiff in the defendant.***
- 3. Having regard to the provisions of sections 42, 46(1), 171 and 172 of the Companies and Allied Matters Act, 2020, the Plaintiff's record of shares kept with Central***

***Securities Clearing System Plc (CSCS) and the provisions of the defendant's articles of association, whether the plaintiff is not entitled to all the benefits of membership in respect all shares recorded as owned by it in the defendant company as reflected in the dematerialized records of the Central Securities Clearing System Plc (CSCS).***

- 4. In view of the provisions of sections 138 and 139 of the Companies and Allied Matters Act, 2020, whether the shares held by the plaintiff in the defendants are not the plaintiff's personal property, with all the rights and privileges appertaining thereto.***
- 5. Upon a combined reading of section 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 139 of the Companies and Allied Matters Act, 2020, whether the plaintiff's shareholding in the defendant can be altered, dissipated, reduced, diminished or erroneously stated in a manner inconsistent with the Plaintiff's right to own property."***

1.2 Upon the determination of these questions, the Plaintiff is seeking the grant of the following reliefs:

- "1. A declaration, that the Plaintiff is a member of the Defendant company by virtue of its shareholding in the Defendant.***
- 2. A declaration, that the number of shares contained/entered in defendant's register of members/records of members relating to the Plaintiff, is representative of the number of shares held by the Plaintiff in the Defendant.***
- 3. A declaration, that the Plaintiff's shareholding in the Defendant stands at 5,386,397,202 (as at 1<sup>st</sup> July 2024) reflected in the dematerialized records of the Central Securities Clearing System Plc (CSCS).***
- 4. A declaration, that the plaintiff is entitled to all the benefits of membership in respect all shares recorded as owned by it in the defendant company as reflected in the***

***dematerialized records of the Central Securities Clearing System Plc (CSCS).***

- 5. A declaration, that all the shares held by the Plaintiff in the defendant are the plaintiff's personal property, with all rights and privileges appertaining thereto.***
- 6. A declaration, that the plaintiff's shareholding in the defendant cannot be altered, dissipated, reduced, diminished, or erroneously stated in a manner inconsistent with the plaintiff's right to own property.***
- 7. A declaration, that the defendant lacks the vires to erroneously state the shareholding of the plaintiff in any way or manner or vide any outlet or deal with the said shareholding and rights appertaining thereto, different from the actual number of shares held by the Plaintiff.***
- 8. An order of perpetual injunction, restraining the defendant, whether by itself, its officers, agents, servants, assigns, privies or anyone acting on its behalf, from altering or continuing to alter, erroneously stating or continuing to erroneously state, dissipating or continuing to dissipate, reducing or continuing to reduce, diminishing or continuing to diminish the plaintiff's shareholding in the defendant."***

1.3 The Defendant, by an ex parte application applied for a Third-Party Notice against the Central Bank of Nigeria. The said ex parte application was granted on 17/7/24 and the Central Bank of Nigeria was thereby joined to this suit as a third party.

1.4 The following questions were formulated in respect of the Third-Party proceedings:

- "1. Whether the prior approval and/or verification by the Central Bank of Nigeria is a mandatory and lawful requirement for the Plaintiff to validly acquire and retain shareholding of 5% and above in the Defendant.***
- 2. Whether the Plaintiff and the Defendant are bound by the results of the shareholding verification process carried out by the Central Bank of Nigeria as***

***communicated to the Defendant via the Central bank of Nigeria's letter dated 29<sup>th</sup> January, 2024."***

- 1.5 On the basis of these questions, the Defendant sought a solitary relief against the Central Bank of Nigeria (Third Party), thus:

***"A declaration that the Defendant is duty bound to act in accordance with the verification process carried out by the Central Bank of Nigeria as communicated to the Defendant via the Central Bank of Nigeria's letter dated 29<sup>th</sup> January 2024, as its statutory regulator."***

- 1.6 In answer to the Third-Party Notice, the third party has filed a 60-paragraphs affidavit deposed to by one **Orjiakor Nwabueze**, who is a Deputy Director, Banking Supervision Department of the third party, to which several documents were attached as exhibits to assist this Honourable Court come to a just decision. We, most humbly adopt and rely on the depositions and the accompanying exhibits in the said affidavit, in urging this Honourable Court to resolve these questions for determination as contained in the Third-Party Notice in favour of the third party.

## 2.0 **ISSUES FOR DETERMINATION**

- 2.1 As noted earlier, the issues for determination are as set out in the order of this Honourable Court of 17/7/24 are:

- "1. Whether the prior approval and/or verification by the Central Bank of Nigeria is a mandatory and lawful requirement for the Plaintiff to validly acquire and retain shareholding of 5% and above in the Defendant.***
- 2. Whether the Plaintiff and the Defendant are bound by the results of the shareholding verification process carried out by the Central Bank of Nigeria as communicated to the Defendant via the Central bank of Nigeria's letter dated 29<sup>th</sup> January, 2024."***

## 3.0 **ARGUMENT OF ISSUES 1 & 2**

- 3.1 For the simple reason that both issues formulated for your lordship's determination in this third-party proceeding are interwoven, we shall crave the indulgence of your Lordship to argue both of them together. This is to avoid repetition of submissions and ensure brevity.

- 3.2 My noble lord, without mincing words, we submit, most humbly that it is mandatory and indeed lawful for the Plaintiff to submit its share acquisition for verification and approval of the Central Bank of Nigeria where the shares so acquired and/or retained by it are up to 5% of the Defendant's total share capital. We submit further that unless such verification is done with a view to enabling the Central Bank determine their existence and lawful acquisition and statutory approval thereby granted by the Central Bank of Nigeria, any such volume of shares so purportedly acquired by the Plaintiff remains ineffectual.
- 3.3 We submit that the third party is a creation of the **Central Bank of Nigeria (Establishment) Act, 2007** and it performs supervisory roles over banks and other financial institutions in Nigeria. See **CBN v. NJEMANZE (2015) 4 NWLR (Pt. 1449) 276 @ 285; CBN v. ARIBO (2018) 4 NWLR (Pt. 1608) 130 @ 167**, where the Supreme Court held thus:

*"The banking industry is one of the institutions where a high level of confidence and trust is expected of employees. The Central Bank of Nigeria performs a supervisory role over banks and other financial institutions in Nigeria."*

- 3.4 We submit further that the powers, functions and responsibilities of the 3<sup>rd</sup> Party are statutory and vested in it by the provisions of the **Central Bank Act, 2007, Banks and other Financial Institution Act 2020** amongst other statutes. Section 1 of the Banks and Other Financial Institution Act 2020 provides as follows: *"The Central Bank of Nigeria (in this Act referred to as "the Bank") shall have all the functions and powers conferred and duties imposed on it by this Act."* A calm look at the provisions of the **Banks and other Financial Institution Act 2020** will reveal that one of the functions vested in it by the said Act is the function of exercising supervisory powers over the operation of Banks and other Financial Institutions. In this connection, **Section 29(1) of BOFIA, 2020** provides:

*"29(1) Notwithstanding anything to the contrary contained in this Act or any other enactment, the Bank shall have and exercise regulatory and supervisory powers over banks, other financial institutions and specialized banks to the exclusion of any other agency or institution." (Underlining ours for emphasis).*

- 3.5 It is submitted that, the above quoted statutory provision of BOFIA, 2020 puts it beyond argument that, 3<sup>rd</sup> party (CBN) has regulatory and supervisory powers over banks (which includes the Defendant herein).
- 3.6 It is submitted that, the question whether the requirement to seek CBN prior approval or consent to shareholding up to 5% or more of the shares of a bank is mandatory cannot but be answered in the affirmative in the face of the settled position of the law and several clear provisions of relevant and applicable statutes. A holistic perusal of Section 7, of Banks and Other Financial Institutions Act, 2020 (BOFIA 2020), particularly Section 7(1)(a)(ii), 7(3), 7(4) bring out this conclusion. The section provides in clear terms, thus:

**"7(1) Except with the prior written consent of the Governor, no bank shall enter into an agreement or arrangement-**

**(a) which results in –**

- (i) a change in the control of the bank, or**  
**(ii) the transfer of a significant shareholding in the bank;**

**(b) for the sale, disposal or transfer of the whole or any part of the business of the bank;**

**(c) for the amalgamation or merger of the bank with any other person;**

**(d) for the restructuring, reconstruction or re-organisation of the bank; or**

**(e) to transfer the whole or any part of the business of the bank to any agent.**

**(2) Where a bank proposes to enter into any agreement or arrangement under subsection (1). the bank may, on the application of any of the banks to be affected, order separate meetings of the banks to be summoned in such manner as the bank may direct.**

**(3) Any transaction in contravention of subsection (1) is void and any transfer of interest thereunder shall be ineffectual except where such transaction is subsequently ratified in writing by the Bank.**

**(4) The Bank may approve an agreement or arrangement covered by subsection (1) if the Bank is satisfied that:-**

- (a) *such agreement or arrangement is not likely to cause a restraint of competition, or tend to create a monopoly in the banking industry*
  - (b) *the significant shareholders or directors of the bank that results from the agreement or arrangement are not disqualified under section 47 of this Act.*
  - (c) *the agreement or arrangement is consistent with public interest; and*
  - (d) *the bank that results from the agreement or arrangement meets the capital requirement prescribed under sections 9 and 13 of this Act.*
- (5) *Upon the grant of a new banking licence by the Bank to a bank which results from the agreement or arrangement in subsection (1), all the assets and liabilities of the banks that are parties to the agreement or arrangement shall, by virtue of the grant of the new banking licence, be transferred to and become the assets and liabilities of the new bank.*
- (6) *The provision of this Act apply notwithstanding the provisions of the Federal Competition and Consumer Protection Act.” (Underlining ours for emphasis).*

**Section 7 of the Banks and Other Financial Institution Act, 2020** has been made in plain and unambiguous term. It must be given its ordinary grammatical meaning.

**See: Ardo v. Nyako (2014) 10 NWLR (Pt. 1416) 591.**

- 3.7 Infact, not only does Section 7(3) of the Act nullifies or renders ineffectual any purported acquisition of significant shares of a bank done in contravention of Section 7(1) of the Act, Section 7(7) thereof criminalizes and stipulates punishment for contravention of the obligations spelt out under Section 7(1) of the Act. **Section 95 of BOFIA 2020, also provides sanction for the breach of the dictates of BOFIA (2020).** The said Sections 7(3), 7(7) and 95 of BOFIA, 2020 state thus:

***“7 (3)Any transaction in contravention of subsection (1) is void and any transfer of interest thereunder shall be ineffectual except where such transaction is subsequently ratified in writing by the Bank.***

**7(7) Any person who contravenes subsection (1), commits an offence and is liable on conviction to a penalty of not less than N20,000,000 and in the case of a continuing breach, to an additional penalty of N500,000 for each day during which the contravention continues.**

**95 Without prejudice to any other provisions of this Act, the Governor may impose any one or more of the following sanctions on any bank, specialized bank, other financial institution, or person for failure to comply with any of the provisions of this Act, the Central bank of Nigeria Act or any other law relating to banking or any rule, regulation, guideline or directive made under it -**

- a) Suspension of the authorised foreign exchange dealership licence for any period of time as the bank may prescribe;**
- b) Prohibition from participation in any medium of transaction in foreign exchange;**
- c) Suspension from participation in bank clearing system;**
- d) Forfeiture to the bank of any pecuniary benefit obtained as a result of the violation or breach;**
- e) Suspension of any licence issued to any bank, specialized bank or other financial institution;**
- f) Imposition of a fine of at least N100,000,000; and**
- g) Any other sanctions the bank may deem appropriate.” (Underlining ours for emphasis).**

The above clearly shows that, banks and shareholders have no discretion where the shares of a shareholder is up to five percent of the bank's total share capital.

- 3.8 My lord, a further look at the detailed provision of Section 7(1)(a)(ii) of BOFIA, 2020 clearly reveal that its application is based on the shareholder qualifying as a **“significant Shareholder”**. Put differently, Section 7(1)(a)(ii), BOFIA, 2020 is only applicable to significant shareholder or shareholding as a mandatory condition precedent. In this regard, Section 131 (interpretation Section) of the Act defines who a “significant shareholder” is. The section describes such a shareholder in the following words:

**“Significant shareholder’ means a person or entity who-**

***(a) beneficially owns five percent or more of the paid up share capital of a bank, specialized bank or other financial institution."***

- 3.9 The next question is, therefore, whether the Plaintiff herein qualifies as a significant shareholder to make it subject to the provisions and the resultant obligations of Section 7, BOFIA, 2020. We submit that with the avalanche of documents before your lordship, it is never in dispute that the Plaintiff herein is a significant shareholder as envisaged under S.7 and defined by Section 131 of BOFIA, 2020.
- 3.10 We humbly refer your lordship to paragraphs 38, 39, 40, 42, 46, 50, and 53 of the Third-Party Affidavit. These paragraphs show that the Plaintiff is allegedly a significant shareholder. Furthermore, we refer your lordship to paragraphs 9, 10, 11, 12, 14, 15, 17, 20, 22, 24, 28, 30 and 33 of the Plaintiff's affidavit in support of its Originating Summons. The Plaintiff in these paragraphs by its own admission, is laying claim to number of shares that are more than 5% of the Defendant's total share capital, thereby putting itself out as a "Significant shareholder" as defined by Section 131 of BOFIA, 2020.
- 3.11 In fact in paragraph 11 of the Plaintiff's supporting affidavit, it specifically claimed that the Plaintiff's shares represent **15.01%** of the Defendant's total issued share capital. The Plaintiff deposed to the following facts in the said paragraph 11 of its supporting affidavit.

***"The aggregation of the records in exhibit 2(a)-(e) is 5,386,397,202 shares and represents 15.01% of the Defendant's 35,895,292,792 outstanding issued shares."***  
*(underlining ours for emphasis)*

- 3.12 It is also necessary to refer the court to the Defendant's letter of 10<sup>th</sup> July, 2023 (Exhibit C attached to 3<sup>rd</sup> Party's Affidavit) wherein the Defendant communicated the 3<sup>rd</sup> party, the Plaintiff's claim of acquisition of 13.3% shares of the Defendant. We, therefore, submit that there is no dispute on whether the Plaintiff is a significant shareholder of the Defendant bank or not. Both parties, having been ad idem on the issue, we urge your lordship to hold that the Plaintiff is a significant shareholder and it is, therefore subject to the application of Section 7 of BOFIA, 2020 and all other such laws affecting a significant shareholder.
- 3.13 Apart from the specific provision of Section 7 of BOFIA, 2020, the attention of the court is drawn to Sections 30 and 56 of BOFIA, 2020 as well as Section 33(1) of the CBN Act, 2007. The 3<sup>rd</sup> party is vested with powers to issue

guidelines and regulations in the exercise of its supervisory and regulatory powers over banks. For effect and clarity, a look at the provisions of **Sections 30 and 56 of BOFIA (2020) as well as Section 33(1) of CBN Act, 2007** would not be out of place.

**Section 33(1)(a) and (b) of the CBN Act, 2007** provide thus:

*"In addition to any of its powers under this Act, the Bank may:*

- a) Require persons and institutions having access thereto, at all reasonable times, to supply, in such forms as the bank may from time to time direct, information relating to or touching or concerning matters affecting the economy of Nigeria; and*
- b) Issue guidelines to any person and any institution under its supervision."*

3.14 Similarly, **Sections 30 and 56(1) of BOFIA, 2020** also provide as follows:

**"30(1)** *Notwithstanding anything to the contrary in this Act or in any other enactment, the Governor shall have power to issue regulations, guidelines and policies to banks, specialized banks and other financial institutions in Nigeria, to –*

- a) Ensure responsible conduct;*
  - b) Protect the interest of consumers of products and services of banks, specialized banks and other financial institutions;*
  - c) Promote competition in the Nigerian financial system; and*
  - d) Engender and sustain public trust and confidence in the use of financial services in Nigeria.*
- (2)** *All banks, specialized banks and other financial institutions shall adopt policies to ensure compliance with consumer protection and competition standards and obligations under extant laws, regulations and to*

*implement appropriate internal controls in that regard.*

**56(1)** *The Governor may make regulations, published in the Federal Government Gazette or in any other medium, pursuant to the objectives of this Act."*

3.15 Consequent to these powers, the **Central Bank of Nigeria' "Corporate Governance" Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks in Nigeria** was issued by the Central Bank of Nigeria. (See Exhibit B attached to the 3<sup>rd</sup> Party's Affidavit) which expressly stipulates the condition that must be satisfied before a significant shareholder can claim such volume of shares in a bank. The said Guidelines (which is now the extant law on Corporate Governance having replaced the 2014 Code) in its paragraph 20.2(b) and (c) provide as follows:

- "b. CBN's prior approval and No Objection shall be sought and obtained before any acquisition of shares of a bank (including through the capital market), that would result in equity holding of five percent (5%) and above, by an investor.*
- c. Where the CBN has an objection on any acquisition as stated in Section 20.2 above, notice of the objection shall be communicated to the bank, and the bank shall notify such investor(s) within forty-eight (48) hours."*

3.16 It is noteworthy that the CBN's "Guidelines" is a subsidiary legislation made by the CBN pursuant to its powers under the CBN Act and BOFIA, 2020, to make such regulations and Policy directions. It is therefore not in doubt that the regulations in view trace their paternity and utility to the provisions of Sections **30 and 56 of BOFIA, 2020 as well as Section 33(1) of CBN Act, 2007.**

3.17 Submit that notwithstanding being a subsidiary legislation, the provisions of the Guideline have a full force of law and the Defendant (and indeed the Plaintiff) are subject to and bound by its provisions in matters relating to share acquisition as it is the case in this suit where the acquisition of shares amounting to 5% of the shares of a bank is in issue. See: section 18(1) of the Interpretation Act; **Ugo v. Ummuna (2018) 2 NWLR (Pt. 1602) 102 @ 126.**

3.18 It is now settled that where a law or subsidiary legislation has specified or prescribed the mode or manner of validly performing an act, that mode must

be strictly complied with. See: **UNITY BANK PLC vs. IGALA CONTR. CO. LTD (2021) 10 NWLR (PT. 1785) 407 @ 435.**

- 3.19 The above being the situation, we submit that on the authority of the above cited statutory provisions, it is mandatory for the Plaintiff to secure the consent and/or approval of the CBN before it can validly acquire or lay claim to valid acquisition of shareholding amounting to 5% or more of the Defendant's total share capital (i.e. significant shareholding). Put differently, not until the consent/approval of the CBN is secured, the Plaintiff cannot lay claim to shares amounting to more than 5% of the defendant total share capital or assert any right attached to such equity holding. In fact, such unvalidated and/or unverified purported equity holding remains ineffectual, null and void, except and until such shareholding is consented to by the CBN.
- 3.20 It is pertinent to state that the decision of the CBN to conduct verification of the equity holding of significant shareholders stemmed from its mandate to ensure transparency and integrity of the nation's financial and business environment. It is in this light, that, Section 7(4) of BOFIA, 2020 gives some of the reason for the requirement of the Governor's consent. **For effect, Section 7(4) of BOFIA, 2020**, provides:

***"(4) The bank may approve an agreement or arrangement covered by subsection (1) if the Bank is satisfied that:***

- a) Such agreement or arrangement is not likely to cause a restraint of competition, or tend to create a monopoly in the banking industry;***
- b) The significant shareholders or directors of the bank that results from the agreement or arrangement are not disqualified under Section 47 of this Act;***
- c) The agreement or arrangement is consistent with public interest; and***
- d) The bank that results from the agreement or arrangement meets the capital requirements prescribed under Sections 9 and 13 of this Act."***

It is submitted that, the realization of the above quoted objective will provide a sound banking/financial system and atmosphere as well as protecting public interest.

3.21 In the same vein, the CBN is enjoined to collaborate with banks in the country to ensure high standard in the conduct of banking business in Nigeria. Section 42(1) of the CBN Act, 2007 is very apt in this respect. It expressly provides as follows:

**"42(1) The bank shall wherever *necessary seek the co-operation of and co-operate with other banks in Nigeria to-***

- a) promote and maintain adequate and reasonable financial service for the public;***
- b) ensure high standards of conduct and management throughout the banking system; and***
- c) further such policies not inconsistent with this Act as shall in the opinion of the Bank be in the national interest."***

3.22 On the second arm of issue of the Third-Party Notice, as to whether the requirement of CBN's prior approval and/or verification is lawful, we submit that requesting for such approval, as in the instant case between the Plaintiff and the Defendant, is lawful, being in compliance with the extant statutory provisions as copiously shown above. It is needless to reiterate the point that all the earlier cited guidelines of the CBN pursuant to which the prior approval and/or verification had been requested, having been traceable to BOFIA, 2020, those Guidelines automatically assume the status of the substantive law. This is so by virtue of the provision of **S.18 of the Interpretation Act**, which states that a subsidiary legislation has the force of law, just like the substantive law under which it was made. Infact, your lordship is empowered to take judicial notice of such subsidiary legislations.

3.23 The above position much was the position of the Supreme Court in **ACCESS BANK V. OGBOJA (2022) 1 NWLR (PT.1812) 547 @ 576** where the apex court in upholding the sanctity of Guidelines made by the CBN, held thus:

***"A subsidiary legislation or enactment is one that is made subsequent to and pursuant to the authority derived from the principal statute or enactment. It thus derives its force or efficacy from the principal statute to which it is complimentary or subsidiary. It follows therefore that a***

***subsidiary legislation generally has the force of law like the parent statute to the extent of its consistency with same, having derived its authority from the substantive legislation made by the parliament. That is to say that subsidiary legislation, subject to their conformity with the principal law which provide the source of their existence and substance, enjoy the same clout of authority and efficacy as the principal law. See section 18(1) of the Interpretation Act. See also Adebayo Amusa v. The State (2003) 4 NWLR (Pt.811) 595; Mayaki v. Lagos City Council (1977) 7 SC 81 at 92; Adene v. Dantunbu (1994) 2 NWLR (Pt.328) 509 at 534. The conclusion of the matter is that judicial notice of a subsidiary legislation is taken as having the force of law without any further proof and as earlier stated, the Rules, Regulations and guidelines of the Central Bank of Nigeria made pursuant to the Central Bank Act and the banks and Other Financial Institutions Act (BOFIA) constitute subsidiary legislations for which the Court shall take judicial notice within the meaning of section 122(2) of the Evidence Act, 2011.*** (Underlining for emphasis)

See also: **YAKI V. BAGUDU (2015) 18 NWLR (PT.1491) 288 @ 319.**

- 3.24 We submit, therefore, that having shown the extent of the Guidelines to wit "Corporate Governance Guideline, For Commercial, Merchant, Non-interest And Payment Service Banks in Nigeria, attached to the 3<sup>rd</sup> Party Affidavit as "Exhibit B" as a subsisting law, then one can safely conclude, and we humbly urge your lordship to so hold, that the requirement of CBN's prior approval and/or verification of the Plaintiff's claimed significant shareholding is lawful, mandatory, and a condition precedent to such claim of acquisition.
- 3.25 It is important to make a fundamental point that the powers of the 3<sup>rd</sup> party as a supervisory and regulatory body is not subject to any other legislation of the National Assembly, such as Companies and Allied Matters Act, 2020. Indeed, **Section 53(1) and (2) of BOFIA** provides:

**"53(1) The provisions of this Act shall apply notwithstanding the provisions of the:**

- a) Companies and Allied Matters Act;**
- b) The Nigeria Deposit Insurance Act;**

- c) Federal Competition and Consumer Protection Act;*
- d) Nigerian Financial Intelligence Unit Act;*
- e) Federal Mortgage Bank of Nigeria Act;*
- f) Mortgage Institutions Act;*
- g) Nigerian Export-Import Bank Act; and*
- h) Other applicable laws, in so far as they relate to banks, other financial institutions and specialized banks.*

**(2) Where any of the provisions of the Acts mentioned in subsection (1) or any other law or enactment is inconsistent with any of the provisions of this Act, the provisions of this Act shall prevail."**

3.26 In conclusion, we further submit that having shown copiously that the requirement for CBN's prior approval is a stipulation of law, it simply means that both the Plaintiff and Defendant in the instant case are strictly bound by the said law as requested of them in CBN's letter of 29<sup>th</sup> January, 2024. To this end, the two questions set out in the 3<sup>rd</sup> party proceedings are to be answered in the affirmative.

3.27 It is also necessary to consider whether Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) has any relevance to the facts and circumstances of this case. For effect, **Section 44(1)** of the said Constitution provides:

**"44(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:**

- a) requires the prompt payment of compensation therefor; and*
- b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of*

*compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria."*

3.28 It is submitted that, the wordings of Section 44(1) of the 1999 Constitution is very clear in that, the constitutional provisions relates to compulsory acquisition of property. That is not the situation here. Nobody has acquired compulsorily the shares subject matter of this action. The whole essence of the provisions of Section 7 of the Banks and Other Financial Institution Act, 2020 and the Guidelines made thereto, is for the 3<sup>rd</sup> party (CBN) to grant consent/approval to the shareholding amounting to up to 5% of the shares of a bank. The question of compulsory acquisition is foreign to the wordings and operation of BOFIA, 2020. The CBN by the verification is not seeking to and has not compulsorily acquired the claimed shares of the Defendant. All that the CBN is doing presently is to request the Plaintiff to show proof of ownership of those shares so that the shares could be validated by the CBN as required by law.

3.29 At any rate and without prejudice to the above, it is submitted that, Section 44(1) of the 1999 Constitution is not without qualification. In fact, the same Section 44(1) of the 1999 Constitution recognizes the provisions of other laws such as the BOFIA, 2020 and CBN Act, 2007 and also validates the verification exercise being done by the CBN in respect of the Plaintiff's shares. In this regard, **Section 44(2)(b) and (k) of the 1999 Constitution provides:**

***"(2)(b) Nothing in Subsection (1) of this section shall be construed as affecting any general law:***

***b) For the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;***

***(k) Relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry.*** (Underlining ours for emphasis).

3.30 It is submitted that the recognition of the unverified shares being claimed by the Plaintiff is such that is within the powers of the 3<sup>rd</sup> party (CBN) to investigate the existence or purchase of the said shares. That being the situation, 3<sup>rd</sup> party exercising its statutory powers under Section 7 of BOFIA and the Guidelines has

not in any way violated the provision of Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).

#### 4.0 **INCOMPETENCE OF THE PLAINTIFF'S SUIT**

4.1 While it is acknowledged that the scope of the 3<sup>rd</sup> Party proceeding is to address the questions formulated and the relief(s) sought thereby, it, however, remains good law that issue of jurisdiction of the Court in any proceeding whatsoever is very germane. Thus, same can be raised at any time during a proceeding and by any party, in whatever way that is necessary. See: **IBRAHIM V. LAWAL (2015) 17 NWLR (Pt. 1489) 490 @ 524.**

4.2 This settled principle of law was restated by the Court of Appeal in **F.G.N V. SHOBU (2014) 4 NWLR (PT.1396) 45 @ 59** where the Court held as follows:

*"The issue of jurisdiction is very fundamental and touches on the competence of a court or tribunal to adjudicate on the suit before the court or tribunal. See, State v. Onogoruwa (1992) 2 NWLR 9pt.221) 33; Galadima v. Tambai (2000) 11 NWLR (Pt.677) 1; G & C Lines v. Olaleye (2000) 10 NWLR (pt.676) 613. It is the law that the issue of jurisdiction is a thousand issue which could be raised at any stage of a proceeding and by any party even in the Supreme Court for the first time, no leave of court is required. It could be raised by the court suo motu whether or not the parties raised it. See, Matari v. Dangaladima (1993) 3 NWLR (Pt.281) 266; State v. Onogoruwa (1992) 2 NWLR (Pt.221) 33 Lawrence v. A.G, federation (Supra)"*

See also: **ANSA V. R.T.P.C.N (2008) 7 NWLR (PT.1086) 42 @ 438-439.**

4.3 It is on the basis of this position of the law that we submit that the substantive case as formulated by the Plaintiff is, for all intent and purposes, incompetent for the simple reason that this Honourable court lacks the requisite jurisdiction to entertain same. It is a case that ought to be dismissed for being academic and an abuse of court processes.

4.4 Perhaps, it is fitting to state that it is now an established principle of law of construction of statutes, that the lawmaker is fully aware and conscious of its earlier enactment when making new ones. See: **ARAKA vs. EGBUE (2003) 17 NWLR (PT. 848) 1 @ 18; NOBIS-ELENDU vs. INEC (2015) 16 NWLR (PT. 1485) 179 @ 224.** Hence in promulgating the BOFIA (2020) which came

into force on 13<sup>th</sup> October, 2020, the lawmaker is deemed to be fully conscious of the content of the earlier law – CAMA (2020) made on 9<sup>th</sup> July, 2020 but assented on 7<sup>th</sup> August, 2020.

- 4.5 Riding on the backdrop of the above, and going through the whole gamut of the Plaintiff's affidavit, particularly the questions for determination, your lordship would discover that same were premised on the provisions of the Companies and Allied Matters Act, 2020 (CAMA 2020), which we strongly contend is inapplicable to the subject or the relevant issues. May we humbly refer your lordship to paragraphs 1-5 of the Questions for Determination. It is upon the determination of these questions that the reliefs sought were premised.
- 4.6 We, however, submit that in matters of banking and shares capital of same, which is the crux of the Plaintiff's case, the provision of CAMA is totally inapplicable. This is the purport of the express provisions of Section 53(1) of BOFIA, 2020, the specific law on the subject, which, at the risk of repetition, states thus:

**"S.53(1) The provision of this Act shall apply notwithstanding the provisions of the-**

- a) Companies and Allied Matters Act;**
- b) the Nigeria Deposit Insurance Corporation Act;**
- c) Federal Competition and Consumer Protection Act;**
- d) Nigerian Financial Intelligence Unit Act;**
- e) Federal Mortgage Bank of Nigeria Act;**
- f) Mortgage Institutions Act;**
- g) Nigerian Export-Import Bank Act; and**
- h) other applicable laws, in so far as they relate to banks, other financial institutions and specialized banks" (Underlining for emphasis)**

- 4.7 Infact, to put it beyond any doubt, Section 53(2) of BOFIA, 2020 specifically states that where any of the provisions of CAMA 2020 conflicts with that of BOFIA 2020, it is that of BOFIA 2020 that shall prevail:

**"S.53(2) Where any of the provisions of the Acts mentioned in subsection (1) or any other law or enactment is inconsistent with any of the**

***provisions of this Act, the provisions of this Act shall prevail."***

- 4.8 My lord, these provisions of BOFIA, 2020 have been brought to the fore to clearly show that the Plaintiff totally missed the point in formulating its case. Its case cannot and ought not to have been founded on the provisions of CAMA, 2020. **Having based same on CAMA 2020, it is clear that the suit is purely academic as there is absolutely nothing to be determined by your lordship.** The case, as constituted, is blatantly academic and discloses no cause of action. It is needless to submit that courts have no jurisdiction to entertain and/or determine academic matters.
- 4.9 In **KOKO V. KOKO (2023) 13 NWLR (PT.1901) 249 @ 280**, the Supreme Court quite recently, clearly spelt out what the position of the court should be to academic issues. The Apex Court unhesitatingly, held, thus:

***"It is trite law that courts do not act in vain. Courts are urged not to dissipate scarce judicial energy on the consideration of academic, hypothetical or moot issues/points, if no purpose will be served by an action or appeal or any issue raised in it other than its mere academic interest, the court will not entertain it. Put in other words, courts have no jurisdiction to entertain academic issues. See Ogheneovo & Anor v. Governor of Delta State & Anor (2022) LPELR – 58062 (SC); (2023) 2 NWLR (Pt.1868) 275; Uzoho & Ors v. national Council of Privatization & Anor (2022) LPELR – 57680 (SC); (2022) 15 NWLR (pt.1852) 1; Oketere & Ors v. Gwagwa & Ors (2022) LPELR – 57535 (SC); (2022) 9 NWLR (Pt.1834) 51."***

**See also: Macaulay v. R.Z.B Austria (2003) 18 NWLR (Pt. 852) 282 @ 300; Dalek (Nig.) Ltd v. OMPADEC (2007) 7 NWLR (Pt. 1033) 402 @ 432.**

- 4.10 We, therefore, submit that the case of the Plaintiff is clearly academic and ought to be dismissed. We humbly urge your lordship to dismiss same on this point.
- 4.11 Furthermore, we submit that the case of the Plaintiff is tainted with mischief and malafide, hence, it qualifies as an abuse of the process of this Honourable Court. The concept of abuse of court process is a complex subject matter which is applicable with due regard to the circumstances of individual cases. In **Carrena v. Akinlase (2008) 14 NWLR (Pt. 1107) 262 @ 290**, the Supreme Court described the term "abuse of court process" generally as being applicable to a proceeding which is lacking in bona fide.

4.12 In another vein, our appellate courts have variously held that abuse of court process refers to situation, where even though a party has a right of action, but he exercises same to the irritation and annoyance of the opposing party. Thus, a suit amounts to abuse of court process where it is wanting in bona fides, frivolous, vexatious and oppressive, and involves bias, malice and deliberateness.

**See: Kolawole v. A.F. Oyo State (2006) 3 NWLR (Pt. 966) 50 @ 74; Messrs Ude Ubakasons v. C.C. Ezekwem & Co. (2000) 10 NWLR (Pt. 676) 600 @ 611; U.B.A Plc v. Mode Nig. Ltd. (2000) 12 NWLR (Pt. 680) 16 @ 22.**

4.13 Thus, where a party to a suit is guilty of abuse of the process of the Court, the Honourable Court has a duty not only to reprimand such a party but to dismiss the abusive suit and/or process. See: **IGBEKE V. FRN (2015) 3 NWLR (PT.2445) 28 @ 54; OKONKWO V. FRN (2011) 11 NWLR (PT.1258) 215 @ 253.**

4.14 We submit that the Plaintiff filed this action malafide. Not only did the Plaintiff deliberately conceal the fact of an on-going verification exercise by the CBN of its claimed significant shareholdings, which it has been fully participating in, it also purposely instituted this suit to circumvent the verification exercise and the decision taken by the CBN against the Plaintiff. May we humbly refer your lordships to paragraphs 58 of the 3<sup>rd</sup> Party affidavit and Exhibits C, D, E, F, H, I and J attached thereto which show Plaintiff's participation in the verification exercise.

4.15 My lord, the point we are making here is that the Plaintiff absolutely knew that the significant shares in dispute are still undergoing the process of validation or verification as required by the applicable laws before it rushed to this Honourable Court, playing the victim card, all in a bid to conceal the real issues underneath its case. He who comes to equity must come with clean hands. The Plaintiff, having employed the processes of this Honourable Court in such abusive way, we submit, that its case is liable to be dismissed. This is a clear case of abuse of court process.

4.16 In the case of **DINGYADI V. INEC (2011) 10 NWLR (Pt.1255) 347 @ 389-390**, the Apex Court of the land lucidly set out what a court faced with an abuse of its processes must do to protect the integrity and sanctity of the court. The Supreme Court held thus:

*"This court in Dingyadi V I.N.E.C (No.2) (Supra) stated categorically that abuse of court is not merely an irregularity that can be pardoned but constitutes a fundamental defect, the effect of which will lead to dismissal of the process which is abusive. In the case of Arubo v. Aiyeleru (1993) 3 NWLR (Pt.280) Pg.126, the Supreme Court took the stand that:*

*"Once a court is satisfied that the proceeding before it amounts to an abuse of process, it has the right, in fact the duty, to invoke its coercive powers to punish the party which is in abuse of its process. Quite often, that power is exercised by a dismissal of the action which constitutes the abuse."  
Adesanoye v Adewole (2000) 9 NWLR (Pt.671) Pg. 127.*

*Issues of abuse of court process have been identified as an issue of jurisdiction. Hence the court reserves the prerogative and inherent jurisdiction to protect itself from abuse of its process. The court has an inherent jurisdiction to undo what has been done by a party in abuse of court process, particularly in an attempt at forum shopping, so as to avoid a situation whereby the court will be presented with a fait accompli.*

*Vaswani Trading C. v. Savalakh & Co. (1972) All NLR (Pt.2) pg.483.*

*Ivory Merchant Bank v. Partnership Investment Ltd. (1996) 5 NWLR (Pt.448) pg.362.*

*Any case which is an abuse must go under the hammer so as to halt the drift created by the abuse."*

- 4.17 We submit that just as it was in the case of **Dingyadi v. INEC (Supra)**, so it is in the instant case. We urge your lordship to wield the big stick against the Plaintiff and its abusive case by dismissing same.
- 4.18 May it please your lordship.

Dated this 8<sup>th</sup> day of Aug, 2024.



*Ofc*

*Ofc*



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