

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON MONDAY, THE 1ST DAY OF JUNE, 2026
BEFORE THEIR LORDSHIPS

MOHAMMED LAWAL GARBA
TIJJANI ABUBAKAR
CHIOMA EGONDU NWOSU-IHEME
HARUNA SIMON TSAMMANI
STEPHEN JONAH ADAH

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
SC/CV/132/2026

BETWEEN:

1. SULEIMAN ABUBAKAR } -- -- APPELLANTS
2. MOHAMMED GONI MODU }

AND

1. PROVIDUS BANK LIMITED (RC. 198892) } 1ST SET OF
2. UNITY BANK PLC (RC. 94524) } RESPONDENTS

AND

1. PROVIDUS BANK LIMITED
2. UNITY BANK PLC
3. PAC CAPITAL LIMITED
4. VETIVA ADVISORY SERVICES LIMITED
5. LIGHT HOUSE CAPITAL LIMITED
6. PLANET CAPITAL LIMITED
7. CORPORATE AFFAIRS COMMISSION (CAC)
8. FEDERAL COMPETITION AND
CONSUMER PROTECTION COMMISSION
(FCCPC)
9. SECURITIES AND EXCHANGE COMMISSION (SEC)
10. CENTRAL BANK OF NIGERIA

2ND SET OF
RESPONDENTS

SC/CV/132/2026

[Signature] 10/6/2026
Certified True Copy

Tijjani Abubakar, JSC

Tisha Gurama Esq

REGISTRAR

SUPREME COURT OF NIGERIA

Official

JUDGMENT

(DELIVERED BY TIJJANI ABUBAKAR, JSC)

This appeal stems from the judgment of the Court of Appeal, Lagos Division, delivered on the 6th day of March 2026 in Appeal No. CA/LAG/CV/1373/2025, wherein the lower Court dismissed the Appellants' appeal against a ruling of the Federal High Court in Suit No. FHC/L/MISC/7/2025. In the challenged decision, the lower Court sustained the preliminary objection against the competence of the appeal before it on the grounds, *inter alia*, that the appeal required prior leave of Court and that the Notice of Appeal was filed outside the period prescribed by law. The lower Court further proceeded, to suo motu direct accelerated hearing of the substantive proceedings pending before the trial Court and awarded costs against the Appellants. Dissatisfied with that decision, the Appellants further invoked the appellate jurisdiction of this Court by way of filing this appeal.

The dispute giving rise to this appeal emerged from proceedings relating to a proposed scheme of merger between the 1st and 2nd SC/CV/132/2026

Respondents, namely Providus Bank Limited and Unity Bank Plc, undertaken within the context of the banking sector recapitalization framework approved by the Central Bank of Nigeria the 10th Respondent in this appeal. In furtherance of the proposed merger, the 1st and 2nd Respondents commenced *ex parte* proceedings before the trial Federal High Court seeking orders convening separate meetings of their shareholders and directors for the purpose of considering and approving the Scheme of Merger. The trial Court granted the application and directed that the proposed scheme be presented to the shareholders at court-ordered meetings convened for that purpose.

Following the conduct of the said meetings and the approval of the proposed merger by the majority of shareholders, the 1st and 2nd Respondents returned to the trial Court by a further *ex parte* application seeking final judicial sanction of the merger scheme. It is the contention of the Appellants that, during the merger proceedings, serious irregularities occurred which fundamentally tainted the

SC/CV/132/2026

process. According to them, the version of the Scheme of Merger allegedly presented to shareholders for approval materially differed from the document earlier placed before and approved by the Court, and that the process was further marred by fraud, forgery, perjury and non-compliance with prior orders of the Court, particularly regarding the requirement for regulatory approval from the Central Bank of Nigeria before any application for final sanction could competently be entertained.

Upon becoming aware of the pending application for sanction, the Appellants, who claim to be members and interested stakeholders in the 2nd Respondent, sought to challenge the competence of the proceedings before the trial Court. They initially raised oral objection to the jurisdiction of the Court to entertain the *ex parte* application for sanction and subsequently, upon the directive of the Court, filed a formal application questioning the validity of the proceedings and praying for appropriate reliefs. Their complaint was essentially that the alleged acts of forgery,

SC/CV/132/2026 4 Tijjani Abubakar, JSC

concealment and procedural non-compliance had vitiated the entire merger process and deprived the Court of the jurisdiction to proceed further.

At the proceedings conducted on the 19th day of November 2025, learned counsel appearing for the Respondents urged the trial Court to take together the hearing of the Appellants' application and the pending *ex parte* application for sanction of the merger. The trial Court allowed that request and directed that both applications be heard together, *although* the Appellants' application to be taken first and determined before consideration of the substantive application for sanction. The Appellants, dissatisfied with what they perceived as an improper procedural course capable of prejudicing their jurisdictional challenge, filed an appeal before the lower Court.

The lower Court however, declined to entertain the appeal on the merits. In its judgment delivered on the 6th day of March 2026, the Court held that the appeal arose from the exercise of judicial discretion by the trial Court and therefore required prior leave before

it could be brought. The lower Court further held that the appeal was filed out of time, dismissed same accordingly, and in addition directed accelerated hearing of the substantive proceedings before the trial Court while awarding costs against the Appellants.

Still dissatisfied, the Appellants approached this Court contending, among other things, that the lower Court misconstrued the nature of the appeal before it, wrongly computed the period prescribed for filing the appeal, and failed to appreciate that the issues raised involved substantial questions of jurisdiction and constitutional access to justice arising from allegations of fraud, forgery and non-compliance with judicial orders in the course of the merger proceedings. These constitute the five (5) grounds of appeal contained in the Notice of Appeal dated the 8th day of March 2026 and filed by the Appellants on the 9th day of March 2026 upon which the present appeal rests. See pages 1658 – 1665 of the records of appeal. In line with the practice in this Court, parties through Counsel filed and exchanged their respective briefs of argument. On the part of the

Appellants, learned Counsel Obah, settled the Appellant's brief of argument dated the 24th day of April 2026 and filed on the 27th day of April 2026. In the said brief of argument, four issues founded on the five grounds of appeal were nominated for determination. The issues are set out as follows:

- 1. "Whether the Appellants' complaint of fraud, forgery of court document (Exhibit A), and non-compliance with subsisting court orders raises a jurisdictional issue that entitled them to appeal as of right as enshrined in the Constitution. (Distilled from Grounds 1 and 4.)"**
- 2. Whether the Appellants' Notice of Appeal before the lower Court was filed out of time. (Distilled from Ground 2).**
- 3. Whether the lower court's grant of accelerated hearing and determination of Suit No: FHC/L/MISC/7/2025 suo motu infringed the right to fair hearing of the Appellants. (Distilled from Ground 3).**
- 4. Whether the lower court was right in awarding costs of N5,000,000 each to the 1st, 2nd, 3rd, 4th, 5th, 6th, and 10th Respondents against the Appellants when**

it is clear that the appeal does not require leave and was filed within time. (Distilled from Ground 5)."

Each of the Respondents caused a brief of argument to be filed by their respective counsel. A careful examination of the respective briefs filed on behalf of the ten Respondents reveals, beyond any peradventure, that the contents are substantially identical both in substance and objective. In particular, the gravamen of the preliminary objections raised on behalf of each of the Respondents (save for the 9th Respondent who did not file any preliminary objection) is the alleged incompetence of the appeal on grounds which include the Appellants' purported lack of locus standi, failure to obtain prior leave of Court, alleged non-compliance with Order 6 Rule 3(5) of the Supreme Court Rules, 2024 concerning deposit of costs in an escrow account in the name of the Chief Registrar, as well as other ancillary procedural complaints. Equally striking is the fact that the substantive arguments canvassed in the respective briefs of

the Respondents are substantially the same, all directed towards one inevitable destination, which is the dismissal of the appeal.

This situation inevitably calls into operation the provisions of Order 16 Rule 7(1) of the Supreme Court Rules, 2024, which provides in clear terms as follows:

“All parties whose interests are identical, or joint shall file joint briefs. Separate briefs may be filed only by those parties whose interests are separate or are in conflict.”

This provision is neither ornamental nor merely directory in objective. It embodies a fundamental principle of appellate adjudication rooted in procedural discipline, judicial economy, and the efficient administration of justice. Rules of Court are not made as cosmetic appendages to judicial proceedings. They are designed to regulate the conduct of litigation in a manner that ensures orderliness, avoids prolixity, prevents unnecessary duplication of arguments, and conserves precious judicial time. In this regard therefore, the Supreme Court Rules, being subsidiary legislation SC/CV/132/2026

made pursuant to constitutional authority of the Chief Justice of Nigeria, possess binding force of law and must be obeyed by litigants and counsel. See **ABUBAKAR V. B.O.A.P. LTD (2007) 18 NWLR (Pt. 1066) 319.**

The jurisprudential rationale behind Order 16 Rule 7(1) of the Supreme Court Rules, 2024 is self-evident. Where parties are united by common interest and pursue identical reliefs or legal objectives, multiplicity of briefs serves no legitimate purpose. Rather, it clogs the appellate process with repetitive submissions, burdens the opposing party with needless responses, and dissipates valuable judicial time that ought to be devoted to the determination of genuinely contentious issues. The law does not encourage superfluity. Equity, like nature, abhors multiplicity where unity suffices.

The mandatory tenor of the Rule is underscored by the deliberate use of the word “shall.” It is elementary that where the word “shall” is employed in a statutory or procedural provision, particularly in relation to a duty imposed upon litigants, it ordinarily

imports compulsion and not mere discretion, unless the context otherwise admits. See **ACCESS BANK PLC V. OGBOJA [2022] 1 NWLR (Pt. 1812) 547**. The obligation imposed on parties with identical interests to file a joint brief is therefore mandatory.

In the instant appeal, not only are the interests of the Respondents visibly aligned, but the arguments also advanced in their separate briefs are virtually indistinguishable in contents, reasoning, and relief sought. No conflict of interest has been demonstrated. No divergence in legal position has been disclosed. No peculiar defense or separate factual matrix has been identified to justify the filing of multiple briefs. The separate briefs merely reproduce, in repetitive sequence, the same preliminary objections and substantive submissions. Such a course of conduct runs contrary to both the letter and spirit of Order 16 Rule 7(1) of the Rules of this Court.

The filing of separate but identical briefs in circumstances such as this tends to amount to an unnecessary proliferation of processes.

Appellate advocacy is not measured by the volume of documents filed, nor by the number of counsel repeating the same arguments in different robes. The quality and precision of legal reasoning remain the true hallmarks of persuasive advocacy. Litigation is neither a game of technicalities nor that of hide and seek but a solemn process for the attainment of justice. See **EGESIMBA V. ONUZURUIKE [2002] 15 NWLR (Pt. 791) 466.**

The implications of non-compliance with Order 16 Rule 7(1) must therefore be considered within the broader context of the overriding objectives of the Rules of Court. While the filing of multiple identical briefs may not, in every circumstance, amount to a jurisdictional defect capable of nullifying the processes filed, the Court cannot ignore conduct which undermines procedural efficiency and orderly administration of justice. Rules of Court exist to be obeyed. Parties and counsel are not at liberty to elect which provisions to comply with and which to disregard. The Courts

especially this Court must ensure that its rules are observed and respected.

The practice of filing repetitive briefs where interests are identical may, in appropriate circumstances, expose parties to adverse procedural consequences, including the striking out of repetitive processes, refusal of costs, or such other consequential orders as the Court may deem fit to protect its procedure from abuse. Courts possess inherent jurisdiction to prevent abuse of process and preserve the integrity of adjudication. See **SARAKI V. KOTOYE [1992] 9 NWLR (Pt. 264) 156 AT 188 – 189**. Abuse of process is not confined to situations of multiplicity of actions alone; it extends to improper use of judicial processes in a manner that is oppressive, vexatious, or manifestly lacking in bona fide. Thus, it must be emphasized that the essence of a joint brief is not merely administrative convenience. It reflects the deeper juridical understanding that parties who stand or fall together in law ought ordinarily to speak with one forensic voice.

To permit otherwise without justification would encourage avoidable

duplication, increase litigation costs, and unnecessarily elongate proceedings contrary to the constitutional imperative of fair and expeditious determination of matters.

In the final analysis on this point, this Court cannot but observe that the separate briefs filed by the Respondents, notwithstanding their identical interest and similarity of arguments, stand in clear contrast with the intent of Order 16 Rule 7(1) of the Supreme Court Rules, 2024. Counsel appearing before this Court bear a solemn responsibility as ministers in the temple of justice to aid, and not hinder, the efficient administration of justice. Procedural rules are designed as instruments for attaining justice with orderliness and dispatch, and not as avenues for procedural congestion or repetitive and rancorous advocacy,

In this appeal therefore, this Court shall only reckon with the brief of argument filed on behalf of the 1st Respondent which substantially captures the position taken by each of the Respondents in this appeal. However, for completeness and record purposes, I

shall record the processes filed on behalf of the each of the Respondents. The 1st Respondent's brief of argument dated and filed on the 29th day of April 2026 was settled by Affis A. Matanmi, Esq. The 2nd Respondent's brief of argument dated and filed on the 29th day of April 2026 was prepared by learned Senior Counsel Dodo, SAN, whereas J. A. Ogechi, settled the 3rd Respondent's brief of argument dated and filed on the 29th day of April 2026. For the 4th Respondent, Ugbede Idachaba, settled the brief of argument dated and filed on the 29th day of April, 2026; Chrys T. Ahmadu settled the 5th Respondent's brief of argument dated and filed on the 26th day of April, 2026; L. M. Anenga-Arthur, settled the 6th Respondent's brief of argument dated and filed on the 29th day of April, 2026; Patrick Okoh, settled the 7th Respondent's brief of argument dated and filed on the 26th day of April, 2026. Isaac Oluwatoba Alaba, prepared the 8th Respondent's brief of argument dated the 7th day of May, 2026 but filed on the 8th day of May, 2026; whereas, the 9th Respondent's brief of argument dated the 1st day of May, 2026 and filed on the 5th day of May, 2026

was settled by Paschal Ozioko, and Loretta Onyenyeonwu, settled the 10th Respondent's brief of argument dated and filed on the 4th day of May, 2026. I have done this just to ensure that the unnecessary processes are captured on record, this is certainly at the expense of precious judicial time of this Court.

Learned Counsel for the Appellants filed a Reply brief of argument upon being served the briefs of argument filed by each of the Respondents. In particular, the Appellants' Reply was filed on the 4th day of May 2026 (1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents); 6th day of May, 2026 (10th Respondent) and 11th May 2026 (9th Respondent).

Meanwhile, in the 1st Respondent brief of argument, learned Counsel adopted, with minor modifications, the issues crafted by the Appellants, as follows:

1. ***“Whether the Lower Court was right to find that the Appellants' appeal before the Lower Court was a challenge against the exercise of judicial discretion by the***

trial Court and therefore an appeal on mixed law and fact requiring prior leave of Court. (Distilled from Grounds 1 and 4).

- 2. Whether the Appellants' Notice of Appeal before the lower Court was filed out of time. (Distilled from Ground 2).*
- 3. Having regard to the Statutory powers of the lower Court, whether the lower Court has the power to order for accelerated hearing and determination of Suit NO: FHC/L/MISC/7/2025 having struck out the appeal for being incompetent. (Distilled from Ground 3).*
- 4. Whether the lower Court has the power to award cost of ₦5, 000,000.00 each to the 1st, 2nd, 3rd, 4th, 5th, 6th and 10th Respondents against the Appellants having held that the appeal was incompetent. (Distilled from Ground 5)."*

I must also point out that the 2nd Respondent filed an application dated the 31st day of March 2026 seeking the following reliefs:

- 1. "AN ORDER OF THIS HONOURABLE COURT invoking its powers under section 22 of the Supreme Court Act to sanction the scheme of Merger between the 1st*

**Respondent and 2nd
Respondent/Applicant.**

IN THE ALTERNATIVE TO RELIEF 1

- 2. AN ORDER OF THIS HONOURABLE COURT mandating the trial Court to proceed and deliver its Ruling on the Appellants' Motion for Stay of Proceedings and the 1st and 2nd Respondents' Joint Ex Parte Originating Summons to sanction the Scheme of Merger argued on 13th March, 2026 in SUIT NO.: FHC/L/MISC/734/2025 between PROVIDUS BANK LIMITED V. UNITY BANK PLC. in accordance with the provisions of Order 7 Rule 2 (2) of the Rules of this Honourable Court within 7 days of the date of the order.**

IN THE ALTERNATIVE TO RELIEFS 1 AND 2 ABOVE

- 3. AN ORDER OF THIS HONOURABLE COURT directing a departure from the Rules of this Honourable Court and abridging time for the Appellants to file their Brief of Arguments to five days, the time within which the Respondents may file their Brief of Argument to three (3) days, and the time within which the Appellants may file their Reply Brief to two (2) days.**

- 4. AN ORDER OF THIS HONOURABLE COURT for Accelerated hearing of Appeal No: SC/CV/132/2026 between SULEIMAN**

**ABUBAKAR & ANOR v. PROVIDUS BANK
LIMITED & 9 ORS.**

**5. AND FOR SUCH FURTHER or other orders
as this Honourable Court may deem fit to
make in the circumstance of this case.”**

With the hearing of the appeal by this Court on the 12th day of May 2026, it becomes clear that Prayers 3 and 4 have become spent and overtaken by events. By implication therefore, the consideration of the motion will be limited to Prayers 1 or 2 as sought by the 2nd Respondent. I shall come back to the motion later in this judgment. As earlier mentioned in this Judgment, the Respondents filed and incorporated arguments on the preliminary objections challenging the competence of the appeal in their respective brief of argument. I will take the preliminary objection first.

PRELIMINARY OBJECTION

The 1st Respondent, in urging this Court to terminate the appeal in limine, contended that the Appellants failed to satisfy the mandatory conditions precedent necessary to invoke the jurisdiction

of this Court. Counsel submitted that jurisdiction remains the lifeblood of adjudication and that where any condition precedent to the exercise of jurisdiction by the Court is absent, the entire proceedings become incompetent, relying on **ACCESS BANK PLC V. IKPAN [2025] 18 NWLR (Pt. 2017) 249, 267-268, PARAS. H – C.**

On the question of locus standi, the 1st Respondent argued that the Appellants were never parties to the originating proceedings before the trial Court, neither were they joined by either the trial Court or the lower Court, and therefore lacked the requisite standing to appeal without first obtaining prior leave of Court pursuant to Section 233(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Counsel submitted that, being mere interested persons who were not parties to the proceedings, the Appellants could not validly invoke the appellate jurisdiction of this Court as of right. Reliance was placed on **ASSAMS V. ARARUME [2016] 1 NWLR. (Pt. 1493) 368, 386, PARAS. E – H.**

The 1st Respondent further contended that Grounds 1, 2, 3 and 5 of the Notice of Appeal were grounds of mixed law and fact for which prior leave of Court was constitutionally required but never obtained. Referring to Section 233(2)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), counsel argued that appeals lie as of right only on questions of law alone. Reliance was placed on **VIRGIN ATLANTIC AIRWAYS V. PABLO-AMARAN (2025) LPELR – 81278 (SC) 47- 48, PARAS D – B; UMANAH V. NDIC [2016] 14 NWLR (Pt. 1533) 458, 478 – 479, PARAS H – A** to submit that any complaint requiring a review of the evaluation of evidence or the exercise of judicial discretion necessarily falls within the latter category.

Learned Counsel argued that the complaints relating to accelerated hearing, consequential orders and costs challenged the discretionary powers exercised by the lower Court and therefore constituted grounds of mixed law and fact, relying on **HONEYWELL FLOUR MILLS PLC V. ECOBANK NIGERIA LTD [2019] 2 NWLR (Pt.**

1655) 35, 50, PARAS. B – D; **UBN PLC V. SOGUNRO** [2006] 16 NWLR (Pt. 1006) 504; **CHIEF OF AIR STAFF V. EDWARD** [2019] 14 NWLR (Pt. 1691) 183, 196, PARAS D – E. The 1st Respondent equally submitted that Ground 4 of the Notice of Appeal was incurably defective because it did not arise from the judgment of the Court below but purported to challenge a decision of the trial Court directly before the Supreme Court. Counsel argued that, by virtue of Section 233(1) of the Constitution, this Court lacks jurisdiction to entertain appeals directly from the trial Court, there being no pronouncement of the Court of Appeal on the complaint raised. Reliance was placed on **ENEJI V. STATE** [2024] 11 N.W.L.R. (PT. 1948) 1, 29, PARAS. F – H; **AUSTIN LAZ & COMPANY THEMPLASTIC INDUSTRIES LTD V. GTB PLC** [2025] 15 NWLR (PART 2008) 235, 250, PARAS A – C and **JAIYESIMI V. DARLINGTON** [2022] 9 NWLR (PT. 1835) 335, 358 – 359, PARAS G – C, for the settled principle that grounds of appeal must arise from and attack the judgment appealed against, and that no direct appeal lies from the trial Court to the Supreme Court.

It was further argued that, since Issues 1 – 4 were distilled from incompetent grounds of appeal, the issues themselves were equally incompetent and liable to be struck out. In support, counsel relied on **CITEC INTERNATIONAL ESTATES LTD V. FRANCIS [2021] 5 NWLR. (Pt. 1768) 148, 179, PARA G**, to submit that no competent issue can arise from an incompetent ground of appeal and that where competent and incompetent grounds are lumped together under one issue, the defect contaminates the entire issue.

On the issue of non-compliance with the Supreme Court Rules, 2024, the 1st Respondent submitted that the Appellants failed to comply with Order 6 Rule 3(5) of the Supreme Court Rules, 2024, which mandates an appellant to deposit all costs awarded against him into an escrow account in the name of the Chief Registrar and file a certificate of compliance as a condition precedent to the continuation of the appeal. Counsel argued that the language of the Rule is mandatory, particularly using the word “shall,” and that failure to comply renders the appeal incompetent. Reliance was

placed on **CHUKWUOGOR & ORS. V. CHUKWUOGOR & ANOR.**
[2021] 15 NWLR (Pt. 1799) 357, 373, PARA A on the mandatory
import of the word “shall,” as well as **ORAKUL RESOURCES LTD V.**
NCC [2022] 6 NWLR (Pt. 1827) 539, 592, PARAS F – A and
CHAIRMAN NDLEA LAGOS V. UMEH [2018] 12 NWLR (Pt. 1632) 50,
60 – 61, PARAS H – A, for the proposition that failure to fulfil a
condition precedent renders the appeal a nullity liable to be struck
out.

Learned Counsel finally relied on **EMTS LTD V. AFDIN**
VENTURES (2026) LPELR - 83327 (SC), 11, PARAS F – G, where this
Court underscored the mandatory nature of compliance with Order 6
Rule 3(5) of the Supreme Court Rules, 2024, and stressed that
procedural discipline constitutes the architecture upon which the
administration of justice rests. The learned Counsel for the 1st
Respondent accordingly urged this Court to strike out the appeal in
its entirety for incompetence.

In their reply to the preliminary objection, the Appellants contended that the objection was misconceived, maintaining that their appeal raised substantial questions of law and jurisdiction for which no prior leave was required under Section 233(2)(a) and (c) of the Constitution. Learned counsel argued that although the Appellants were not parties to the *ex parte* proceedings relating to the sanction application, their complaint fundamentally challenged the jurisdiction of the trial Court to entertain the application in the first place, particularly in view of the allegations of fraud, forgery, perjury and non-compliance with conditions precedent allegedly committed by the 1st and 2nd Respondents. Counsel submitted that jurisdiction is a threshold issue which may be raised at any stage of proceedings, even *suo motu* by the Court, relying on **ATTORNEY-GENERAL OF THE FEDERATION V. ABUBAKAR [2007] 10 NWLR (Pt. 1041) 1 (SC)**. It was further argued that the Appellants had formally brought the jurisdictional defects to the attention of the trial Court upon its directive, as reflected in the Record of Appeal.

The learned Counsel for the Appellants further submitted that, as shareholders of the 2nd Respondent, Appellants were entitled to challenge acts tainted by fraud and illegality, notwithstanding the rule in *Foss v. Harbottle* (1843) 2 HARE 461. Counsel maintained that the alleged alteration and circulation of a forged version of Exhibit A, together with the failure to obtain approval from the Central Bank of Nigeria before seeking judicial sanction of the merger, rendered the entire process incompetent and deprived the trial Court of jurisdiction to hear and determine the matter.

On the question whether leave was required, the learned Counsel for the Appellants argued that the grounds of appeal were grounds of law alone, since they challenged the decision of the lower Court declining jurisdiction and holding the appeal incompetent for being filed out of time. Counsel submitted that the legal character of a ground of appeal is determined by its substance rather than its form, and that where the complaint concerns the interpretation or application of the law to admitted facts, the ground remains one of

law. Reliance was placed on **NWADIKE V. IBEKWE [1987] 4 NWLR (Pt. 67) 718 (SC); GENERAL ELECTRIC CO. V. AKANDE [2010] 18 NWLR (Pt. 1225) 596**. Counsel also referred to **OGUNBIYI V. ADEWUNMI [2008] 5 NWLR (Pt. 1079) 57 (SC); OGBECHIE V. ONOCHIE [1986] 2 NWLR (Pt. 23) 484 AT 488**; and **BPS ENGINEERING & CONSTRUCTION CO. LTD. V. FERMA [2023] 7 NWLR (Pt. 1884) 461 AT 481** in support of the proposition that appeals on questions of law lie as of right without leave.

With respect to the issue of computation of time, the Appellants contended that the question whether the appeal was filed within time was itself a pure question of law, citing **EBOIGBE V. NNPC (1994) 5 NWLR (Pt. 347) 649 (SC)**. On the complaint concerning accelerated hearing allegedly granted *suo motu* by the lower Court, counsel submitted that the failure to afford parties an opportunity to address the Court amounted to a breach of fair hearing protected under Chapter IV of the Constitution. Reliance was placed on **REGISTERED TRUSTEES OF AMORC V. AWONIYI (1994) 7 NWLR (Pt. 355) 154 at**

177; **ARAKA V. EJEAGWU** [2000] 8 NWLR (Pt. 670) 587, and **BAMGBOYE V. UNIVERSITY OF ILORIN** [1999] 10 NWLR (Pt. 622) 290 at 324.

Learned Counsel for the Appellants also rejected the contention that the Appellants were introducing fresh issues before this Court, maintaining that the allegations of fraud, forgery and non-compliance with the subsisting Court order formed the very substratum of the appeal before the lower Court, but were never determined on the merits because the appeal was dismissed in limine. It was argued that this Court retains powers under Section 22 of the Supreme Court Act to determine such issues or remit same to the lower Court for hearing. Counsel distinguished the case of **JAIYESIMI V. DARLINGTON** (supra), relied upon by the 1st Respondent, on the ground that, unlike the present case, the issue there arose freshly before the Supreme Court without having been canvassed at the Court of Appeal.

Finally, learned counsel submitted that the objection predicated on non-compliance with Order 6 Rule 3(5) had become academic, the Appellants having been paid the requisite sums into the account designated by this Court. The Court was accordingly urged to dismiss the preliminary objection and hold that the appeal is competent. Learned Counsel for the Appellants so urged this Court.

RESOLUTION OF PRELIMINARY OBJECTION

The preliminary objection by the 1st Respondent (and the other Respondents) calls for a careful examination of the constitutional conditions governing the competence of appeals before this Court. The objection, in substance, questions the Appellants' locus standi to institute the appeal, the competence of certain grounds of appeal alleged to be of mixed law and fact filed without leave, the validity of Ground 4 not arising from the judgment appealed against, and the alleged non-compliance with Order 6 Rule 3(5) of the Supreme Court Rules, 2024. The objection, if sustained, would terminate the appeal

in limine without recourse to its substantive merits. It therefore becomes imperative to approach the issues raised with the caution befitting questions touching on the jurisdiction of this Court, for jurisdiction remains the spinal cord of adjudication. Where it is absent, the entire superstructure of the proceedings will collapse, no matter how brilliantly conducted. See **NNPC V. FUNG TAI ENG. CO. LTD [2023] 15 NWLR (Pt. 1906) 117; OJO V. ADESIDA [2020] 10 NWLR (Pt. 1732) 347.**

It is equally settled that preliminary objections, particularly those directed at shutting out a litigant from the seat of justice, must not be sustained upon doubtful or overly technical grounds. The modern judicial attitude leans against technical justice where substantial justice can still be done within the framework of the law. Courts exist to determine disputes on their merits and not to enthrone procedural technicalities as instruments of injustice. The law, while exacting in matters of jurisdiction, is not insensitive to the demands of substantive justice.

I must, at this stage, observe an important constitutional development which appears to have escaped the attention of learned Counsel for the 1st Respondent in the construction and framing of the preliminary objection. Learned counsel predicated part of his objection on the alleged non-compliance with Section 233(5) of the Constitution, particularly in relation to the requirement of leave by persons who were not parties to proceedings before the lower Court. However, the said argument rests on a constitutional provision that no longer exists within our current constitutional architecture.

It is now beyond dispute that by the recent constitutional alteration (Second Alteration Act), 2010, Subsections (3), (4), (5) and (6) of Section 233 of the Constitution have been deleted. See unreported decision of this Court in **SC/ML/347/2025 – FRN V. IBRAHIM GIDADO & ORS** delivered on the 12th day of December 2025. The extant Section 233 now contains only two subsections reproduced below:

“233. Appellate jurisdiction

(1) The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal.

(2) An appeal shall lie from decisions of the Court of Appeal to the Supreme Court as of right in the following cases-

(a) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of Appeal.

(b) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution:

(c) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;

(d) decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of Appeal has affirmed a sentence of death imposed by any other court.

(e) decisions on any question whether-

(i) any person has been validly elected to the office of President or Vice-President under this Constitution,

(ii) the term of office of President or Vice-President has ceased,

(iii) the office of President or Vice-President has become vacant,

(iv) any person has been validly elected to the office of Governor or Deputy Governor under this Constitution,

(v) the term of office of Governor or Deputy Governor has ceased.

(vi) the office of Governor or Deputy Governor has become vacant; and

(f) such other cases as may be prescribed by an Act of the National Assembly.”

Consequently, any argument founded on the repealed Section 233(5) cannot enjoy continued constitutional validity. Courts of law are creatures of the Constitution and must interpret and apply the law as presently enacted, not as it once stood. Constitutional adjudication cannot proceed based on extinct provisions or spent legislative texts. The law, like society itself, is not static. Once a constitutional provision has been deleted, it ceases to possess

normative force and cannot constitute the juridical foundation for the exercise or denial of appellate rights.

The inevitable implication is that the objection challenging the competence of the appeal on the footing that the Appellants were not parties to the proceedings and failed to obtain leave pursuant to Section 233(5) of the Constitution is fundamentally misconceived, there being no such extant constitutional requirement under the present constitutional regime. The Court cannot breathe life into a provision that has been deliberately excised from the Constitution by constitutional amendment. To do so would amount to judicial legislation, a course firmly prohibited by settled constitutional principle. See **ALAGBAOSO V. INEC [2023] 8 NWLR (Pt. 1885) 115**. More importantly, the appeal before the lower Court was dismissed *in limine* principally on grounds touching on jurisdiction and competence. The issues raised before this Court, particularly Grounds 1, 2 and substantial aspects of Ground 3, cannot, at least *prima facie*, be dismissed as wholly alien to questions of law.

Complaints regarding whether leave was required to appeal, whether computation of time was correctly undertaken under Section 15(2)(a) of the Interpretation Act, and whether a Court raised and determined an issue *suo motu* without hearing the parties, are complaints which substantially implicate legal and constitutional questions.

It is true, as argued by learned Counsel for the 1st Respondent, that certain complaints touching on exercise of discretion, accelerated hearing, and award of costs may arguably traverse the field of mixed law and fact. Equally, Ground 4 appears inelegantly framed and dangerously close to inviting this Court into a direct review of proceedings at the trial Court without a clear pronouncement thereon by the lower Court. Ordinarily, such defects may attract the requirement of prior leave or render particular grounds of appeal incompetent.

Nevertheless, this Court has consistently maintained that where a Notice of Appeal contains at least one competent ground capable of sustaining the appeal, the proper approach is not to

SC/CV/132/2026 35 Tijani Abubakar, JSC

terminate the entire appeal in limine but to preserve the competent grounds and strike out only those grounds found defective. The appellate jurisdiction of this Court is not defeated merely because some grounds may be incompetent, provided there remains at least one valid ground upon which the appeal can stand and be sustained. See **W.D.P. DEV. CO. LTD. V. TRADE WHEELS LTD.** [2022] 8 NWLR (Pt. 1832) 247.

In the instant case, Grounds 1 and 2, in my humble view, substantially raise questions of law relating to jurisdiction and computation of statutory time. Ground 3 equally raises the constitutional issue of fair hearing arising from the alleged *suo motu* order for accelerated hearing. These grounds cannot, at this interlocutory stage, be dismissed as being patently incompetent. Once there exists at least one competent ground of appeal, the appeal itself survives. The proper course is to reserve fuller consideration of the precise character of each ground, and the weight to be attached thereto, until the substantive hearing of the appeal.

I am equally unable to sustain the objection founded on Order 6 Rule 3(5) of the Supreme Court Rules, 2024. While the provision requiring deposit of costs and filing of certificate of compliance is couched in mandatory language, the record before this Court shows that the Appellants have since complied with the requirement by making the requisite deposit into the designated account of this Court. The essence of procedural rules is to ensure orderly administration of justice, not to punish litigants who subsequently regularize non-compliance before the objection is determined. Procedural rules remain handmaids of justice and not its mistress. See **NNEJI V. CHUKWU** [1988] 3 NWLR (Pt. 81) 184.

I must also observe that the present appeal raises issues which, though inelegantly presented in some respects, touch upon questions of jurisdiction, fair hearing and the scope of appellate intervention in merger sanction proceedings. These are not matters that ought lightly to be foreclosed without affording parties the opportunity to ventilate them fully on the merits. The administration

of justice is better served where disputes, particularly those implicating constitutional questions, are determined substantively rather than buried beneath technical objections whose resolution is not entirely free from doubt.

In the end, while certain aspects of the preliminary objection are not without force, I am not persuaded that the defects alleged are of such fundamental character and magnitude as to extinguish the appeal in *limine*. The objection therefore lacks merit it is accordingly dismissed. I will now proceed to consider the substantive appeal on the merit.

SUBSTANTIVE APPEAL

SUBMISSIONS OF COUNSEL FOR THE APPELLANTS

ISSUE ONE

The learned Counsel for the Appellants submitted on the first issue, that their complaints bordering on fraud, forgery of Exhibit A, and disobedience of subsisting Court orders were fundamentally jurisdictional in nature and therefore constituted grounds of law alone for which no leave was required before filing any appeal.

Relying on Section 241(1)(b) of the Constitution, counsel argued that appeals on questions of law lie as of right. Reference was made to **MADUKOLU V. NKEMDILIM [1962] 1 ALL NLR 587; NWADIKE V. IBEKWE** (supra); **OGUNBIYI V. ADEWUNMI** (supra); and **KRAUS THOMPSON ORG. LTD. V. UNIVERSITY OF CALABAR [2004] 9 NWLR (Pt. 879) 631**, on the proposition that an appeal raising jurisdictional questions is one of law alone. Counsel further relied on **OGBECHIE V. ONOCHIE** (supra) and **ISAH V. INEC [2016] 18 NWLR (Pt. 1544) 175** to contend that where a complaint involves misapplication of the law to admitted facts or failure to consider jurisdictional issues, the ground remains one of law. It was argued that the lower Court erred in treating the appeal as one of mixed law and fact, whereas the gravamen of the complaint was that the proceedings were founded on fraud, forgery and non-compliance with conditions precedent imposed by the trial Court. Counsel maintained that the deliberate presentation of an altered Scheme of Merger instead of Exhibit A, coupled with the failure to obtain prior approval of the Central Bank

of Nigeria as ordered by the Court, vitiated the entire proceedings and robbed the Court of competence. Reliance was placed on **ADALMA TANKERS BUNKERING SERVICES V. C.B.N. (2022) 11 NWLR (Pt. 1842) 405**; **A.G. FEDERATION V. ABUBAKAR (2008) 16 NWLR (Pt. 1112) 135 (SC)**; **ALADE V. ALEMULOKE (1988) 1 NWLR (Pt. 69) 207 (SC)**; **SHELL PETROLEUM DEVELOPMENT COMPANY V. AMADI (2011) 14 NWLR (Pt. 1266) 157 (SC)**; **SARAKI V. KOTOYE (supra)**; **OKOKO V. DAKOLO (2006) 14 NWLR (Pt. 1000) 401**; **CITEC INTERNATIONAL ESTATES LTD. V. FRANCIS (supra)**; and **NNAJI V. NDUBUISI (2024) 5 NWLR (Pt. 1930) 163**, to submit that fraud and disobedience of mandatory conditions precedent nullify proceedings and remove the matter from the operation of the rule in *Foss v. Harbottle* (supra). Counsel accordingly urged the Court to hold that the appeal lay as of right and that the objection founded on absence of leave was misconceived. Learned Counsel then urged this Court to resolve this issue in favor of the Appellants against the Respondents.

ISSUE TWO

On the second issue, learned Counsel for the Appellants contended that the Notice of Appeal before the lower Court was filed within the statutory period prescribed by Section 24(2)(a) of the Court of Appeal Act. Counsel argued that the settled principle governing computation of time is that the day on which the decision was delivered must be excluded. Reliance was placed on Section 15(2)(a) of the Interpretation Act and the decisions in **EBOIGBE V. NNPC** (supra); **AKEREDOLU V. AKINREMI** [1986] 2 NWLR (Pt. 25) 710 (SC); **AUTO IMPORT EXPORT V. ADEBAYO** [2002] 18 NWLR (Pt. 799) 554 (SC); **WESTERN STEEL WORKS LTD. V. IRONSTEEL WORKERS UNION** [1986] 3 NWLR (Pt. 30) 617; **KABIRU V. STATE** [2022] 10 NWLR (Pt. 1838) 255; and **YAKUBU V. FRN** [2023] 1 NWLR (Pt. 1864) 9 (SC). Counsel submitted that since the ruling appealed against was delivered on the 19th day of November 2025, the computation ought to exclude that date, with the result that the Notice of Appeal filed on the 3rd day of December 2025 was competent and filed within time. It

was further argued that the lower Court misapplied **OWNERS OF THE M.T. MARIGOLD V. NNPC [2022] 7 NWLR (Pt. 1828) 165** and thereby wrongly deprived the Appellants of their constitutional right of appeal. Counsel referred to **OKONJI V. NJOKANMA [1999] 14 NWLR (Pt. 638) 250 (SC)** and **ABUBAKAR V. DANKWAMBO [2015] 18 NWLR (Pt. 1491) 213** in urging the Court not to allow procedural technicalities defeat substantial justice where competent grounds of appeal exist. Learned Counsel urged that this issue be resolved in favor of the Appellants against the Respondents.

ISSUE THREE

Arguing the third issue, Counsel submitted that the lower Court breached the Appellants' constitutional right to fair hearing by *suo motu* granting accelerated hearing of Suit No. FHC/L/MISC/734/2025 without hearing the parties on the propriety of such an order. Counsel contended that a Court is bound to confine itself to the reliefs sought by the parties and cannot assume the role of "Father Christmas." Reliance was placed on **SALUBI V. NWARIAKU [2003] 7 NWLR (Pt.**

819) 426; **ATIVIE V. KABELMETAL (NIG.) LTD.** [2008] 10 NWLR (Pt. 1095) 399; and **AGBI V. OGBEH** [2006] 11 NWLR (Pt. 990) 65. Counsel further argued that the lower Court raised and determined the issue of accelerated hearing *suo motu* without inviting addresses from counsel, contrary to the principles enunciated in **IMAH V. OKOGBE** [1993] 9 NWLR (Pt. 316) 159; **OYEKANMI V. NEPA** [2000] 15 NWLR (Pt. 690) 414 (SC); **GOVERNOR OF GONGOLA STATE V. TUKUR** [1989] 4 NWLR (Pt. 117) 592; **SOUTH ATLANTIC PETROLEUM LTD. V. MINISTER OF PETROLEUM RESOURCES** [2023] 7 NWLR (Pt. 1882) 135; **OKERE V. AMADI** [2005] 14 NWLR (Pt. 945) 545; **IROM V. OKIMBA** [1998] 3 NWLR (Pt. 540) 19; **BADMUS V. ADEGUNDE** [1999] 11 NWLR (Pt. 627) 493; and **UGHANWA V. I.G.P.** [2024] 16 NWLR (Pt. 1963) 91. Counsel maintained that by fast-tracking the substantive suit despite pending allegations of fraud, forgery and non-compliance with statutory and judicial conditions precedent, the lower Court effectively prejudged the Appellants' challenge and occasioned a grave miscarriage of justice, learned SC/CV/132/2026

Counsel therefore urged this Court to so hold and resolve this issue in favor of the Appellants.

ISSUE FOUR

On the fourth issue, Counsel argued that the award of ₦5,000,000.00 costs each against the Appellants in favour of the 1st, 2nd, 3rd, 4th, 5th, 6th and 10th Respondents was made upon a fundamentally erroneous premise that the appeal was incompetent. Counsel submitted that although costs are discretionary, such discretion must be exercised judicially and judiciously. Reliance was placed on **NIGERIAN PORTS AUTHORITY V. AMINU IBRAHIM & CO. [2018] 12 NWLR (Pt. 1632) 62 AT 86 – 87; OLUSANYA V. OSINLEYE [2013] 12 NWLR (Pt. 1367) 148; ANENE V. MTN (NIG.) COMM. PLC [2025] 16 NWLR (Pt. 2010) 1; INTERNATIONAL OFFSHORE CONSTRUCTION LTD. V. SHORELINE LIFEBOAT LTD. [2003] 2 NWLR (PT. 803) 1; UNIVERSITY OF LAGOS V. AIGORO [1985] 1 NWLR (Pt. 1) 143 at 148 – 149; and INEC V. ACD [2022] 12 NWLR (Pt. 1844) 257**. Learned Counsel argued that once the findings that the

appeal was filed out of time and without leave were shown to be erroneous, the award of costs, founded upon those findings, could not stand, invoking the dictum in **MACFOY V. UAC LTD. (1962) AC 152 AT 160** that one cannot place something on nothing and expect it to stand. It was further submitted by learned Counsel that the quantum awarded was manifestly excessive, punitive and calculated to discourage the exercise of the constitutional right of appeal, particularly as the appeal was disposed of on preliminary objections without a hearing on the merits. Counsel therefore urged the Court to set aside the award of costs in its entirety and allow the Appellant's appeal.

SUBMISSIONS OF COUNSEL FOR THE 1ST RESPONDENT
ISSUE ONE

In response to the submissions of the Appellants on Issue One, learned counsel for the 1st Respondent contended that the gravamen of the appeal before the lower Court was not the merit of the allegations of fraud, forgery or non-compliance with Court orders, but the competence of the appeal itself. Counsel submitted that the

ruling of the trial Court merely regulated the sequence in which the pending applications would be heard and therefore amounted to an exercise of judicial discretion in the management of proceedings. Reference was made to the portion of the ruling where the trial Court directed that the Appellants' application would first be heard before the substantive *ex parte* motion. It was argued that the grounds of appeal challenging that procedural decision were clearly grounds of mixed law and fact, for which prior leave of Court was mandatory. Relying on **CHIEF OF AIR STAFF V. EDWARD** [2019] 14 NWLR (Pt. 1691) 183 AT 196 paras. D – E; **DESTRA INVESTMENT LTD. V. F.R.N.** [2018] 8 NWLR (Pt. 1621) 335 AT 343 paras. D – E; **UNITY BANK PLC V. NWADIKE** [2009] 4 NWLR (Pt. 1131) 352 AT 374 para. B; **CPL INDUSTRIES LTD. V. UNION HOMES SAVINGS & LOANS LTD.** [2021] 9 NWLR (Pt. 1781) 201 AT 235 paras. B – C; and **A.S.E.S.A. V. EKWENEM** [2009] 13 NWLR (Pt. 1158) 410. Counsel further argued that allegations of fraud and forgery are factual matters requiring

grounds of pure law merely because jurisdiction was mentioned in the grounds of appeal. It was therefore submitted that, having failed to obtain leave before filing the appeal, the appeal before the lower Court was incompetent ab initio. Counsel relied on **VIRGIN ATLANTIC AIRWAYS V. PABLO-AMARAN [2026] 1 NWLR (Pt. 2026) 405 at 439 para. F; OSAS V. TUEDOR-MATHEWS [2024] 13 NWLR (Pt. 1956) 509 at 535 paras. E – G; NDUBUISI V. SHOBANDE [2025] 20 NWLR (Pt. 2022) 163 at 174 paras. E – H; AL-MAJIR V. JALBAIT VENTURES (NIG.) LTD. [2021] 15 NWLR (Pt. 1798) 157; MAIGORO V. GARBA [1999] 10 NWLR (Pt. 624) 555; OLUWOLE V. LAGOS STATE DEVELOPMENT AND PROPERTY CORPORATION (1983) 5 SC 1; OGLECHIE V. ONOCHIE (NO.1) [1986] 2 NWLR (Pt. 23) 484; AMMANI V. BALARABE [2022] 14 NWLR (Pt. 1849) 165 at 183 paras. B – C; ABUBAKAR V. WAZIRI [2008] 14 NWLR (Pt. 1108) 507; ALLANAH V. KPOLOKWU [2016] 6 NWLR (Pt. 1507) 1; and NWAGBARA V. JADCOM LTD. [2021] 16 NWLR (Pt. 1802) 327, urging the Court to affirm the findings of the lower Court that the appeal was**

incompetent for want of leave. Counsel urged this Court to resolve this issue in favor of the Respondents.

ISSUE TWO

On Issue Two, learned counsel for the 1st Respondent submitted that the lower Court was right in holding that the Notice of Appeal was filed out of time. Counsel argued that although the Appellants relied on **AKEREDOLU V. AKINREMI** (supra) and **AUTO IMPORT EXPORT V. ADEBAYO** (supra) on the proposition that the date of the ruling ought to be excluded in computing time, the Court below rightly preferred the more recent authorities of this Court which hold otherwise. Reliance was placed on **OWNERS OF THE MT MARIGOLD V. NNPC** [2022] 7 NWLR (Pt. 1828) 165 and **ENYIBROS FOOD PROCESSING CO. (NIG.) LTD. V. NDIC** [2021] 16 NWLR (Pt. 1800) 559 at 571 paras. **A – B.** Counsel further submitted that where there are apparently conflicting decisions of this Court, the lower Court is bound to follow the later decision in time. In support, reliance was placed on **WEMA BANK PLC V. AWOTUNDE** [2025] 18 NWLR (Pt. 2017) 273 at 289

paras. D – E; **CBN V. ZAKARI (2018) LPELR-44751; CARDOSO V. DANIEL [1986] 2 NWLR (Pt 20) 1; SERIKI V. SOLARU (1963) 2 SCNLR 393; and IKEAGWU V. NWANKPA (1966) 1 SCNLR 238.** Counsel accordingly urged the Court to affirm the decision of the lower Court on the issue of limitation of time and resolve this issue in favor of the Respondent.

ISSUE THREE

In response to Issue Three, learned counsel submitted that the complaint of denial of fair hearing was misconceived, arguing that fair hearing is not to be invoked as a ritualistic formula where the facts do not justify it and relying on **AONDOAKAA V. OBOT [2022] 5 NWLR (Pt. 1824) 523 at 596 paras. C – D.** Counsel maintained that the order for accelerated hearing was not raised *suo motu* by the Court below but arose naturally from the peculiar urgency surrounding the recapitalization deadline confronting the 1st and 2nd Respondents. Learned Counsel submitted that the Court below merely exercised its statutory powers to make consequential and appropriate orders in

the interest of justice. Reliance was placed on Section 15 of the Court of Appeal Act, Laws of the Federation of Nigeria 2004; Order 4 Rule 1 of the Court of Appeal Rules 2021, and the decisions in **AMAECHI V. INEC [2008] 5 NWLR (Pt. 1080) 227 AT 345 paras. C – E; O.S.I.E.C. V. A.C. [2010] 19 NWLR (Pt. 1226) 273 at 322 - 324 paras. E – B; ETAJATA V. OLOGBO [2007] 16 NWLR (Pt. 1061) 554 at 589 – 590 paras. A – D; and NNAEMEKA V. INEC [2026] 1 NWLR (Pt. 2024) 1 at 57 paras. C – E.** Counsel further argued that even if the issue was deemed to have been raised *suo motu*, it fell within the recognized exceptions permitting the Court to act without calling for addresses from parties, relying on **AKINGBULUGBE V. NIROWI [2023] 11 NWLR (Pt. 1895) 339 AT 355 paras. G – H.** The Court was therefore urged to affirm the order for accelerated hearing and resolve in favor of the Respondent.

ISSUE FOUR

Submitting on Issue Four, learned counsel for the 1st Respondent said the award of costs by the lower Court was entirely

within its statutory and discretionary powers. Counsel referred to Section 11 of the Court of Appeal Act and Order 4 Rule 3 of the Court of Appeal Rules 2021, contending that costs ordinarily follow events and are awarded to indemnify the successful party for expenses reasonably incurred in litigation. Reliance was placed on **ANENE V. MTN (NIG.) COMMUNICATIONS PLC [2025] 16 NWLR (Pt. 2010) 1 at 28 paras. D – H**. Counsel argued that since the decision of the lower Court striking out the appeal for incompetence remains subsisting, the consequential award of costs cannot be faulted, particularly as it was intended to discourage the filing of incompetent interlocutory appeals. The Court was accordingly urged to affirm the award of cost and resolve this issue in favor of the Respondents and allow the appeal.

APPELLANT'S REPLY

In reply to the submissions of the 1st Respondent, the learned Counsel for the Appellants contended that the issues of fraud, forgery and non-compliance with a subsisting court order raised

fundamental questions touching on the jurisdiction of the trial Court and being threshold issues, ought to have been determined before any further proceedings were undertaken. Reliance was placed on **OKAFOR V. NWEKE [2007] 10 NWLR (Pt. 1043) 521 at 531**. Counsel maintained that the grounds of appeal before the lower Court were grounds of law alone, as they challenged the competence of the trial Court to entertain the *ex parte* application for sanction. Citing **NWADIKE V. IBEKWE** (*supra*), learned counsel argued that a complaint bordering on lack of jurisdiction constitutes a ground of law for which no leave is required. According to the Appellants, the jurisdictional challenge arose from the allegation that the scheme presented to shareholders was a forged or altered version of the document approved by the Court, that the shareholders' meeting was void *ab initio*, and that there had been non-compliance with the subsisting order requiring prior approval of the Central Bank of Nigeria before the sanction application could be entertained.

The learned Counsel for the Appellants further argued that although the trial Court directed that their application be heard first, its decision to hear same together with the substantive *ex parte* application offended settled principles of law and fair hearing, particularly as they were neither parties to the *ex parte* proceedings nor entitled to respond thereto, citing **OSHOBOKA V. AMUDA [2013] 7 NWLR (Pt. 1353) 233 (SC)** and **MADUKOLU V. NKEMDILIM** (*supra*). Counsel submitted that the decision in **CHIEF OF AIR STAFF V. EDWARD** (*supra*) was distinguishable, same having arisen from a mere case-management decision unrelated to jurisdiction. Similarly, **DESTRA INVESTMENT LTD. V. FEDERAL REPUBLIC OF NIGERIA** (*supra*) was said to be inapplicable, as the issue therein concerns the exercise of discretion rather than the competence of the proceedings.

On the allegation of fraud and forgery, the learned Counsel for the Appellants conceded that such matters are ordinarily factual in nature, but argued that where the fraud is admitted or patent on the

face of the record, the issue transcends factual dispute and becomes one of law leading to nullity. Reference was made to **EPHRAIM V. OKE [2017] 2 NWLR (Pt. 1549) 345 (SC)**, while counsel asserted that the Respondents had admitted altering Exhibit A at page 825 of the Record of Appeal. The Appellants further relied on **SHELL PETROLEUM DEVELOPMENT COMPANY V. AMADI [2011] 14 NWLR (Pt. 1266) 157 (SC)** and **AKINLOYE V. EYIYOLA (1968) NMLR 92 (SC)** for the proposition that proceedings founded on forged documents are nullities. It was therefore argued that the authority of **CPL INDUSTRIES LTD. V. UNION HOMES SAVINGS & LOANS LTD.** (supra), cited by the 1st Respondent, was distinguishable because it involved disputed facts requiring evaluation, unlike the present case where the material facts were allegedly admitted.

The learned Counsel for the Appellants also submitted that since the appeal before the lower Court challenged jurisdiction, it was competent as of right and did not require prior leave.

Consequently, the authorities relied upon by the 1st Respondent,

namely **OSAS V. TUEDOR-MATHEWS** (supra); **NDUBUISI V. SHOBANDE** (supra) and **AMMANI V. BALARABE** (supra), were said to be distinguishable, having been decided on grounds genuinely involving mixed law and fact. On the issue of computation of time, counsel argued that the principle enunciated in **AKEREDOLU V. AKINREMI** (supra), to the effect that the day judgment is delivered must be excluded in computing time, remains good law and was reaffirmed in **YAKUBU V. FEDERAL REPUBLIC OF NIGERIA** (supra), notwithstanding the decision in **OWNERS OF THE MT MARIGOLD V. NIGERIAN NATIONAL PETROLEUM CORPORATION** (supra).

On the complaint relating to accelerated hearing, the learned Counsel for the Appellants argued that mere awareness of facts does not amount to an opportunity to be heard on a proposed order. They contended that the lower Court raised and determined the issue *suo motu* without inviting addresses from parties, thereby breaching the Appellants' right to fair hearing. Reliance was placed on **OYEKANMI V. NEPA** (supra). Counsel further submitted that none of the

recognized exceptions identified in **AKINGBULUGBE V. NIROWI** (supra) applied to justify the order for accelerated hearing.

Finally, on the award of costs, the Appellants argued that the admission by the 1st Respondent that the costs were intended to serve as a deterrent clearly demonstrated their punitive nature, relying on **OLUSANYA V. OSINLEYE [2013] 2 NWLR (Pt. 1367) 148 (SC)**. It was further contended that once the appeal before the lower Court is found competent, the foundation upon which the award of costs rested collapses, in line with the celebrated dictum in **MACFOY V. UNITED AFRICA COMPANY LTD.** (supra), that one cannot place something on nothing and expect it to stand. The Appellants also maintained that the cumulative award of ₦35,000,000.00 against them, without proof of actual expenses incurred, was manifestly excessive and punitive.

I must be quick to mention that Appellants reply brief substantially repeated the submissions canvassed in arguing the substantive appeal. Reply brief is essential an opportunity to respond

to fresh issues canvassed by the Respondent, it must not be taken as an avenue for the Appellant to re-argue his case. In any case, I have touched on the Appellant's reply brief.

RESOLUTION OF SUBSTANTIVE APPEAL

The resolution of the substantive appeal turns, fundamentally, on the true character of the complaints raised by the Appellants before the lower Court and whether the grounds of appeal contained in the Notice of Appeal filed by Appellants before the Court below were, in substance and effect, grounds of law alone or grounds of mixed law and fact requiring prior leave of Court. The appeal also calls for determination of whether the lower Court was correct in holding that the Notice of Appeal was filed out of time; whether the complaint of denial of fair hearing arising from the order for accelerated hearing is sustainable; and whether the consequential award of costs ought to be disturbed by this Court.

It is necessary, at the very outset, to restate a principle that has now become firmly embedded in our appellate jurisprudence and

which is that in determining whether a ground of appeal is one of law, fact, or mixed law and fact, the Court is not bound by the label ingeniously affixed to the ground by counsel. Jurisdictional phraseology, however, artfully and cunningly deployed, cannot by sheer forensic dexterity convert factual controversies into pure questions of law. The Court must examine the ground of appeal, together with its particulars, to ascertain its real substance, legal effect and practical import. See **P.D.P. V. SHERRIF [2017] 15 NWLR (Pt. 1588) 219**. This Court has consistently emphasized that the classification of a ground of appeal depends not on the language employed by Counsel but on the intrinsic nature of the complaint disclosed therein. See **CPL IND. LTD. V. UNION HOMES S. & L. LTD. [2021] 9 NWLR (Pt. 1781) 201**.

I have carefully examined the two grounds of appeal contained in the Notice of Appeal reproduced from pages 1091 – 1095 of the Records of Appeal. A close reading of those grounds reveals, in my humble view, that although the Appellants repeatedly employed the

use of expressions such as “jurisdiction,” “forgery,” “fraud,” “nullity,” and “non-compliance with court order,” the true gravamen of their complaint was directed against the procedural and discretionary decision of the learned trial Judge to hear together the Appellants’ application and the pending *ex parte* application for sanction of merger. The complaints were not confined to the abstract legal competence of the Federal High Court to entertain merger proceedings under the Companies and Allied Matters Act. Rather, they invited the lower Court to activate its appellate status to inquire into whether the learned trial Judge properly exercised judicial discretion in the management of pending applications; whether there was indeed alteration of the merger scheme earlier approved; whether there had been compliance with prior court directives requiring approval of the Central Bank of Nigeria; whether the Appellants stood the risk of being overreached; and whether the procedural sequence adopted by the trial Court occasioned injustice.

Those matters cannot be determined merely by sterile legal construction in vacuo. They necessarily require investigation of contested facts, examination of procedural events, scrutiny of documents, and evaluation of competing factual assertions. Such an exercise falls squarely within the domain of mixed law and fact. The law is settled beyond peradventure that where determination of a ground of appeal necessitates evaluation of evidence, examination of facts, or review of the way the discretion was exercised, the ground is one of mixed law and fact. See **COMEX LTD. V. N.A.B. LTD. [1997] 3 NWLR (Pt. 496) 643; ALLANAH V. KPOLOKWU [2016] 6 NWLR (Pt. 1507) 1**. For ease of reference, I consider it necessary to reproduce the two grounds of appeal including the particulars of error below:

"GROUND 1

The learned trial judge erred in Law when he ruled that the court can hear An Application challenging the jurisdiction of court to sanction merger and the Ex Parte Application of the 1st Sets of Respondents to sanction Merger together when there are fundamental issues of law challenging Jurisdiction raised by the Interested Parties/Appellants to wit, Noncompliance with

the court Order to seek Central Bank of Nigeria's approval before back to court as ordered.

Particulars of Error

- a. It is trite that when an application challenging the jurisdiction of the court is made, the court has to first determine such an application because the ground upon which the court exercises its authority is jurisdiction.*
- b. The Learned trial Judge allowed himself to be rushed and pressured by the Counsels (sic) to the 1st Set of Respondents to rush the Hearing of their Application by giving the same date to hear all application even when the issue of fraud and noncompliance with Court's order were alleged.*
- c. The Court ordered the 1st Set of Respondents to seek Central Bank of Nigeria's approval before coming back to the court for the Merger sanction, but they failed to do so.*
- d. The Appellant will be overreached if the two Applications are taken together as the Appellants are not parties to the Ex Parte Application for Merger sanction and their right to seek redress if the ruling is not in their favour will be forestall because the Ex Parte would have ruled upon to favour the 1st Sets of Respondents.*
- e. It is the position of the law that any step taken by the court without jurisdiction will amount to nullity.*

GROUND 2

The learned trial Judge erred in Law when he ruled that the Application that that raised the issue of forgery can be heard with the Substantive Application Merger knowing fully well that the moment the Merger is sanctioned, end as come to the suit.

Particulars of Error

- a. The 1st Set of Respondents filed an application seeking the order of the court for separate meetings of the shareholders of the 1st Set of Respondents to present the merger scheme attached to their application. However, the 1st Sets of Respondents went ahead fraudulently changed the merger scheme and presented another merger scheme entirely to the Shareholders.
- b. Despite not complying the court and presentation forged merge scheme to shareholders. (sic) The 1st Sets of Respondents went back to the court and filed Ex Parte Application on the 27th October 2025 that they have complied with the order of the court, urging the court to sanction the merger.
- c. The Appellants raised the issue of forgery in their application of 6th of November 2025 and on the 19th November 2025, the court ruled that the two applications will be heard together despite the argument that if the ruling goes in favour of the Ex Parte application, it means the merger has been sanctioned and the Appellant herein who is not a party in the Ex Parte application does not have a right of Appeal.
- d. If Ex Parte application decision goes in favour of the 1st set of the Respondent, the appellants

would overreached because the merger would have been sanctioned by fraud with the forged scheme of merger. (sic)”

What the Appellants sought to challenge before the lower Court was not the inherent jurisdiction of the Federal High Court over merger sanction proceedings *simpliciter*, but the manner in which the learned trial Judge exercised procedural control over proceedings already properly before the Court. The mere insertion of the word “jurisdiction” into a ground of appeal cannot transmute factual disputes into pure questions of law. Jurisdiction is not a talisman whose invocation automatically decontaminates every complaint from the constitutional requirement of leave. Courts are enjoined to look beyond form to substance, for the law does not permit clever draftsmanship to defeat constitutional procedure.

Equally significant is the fact that the allegations of fraud and forgery upon which the Appellants heavily relied are quintessential allegations of fact requiring credible evidential proof. Fraud is never presumed. It must not only be specifically pleaded but must also be

strictly proved by credible evidence. See **OTUKPO V. JOHN [2012] 7 NWLR (Pt. 1299) 357**. Even where fraud is alleged to affect jurisdictional competence, the Court must still undertake factual inquiry before arriving at any legal conclusion. Therefore, the Appellants' attempt to elevate those allegations to pure questions of law cannot avail them. As I have earlier pointed out, where grounds of appeal require investigation into the existence or otherwise of facts upon which legal consequences depend, such grounds remain grounds of mixed law and fact. I therefore agree entirely with the lower Court that the appeal, as constituted before it, substantially involved grounds of mixed law and fact requiring prior leave. The first issue is accordingly resolved in favour of the Respondents against the Appellants.

The second issue, however, stands on an entirely different footing. It concerns the computation of statutory time within which the Notice of Appeal was required to be filed. On this issue, with profound respect to the learned Justices of the lower Court, I am

unable to agree with the conclusion reached that the Notice of Appeal was filed out of time. By virtue of Section 15(2)(a) of the Interpretation Act, Cap. 123, Laws of the Federation of Nigeria, 2004, where a period is reckoned from the happening of an event, the day on which the event occurs is excluded from computation. The provision is clear, mandatory and admits of no ambiguity whatsoever. It provides that:

“A reference in an enactment to a period of days shall be construed... as excluding the day on which the event occurs.”

The jurisprudence on this point has enjoyed remarkable consistency over the years. As far back as 1985 in **AKEREDOLU V. AKINREMI** (supra), this Court held unequivocally that the day judgment was delivered must be excluded in computing time for appeal. The same principle was reaffirmed in **MOORE V. FLOUR MILLS OF NIGERIA PLC (2022) 11 NWLR (Pt. 1841) 365** and again, even more recently in **YAKUBU V. F.R.N.** (supra). The rationale for the rule is rooted in certainty, fairness and fidelity to statutory

interpretation. A litigant cannot be expected to utilize a day that has substantially expired before the judicial act giving rise to the right of appeal occurred.

It is not in dispute that by Section 24(2)(a) of the Court of Appeal Act, the Appellants have fourteen days to appeal against the interlocutory decision of the trial Court. It is also not disputed that the ruling of the trial Court appealed against was delivered on the 19th day of November 2025. Excluding that date, computation properly commenced on the 20th day of November 2025. The fourteenth day therefore fell on the 3rd day of December 2025, being precisely the date the Notice of Appeal was filed. The appeal before the lower Court was therefore filed within the statutory period prescribed by law.

I am not unmindful of the reliance placed by the lower Court and learned counsel for the Respondents on **OWNERS OF THE MT MARIGOLD V. NNPC** (supra) and **ENYIBROS FOOD PROCESSING CO. (NIG.) LTD. V. NDIC** (supra). However, the later decision of this SC/CV/132/2026

Court in **YAKUBU V. F.R.N.** (supra) directly reaffirmed the operation and mandatory effect of Section 15(2)(a) of the Interpretation Act and therefore represents the current authoritative position of the law. The doctrine of *stare decisis* commands fidelity not merely to chronology but to the proper interpretation of extant statutory provisions. Courts are not permitted, under the guise of interpretation, to construe away the express words of a statute. The lower Court therefore fell into grave error when it held that the Notice of Appeal was incompetent having been filed out of time. The second issue is accordingly resolved in favour of the Appellants against the Respondents.

On the third issue touching on fair hearing and the complaint relating to the order for accelerated hearing, I again find myself unable to agree with the contention advanced by the learned Counsel for the Appellants. Fair hearing, though fundamental and constitutionally entrenched under Section 36(1) of the Constitution, is not a magical incantation to be invoked whenever a party is dissatisfied with the procedural direction adopted by a Court. The

constitutional guarantee is satisfied once parties are afforded reasonable opportunity to present their case before an impartial tribunal. See **AYOADE V. STATE [2020] 9 NWLR (Pt. 1730) 577; GOV., IMO STATE V. E.F. NETWORK NIG. LTD [2019] 9 NWLR (Pt. 1676) 95.**

The order for accelerated hearing made by the Court below neither determined the substantive rights of the parties nor foreclosed any issue pending before the trial Court. It was, plainly, a case-management directive issued within the inherent and statutory powers of the Court to ensure expeditious disposal of proceedings, particularly in the light of the urgency surrounding the recapitalization and merger timelines confronting the Respondents. Courts are not helpless spectators in proceedings before them. They possess inherent jurisdiction to regulate their own process and ensure that the machinery of justice is not frustrated by avoidable delay or procedural stagnation.

It is also incorrect, with due respect, to characterize every procedural direction made by a Court as an issue raised *suo motu*

requiring further addresses from counsel. The order for accelerated hearing arose naturally from circumstances already apparent on the record and from the urgency repeatedly canvassed before the Court. The law does not insist upon empty formalism where the issue arises directly from the proceedings themselves. Courts are entitled, in appropriate cases, to make consequential or incidental orders necessary for the proper administration of justice. See **POWER HOLDING CO. (NIG.) PLC & ANOR V. NWOGBU (2026) LPELR – 83226 (SC); AFROTEC TECH. SERV. (NIG.) LTD. V. MIA & SONS LTD [2000] 15 NWLR (Pt. 692) 730 (SC)**. More fundamentally, the Appellants failed to demonstrate what actual prejudice they suffered because of the said order. Fair hearing is not established by speculative grievance or generalized dissatisfaction. A party alleging denial of fair hearing must show how the alleged breach occasioned miscarriage of justice. See **OKEKE V. UWAECHINA [2022] 10 NWLR (Pt. 1837) 173**. No such prejudice has been demonstrated here. The

third issue is therefore resolved in favour of the Respondents against the Appellants.

The fourth issue concerns the award of costs in the sum of ₦5,000,000.00 each in favour of the affected Respondents. The Appellants have urged this Court to interfere with the award on the ground that it was punitive and founded upon erroneous conclusions reached by the lower Court. It is settled beyond argument that costs are entirely within the discretionary province of the Court, provided such discretion is exercised judicially and judiciously. See **ONESI V. KERI** [2024] 14 NWLR (Pt. 1957) 1 (CA); **NNPC V. KLIFCO NIG. LTD.** [2011] 10 NWLR (Pt. 1255) 209. Costs ordinarily follow events. Litigation, especially complex corporate and commercial litigations of the present nature, impose substantial financial, professional and administrative burdens upon successful parties. The law therefore permits the award of costs not merely as symbolic recompense but as partial indemnity for expenses reasonably incurred in defending proceedings.

The lower Court, having found the appeal incompetent at the time, was entitled to award costs against the Appellants. Although I have disagreed with the Court below on the issue of computation of time, I do not consider that disagreement alone sufficient basis for disturbing the discretionary award of costs in the peculiar circumstances of this case. Appellate Courts do not lightly interfere with award of costs except where the discretion was exercised upon wrong principles, was manifestly arbitrary, or where the award is plainly perverse. See **MEKWUNYE V. EMIRATES AIRLINES [2019] 9 NWLR (Pt. 1677) 191.**

The mere fact that the Appellants succeeded partially on one issue before this Court does not automatically invalidate the costs earlier awarded by the lower Court, particularly having regard to the interlocutory disputes generated by the proceedings. The law is settled that costs are not imposed merely to punish; they are awarded to compensate a successful litigant for the trouble, harassment and inconvenience he has been subjected to

SC/CV/132/2026 71 *Tijani Abubakar, JSC*

unnecessarily. See **OTASOPE V. NATIONAL BANK** [1985] 3 NWLR (Pt. 11) 147 (CA); **P.H.M.B. V. UTOMI** [1999] 13 NWLR (Pt. 636) 572 (CA). In the circumstances therefore, I decline the invitation to interfere with the discretionary award of costs made by the lower Court. The fourth issue is accordingly resolved in favour of the Respondents, against the Appellants.

The implication of the above is that only the second issue bordering on computation of time to file the Notice of Appeal at the lower Court is resolved in favour of the Appellants. Therefore, the appeal is unmeritorious. and deserves to be dismissed.

However, this is not the end of the appeal because, as I earlier pointed out, the 2nd Respondent filed a motion seeking for several reliefs already reproduced in the course of this judgment but for the purpose of the application, only two of the reliefs sought alternatively are alive before the Court and they are reproduced as follows:

**1. "AN ORDER OF THIS HONOURABLE
COURT invoking its powers under section**

22 of the Supreme Court Act to sanction the scheme of Merger between the 1st Respondent and 2nd Respondent/Applicant.

IN THE ALTERNATIVE TO RELIEF 1

2. AN ORDER OF THIS HONOURABLE COURT mandating the trial Court to proceed and deliver its Ruling on the Appellants' Motion for Stay of Proceedings and the 1st and 2nd Respondents' Joint Ex Parte Originating Summons to sanction the Scheme of Merger argued on 13th March, 2026 in SUIT NO.: FHC/L/MISC/734/2025 between PROVIDUS BANK LIMITED V. UNITY BANK PLC. in accordance with the provisions of Order 7 Rule 2 (2) of the Rules of this Honourable Court within 7 days of the date of the order."

The application is supported by a 43-paragraph affidavit deposed to by one Kingsley Amuchuaka, the Zonal Legal Officer of the 2nd Respondent/Applicant. It was also accompanied by a written address filed by learned Senior Counsel Dodo, SAN. Although three issues were formulated for the determination of the application, only

two issues relate to Prayers 1 and 2 under consideration and they are as follows:

- 1. "Whether the 2nd Respondent/Applicant has made out a case for the invocation of the powers of this Honourable Court in Section 22 of the Supreme Court Act?**
- 2. Whether the 2nd Respondent/Applicant has made out a case for the grant of an order directing the Trial Court to resume proceedings on an accelerated basis?"**

The 2nd Respondent/Applicant, in urging the Court to invoke its powers under Section 22 of the Supreme Court Act, Cap. S15, Laws of the Federation of Nigeria 2004 contended that it had placed before the Court sufficient materials to warrant the favorable exercise by the Court of its discretion, relying on **RE: YAR'ADUA (2011) 17 NWLR (Pt. 1277) 567 at 585, paras. E – F**. Learned Senior Counsel submitted that the record of appeal, particularly the Joint *Ex Parte* Originating Summons for the sanction of the Scheme of Merger contained at pages 281 of Volume 1 to 600 of Volume 2 of the Records of Appeal,

supplied all the necessary materials for the determination of the real issues in controversy without remitting the matter to the trial Court.

Relying on Section 22 of the Supreme Court Act, learned Senior Counsel argued that the provision confers wide and unfettered powers on this Court to exercise full jurisdiction over proceedings before it as though the matter had originated at first instance before the Supreme Court. The Applicant referred to the decision in **MATO V. HEMBER (2017) LPELR - 42765 (SC)**, where the conditions guiding the exercise of powers under Section 22 were identified to include the availability of sufficient materials, the need to avoid delay, and the overall interest of justice. It was submitted that those conditions had been fully satisfied in the instant case, particularly as remitting the matter to the trial Court would occasion further delay and jeopardize the proposed merger process.

Learned Senior Counsel further argued that the delay occasioned by the pending interlocutory appeal would gravely prejudice the 2nd Respondent/Applicant in the light of the SC/CV/132/2026

recapitalization deadline imposed by the regulatory authorities, with the attendant risk of loss of depositor confidence and financial instability. The Court was accordingly urged to adopt the pragmatic approach endorsed in **APC V. ENUGU STATE INDEPENDENT ELECTORAL COMMISSION (2021) LPELR – 55337 (SC)** and more recently in **EMTS LTD V. AFDIN VENTURES LTD** (supra), where this Court exercised its powers under Section 22 in view of the commercial and systemic implications of the dispute and the need to conclusively settle the issues presented before it.

The learned Senior Counsel for the 2nd Respondent/Applicant further submitted that, by virtue of Section 711(3) of the Companies and Allied Matters Act 2020, the rights of the Appellants as dissentient shareholders would not be extinguished even if the merger scheme were sanctioned, as they retained the statutory right to approach the trial Court for appropriate reliefs thereafter. Counsel therefore urged the Court to resolve the first issue in favour of the

Applicant and invoke its powers under Section 22 of the Supreme Court Act.

On the alternative prayer seeking an order directing the trial Court to resume proceedings on an accelerated basis, counsel submitted that Order 7 Rule 2(2) of the Supreme Court Rules 2024 expressly prohibits the stay of proceedings in any matter before a lower Court on account of an interlocutory appeal pending before this Court. It was argued that the appeal lodged by the Appellants was interlocutory in nature and that the decision of the trial Court to halt proceedings pending the outcome of the appeal constituted a clear violation of the spirit and intent of the Rule.

Learned senior Counsel urged the Court to adopt the mischief rule of interpretation in construing Order 7 Rule 2(2), contending that the provision was specifically introduced to curb the abuse of interlocutory appeals as instruments for delaying proceedings before lower Courts. Reliance was placed on **GCM LTD V. TRAVELERS PALACE HOTEL [2019] 6 NWLR (Pt. 1669) 507** at 530, paras G - E.

Counsel further relied on **ALIOKE V. OYE [2018] 18 NWLR (Pt. 1651) 247 at 264, para. H** for the proposition that the mere filing of an interlocutory appeal does not automatically operate as a stay of proceedings, and on **ODUBA V. HOUTMANGRACHT (1997) 6 NWLR (Pt. 508) 185 at 205 - 206, paras. H - A**, where this Court emphasized that lower Courts must consider the overriding interests of justice before granting stay of proceedings. It was finally submitted that the continued suspension of proceedings had occasioned severe commercial consequences for the Applicant, including loss of depositor confidence and financial uncertainty, and that the interest of justice demanded a positive order directing the trial Court to resume proceedings on an accelerated basis pending the determination of the interlocutory appeal.

In my humble view, the first issue formulated by the 2nd Respondent/Applicant is dispositive of the application. Section 22 of the Supreme Court Act donates to this Court an expansive and remedial jurisdiction to make any order necessary for determining

SC/CV/132/2026 78 Tijjani Abubakar, JSC

the real question in controversy between the parties and to exercise full jurisdiction over the entire proceedings as if the matter had originated before this Court. The provision states:

“The Supreme Court may, from time to time, make any order necessary for determining the real question in controversy in the appeal and may amend any defect or error in the record of appeal, and may direct the Court below to inquire into and certify its findings on any question which the Supreme Court thinks fit to determine before final judgment in the appeal, and may make an interim order or grant any injunction which the Court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Supreme Court as Court of first instance...”

The philosophy underpinning this provision is deeply rooted in the eternal judicial obligation to ensure that justice is not sacrificed to the altar of technicality, procedural subterfuge or avoidable delay. Litigation, as I have said earlier, is not after all, a game of hide and

seek. Courts exist for the determination of genuine disputes and not for the encouragement of procedural ambushes deliberately designed to frustrate the course of justice. Equity, as the old maxim reminds us, regards as done that which ought to be done. Likewise, the law abhors a situation where a party, having failed to secure substantive relief, seeks to immobilize the judicial process itself through serial interlocutory skirmishes.

The principles governing the exercise of the powers under Section 22 of the Supreme Court Act have long been settled. This Court has restated in a plethora of its decision that the jurisdiction may be invoked where all the materials necessary for the determination of the dispute are available before the Court, where the interest of justice so demands, where the issue involved is substantial and capable of being finally resolved without remitting the matter to the lower Court, and where such exercise would avoid unnecessary delay and multiplicity of proceedings. See **F.C.M.B. V.**

ABDUL GAFARU & CO. LTD. [2026] 6 NWLR (Pt. 2038) 179;

ABIODUN V. F.R.N. [2016] 9 NWLR (Pt. 1516) 126; ODEDO V. INEC

[2008] 17 NWLR (Pt. 1117) 554. The present case satisfies these conditions in abundant measure. The entire Records of Appeal, including the Joint *Ex Parte* Originating Summons seeking sanction of the Scheme of Merger, the affidavits in support thereof, the resolutions of shareholders, the regulatory approvals, the relevant corporate documentation, and all processes filed by the parties are already before this Court. The 2nd Respondent/Applicant has correctly submitted that there is no evidential vacuum requiring further factual inquiry by the trial Court. Indeed, the real controversy has crystallized fully before this Court. What remains is whether this Court, in the exercise of its constitutional and statutory responsibility as the apex judicial authority in the land, should permit the administration of justice to be held hostage by interlocutory maneuvers whose practical effect has been to obstruct and frustrate proceedings already ripe for determination. This Court will certainly not allow litigants engage in uncouth gymnastics to stall genuine

judicial proceedings in any Court, the time has come for this and other Courts to resist ill-mannered litigations designed to tie the hands the Courts. Delay has become the common feature of litigation in Nigerian Courts, we must do all we can to resist litigations designed to hood-wink the Court, we have had enough of needless proceedings in our Court, the time to act is now.

✓ The affidavit evidence before the Court, which remains substantially unchallenged, establishes that the proposed merger was initiated in compliance with the recapitalization directives of the Central Bank of Nigeria requiring commercial banks with national authorization to attain a minimum capital threshold within the stipulated regulatory timeline. The evidence further discloses that continued uncertainty surrounding the merger has already begun to erode depositor confidence and threaten financial stability in relation to the 2nd Respondent/Applicant. These are not idle or speculative concerns. Banking thrives fundamentally on public confidence. Once

uncertainty and instability are introduced into the system, the consequences may become immediate, widespread and irreparable. Slight sign of distress affects confidence of customers and creates run on the Bank, we must be deliberate in our efforts to save investors and customers, judicial pronouncements instill confidence in investors, and help in stabilizing financial Institutions worldwide and promote commercial certainty, commercial matters deserve expeditious hearing and determination, it is soothing to find that the Supreme Court Rules 2024 provide for fast-track hearing and determination of commercial appeals.

It is precisely for situations such as this that Section 22 of the Supreme Court Act exists to prevent justice from becoming captive to procedural obstruction and to empower this Court to bring litigation to a definitive and efficacious conclusion where the circumstances demand. See **EMTS LTD. V. AFDIN VENTURES LTD.** (supra), a decision of this Court where I was privileged to deliver the leading judgment, and where I reiterated that the powers of this Court

under Section 22 of the Supreme Court Act are designed to advance substantial justice and forestall situations where remitting a matter ✓ would merely prolong needless litigation.

Equally significant is the fact that the rights of dissentient shareholders are not extinguished by the sanction of the Scheme of Merger. Section 711(3) of the Companies and Allied Matters Act, 2020 expressly preserves the right of any aggrieved shareholder to seek appropriate reliefs notwithstanding the sanction of the scheme. Thus, the specter of irreversible prejudice so strenuously suggested by the Appellants in this appeal is more imagined than real. The law itself has already provided a remedial framework for the ventilation of any legitimate grievance that may subsist after the merger process.

I must further observe that the posture adopted by the Appellants in the present proceedings exposes an unmistakable contradiction which substantially weakens the foundation of any opposition the Appellants may have against the present application.

Curiously, one of the substantive reliefs sought by the Appellants

themselves in their Notice of Appeal filed on the 9th day of March, 2026 before this Court expressly invited this Court to invoke its powers under Section 22 of the Supreme Court Act. Indeed, at paragraph 8.0 of the Appellants' Brief of Argument, this Court was specifically urged to grant the reliefs sought in the appeal, including the relief predicated upon Section 22 of the Supreme Court Act.

This position is not without legal significance. A party who has himself invoked the jurisdictional powers of this Court under Section 22 cannot, with any degree of consistency, oppose a contention that the Court has the necessary competence, propriety or jurisdictional basis to invoke the very same powers in determining the real questions in controversy before it. More importantly, the invitation extended by the Appellants themselves to this Court to invoke Section 22 constitutes a tacit acknowledgment that the Records before this Court are sufficiently comprehensive to enable the Court effectually and completely determine the matters in controversy without remitting the proceedings to the trial Court.

Considering the state of the affidavit evidence, the submissions of learned counsel, the applicable law, and the peculiar circumstances of this case, I am fully satisfied that this is a case deserving of exceptional invocation of the powers conferred on this Court under Section 22 of the Supreme Court Act. Accordingly, the first relief sought by the 2nd Respondent/Applicant succeeds and is hereby granted.

Having therefore resolved to invoke the powers vested in this Court under Section 22 of the Supreme Court Act, and having found that all the materials necessary for the determination of the substantive application are fully available in the Records before us, it becomes both proper and imperative for this Court to proceed to hear and determine the Joint *Ex Parte* Originating Summons filed by the 1st and 2nd Respondents seeking sanction of the Scheme of Merger. To remit the matter to the trial Court merely for the formal consideration and pronouncement of orders which this Court is fully empowered to

make would amount to an unnecessary prolongation of proceedings already unduly delayed by serial interlocutory excursions.

I have carefully examined the Joint *Ex Parte* Originating Summons filed on the 27th day of October, 2025 together with the 26-paragraph affidavit filed in support thereof deposed by Kingsley Aigbokhaevbo, the Deputy Managing Director on the Board of the 1st Respondent (See pages 291 – 294 of the Record) and the 25 – paragraph affidavit filed in support by Mr. Alaba Williams, the exhibits annexed thereto, including Exhibit PBL1, the Scheme Document (particularly the terms of the proposed Scheme of Merger at pages 27 – 33 thereof); Exhibits PBL7 and UBP6 the special resolutions passed at the separate Court-ordered meetings of the shareholders of the 1st Respondent and 2nd Respondent respectively; Exhibits PBL8 and UBP7, the resolution passed by the 1st and 2nd Respondents' Board of Directors dated the 30th day of January, 2025 and 28th day of March, 2025 respectively; the final regulatory approvals and non-objections by the 9th Respondent herein, Securities and Exchange Commission

SC/CV/132/2026

(SEC) and the 10th Respondent herein, Central Bank of Nigeria (CBN) exhibited to the Affidavits as Exhibits PBL9, PBL10, UBP8 and UBP9. I am satisfied that the statutory requirements stipulated under Sections 711 to 715 of the Companies and Allied Matters Act, 2020 have been complied with. There is nothing on Record suggesting procedural irregularity, fraud, bad faith, oppression of minority interests, or any feature rendering the Scheme unfair, inequitable or contrary to public policy.

It is also significant to observe that the Scheme Document itself, Exhibit PBL1, contains elaborate and comprehensive provisions designed to protect not only shareholders who consented to the merger, but equally those who may be unwilling or dissentient to the Scheme. In particular, the Scheme carefully delineates the rights, options and entitlements available to shareholders of the 2nd Respondent, including the election either to receive cash consideration or share consideration in the enlarged merged entity.

Indeed, as earlier noted in this judgment, the Appellants, assuming

without conceding that they properly qualify as dissentient shareholders, are by no means left without remedies under the law. The terms of the Scheme itself, read together with Section 711(3) of the Companies and Allied Matters Act, 2020, preserve their right to ventilate any legitimate grievance arising from the implementation of the Scheme and to seek appropriate reliefs where necessary. The law has therefore made adequate and reasonable safeguards for both consenting and dissenting interests within the corporate framework governing mergers and schemes of arrangement.

A careful examination of the Scheme Document further reveals that the merger was conceived as a structured commercial transaction intended to preserve corporate continuity, safeguard depositor confidence, ensure regulatory compliance and strengthen the financial viability of the resulting institution. The provisions contained therein are exhaustive in scope and meticulous in detail. They address, amongst other matters, the transfer and vesting of assets and liabilities, treatment of employees, treatment of

shareholders, treatment of existing contractual obligations, continuation of pending proceedings, share exchange mechanisms, cash settlement alternatives, corporate governance arrangements and post-merger restructuring obligations. This Court is therefore satisfied that the interests of all relevant stakeholders, including shareholders, employees, depositors, creditors and regulators, have been sufficiently considered in the design and implementation of the Scheme.

Let me pause here to quickly make a few observations regarding the conduct of the Appellants and their counsel throughout the course of these proceedings. A close examination of the chronology of events reveals a disturbing pattern of procedural obstruction calculated principally to delay, rather than genuinely ventilate substantive rights. The Appellants initially approached the trial Court seeking leave to be joined as interested parties and simultaneously prayed for an order dissolving the merger. Upon the order of the learned trial Judge consolidating their application with the

substantive application for sanction of the merger, the Appellants proceeded on interlocutory appeal to the Court of Appeal. Their appeal was dismissed. Thereafter, they embarked upon a succession of applications for stay of execution and stay of proceedings before different Courts, only for those applications to be subsequently withdrawn when confronted with the legal and procedural fragility upon which they rested.

Most revealing, however, is what transpired before the trial Court on the 13th day of March 2026. The Record of Proceedings demonstrates that despite the Court's clear pronouncement that all pending applications would be taken together, counsel for the Appellants, upon being invited to move the substantive Motion on Notice filed on the 6th day of November, 2025 seeking leave to be joined and for an order dissolving the merger, expressly failed to move that particular application but proceeded to argue the application for stay filed on the 10th day of March, 2026. In law, the consequence is

inevitable and incontrovertible the application filed on the 6th day of November, 2025 stood abandoned.

An application which a party deliberately refuses to move when called upon by the Court is deemed abandoned and liable to be struck out. Courts do not act in vain, nor do they preserve dormant applications indefinitely at the pleasure of litigants. Having consciously elected not to prosecute the very application upon which their asserted grievance rested, the Appellants cannot now be heard to complain that proceedings relating to the merger ought not continue. What is even more troubling is that the Appellants, having abandoned their substantive application, nevertheless persisted in filing serial applications aimed solely at arresting proceedings. This Court cannot shut its eyes to the practical realities disclosed by the Records. Judicial process is a sacred instrumentality for the attainment of justice; it is not a tactical weapon for economic sabotage or procedural paralysis. The Courts must remain vigilant against the misuse of interlocutory processes in a manner capable of

inflicting grave commercial uncertainty, particularly in sectors as systemically sensitive as banking and financial services.

It is therefore difficult to resist the conclusion that the succession of interlocutory applications filed by the Appellants was principally calculated to hold the substantive proceedings in abeyance for as long as possible. Courts of law must be careful not to lend their processes to stratagems or schemes which impede rather than promote the administration of justice. See **KWAJAJFFA V. B.O.N. LTD. [2004] 13 NWLR (Pt. 889) 146**. I must observe, with all the restraint demanded by judicial decorum, that learned counsel owe a solemn duty not merely to their clients, but also to the Court and to the due administration of justice. Advocacy, no matter how vigorous, must remain within the bounds of professional responsibility. The Court cannot commend a litigation strategy which, viewed objectively, appears more devoted to frustrating the hearing of the substantive matter than to securing a fair adjudication thereof.

The temple of justice is not served when procedure is converted into

a labyrinth designed to exhaust, frustrate and immobilize legitimate adjudication. I need not say more, let me just stop here.

In this regard, it must be reiterated that the jurisdiction of the Court in sanctioning a scheme of merger or arrangement is not to determine whether the Court itself would have designed a better commercial arrangement, but whether the Scheme is fair, lawful, reasonable and one which an intelligent and honest shareholder, acting in respect of his interest, might reasonably approve. See **RE ALABAMA, NEW ORLEANS, TEXAS AND PACIFIC JUNCTION RAILWAY CO. (1891) 1 CH. 213**. Once the statutory requirements have been fulfilled and the Scheme is shown to be fair and *bona fide*, the Court ought not to withhold its sanction merely because a minority of shareholders are dissatisfied with the commercial wisdom underlying the transaction. The facts disclosed in the present proceedings do not reveal any circumstance warranting judicial refusal of the sanction sought. To the contrary, the totality of the materials before the Court demonstrate substantial compliance with

the applicable statutory and regulatory framework and a conscientious effort to balance the interests of all categories of stakeholders affected by the merger.

Accordingly, and pursuant to the powers conferred on this Court under Section 22 of the Supreme Court Act and Sections 711 to 715 of the Companies and Allied Matters Act, 2020, the Joint *Ex Parte* Originating Summons filed by the 1st and 2nd Respondents on 27th October, 2025 succeeds and is hereby granted as prayed. The Scheme of Merger between the 1st Respondent and the 2nd Respondent/Applicant is hereby sanctioned. For the avoidance of doubt, the following reliefs sought in the Joint *Ex parte* Originating Summons are granted:

- a. "AN ORDER of this Court sanctioning the Scheme of Merger between the 1st and 2nd Applicants (the "Scheme") in the form and context set out at pages 27 to 33 of the Scheme Document annexed to the Affidavits filed on behalf of the Applicants in support of this Originating Summons.**

- b. AN ORDER transferring to and vesting in the 1st Applicant, without any further act or deed, all assets, employment contracts, liabilities and undertakings, including real properties, any deferred tax assets and intellectual property rights of the 2nd Applicant as set out in the Scheme under consideration.**
- c. AN ORDER directing that in consideration of the transfer to the 1st Applicant of all the assets, liabilities and undertakings, including real properties, deferred tax assets, employment contracts and intellectual property rights of the 2nd Applicant, the 1st Applicant shall within 10 (ten) Business Days from the date of the Court's Order sanctioning the Scheme:**
- i. as contained in the Scheme Document, pay the Cash Consideration of ₦3.18 to the Scheme Shareholders that elect to receive the Cash Consideration, for each ordinary share of ₦0.50 held in the 2nd Applicant as at close of business on the Terminal Date; or**
 - ii. Issue and allot up to 18 ordinary shares of ₦0.50 each in the share capital of the 1st Applicant in exchange for every 17 ordinary shares of ₦0.50 each held in Unity Bank Plc as at close of business on the Terminal Date, to all Scheme**

Shareholders that elect to receive the Share Consideration.

- d. AN ORDER directing that the 1st Applicant be authorized to increase its share capital from ₦20,902,916,875.00 to ₦27,091,389,903.50 divided into ₦54,182,779,807 ordinary shares of ₦0.50 each by the creation of 12,376,946,057 ordinary shares of ₦0.50 each ranking pari passu with the existing ordinary shares of the 1st Applicant, for the purpose of implementing the Scheme.**
- e. AN ORDER directing the Board of Directors of the 1st Applicant (where it deems appropriate) to be authorized to take necessary steps to cancel any unallotted shares of the 1st Applicant.**
- f. AN ORDER directing that all legal proceedings, claims, and litigations pending or contemplated by or against the 2nd Applicant be continued by or against the 1st Applicant after the Scheme is sanctioned by this Court.**
- g. AN ORDER directing that the 2nd Applicant be dissolved without being wound up and the entire issued share capital of the 2nd Applicant be cancelled.**

h. AN ORDER directing that the name of the enlarged bank, (resulting from the merger of the 1st Applicant with the 2nd Applicant), be changed to Providus-Unity Bank Limited ("Enlarged Bank").

i. AN ORDER directing that the Certificate of Incorporation of the 1st Applicant shall be the certificate of incorporation of the Enlarged Bank.

j. AN ORDER directing that if the total number of shareholders in the Enlarged Bank post-Merger exceeds 50, the Enlarged Bank be re-registered as a public company limited by shares.

k. AN ORDER directing that the Memorandum and Articles of Association of the Enlarged Bank be amended to reflect the change of name and increase in the share capital of the Enlarged Bank."

In the end, the Appellants' appeal is unmeritorious. The decision of the Court of Appeal, Lagos Division is hereby affirmed in part.

Pursuant to the powers vested in this Court under Section 22 of the Supreme Court Act, the Scheme of Merger between the 1st

Respondent and the 2nd Respondent/Applicant is hereby sanctioned as prayed in their Joint *Ex parte* Originating Summons dated on the 27th day of October 2025 and reproduced above.

Costs of ₦10,000,000.00 to each of the Respondents is awarded against the Appellants.

Appeal dismissed.


TIJANI ABUBAKAR,
JUSTICE, SUPREME COURT

APPEARANCES:

M.A. ATTAH, SAN with N.H. OBAH, ESQ; SADIQ SAMAILA, ESQ; B. ALI, ESQ; ABDURAMAN IBRAHIM, ESQ; H.B. USMAN, ESQ & S.B. IBRAHIM, ESQ for the Appellants.

MAHMUD ABUBAKAR MAGAJI, SAN with MARK MORDI, SAN; A.G. SOYIBO, ESQ; AFFIS MATANMI, ESQ; CYRIL IRORAKPOR, ESQ; NDENTUOKID ESSANG, ESQ; NABILA ABDULLAHI, ESQ; YUSUF S. ZULU-GAMBARI, ESQ; GENEVIEVE OKOLI, ESQ and SHARON ABRAHAM, ESQ for the 1st Respondent.

D.D. DODOH, SAN with R.O. ATABO, SAN; O.E. ADAH, ESQ; R.I. IDAKWOJI, ESQ; CHIMEZIE NDUBUISI, ESQ; ABDULMALIK AHMAD-ZARUQ, ESQ; EMMANUEL AMEH, ESQ; EMMANUEL LAWAL, ESQ; ARNOLD DANIEL, ESQ; ADEAYO OLUSOLA, ESQ and MARK ASU-Obi, ESQ for the 2nd Respondent.

J.A. OGUCHE, ESQ with A.G. HARUNA, ESQ and EMMANUEL OKWOLI, ESQ for the 3rd Respondent.

SC/CV/132/2026


10/6/2026
Certified True Copy
Tijani Abubakar Esq.
REGISTRAR

Tijani Abubakar, JSC

SUPREME COURT OF NIGERIA

Official

UGBEDE IDACHABA, ESQ with R.A. UGBANE, ESQ and U. USMAN, ESQ for the 4th Respondent.

C.T. AHMADU, ESQ with P.A. ACHUARA, ESQ; D.A. ONYIOACHA, ESQ and O.V. EBUTE, ESQ for the 5th Respondent.

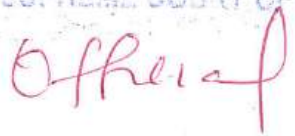
L.M. ANENGA-ARTHUR, ESQ with B.O. ADAJI, ESQ and S.O. EMUKAI, ESQ for the 6th Respondent.

PATRICK OKOH, ESQ with LUQMAN OLANREWAJU SALMAN, ESQ; ADAVIZE SANI, ESQ and SULEIMAN JOSEPH, ESQ for the 7th Respondent.

I.O. ALABA, ESQ for the 8th Respondent.

P.E. OZIOKO, ESQ for the 9th Respondent.

L.I. ONYENYEONWU, ESQ for the 10th Respondent.

 15/6/2022
Certified True Copy
Alsha Guruma Esq
REGISTRAR
SUPREME COURT OF NIGERIA


IN THE SUPREME COURT OF NIGERIA
HOLDIEN AT ABUJA
ON FRIDAY THE 1ST DAY OF JUNE, 2026
BEFORE THEIR LORDSHIPS

MOHAMMED LAWal GARBA
TIJJANI ABUBAKAR
CHIOMA EGONdu NWOSU-IHEME
HARUNA SIMON TSAMMANI
STEPHEN JONAH ADAH

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
SC/CV/132/2026

BETWEEN

1. SULEIMAN ABUBAKAR
2. MOHAMMED GONI MODU

}

APPELLANTS

AND

1. PROVIDUS BANK LIMITED (RC. 198892)
2. UNITY BANK PLC (RC. 94524)

}

**1ST SET OF
RESPONDENTS**

AND

1. PROVIDUS BANK LIMITED
2. UNITY BANK PLC
3. PAC CAPITAL LIMITED
4. VERIVA ADVISORY SERVICES LIMITED
5. LIGHT HOUSE CAPITAL LIMITED
6. PLANET CAPITAL LIMITED
7. CORPORATE AFFAIRS COMMISSION (CAC)
8. FEDERAL COMPETITION AND CONSUMER
PROTECTION COMMISSION (FCCPC)
9. SECURITIES AND EXCHANGE COMMISSION
(SEC)
10. CENTRAL BAN OF NIGERIA

}

**2ND SET OF
RESPONDENTS**


10/6/2026
Certified True Copy
Aisha Gurama Esq
REGISTRAR
SUPREME COURT OF NIGERIA
Official

JUDGMENT

DELIVERED BY HARUNA SIMON TSAMMANI, JSC)

I had the benefit of reading in advance the draft of the judgment prepared by my learned brother, *Tijjani Abubakar, JSC*.

My learned brother has comprehensively and eruditely considered the pertinent issues that came up for determination in this appeal. I agree with the illuminating reasoning and conclusion reached by my learned brother. Consequently, I, with great respect, adopt and align myself with same. I have nothing else useful to add to the exhaustive and illuminating judgment prepared by my learned brother.

I also agree with my learned brother that this is a proper case for us to resort to Section 22 of the Supreme Court Act, in order to put to rest and put a stop to the tide of the obviously malicious and deliberate act of the Appellants to scuttle the Scheme of Merger agreed to by the 1st and 2nd Respondents. Section 22 of the Supreme Court Act may be applied by this Court, in the following circumstances:

- (a) where there is availability of the necessary materials to be considered and determined in the matter;
- (b) the length of time between the disposal of the action at the trial court and the hearing of the appeal;
- (c) the interest of justice so as to eliminate further delay that would arise in the event that matter is remitted to the trial Court for hearing;
- (d) the hardship such an order may cause to either or both of the parties to the case.

Where all or any of the above conditions exist, this Court would exercise the powers granted by Section 22 of the Act, to put to rest, the issues in controversy between the parties.

In the instant case, I will leverage on the attitude of the Appellants at the trial Court, the Court of Appeal and this Court. Clearly, the Appellants who were yet parties at the trial Court to permit them move a motion which was filed on the 06/11/25. However, they failed to move that motion preferring to move a motion which they filed on the 06/3/26

which was clearly intended to stifle the trial Court from sanctioning the Scheme of Merger or arrangement. Despite the trial court's unusually magnanimous order that such motion be argued together with the 1st and 2nd Respondents' Application, the Appellants felt aggrieved by such an order, and decided to pursue same up to this Court. I am therefore of the view, in line with that expressed by my learned brother in the lead judgment, that the antecedents of the Appellants show clearly that, they are bent on frustrating and exhausting the well intentioned acts of the 1st and 2nd Respondents. Therefore, to remit the matter to the trial Court will have the probability of giving the Appellants greater leeway to achieve their design to frustrate, or even terminate the Scheme of Merger agreed to by the 1st and 2nd Respondents. It is for the above reason that I agreed that, Section 22 of the Supreme Court Act should be and is hereby applied to put an end to the bad faith exhibited by the Appellants.

On the whole, therefore, I am in complete agreement that this appeal is meritless. It has failed and is accordingly dismissed. I abide

by all the orders, including the consequential orders made in the lead judgment. I also abide with the order on costs.


HARUNA SIMON TSAMMANI
JUSTICE, SUPREME COURT


10/6/2026
Certified True Copy
Aisha Gurama Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Official

APPEARANCES

M. A. Attah; SAN with N. H. Obah; Esq. Sadiq Samaila; Esq. B. Ali; Esq. Abduraman Ibrahim; Esq H. B. Usman; Esq & S. B. Ibrahim; Esq **for the Appellants.**

Mahmud Abubakar Magaji; SAN with Mark Mordi; SAN; A. G. Soyibo; Esq Affis Matanmi; Esq. Cyril Irorakpor; Esq. Ndentuokid Essang; Esq Nabila Abdullahi; Esq Yusuf S. Zulu-Gambari; Esq. Genevieve Okoli; Esq and Sharon Abraham; Esq. **for the 1st Respondent.**

D. D. Dodo; SAN with R. O. Atabo, SAN. O. E. Adah; Esq. R. I. Idakwoji; Esq. Chimezie Ndubuisi; Esq. Abdulmalik Ahmad-Zaruq; Esq. Emmanuel Ameh; Esq; Emmanuel Lawal; Esq. Arnold Daniel; Esq. Adedayo Olusola; Esq. and Mark Asu-Obi; Esq. **for the 2nd Respondent.**

J. A. Oguche; Esq. with A. G. Haruna; Esq and Emmanuel Okwoli; Esq. **for the 3rd Respondent.**

Ugbede Idachaba; Esq with R. A. Ugbane; Esq and U. Usman; Esq. **for the 4th Respondent.**

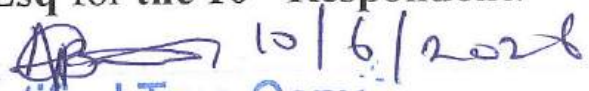
C. T. Ahmadu, Esq. with P. A. Achuara; Esq. D. A. Onyiocha; Esq and O. V. Ebute; Esq. **for the 5th Respondent.**

L. M. Anega-Arthur; Esq. with Luqman Olanrewaju Salman; Esq. Adavize Sanni; Esq and Suleiman Joseph; Esq. **for the 7th Respondent.**

I. O. Alaba Esq. **for the 8th Respondent.**

Pe. Ozioko; Esq. **for the 9th Respondent.**

L. I. Onyenyeonwu; Esq **for the 10th Respondent.**


10/6/2022
Certified True Copy
Aisha Gurama Esq
REGISTRAR

SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON MONDAY, 1ST JUNE, 2026
BEFORE THEIR LORDSHIPS

MOHAMMED LAWAL GARBA
TIJJANI ABUBAKAR

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT

CHIOMA EGONDU NWOSU-IHEME

JUSTICE, SUPREME COURT

HARUNA SIMON TSAMMANI

JUSTICE, SUPREME COURT

STEPHEN JONAH ADAH

JUSTICE, SUPREME COURT

SC/CV/132/2026

BETWEEN

1. SULEIMAN ABUBAKAR
2. MOHAMMED GONI MODU-----APPELLANTS

AND

1. PROVIDUS BANK LIMITED (RC. 198892)
2. UNITY BANK PLC (RC. 94524)-----RESPONDENTS

1. PROVIDUS BANK LIMITED
2. UNITY BANK PLC
3. PAC CAPITAL LIMITED
4. VETIVA ADVISORY SERVICES LIMITED
5. LIGHT HOUSE CAPITAL LIMITED
6. PLANET CAPITAL LIMITED
7. CORPORATE AFFAIRS COMMISSION

HON.JUSTICE MOHAMMED LAWAL GARBA, JSC

RESPONDENTS


Certified True Copy
Aisha Gurama Esq
REGISTRAR

SUPREME COURT OF NIGERIA

Office

- | | |
|---|---------------|
| 8. FEDERAL COMPETITION AND
CONSUMER PROTECTION | } RESPONDENTS |
| 9. SECURITIES AND EXCHANGE COMMISSION | |
| 10. CENTRAL BANK OF NIGERIA | |

JUDGMENT

(Delivered by MOHAMMED LAWAL GARBA, JSC)

By an Exparte Originating Summons filed on the 14/07/25 before the Federal High Court, Lagos (trial court), the 1st and 2nd Respondents, sought for, *inter alia*, an order granting each of them leave to convene a separate meeting of the holders of their fully paid ordinary shares for the purpose of considering and approving a Scheme of Merger between them. The reliefs sought were granted by the trial court on 17/07/25, and the 1st and 2nd Respondents were ordered to convene separate meetings of their paid up shareholders.

Consequently, the 1st and 2nd Respondents, by an Ex Parte Originating Summons filed on 27/10/25 sought for, amongst others, an order sanctioning the Scheme of Merger between them. The Appellants (as Interested Parties/Applicants) filed an application on 6th November, 2025 seeking the following reliefs:

1. An order of this Honourable Court granting leave to the Interested Parties/Applicants to bring this application as interested parties.

2. An order of this Honourable Court discontinuing the Merger between the 1st Applicant (Providus Bank Limited) and the 2nd Applicant (Unity Bank Plc) having disseminated forged Merger Scheme Document to the shareholders other than one ordered by this Court.
3. An order of this Honourable Court dissolving the Merger between the 1st Applicant (Providus Bank Limited) and the 2nd Applicant (Unity Bank Plc) in its entirety having disseminated forged Merger Scheme Document other than one ordered by this Court.
4. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this case/Application.

This application was opposed by the Respondents. On the 19th day of November 2025, 1st Respondent's counsel urged the court to consolidate the hearing of the Exparte Originating Summons alongside the Appellants' above referenced application. The trial court in its bench ruling, ordered that the 1st and 2nd Respondents' Ex-parte Originating Summons would be taken the same day, but the Appellants' application will be taken first.

Dissatisfied with the Ruling of the trial court, the Appellants appealed to the Court of Appeal Lagos Division (court below). The Respondents filed Preliminary Objection(s) challenging the competence of the appeal. The court below in its judgment delivered on 6th March 2026: sustained

the objection(s); dismissed the appeal; ordered the trial court to proceed with the hearing and determination of the matters before it; made an order of accelerated hearing and determination of the suit and; awarded costs of N5,000,000.00 against the Appellants, in favour of the Respondents.

Dissatisfied with the decision of the court below, the Appellants initiated the instant appeal by a 5 Grounds Notice of Appeal filed on the 9/03/26. In the Appellants' Brief filed on the 27/04/26, four (4) issues are said to arise from the grounds for determination by the court. The issues are in the following terms:-

1. Whether the Appellants' complaint of fraud, forgery of court document (Exhibit A) and non-compliance with subsisting court order raises a jurisdictional issue that entitled them to appeal as of right as enshrined in the Constitution (Distilled from Grounds 1 and 4)
2. Whether the Appellants' Notice of Appeal before the lower Court was filed out of time (Distilled from Ground 2)
3. Whether the lower court's grant of accelerated hearing and determination of Suit No: FHC/L/MISC/7/2025 suo motu infringed the right to fair hearing of the Appellants (Distilled from Ground 3)

4. Whether the lower court was right in awarding costs of N5,000,000 each to the 1st, 2nd, 3rd, 4th, 5th, 6th and 10th Respondents against the Appellants when it is clear that the appeal does not require leave and was filed within time (Distilled from Ground 5)

Several issues are raised in the 1st-10th Respondents' separate Briefs of Argument for the determination of the appeal on the merit.

In the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 10th Respondents Brief of Argument, preliminary objection(s) were raised and argued challenging the competence of the appeal.

Since the preliminary objection(s) filed by the Respondents challenge the competence of the appeal and the jurisdiction of the court to adjudicate over it on the merit, it is prudent to determine the preliminary objection first before a consideration of the merit of the appeal, if necessary. *A.P.C v. I.N.E.C* (2015) 8 NWLR (Pt. 1462), *Elias v. FRN* (2021) 16 NWLR (Pt. 1800) 495, *Polaris Bank Ltd v. Forte Oil Plc* (2023) 5 NWLR (Pt. 1876) 179, *Adagun v. Satumari* (2023) 15 NWLR (Pt. 1904) 243, *Yaro v. Arewa Const. Ltd* (2007) 17 NWLR (Pt. 1063) 333.

The grounds upon which the 2nd Respondent's Preliminary Objection is predicated are as follows:

1. The Appellants have failed to comply with the mandatory requirement of Order 6 Rule 3(5) of the Supreme Court Rules, 2024 to pay the total costs of N5,000,000.00 (Five Million Naira) awarded to the 2nd Respondent by the lower Court into an escrow account in a commercial bank in the name of the Chief Registrar of this Honourable Court.
2. The mandatory and imperative nature of Order 6 Rule 3(5) of the Supreme Court Rules, 2024 has been given judicial endorsement by this Honourable Court in its recent decision in SC/CV/1096/2024- Emerging Markets Telecommunications Services Limited (Doing Business as 9 mobile) v. AFDIN Ventures Limited & 6 ors. delivered on 6th March, 2026.
3. That the Appellants who filed the instant Notice of Appeal are not parties and have not been joined as parties to the 1st and 2nd Respondents' Exparte application for merger which is the foundation of the instant Appeal and consequently lacks the locus standi to institute this instant Appeal.
4. The Appellants failed to seek and obtain leave of the Court below or this Honourable Court before filing the instant Interlocutory Appeal contrary to the mandatory requirement of Section 21(2) of the Supreme Court Act.
5. The Five (5) Grounds of Appeal upon which the Notice of Appeal is predicated are Grounds of facts or at best Grounds of mixed law

and facts which were filed without leave of the Court below or this Honourable Court first sought and obtained, as mandatorily required by Section 233 of the 1999 Constitution of the Federal Republic of Nigeria (As amended).

6. Section 233 of the 1999 Constitution of the Federal Republic of Nigeria (As amended) requires the Appellants to first seek and obtain leave of the lower Court or this Honourable Court to appeal on Grounds of mixed law and facts.
7. Ground 4 of the Appellants' Notice of Appeal is an Appeal against the decision of the Federal High Court and not the Court of Appeal. This Honourable Court has jurisdiction to hear appeals from the Court of Appeal and not the Federal High Court thereby making Ground 4 of the Notice of Appeal incompetent and liable to be struck out.
8. Ground Five of the Grounds of Appeal is against the award of cost and the leave of the lower Court or this Honourable Court was not sought and obtained as required by law.
9. The Appellants' Notice of Appeal on the whole is incurably defective, incompetent, a clear abuse of court process and liable to be struck out.
10. This Honourable Court has the vires to strike out or dismiss the Appeal for having failed to properly activate the hallowed Jurisdiction of this Honourable Court.

HON.JUSTICE MOHAMMED LAWAL GARBA, JSC

The 3rd Respondent objected to the competence of the appeal on the following Grounds:

1. That APPEAL NO:SC/CV/132/2026 is merely academic and thus liable to be dismissed by this Honourable Court in that:
 - a. The instant interlocutory appeal was filed on the 9th day of March, 2026 by the Appellants without first obtaining leave of either this Court or that of the Court below, contrary to the mandatory prescription of Section 21(2) of the Supreme Court Act.
 - b. That the instant interlocutory appeal was filed by the Appellants who have no locus standi to institute same.
 - c. That the Appellants failed to appeal against the fundamental holding by the Court below that their appeal is “an appeal against the exercise of discretion by the learned trial Judge.”
2. That APPEAL NO:SC/CV/132/2026 is incompetent in law and thus liable to be struck out by this Honourable Court, in that:
 - a. Grounds 1, 2,3 and 5 of the Grounds of Appeal upon which the Notice of Appeal is predicated which are Grounds of mixed law and facts are not litigable before this Court on the authority of SHITTU v. PEUGEOT AUTOMIBLE (NIG) LTD (2018) LPELR-54377(SC) (PP 14-15 PARAS. D)

- b. Grounds 1, 2,3 and 5 of the Grounds of Appeal upon which the Notice of Appeal is predicated which are Grounds of mixed law and facts which were filed without leave of either the Court below or that of this Honourable Court first sought and obtained, as mandatorily required by law.
- c. Grounds 1, 2,3 and 5 of the Grounds of Appeal upon which the Notice of Appeal is predicated which are Grounds of mixed law and facts which were filed without leave of either the Court below or that of this Honourable Court first sought and obtained, as mandatorily required by law.
- d. Ground 4 of the Grounds of Appeal which is a complaint against the proceedings conducted by the trial Federal High Court is non-litigable in this Honourable Court by virtue of Section 233(1) of the 1999 Constitution of the Federal Republic of Nigeria (As amended).
- e. Ground 4 of the Grounds of Appeal does not emanate from the judgment of the Court below contrary to Section 233(1) of the 1999 Constitution of the Federal Republic of Nigeria (As amended)
- f. Ground 5 of the Grounds of Appeal which is a complaint against the award of cost by the Court below was filed without leave of either the Court below or that of this Honourable Court first sought and obtained.

g. The entire Four (4) Issues for determination formulated and argued by the Appellants in their Briefs of Argument filed on the 27th day of April, 2026 are distilled from incompetent Grounds of Appeal and thus afflicted by the incurable virus of incompetence.

The 4th Respondent's objection challenged the competence of the instant appeal on the following grounds:

- a. That the Notice of Appeal used by the Appellants to commence this instant interlocutory appeal, was filed on the 9th day of March, 2026, without leave of either the Court below or that of this Honourable Court first sought and obtained, as mandatorily required by Section 21(2) of the Supreme Court Act.
- b. That the Notice of Appeal was filed by the Appellants who have no locus standi to institute the instant appeal.
- c. That the Five (5) Grounds of Appeal upon which the Notice of Appeal is predicated are Grounds of mixed law and facts which were filed without leave of either the Court below or that of this Honourable Court first sought and obtained, as mandatorily required by law.
- d. That ground 4 of the Appellants' Notice of Appeal is not an attack on the Judgment of the lower Court delivered on the 6th

day Of March, 2026 but an attack on the decision of the Federal High Court and therefore incompetent in law.

- e. The Five (5) grounds of Appeal are incompetent and the Notice of Appeal is therefore liable to be struck out.
- f. That the lower Court awarded cost of Five Million Naira each in favour of the 1st-6th Respondents and the 10th Respondents which has not been paid before the filing of the Notice of Appeal.
- g. That ground Five of the Grounds of Appeal is against the award of cost and leave of the lower Court or this Honourable Court has not been sought and obtained.

The grounds upon which the 5th Respondent's Preliminary Objection is predicated are one and same with the grounds relied on by the 4th Respondent with the exception of (f).

The Grounds of the 6th Respondent's Objection are:

- a. That the Notice of Appeal used by the Appellants to commence this interlocutory appeal was filed on 9 March 2026 without leave of either the Court below or this Honourable Court first sought and obtained, as required by law.
- b. That the Appellants have no locus standi to institute the instant appeal.

- c. That the five grounds of appeal upon which the Notice of Appeal is predicated are grounds of mixed law and fact and were filled without the leave of either the Court below or this Honourable Court first sought and obtained.
- d. That Ground 4 of the Appellants' Notice of Appeal does not complain against the judgment/ruling of the Court below delivered on 6 March 2026, but rather attacks the decision of the Federal High Court, and is therefore incompetent.
- e. That Ground 5 complains against the award of costs only, and no leave of either the Court below or this Honourable Court was first sought and obtained.
- f. That the five grounds of appeal are incompetent and the Notice of Appeal founded on them is liable to be struck out.
- g. That the Court below awarded costs of N5,000,000.00(Five Million Naira) each in favour of the 1st- 6th Respondents and the 10th Respondent, which costs were not paid before the filing of the Notice of Appeal.

The 8th Respondent filed a Preliminary Objection to the competence of the instant appeal on the following grounds:

- a. The Appellants lack the requisite locus standi to prosecute this appeal before this Honourable Court, their Motion for Joinder as parties to the substantive suit (Suit No.

FHC/L/MISC/734/2025) at the Federal High Court, Lagos, being still pending and undetermined. (Ground One)

- b. The Appellants, not being duly joined parties to the substantive suit, are strangers to the proceedings and cannot competently appeal against any ruling or decision arising therefrom, including the interlocutory ruling of the Federal High Court delivered on 19th November, 2025 and the consequential ruling of the Court of Appeal delivered on 6th March 2026. (Ground Two)
- c. This Honourable Court lacks the jurisdiction to entertain this appeal, same being predicated on a fundamentally incompetent foundation, the Appellants having no recognized legal personality or standing as parties to the proceedings from which this appeal purports to flow.

The 9th Respondent did not file a Preliminary Objection.

The Grounds upon which the 10th Respondent's Preliminary Objection are based are:

1. The Notice of Appeal filed on 9th March, 2026 by the Appellant in Appeal No:SC/CV/132/2026 is an INTERLOCUTORY APPEAL whereby NO prior leave of the Lower Court nor this Honourable Supreme Court was first sought and obtained as mandatorily required by Section 21(2) of the Supreme Court Act, 2024.

2. Contrary to the misconceived view of the Appellant, the five (5) Grounds of Appeal upon which the Notice of Appeal is predicated are Grounds bothering on mixed law and facts which were filed without prior leave of either the court below or that of this Honourable Court first sought and obtained being a failure to fulfill a condition precedent as a matter of law.
3. The Appellants herein lack Locus Standi to initiate any application and/or proceedings for the sanctioning of a merger scheme nor the vires to unilaterally joined (sic) as a party to the 10th Respondent herein without first being made a party and without an order of the Lower Court.
4. The Appellants lacked the Locus Standi to appeal as of right from decisions of the Court of Appeal not being part of the existing parties in the scheme of merger before the Lower Court in Suit No:FHC/L/MISC/734/2025 and without first obtaining the leave of this Honourable Court as an Interested Party in contravention of Section 233(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
5. That ground 4 of the Appellant Notice of Appeal failed to attack the Ratio decidendi of the judgment of the Court of Appeal delivered on 6th March, 2026 and is therefore incompetent as a matter of law.

6. The entire (5) grounds of Appeal are equally incompetent and the Appellant's Notice of Interlocutory Appeal before this Honourable Court is liable to be struck out "ex debito nullito justitiae".
7. That ground (5) of the grounds of Appeal is against the award of cost and prior leave of the Lower Court or this Honourable Court was not first sought and obtained.
8. The Lower Court (Court of Appeal) awarded cost of N5,000,000.00 (Five Million Naira) only, in favour of 10th Respondent and also to the 1st-6th Respondents herein which said cost has NOT been paid to the 10th Respondent even after Twenty-one (21) days of the filing of the Notice of Appeal, nor before the transmission of the Records of Appeal to this Honourable Court neither has the Appellant file any evidence and/or certificate of compliance that the said costs has been paid into an escrow account in a commercial bank in the name of the Chief Registrar in compliance with the provisions of Order 6 Rule 3(5) of the Supreme Court Rules, 2024.
9. In the premises thereof, the Appellants Appeal constitutes a flagrant abuse of the processes of this Honourable Court.

1st Respondent's Arguments

The 1st Respondent incorporated arguments on different heads in support of its preliminary objection in its Brief of Argument.

The Appellants lack the locus standi to institute this appeal having failed to seek and obtain leave.

It was argued that the Appellants are not parties to the originating process at the trial court. Neither the trial court nor the lower court has joined the Appellants herein as parties to the proceedings, hence they lack the right to appeal to this Honourable Court without its leave. Section 233(5) of the 1999 Constitution of the Federal Republic of Nigeria (As amended). It is only thereto or a party who has been granted leave that can appeal to this Honourable Court. The Appellants herein are still interested parties who have not been joined as parties to this proceeding, therefore they lack the right to appeal as of right. *Assams v. Ararume* (2016) 1 NWLR (Pt. 1493) 368.

Failure of the Appellants to seek and obtain leave before appealing on grounds of mixed law and facts

It was argued that the right of appeal from the Court of Appeal to the Supreme Court as of right is only when such decision involves questions of law alone. Section 233(a) of the 1999 Constitution of the Federal Republic of Nigeria (As amended), *Virgin Atlantic Airways v. Pablo-Amaran* (2025) LPELR-81278 (SC) 47-48. The 1st Respondent submits that Grounds 1, 2, 3 and 5 contained in the Appellants' Notice of Appeal are grounds of mixed law and facts. According to the 1st Respondent, Ground 1 involves an invitation to this Honourable Court to review the evaluation of the facts and evidence done by the lower court before

HON.JUSTICE MOHAMMED LAWAL GARBA, JSC

arriving at the decision that the Appeal is one of mixed law and facts. In other words, the decision of the lower court was premised on the evaluation of facts and evidence before the trial court before deciding if such factual particulars qualify to be described as one of law, facts or mixed law and facts. Thus, any appeal as to the correctness or otherwise of such finding would be necessarily one of mixed law and facts as it would involve questioning the evaluation of facts and evidence carried out by the lower court before the application of the law. *Bestman v Whyte* (2020) 6 NWLR (Pt. 1719) 136, *Nikagbate v. Opuye* (2018) 9 NWLR (Pt. 1623) 85. Grounds 3 and 5 seek to appeal the discretionary consequential orders of accelerated hearing and cost made by the lower court. It was submitted that the said grounds are grounds of mixed law and facts because both grounds question the lower court's exercise of judicial discretion to order accelerated hearing of the proceedings before the trial court and the award of cost by the lower court. It is now trite that a ground of appeal questioning the exercise of discretion by a lower court is not a ground of law but at best grounds of mixed law and facts *UBN Plc v. Sogunro* (2006) 16 NWLR (Pt. 1006) 504, *Honeywell Flour Mill Plc v. Ecobank (Nig.) Ltd* (2019) 2 NWLR (Pt. 1655) 35, *Mabol & Assoc v. N.C.C.E (N.P.I)* 2024) 9 NWLR (Pt. 1944) 425. From the foregoing, where an appellant seeks to appeal on grounds of mixed law and facts, leave of either the Court of Appeal or this Honourable Court must be sought and obtained. Where this is not done, such grounds of

HON.JUSTICE MOHAMMED LAWAL GARBA, JSC

appeal are incompetent and this Honourable Court is robbed of jurisdiction to entertain the appeal on such grounds and the grounds are liable to be struck out. *Aya v. Nkanu* (2022) 11 NWLR (Pt. 1840) 157. Therefore, all the issues formulated from the incompetent grounds are liable to be struck out as an incompetent ground of appeal cannot give birth to a competent issue for determination. *C.O.P v. Ogor* (2022) 14 NWLR (Pt. 1849) 49, *A.T.S & Sons v. B.E.C (Nig.) Ltd* (2008) 17 NWLR 9Pt. 1647) 1.

On jurisdictional competence of this Honourable Court to entertain/adjudicate upon Ground 4 of the Appellants' Notice of Appeal, same being a ground which does not emanate from the Judgment of the lower court and issue one formulated in the Appellants' Brief of Argument.

It was stated that a review of Ground 4 of the Notice of Appeal shows that the Appellants are inviting the court to sit on appeal over a purported decision of the trial court. It is said that the Appellants are attempting to sneak in the substantive issue presented before the lower court as part of the grounds of appeal herein and issues to be determined by this Honourable Court, even though the said issue did not arise from the decision of the lower court but from the trial court. Also, the said ground 4 did not emanate from the bench ruling delivered by the trial court. It was argued that an appeal to this court can only be on issues pronounced on by the Court of Appeal and grounds of appeal must

attack and emanate from the decision appealed against. *Eneji v. State* (2024) 11 NWLR (Pt. 1948) 1, *Austin Laz Themplastic Ind. Ltd. v. G.T.B. PLc* (2025) 15 NWLR (Pt. 2008) 235. *Olufeagba v. AbdulRaheem* (2009) 18 NWLR (Pt. 1173) 384, *Jaiyesimi v. Darlington* (2022) 9 NWLR (Pt. 1835) 335. This court was urged to strike out Ground 4 of the Notice of Appeal and issue one formulated therefrom as it does not emanate from the judgment of the lower court which is the subject of the present appeal.

On failure of the Appellants to deposit the cost awarded by the lower court in an escrow account in the name of the Chief Registrar in line with the provisions of Order 6 Rule 3(5) of the Supreme Court Rules, 2024

It was stated the lower court awarded cost in the sum of Five Million Naira (NGN5,000,000.00) against the Appellants in favour of each of the Respondents. By the provision of the rules of this Honourable Court, cost awarded against the Appellants is required to be deposited by the Appellants in an escrow account in a commercial bank in the name of the Chief Registrar as a pre-condition for the exercise of a right of appeal. The Appellants neither complied with this provision nor filed a certificate of compliance before the registry of the lower court to show compliance with the said provisions which is a condition precedent for the exercise of the right of appeal and a valid ground for dismissal of an appeal. Failure to comply with this provision is deemed non-compliance

HON.JUSTICE MOHAMMED LAWAL GARBA, JSC

with the condition for the appeal and it may entitle the court to dismiss the appeal. *Orakul Resources Ltd. v. N.C.C* (2022) 6 NWLR (Pt. 1827) 359, *Atungwu v. Ochekwu* (2000) 1 NWLR (Pt. 641) 507. The imperative and mandatory nature of the said requirements is seen in the choice of the word “shall”. *Chukwuogor & 3 ors. v. Chukwuogor & Anor* (2021) 15 NWLR (Pt. 1799) 357. It was stated that where a condition precedent for the activation and continuation of an appeal is not fulfilled, such appeal is incompetent and therefore, null and void and of no effect whatsoever. This court was urged to strike out the appeal for being incompetent.

2nd and 7th Respondents’ Arguments

The 2nd and 7th Respondents, although represented by different counsel presented exactly the same arguments in their Briefs of Argument in support of their Preliminary objection(s), except that the 7th Respondent did not raise the ground of failure of the Appellants to pay cost awarded against them into an escrow account.

On failure to pay costs awarded by the court below into an escrow account (Grounds 1 and 2 of the Notice of Preliminary Objection)

Reference was made to Order 6 Rule 3(5) of the Supreme Court Rules, 2024 and it was stated that the court below in dismissing the Appellants’ appeal awarded cost in the sum of 5,000,000 (Five Million Naira) each in favour of the 1st-6th and 10th Respondents. In defiance of the

mandatory provisions of the Rules of this court, the Appellants transmitted Record of Appeal to this Honourable Court without payment of the costs awarded by the court below or an inclusion of a Certificate of Compliance duly verified by the Registrar of the court below in the Record of Appeal. The trite law was stated that where rules of court employ the word “shall” it connotes compulsion and such provisions are meant to be obeyed. *Stowe v. Benstowe* (2012) 9 NWLR (Pt. 1306) 450. It was also said that this Honourable Court in the case of *Emerging Markets Telecommunications Services Limited (Doing Business as 9 mobile) v. AFDIN Ventures Limited & 6 ors.* (2026) LPELR-83327 (SC) rendered a dispassionate consideration of the provisions of Order 6 Rule 3(5) of the Supreme Court Rules, 2024. This court was urged to dismiss the appeal for non-compliance with the said mandatory provisions.

On the Appellants’ lack of locus standi to file this Appeal (Ground 3 of the Notice of Preliminary Objection)

Reliance was placed on section 243(1) (a) of the 1999 Constitution of the Federal Republic of Nigeria (As amended) on the category of persons who can appeal against the decision of a trial court to the court below and further to this Honourable Court. A party to the proceedings can appeal as of right but any other person can only exercise a right of appeal upon leave sought and obtained by either the trial court or the court below. The Appellants who were never parties to the Ex-parte

Originating Summons filed by the Respondents did not seek leave of the court below to bring the appeal and they also failed to seek leave of the court below to appeal as interested parties. *FAAN v. Bi Courtney Ltd & Anor.* (2025) 7 NWLR (Pt. 1989)365. The Record will show that the Appellants unilaterally transfigured themselves from Interested Parties/Applicants to Appellants without leave of any court. It was stated that a party is not at liberty to add or delete the names of parties at the trial court unless specifically ordered by court. *Re Apeh v. PDP* (2017) 11 NWLR (Pt. 1576) 252. This court was urged to hold that the Appellants lack the locus standi to appeal against the Ruling of the trial court and the decision of the lower court to this Honourable Court.

On failure to seek leave of court before filing the instant interlocutory appeal

According to counsel, a party who wants to appeal against an interlocutory decision of the court below must first seek and obtain leave of the court below or this Honourable Court. Section 21(2) of the Supreme Court Act, *Oketade v. Adewumi* (2010) 8 NWLR (Pt. 1195) 63, *Abubakar v. Nasamu* (2012) 17 NWLR (Pt. 1330) 523, *Registered Trustees, Mission House Int'l v. All States Bank Plc* (2021) 17 NWLR (Pt. 1805) 275. It is not in doubt that the present appeal is an interlocutory appeal, therefore, the failure to first seek leave before appealing against same renders the Notice of Appeal filed by the

Appellant incompetent and liable to be struck out by this Honourable Court. *Fidelity Bank Plc v. Sagecom Concepts Ltd & Anor.* (2025) LPELR-81172 (SC). This court was urged to strike out the incompetent Notice of Appeal for failure to seek leave of court.

On all Five Grounds being Grounds of facts or at best mixed law and facts. (Grounds 5,6,8,9 of the Notice of Preliminary Objection)

It was submitted that where a party seeks to appeal the decision of the court below to this Honourable Court on grounds other than ground of law alone, such party must first obtain and seek leave of the lower court or this Honourable Court. *Agonsi v. Ukwu* (2022) LPELR-57748 (SC). It was further submitted that a careful examination of the Appellants' Grounds of Appeal reveal that they are at best grounds of mixed law and facts, which require leave of the lower court or this Honourable Court. The particulars of Ground 1 were stated to border on allegations of fraud and perjury which are questions of fact which are disputed by the parties and require the court to evaluate evidence and make findings of facts before applying the law. Therefore, Ground 1 raises issues of mixed law and fact, which require prior leave of court. Furthermore, Ground 2 of the Appellants' Notice of Appeal challenges the computation of time which involves the consideration and evaluation of factual circumstances relating to relevant dates and procedural steps taken by the parties. Consequently, the said ground is at best one of mixed law

and facts for which leave ought to have been sought and obtained. Grounds 3 and 4 challenge the exercise of the discretionary power of the lower court in granting a consequential order directing accelerated hearing of the proceedings before the trial court and taking both the Appellants' Motion for leave to bring an application as interested parties alongside the 1st and 2nd Respondents' joint ex parte Originating Summons to sanction to scheme of merger. In addition, Ground 5 challenges the discretionary power of the lower court to award costs against the Appellants. Grounds 3, 4 and 5 which challenge the exercise of discretion by the court below is at best mixed law and facts. Chief of Air Staff v. Edward (2019) 14 NWLR (Pt. 1691) 183. This court was urged to hold that Grounds 3, 4 and 5 are of mixed law and facts. Concluding on this issue, it was submitted that the failure of the Appellants to seek and obtain leave before filing the instant appeal is fatal, and robs this Honourable Court of the requisite jurisdiction to entertain the appeal and consequently renders the entire appeal incompetent and liable to be struck out.

On incompetence of Ground 4 of the Notice of Appeal

It was stated that a careful examination of Ground 4 of the Appellants' Notice of Appeal together with the particulars of error clearly shows that the complaint is directed against the decision of the trial court. The said Ground 4 does not arise from the decision of the lower court which is

the subject of the present appeal. Rather, the Appellants seek, under the guise of this appeal to challenge the findings of the trial court directly before this Honourable Court. The settled law was stated that an appeal to this Honourable Court must relate to the decision of the court below and not the trial court. Section 233(1) of the 1999 Constitution of the Federal Republic of Nigeria (As amended), *Ogembe v. Usman & Ors.* (2011) LPELR-8155 (SC), *Gilar Cosmetics Store v. Africa Reinsurance Corporation* (2025) LPELR-80701 (SC). In conclusion, it was submitted that Ground 4 of the Appellants' Notice of Appeal is grossly incompetent and liable to be struck out.

3rd Respondent's Arguments

The 3rd Respondent argued each head of its objection in its Brief of Argument. The arguments are similar to the arguments of 1st, 2nd and 7th Respondents reproduced above, save for the judicial authorities relied on, thus, obviating the need to repeat them.

4th Respondent's Arguments

The 4th Respondent presented arguments in support of its objection on 3 distinct heads:

- a. That the Appellants/Respondents failed and or neglected to obtain leave either at the Court below or this Honourable Court before filing their Notice of Appeal on the 9th day of March, 2025, thus

making the Notice of Appeal incompetent and liable to be struck out in view of Order 11 Rule 6 of the Supreme Court Rules, 2024, Section 21(2) of the Supreme Court Act and Section 233(1) of the 1999 Constitution of the Federal Republic of Nigeria (As amended). (Ground One and Three)

- b. That ground 4 of the Appellant's Notice of Appeal is an attack on the decision of the trial Court and not the Court of Appeal, thus making the said Ground of Appeal incompetent and liable to be struck out and having regard to Section 233(1) of the 1999 Constitution of the Federal Republic of Nigeria (As amended) which stipulates that an appeal to the Supreme Court should arise from the decision of the Court of Appeal. (Ground Four of the Objection)
- c. That ground 5 of the Appellants' Notice of Appeal is an attack on the award of costs granted in favour of the 1st-6th Respondents & 10th Respondent against the Appellant by the lower Court, thus rendering the ground 5 of the Notice of Appeal incompetent in view of the fact that the Appellant failed and/or neglected to obtain leave either at the lower Court or this Court before appealing the decision. (Ground Five of the Objection)

Similarly, the arguments presented are analogous to the above reproduced arguments, therefore, it is unnecessary to reproduce same in this judgment.

5th Respondent's Arguments

The 5th Respondent argued its Preliminary Objection based on the same issues presented by the 4th Respondent, with the addition of Argument on Ground 2 of the Objection, which although argued by the 4th Respondent, was not expressly stated thus:

The Notice of Appeal was filed by the Appellants who have no locus standi to institute the instant Appeal (Ground Two of the Objection).

In addition, the 5th Respondent submitted that a further feature of the Appellants' Appeal is the serial abuse of Court Process by the Appellants. It was stated that upon a perusal of the Record of Appeal, the filing of the Appellants' Motion before the trial court dated 6th November, 2025 seeking for an Order granting leave to be heard as Interested Parties in the Proceedings brought Ex-Parte and the present Appeal predicated on five Grounds which are inarguably, Grounds of mixed Law and Fact, without the leave of the lower Court or this Honourable Court, without the backing of any law, constitutes an abuse of Court process. *Sakamori Constr. Nig. Ltd v. L.S.W.C* (2022) 5 NWLR (Pt. 1823) 339. It was also stated that knowingly filing an

interlocutory appeal by the Appellants, which has no backing in law, without leave of either the lower court or this court, constitutes an abuse of court process. Adamu v. FRN (2020) 2 NWLR (Pt. 1017) SC, Ojo v. A.G. Oyo State (2008) 15 NWLR (Pt. 1110) 309, Adegbanke v. Ojelabi (2023) 4 NWLR (Pt. 1875) 481. This court was urged to find and hold that the Appellants have embarked on a scandalous abuse of Court process.

6th Respondent's Arguments

The 6th Respondent argued each head of its objection in its Brief of Argument. It is superfluous to present the said arguments as they are similar to the arguments reproduced above.

8th Respondent's Arguments

The 8th Respondent's Arguments in support of its Preliminary Objection are a rehash of the arguments set out above and would not be set out here.

10th Respondent's Arguments

The 10th Respondent argued its Preliminary Objection based on its issues formulated for determination as to the competence of the instant appeal thus:

1. Whether in the absence of prior leave either of the court below or that of this Honourable Court, this Honourable Court is clothed with the requisite jurisdiction to entertain and adjudicate upon the Appellant's Interlocutory Appeal filed on 9th March, 2026 which contains grounds of mixed law and facts
2. Whether the Appellants lacked the locus standi as of right from decisions of the Court of Appeal not being part of the existing parties in the scheme of merger before the lower court in Suit No: FHC/L/MISC/734/2025 and without first obtaining the prior leave of this Honourable Court as an Interested Party as mandatorily required by Section 233(5) of the Constitution of the Federal Republic of Nigeria (as amended)
3. Whether ground 4 of the Appellants' Notice of Appeal filed on 9th March, 2026 being a failure to attack the "ratio decidendi" of the judgment of the Court of Appeal is grossly incompetent and ought to be struck out and/or set aside "ex debito nullito justiae"
4. Whether pursuant to the provisions of Order 6 Rule 3(5) of the Supreme Court Rules, 2024, the Appellants' Interlocutory appeal deserves to be dismissed in chambers in limine without hearing argument in the appeal.

Appellants' Reply to Arguments in support of the Respondents' Preliminary Objection

On non-compliance with the provisions of Order 6 Rule 3(5) of the Supreme Court Rules, 2024, the Appellants submitted that they have paid the money into the account provided by this Honourable Court, therefore, the Respondent's objection on this ground has been overtaken by events and there is no longer any basis for contending that the Appellants are in breach of the said provision.

On the Appellants' lack of locus standi to institute this appeal having failed to seek and obtain leave, they allude that they were not parties to the ex parte application for the sanction of the merger. However, their main argument is that the court lacks jurisdiction to entertain the application in the first instance because the 1st and 2nd Respondents committed fraud, forgery and perjury on Exhibit A before circulating it to the shareholders and this robs the trial court of its jurisdiction. According to them, they (the Appellants) intimated the court orally on the day of the hearing of the exparte application and the court directed them to file their formal application challenging its jurisdiction and competence to hear the ex parte application. It was stated that jurisdiction is a fundamental issue which the court can raise suo motu, therefore, any person who notices a defect in jurisdiction can bring it to

the court's attention. It is thus clear that the Appellants' application was filed with the purview of the law, which clearly establishes locus standi.

On the incompetence of the Appellants' five grounds of appeal, their response is that they are all grounds of law which do not require leave of court to be competent. That Ground 1 challenges the finding of the court below that it lacks jurisdiction to entertain the appeal for being incompetent and not filed within time. In other words, Ground 1 challenges the competence and jurisdiction of the court, hence it is a ground of law which requires no leave to appeal. *Virgin Atlantic Airways v. Pablo-Amaran* (2025) LPELR-81278 (SC), *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt. 67) 718. That Ground 2 challenges the finding of the lower court that the Notice of Appeal was incompetent for being filed out of time. It was stated that the issue of computation of time is strictly one of law. *Eboigbe v. NNPC* (1994) 5 NWLR (Pt. 347) 649. Ground 3 raises the question whether or not there was fair hearing when the court failed to give parties the opportunity to be heard on the issue raised suo motu and that this breach of rights of the Appellants falls under the purview of Chapter 4 of the Constitution, therefore, no leave is required to appeal. In conclusion, since the grounds of appeal are competent, the issues formulated therefrom are also competent.

The Appellants also submitted that Ground 4 of their Notice of Appeal does not amount to sneaking in any issue or introducing new issues,

rather, they are challenging the decision of the lower court which prevented the issues presented from being heard. It was stated that what the Appellants are challenging is not the trial court's decision in isolation but the lower court's affirmation of that decision. Moreso, the jurisdiction assumed by the trial court to entertain the application challenging the hearing of the ex parte application is a live issue before the lower court and the lower court's failure to disturb that assumption of jurisdiction is itself a decision, which Ground 4 emanates from. It was also submitted that the said Ground 4 is a ground of law which requires no leave as the ground challenges the jurisdiction of the trial court to entertain an application of the nature brought before it. Ground 5 bordering on the award of costs against the Appellants was said to raise a question of law which does not require leave of court.

This court was urged to dismiss the Respondents' objection.

Resolution

The issues formulated for determination by the 10th Respondent encompass the 1st-8th Respondents' grounds of objection and arguments, hence, they shall be used in the resolution of the objection(s) challenging the competence of instant appeal. For ease of reference and clarity, they are hereunder reproduced again:

1. Whether in the absence of prior leave either of the court below or that of this Honourable Court, this Honourable Court is clothed with the requisite jurisdiction to entertain and adjudicate upon the Appellant's Interlocutory Appeal filed on 9th March, 2026 which contains grounds of mixed law and facts.
2. Whether the Appellants lacked the locus standi as of right from decisions of the Court of Appeal not being part of the existing parties in the scheme of merger before the lower court in Suit No: FHC/L/MISC/734/2025 and without first obtaining the prior leave of this Honourable Court as an Interested Party as mandatorily required by Section 233(5) of the Constitution of the Federal Republic of Nigeria (as amended)
3. Whether ground 4 of the Appellants' Notice of Appeal filed on 9th March, 2026 being a failure to attack the "ratio decidendi" of the judgment of the Court of Appeal is grossly incompetent and ought to be struck out and/or set aside "ex debito nullito justicae"
4. Whether pursuant to the provisions of Order 6 Rule 3(5) of the Supreme Court Rules, 2024, the Appellants' Interlocutory appeal deserves to be dismissed in chambers in limine without hearing argument in the appeal.

The first issue deals with the failure to seek leave either of the court below or of this Honourable Court to appeal on grounds of mixed law

and facts. The provision of Section 233(2) (a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is that:

“An appeal shall lie from the decisions of the Court of Appeal to the Supreme Court as of right in the following cases- where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of Appeal”.

By this provision, where the ground of appeal involves a question of facts or mixed law and facts from a decision of the court below, leave to appeal must be obtained from the court below or this court. In other words, the mere fact that an appeal is against an interlocutory decision does not necessarily mean that the leave must be obtained. It is the nature of the grounds of appeal that will determine whether the leave of court is required pursuant to section 233(2)(a) of the Constitution. It is only when the grounds of appeal are grounds of facts or mixed law and facts that leave of court must be sought and obtained before such appeal can be competent. Where the appeal is based simply on grounds of law, the appellants can appeal as of right to the Supreme Court. This was the holding of the court in judicial authorities such as *Aya v. Nkanu* (2022) 11 NWLR (Pt. 1840) 157, *Ajose-Adeogun v. Olojede* (2024) 13 NWLR (Pt. 1956) 537, *Mamman v. State* (2022) 14 NWLR (Pt. 1851) 459, *Irabor v. Ogaïamien* (1999) 8 NWLR (Pt. 616) 517.

HON.JUSTICE MOHAMMED LAWAL GARBA, JSC

The determination of the classification of a ground of appeal is often a delicate task, however, the court is admonished to embark on a community reading of the grounds of appeal alongside their particulars of error, so as to determine the real nature and classification of the ground of appeal, whether it is a ground of law, facts or mixed law and facts. *Williams v. Adold Stamm Intl (Nig.) Ltd.* (2022) 5 NWLR (Pt. 1822) 23, *Global West Vessel Specialist (Nig.) Ltd v. NNLG Ltd.* (2017) 8 NWLR (Pt. 1561) 381, *Orakosim v. Menkiti* (2001) 9 NWLR (Pt. 719) 529, *Total Int. Ltd v. Awogboro* (1994) 4 NWLR (Pt. 337) 147, *Nze v. UNN* (2017) 6 NWLR (Pt. 1561) 300, *Odunukwe v. Ofomata* (2010) 18 NWLR (Pt. 1225) 404.

Some of the principles for determining whether ground of appeal is a ground of law, or facts or mixed law and facts have been laid down in *Obayuwana v. Adun* (2020) 13 NWLR (Pt. 1741) 371, *Allanah v. Kpolokwu* (2016) NWLR (Pt. 1507) 1, *Ehinlanwo v. Oke* (2008) 16 NWLR (Pt. 1113) 357 thus:

- a. Where the court is being invited to investigate the existence or otherwise of certain facts upon which the award of damages was based, such a ground of appeal is a ground of mixed law and fact;
- b. A ground of appeal which challenges the findings of fact or involves issues of law and fact, is a ground of mixed law and fact;

- c. Where the evaluation of facts established by the trial court before the law in respect thereof is applied is under attack or question, the ground of appeal is one of mixed law and fact;
- d. Where evaluation of evidence tendered at the trial is exclusively questioned, it is a ground of fact simpliciter;
- e. Where it is alleged that the trial court or an appellate court misunderstood the law or misapplied the law to the admitted or proved facts, such a ground of appeal is one of law simpliciter;
- f. It is a ground of law if the adjudicating tribunal or court took into account some wrong criteria in reaching its conclusion or applied some wrong standard of proof or if, in applying the correct criteria, it gave wrong weight to one or more of the relevant factors;
- g. It is a ground of law where the ground deals merely with a matter of inference even if it is limited to admitted or proved or accepted facts.

It has also been held that a ground of appeal which challenges an exercise of discretion by the court is a ground of mixed law and facts. *Faleye v. Dada* (2016) 15 NWLR (Pt. 1534) 80, *Olatubosun v. Texaco Nig. Plc* (2012) 14 NWLR (Pt. 1319) 200, *Coker v. U.B.A. Plc* (1997) 2 NWLR (Pt. 490) 641.

In order to determine the class of the Appellants' Grounds of Appeal, there is the need to set them out, together with their particulars. They are set out as follows:

GROUND 1

The Court of Appeal Justices erred in Law when they held that the Appellants' appeal challenging jurisdiction of the trial court requires leave to appeal contrary to provision of Section 241(2)(d) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

Particulars of Error

- a. It is the decision of this court that an appeal on the issue of law especially issues that challenge the jurisdiction of the court requires no leave, *Ben Anachebe Esq. v. Kingsley Ijeoma & Ors.* (2014) 14 NWLR (Pt. 1426)
- b. The Appellants grounds of appeal contained in the notice of appeal before the lower court are grounds of law as provided by the provision of the 1999 Constitution (as amended) which require no leave of court.
- c. The first ground before the lower court questioned whether the trial court had the authority to hear an application challenging the hearing of the Ex parte motion-on grounds of fraud and perjury-as well as the Ex parte Motion itself.

- d. The second ground raised before the lower court questioned whether the trial court was competent to consider an application challenging the hearing of the ex parte motion alongside the ex parte itself, due to earlier non-compliance with a court order, which was a condition precedent for hearing of the ex parte application.

GROUND 2

The Court of Appeal Justices erred in Law when they dismissed the Appeal of the Appellants on the ground that the Notice of Appeal filed by the Appellants is incompetent having been filed outside the time prescribed by the Law when the record indicates that the date of the ruling and the filing of the notice of appeal are otherwise.

Particulars of Error

- a. The trial court delivered its ruling on the 19th day of November 2025 and the Appellant (sic) notice of appeal was filed on the 3rd day of December, 2025.
- b. By the rules of the lower court, appeal of such nature shall be file (sic) 14 days from the day of the ruling
- c. It is trite that when computing time, the day of occurrence of an event is not included, as provided by Section 15(2)(a) of the

- Interpretation Act which states that the day of occurrence of that event is excluded and the time starts to run on the following day
- d. The Appellants filed its notice of appeal on the last day being the fourteenth day as provided by the law.
 - e. It is an error to include the day the Bench Ruling delivered (sic) in computation of time within which the appellants may appeal, which is a clear departure from the provision of Interpretation Act hence dismissed the Appeal in limine.

GROUND 3

The Court of Appeal erred in law by ordering an accelerated hearing of the substantive matter still pending before the trial court, despite neither party to the appeal requesting such an order. Furthermore, the appellants were not given the opportunity to address the court on this matter, which was initiated at the court's own discretion.

Particulars of Error

- a. The position of the law is that the court cannot grant the prayer or relief that was not specifically asked for by a party.
- b. The court is bound by the issues raised in the case and act as an unbiased umpire because granting unasked-for remedies has expand (sic) the appeal boundaries.

- c. The principle of law stipulates that when a court raises an issue suo motu, all parties involved must be given the opportunity to address the court on the matter, ensuring that no undue advantage is afforded to any one party.
- d. The court of appeal in its bid to do substantial justice to the case has the power to order the 10th Respondent to extend the time within which the 1st and 2nd Respondents can conclude the merger if the process is found to be proper by the decision of the court.

GROUND 5

The Court of Appeal erred in law when it granted cost against the Appellants when the appeal filed by the Appellants was within the time based on the record of the court.

Particulars of Error

- a. The Court of Appeal awarded cost against the Appellants and in favour of the 1st, 2nd, 3rd, 4th, 5th, 6th and 10th Respondents on the ground that cost follows event on erroneously (sic) thought that the appellants' appeal requires court leave and that was out of time
- b. The Appellants filed its appeal challenging the jurisdiction of the trial court require no leave of court and within the 14 days as provided by the law and the Appeal was not heard on merit.

Grounds 1 and 2 have been carefully examined and they challenge the findings of the court below that the appeal is incompetent having been filed outside the time prescribed by law and that the appeal requires leave to be competent. Contrary to the Appellants' reply, the two grounds and their particulars do not challenge the jurisdiction of the court. Rather, they qualify as grounds which challenge the finding of facts by the court below that the appeal requires leave and is incompetent, having been filed outside the time prescribed by law. It can also be said that the grounds involve issues of law and facts. Therefore, they qualify as grounds of mixed law and facts.

Grounds 3 and 5 challenge the Court of Appeal's order for accelerated hearing of the substantive matter pending before the trial court and award of cost against the Appellants respectively. Essentially, the order for accelerated hearing and award of costs were made by the court below in the exercise of its judicial discretion. Therefore, the two grounds challenge the exercise of the court's discretion. As said earlier, a ground of appeal which challenges an exercise of discretion by the court is a ground of mixed law and facts, for which leave of court is required to make same competent.

Consequently, by the classification of the Appellants' grounds 1,2, 3 and 5 of appeal which are clearly on mixed law and facts, prior leave of the court below or this court was required to make them competent before

this court, as provided under section 233(3) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended).

There is no evidence in the record of appeal that the Appellants obtained the required leave from the court below or this court before lodging an appeal on the said grounds but, as seen earlier, have insisted that the grounds are of law alone. Grounds of appeal of mixed law and facts require prior leave of court to be valid and competent grounds, worthy of consideration by this court. A ground of appeal for which leave is required and filed without such leave renders such ground incompetent and liable to be struck out. *C.O.P v. Ogor* (2022) 14 NWLR (Pt. 1849) 49, *Otti v. Ogah* (2017) 7 NWLR (Pt. 1563) 1.

Since leave of court was required before filing of grounds of mixed law and facts, it is a condition precedent for the validity and competence of the said grounds. Therefore, failure to obtain leave prior to the filing of the Appellants' Notice of Appeal containing the said grounds, renders it incompetent thereby depriving the court below the requisite jurisdiction to entertain and adjudicate over the grounds. *Tiza v. Begha* (2005) 15 NWLR (Pt. 949) 616, *Otu v. A.C.B Plc* (2008) 3 NWLR (Pt. 1073) 179, *Emetuma v. Nwagwu* (2022) 7 NWLR (Pt. 1828) 71, *Osas v. Tuedor-Matthews* (2024) 13 NWLR (Pt. 1956) 509, *Okwuagbala v. Ikwueme* (2010) 19 NWLR (Pt. 1226) 54.

On this premise, Grounds 1, 2, 3 and 5, being grounds of mixed law and facts which were filed without seeking and obtaining prior leave of the court below or this court are incompetent and are hereby struck out.

On failure of Ground 4 of the Appellants' Notice of Appeal: to attack the ratio decidendi and to; arise from the decision of the court below, it is necessary at this juncture to reproduce the said ground:-

GROUND 4

The trial court erred in law when it assumed jurisdiction to hear an application challenging the hearing of the Ex Parte application based on fraud, forgery of document and non-compliance with the earlier order made by the court alongside the exparte motion itself.

Particulars of error

- a. The trial court heard ex parte application of the 1st and 2nd respondents for merger ordered the (sic) scheme of merger shall be presented to shareholders to approved (sic) with or without modification
- b. The 1st and 2nd Respondents committed fraud and perjury by presenting to the shareholders entirely altered scheme not the one ordered by court.
- c. The trial court ruled that after the shareholders meeting, the 1st and 2nd respondents must secure Central Bank of Nigeria (CBN)

approval before requesting a sanction order; this approval was not included in the ex parte motion for sanction

- d. The appellant contended before the trial judge that the court should examine the documents before him and determine whether the required CBN approval, as ordered, is included among the exhibits attached to the sanction ex parte application-a step the court is ordinarily expected to take on its own.
- e. The appellant displayed both the court-ordered scheme and the version presented to shareholders, pointing out the sections that were fraudulently changed and providing clear evidence of perjury by the 1st and 2nd respondents which were admitted.
- f. Despite perjury and non-compliance with the court's earlier order were admitted, the trial court surreptitiously ruled to consider both the Appellant's application challenging the ex parte motion and the ex parte motion itself.
- g. The appellants contended that such ruling had not served justice interest because once the court granted the sanction, appellants will lose their capacity (locus) to initiate any further action and have no right to appeal court ex parte order as provided by Court of Appeal Act.
- h. Upon the sanctioning of the merger by the trial court, the appellants will no longer be member of the 2nd respondent. Their

interests shall be limited to the shareholders' payout as specified in the forged merger scheme.

Section 233(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is instructive. It provides thus:

“The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal”.

The interpretation of the above provision is that the Supreme Court does not possess the jurisdiction to entertain matters or complaints that transpired/occurred at the Federal High Court, without such matter having been first appealed to the Court of Appeal for its determination. The Supreme Court lacks the power to entertain an appeal directly against the decision of the trial court. *Enahoro v. Ayoola* (2025) 6 NWLR (Pt. 1985) 115, *Dangote Cement Plc v. Ager* (2024) 10 NWLR (Pt. 1945) 1, *Musa v. State* (2022) 18 NWLR (Pt. 1863) 551, *Eneji v. State* (2024) 11 NWLR (Pt. 1948) 1, *Sanga v. A.P.C* (2024) 9 NWLR (Pt. 1944) 555. In addition, grounds of appeal must attack the ratio decidendi of the decision appealed against. In other words, grounds of appeal against a decision/judgment must be related to the decision and should constitute a challenge to the ratio decidendi of the decision of that court and not that of any other court. *F.B.N. Plc v. A.G. Fed* (2018) 7 NWLR (Pt. 1617) 121, *Iloabachie v. Iloabachie* (2000) 7 NWLR (Pt. 1617) 121.

HON.JUSTICE MOHAMMED LAWAL GARBA, JSC

1617) 121, *Tabansi v. Tabansi* (2018) 18 NWLR (Pt. 1651) 279, *Abdu v. State* (2023) 1 NWLR (Pt. 1865) 339, *Eyigebe v. Iyaji* (2013) 11 NWLR (Pt. 1365) 407. Any ground of appeal not arising from the decision appealed against would be discountenanced.

From an examination of the above highlighted ground 4, it can be seen that it made copious reference to the trial court's assumption of jurisdiction. It can also be seen that the particulars of error highlight what happened at the trial court. The said ground and its particulars have no foundation in the decision of the court below. It neither attacks the ratio decidendi of the decision of the court below nor does it arise from the decision of the court below, rather, it arose from the decision/finding of the trial court. This amounts to appealing the decision of the trial court directly at/before this Honourable Court, without first appealing to the Court of Appeal. It has been said earlier that this court lacks the jurisdiction to entertain appeals arising from the decision of the trial court. Consequently, this ground of appeal is incompetent and is hereby struck out.

On the Appellants' lack of locus standi to initiate the instant appeal, not being parties to suit at the trial court, generally, a person who is not a party to a suit has no standing to appeal against an order made in the suit. *A.D.H Ltd. v. Min., F.C.T* (2013) 8 NWLR (Pt. 1357) 493. By section 233(5) of the 1999 Constitution, in civil proceedings, the right of

appeal to this court from the decision of the Court of Appeal shall be exercisable with leave of either courts at the instance of a person having an interest in the matter. While, by the provision of section 243(1) (a), in civil proceedings, any right of appeal to the Court of Appeal from the decisions of the trial court is exercisable at the instance of a person having interest in the matter with leave of either the trial court or the Court of Appeal. An appellant or any person desirous of appealing a judgment of a court which he was not originally a party to the decision complained of must first seek leave of the court that delivered the decision or the appellate court, to appeal as an interested party. In *Re: Nigeria Customs Service Board* (2022) 6 NWLR (Pt. 1825) 67, *Williams v. Mokwe* (2005) 14 NWLR (Pt. 945) 249, *Chukwu v. INEC* (2014) 10 NWLR (Pt. 1415) 385.

In the instant case, the Appellants were not yet parties to the suit at the trial court. Admittedly, the Appellants, as Interested Parties, filed an application on 6th November, 2026 seeking for an order granting them leave to bring the application as interested parties, however, the application has not been taken at the trial court. In fact, the Appellants' dissatisfaction with the bench ruling of the trial court was the trial court's order of hearing all pending applications before it, with the trial court ruling that the Appellants' application be taken first. This buttresses the point that the Appellants were not yet parties to the suit at

the trial court. The Appellants however appealed the bench ruling to the court below and further to this court without seeking and obtaining leave of either and/or both courts to appeal as interested parties. The Record of Appeal lends credence to the failure of the Appellants to seek and obtain leave to appeal as Interested Parties.

In the circumstance, having failed to comply with the provisions of section 243(1)(a) and 233(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), on the requirement of seeking leave to appeal as a party having interest in the matter, the Appellants lacked the right to appeal against the decision of the trial court to the court below and further to this Honourable Court.

The last issue borders on non-compliance with the provisions of Order 6 Rule 3(5) of the Supreme Court Rules, 2024.

The court below in its judgment delivered on 6th March 2026, dismissed the appeal and awarded costs of N5,000,000.00 against the Appellants, in favour of the 1st, 2nd, 3rd, 4th, 5th, 6th and 10th Respondents. Order 6 Rule 3(5) of the Supreme Court Rules, 2024, mandates the Appellant to pay costs ordered to be paid to the Respondent into an escrow account. The rule provides thus:

“Twenty-one (21) days after filing a Notice of Appeal, or before the transmission of the Records of Appeal (whichever is

earlier), the Appellant shall file evidence showing that all sums, by way of costs the Appellant had been ordered to pay to the Respondent have been paid into an escrow account in a commercial bank in the name of the Chief Registrar. The Appellant shall forward the Certificate of Compliance to the Registrar of the Court below for inclusion in the Records, and if the Appellant compiles the Records himself, the Certificate of Compliance duly verified by the Registrar of the Court below shall form part of the Records; failure of which shall be deemed as non-compliance with the condition for the appeal. The Court may, in the circumstance, proceed to dismiss the appeal in chambers without hearing arguments in the appeal”.

This provision recently received judicial approval in the case of Emerging Markets Telecommunications Services Limited v. Afdin Ventures Limited & ors. (2026) LPELR-83327 (SC) to the effect that Order 6 Rule 3(5) of the Supreme Court Rules, 2024 is couched in mandatory language and the jurisprudence of this court leaves no room for equivocation as to the meaning of the word “shall” encapsulated in the wordings of the Rule. Specifically, it was stated thus:

“Ordinarily, therefore, the combined effect of the Appellants failure to comply with the order to make deposit of the Judgment sum and the mandatory requirements of Order 6

Rule 3(5) of the Supreme Court Rules, 2024, would compel this Court to sustain this preliminary objection and terminate the appeal. Respect for positive orders of Court by litigants remains necessary and a party in contempt of an order of Court is not entitled to audience this is already settled in several judicial decisions”.

In this appeal, there is no dispute that the Appellants did not comply with the provisions of the Rules of the court in Order 6, Rule 3(5) (above) which are in mandatory terms. This court has consistently maintained that the Rules of court, generally, but those couched in mandatory tenor, particularly bind both the court and the parties and so should or must be obeyed and complied with. See *South Atlantic Pet. Ltd. v. Min. Pet. Resources* (2014) 4 NWLR (Pt. 1396) 24, *MC Inv. Ltd. v. C.I. & C. M. Ltd.* (2012) 12 NWLR (Pt. 1313) 1, *Ifeanyichukwu T.I.V. Ltd v. O.C.B. Ltd.* (2015) 17 NWLR (Pt. 1487) 1, *Adegbola v. Idowu* (2017) 17 NWLR (Pt. 1595) 353, *In Re:Abiola* (2019) 12 NWLR (Pt. 1685) 27, *Sharing Cross E.S. Ltd. v. Umaru Adamu Ent. Ltd.* (2020) 10 NWLR (Pt. 1733) 561. In line with the pronouncement of the court in *Emerging Markets Telecommunications Services Limited v. Afdin Ventures Limited & ors.* (supra), the ground of objection is meritorious and upheld.

In the final result, the objection raised by the 1st-8th and 10th Respondents to the competence of the appeal is upheld by me, thereby rendering the appeal incompetent and depriving the court of the requisite jurisdiction to adjudicate over it on the merit. In these premises, the Notice of Appeal filed on the 09/03/26 is liable to be struck out.

However, on the merit, due to the peculiar facts and circumstances of the 1st and 2nd Respondents' case in respect of which time is of the very essence and the elaborate reasons set out therein, I agree with the Lead Judgment my Learned Brother T. Abubakar, JSC, on the invocation of the provisions of section 22 of the Supreme Court Act in the terms set out therein along with all the consequential orders made.



MOHAMMED LAWAL GARBA
JUSTICE, SUPREME COURT

APPEARANCES

M.A. Attah, SAN with N.H. Obah, Esq., Sadiq Samaila, Esq., B. Ali, Esq., Abdulraman Ibrahim, Esq., H.B. Usman, Esq., S.B. Ibrahim, Esq., M.B. Albishir Esq., and M.T. Bello Esq., for the Appellants.

HON.JUSTICE MOHAMMED LAWAL GARBA, JSC

 10/6/2026
Certified True Copy
Aisha Gurama Esq
REGISTRAR
SUPREME COURT OF NIGERIA
Othman

Mahmud A. Magaji, SAN, Mark Mordi, SAN with A.G. Soyibo Esq, Affis A. Matanmi, Esq., Cyril Irorakpor, Esq., Ndentuokid Essang, Esq., Nabila Abdullahi, Esq., Yusuf S. Zulu-Gambari Esq., Genevieve Okoli, Esq., and Sharon Abraham Esq., for the 1st Respondent.

D.D. Dodo SAN., R.O. Atabo, SAN with O.E. Adah, Esq., R.I. Idakwoji, Esq., Chimezie Ndubisi, Esq., Abdulmalik Ahmad Zaruq, Esq., Emmanuel Lawal, Esq., Arnold Daniel Esq., Adefayo Olusola Esq., and Mark Asu-Obi Esq., for the 2nd Respondent.

J.A. Oguche Esq., A.G. Haruna Esq., and Emmanuel Okwoli, Esq., for the 3rd Respondent.

Ugbede Idachaba Esq., R.A. Ugbane, Esq., and U. Usman for the 4th Respondent.

C.T. Ahmadu, Esq., P.A. Achuara, Esq., D.A. Onyiocha, Esq., and O.V. Ebute, Esq., for the 5th Respondent.

L.M. Anenga-Arthur, Esq., B.O. Adaji, Esq., S.O. Emukai, Esq., for the 6th Respondent.

Patrick Okoh, Esq., Luqman O. Salman, Esq., and Suleiman Joseph, Esq., for the 7th Respondent.

I.O. Alaba, Esq. for the 8th Respondent.

P.E. Ozioko for the 9th Respondent.

HON.JUSTICE MOHAMMED LAWAL GARBA, JSC

L.I. Onyenyeonwu for the 10th Respondent.

 10/6/2026
Certified True Copy
Aisha Gurama Esq
REGISTRAR
SUPREME COURT OF NIGERIA
Officer

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON MONDAY, THE 1ST DAY OF JUNE, 2026.
BEFORE THEIR LORDSHIPS

MOHAMMED LAWAL GARBA
TIJJANI ABUBAKAR
CHIOMA EGONDU NWOSU-IHEME
HARUNA SIMON TSAMMANI
STEPHEN JONAH ADAH

JUSTICE SUPREME COURT
JUSTICE SUPREME COURT
JUSTICE SUPREME COURT
JUSTICE SUPREME COURT
JUSTICE SUPREME COURT
SC/CV/132/2026

BETWEEN:

1. SULEIMAN ABUBAKAR
2. MOHAMMED GONI MODU } APPELLANTS
AND

1. PROVIDUS BANK LIMITED (RC.198892)
2. UNITY BANK PLC (RC.94524) } 1ST SET OF RESPONDENTS
AND

1. PROVIDUS BANK LIMITED
2. UNITY BANK PLC
3. PAC CAPITAL LIMITED
4. VETIVA ADVISORY SERVICES LIMITED
5. LIGHT HOUSE CAPITAL LIMITED
6. PLANET CAPITAL LIMITED
7. CORPORATE AFFAIRS COMMISSION (CAC)
8. FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION (FCCPC)
9. SECURITIES AND EXCHANGE COMMISSION (SEC)
10. CENTRAL BANK OF NIGERIA } 2ND SET OF RESPONDENTS

10/6/2026

Certified True Copy
Aisha Gurama Esq
REGISTRAR
SUPREME COURT OF NIGERIA
Of Kurel

JUDGMENT
(DELIVERED BY CHIOMA EGONDU NWOSU-IHEME, JSC.)

My learned brother TIJJANI ABUBAKAR, JSC accorded me the opportunity of reading the lead judgment.

I am in full concurrence with the reasoning and conclusion reached in the lead judgment to the effect that the appeal is bereft of merit.

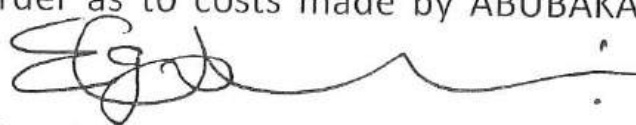
I flow with the reasoning that Pursuant to the powers conferred on this Court under Section 22 of the Supreme Court Act and Sections 711 to 715 of the Companies and Allied Matters Act, 2020, the joint Ex-Parte Originating Summons filed by the 1st and 2nd Respondents on the 27th day of October, 2025 succeeds and is hereby granted as prayed. The scheme of Merger between the 1st Respondent and the 2nd Respondent/Applicant is also sanctioned by me.

I also grant reliefs a-k sought in the joint Ex-parte Originating Summons.

The Appellants' Appeal is bereft of merit. Consequently, I accordingly dismiss same. The decision of the Court of Appeal, Lagos Division is affirmed in Part.

Sequel to the Powers vested in this Court under Section 22 of the Supreme Court Act, the Scheme of Merger between the 1st Respondent and the 2nd Respondent is accordingly Sanctioned as prayed in their joint Ex parte Originating Summons dated the 27th day of October, 2025.

I abide by the order as to costs made by ABUBAKAR, JSC in the lead judgment.


CHIOMA EGONDU NWOSU-IHEME (Ph.D)
JUSTICE, SUPREME COURT.

 10/6/2026
Certified True Copy
Aisha Gurama Esg
REGISTRAR

SUPREME COURT OF NIGERIA
Official

APPEARANCE OF COUNSEL:

M.A. ATTAH SAN, with him N.H. OBAH, ESQ; SADIQ SAMAILA, ESQ.; B. ALI, ESQ.; ABDURAMAN IBRAHIM, ESQ.; H.B. USMAN, ESQ and S.B. IBRAHIM, ESQ. for the Appellants.

MAHMUD ABUBAKAR MAGAJI, SAN, with him MARK MORDI, SAN; A.G. SOYIBO, ESQ; AFFIS MATANMI, ESQ; CYRIL IRORAKPOR, ESQ; NDENTUOKID ESSANG, ESQ; NABILA ABDULLAHI, ESQ; YUSUF S. ZULU-GAMBARI, ESQ; GENEVIEVE OKOLI, ESQ and SHARON ABRAHAM, ESQ for the 1st Respondents.

D.D. DODO, SAN with him R.O. ATABO, SAN; O.E. ADAH, ESQ; R.I. IDAKWOJI, ESQ; CHIMEZIE NDSUBUISI, ESQ; ABDULMALIK AHMAD ZARUQ, ESQ; EMMANUEL AMEH, ESQ; EMMANUEL LAWAL, ESQ; AARNOLD DANIEL, ESQ.; ADEAYO OLUSOLA, ESQ and MARK ADU-Obi, ESQ for the 2nd Respondents.

J. A. OGUCHE, ESQ with him A.G. HARUNA, ESQ and EMMANUEL OKWOLI, ESQ for the 3rd Respondents.

UGBEDE IDACHABA, ESQ with him R.A. UGBANE, ESQ and U. USMAN, ESQ for the 4th Respondent.

C.T. AHMADU, ESQ with him P.A. ACHUARA, ESQ; D.A. ONYIOACHA, ESQ and O.V. EBUTE, ESQ for the 5th Respondent.

L.M. ANENGA-ARTHUR, ESQ with him B.O. ADAJI, ESQ and S.O. EMUKAI, ESQ for the 6th Respondent.

PATRICK OKOH, ESQ with him LUQMAN OLANREWAJU SALMAN, ESQ; ADAVIZE SANNI, ESQ and SULEIMAN JOSEPH, ESQ for the 7th Respondent.

I.O. ALABA, ESQ for the 8th Respondent.

P.E. OZIOKO, ESQ for the 9th Respondent.

L.I. ONYENYEONWU, ESQ for the 10th Respondent.

 10/6/2026
Certified True Copy
Alifa Gurama Esq
REGISTRAR
SUPREME COURT OF NIGERIA
Official

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

ON MONDAY THE 1ST DAY OF JUNE, 2026

BEFORE THEIR LORDSHIPS

MOHAMMED LAWAL GARBA
TIJJANI ABUBAKAR
CHIOMA EGONDU NWOSU-IHEME
HARUNA SIMON TSAMMANI
STEPHEN JONAH ADAH

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT

APPEAL NO: SC/CV/132/2026

BETWEEN:

1. SULEIMAN ABUBAKAR }
2. MOHAMMED GONI MODU } == APPELLANTS

AND

1. PROVIDUS BANK LIMITED (RC. 198892) } == 1ST SET OF
2. UNITY BANK PLC (RC. 945224) } RESPONDENTS

AND

1. PROVIDUS BANK LIMITED
2. UNITY BANK PLC
3. PAC CAPITAL LIMITED
4. VETIVA ADVISORY SERVICES LTD
5. LOIGHT HOUSE CAPITAL LIMITED
6. PLANET CAPITAL LIMITED
7. CORPORATE AFFAIRS COMMISSION (CAC)
8. FEDERAL COMPETITION AND CONSUMER
PROTECTION COMMISSION (FCCPC)
9. SECURITIES AND EXCHANGE
COMMISSION (SEC)
10. CENTRAL BANK OF NIGERIA (CBN) } 2ND SET OF
==RESPONDENTS


10/6/2026
Certified True Copy
Nisha Gurama Egb
REGISTRAR
SUPREME COURT OF NIGERIA

Officer

JUDGMENT
[DELIVERED BY STEPHEN JONAH ADAH, JSC]

I had the privilege of reading in draft the judgment just delivered by my learned brother, **Tijjani Abubakar, JSC**.

I am in complete agreement with the lucid reasoning and conclusion contained in the lead judgment that this appeal is wholly devoid of merit. Having carefully examined the record of appeal, the submissions of learned counsel, and the applicable provisions of the law, I find no basis whatsoever for interfering with the decision reached by the lower Court. The arguments canvassed by the appellants fail to disclose any error of law, miscarriage of justice, or other circumstance warranting the invocation of this Court's appellate jurisdiction in their favour.

I equally subscribe to the view expressed in the lead judgment that, by virtue of the extensive powers vested in this Court under Section 22 of the Supreme Court Act and Sections 711 to 715 of the Companies and Allied Matters Act, 2020, this Court is fully empowered to make any order which the circumstances of the case require in order to do substantial justice between the parties and bring the litigation to a just and final conclusion. The exercise of that jurisdiction is particularly appropriate in the present case, where all the materials

necessary for the determination of the issues are already before the Court.

Accordingly, I hold that the Joint Ex-Parte Originating Summons filed by the 1st and 2nd Respondents on the 27th day of October, 2025, is well-founded in law and substance. The application has satisfied all the statutory and procedural requirements prescribed under the relevant provisions of the Companies and Allied Matters Act, 2020, and there exists no legal impediment to the grant of the reliefs sought therein.

Consequently, the Joint Ex-Parte Originating Summons succeeds and is hereby granted as prayed. In further exercise of the powers conferred on this Court, I hereby sanction and approve the Scheme of Merger between the 1st Respondent and the 2nd Respondent/Applicant. The said scheme, having complied with all legal requirements and having been shown to be fair, lawful, and beneficial to the corporate entities involved, deserves the imprimatur of this Court.

For the avoidance of doubt, I also grant all the reliefs contained in paragraphs (a) to (k) of the Joint Ex-Parte Originating Summons. The orders sought therein are consequential, necessary, and incidental to the effective implementation of

the approved Scheme of Merger and are therefore hereby granted in their entirety.

In the final analysis, I find the appeal to be completely lacking in merit. It is accordingly dismissed. The judgment of the Court of Appeal, Lagos Division, is affirmed to the extent stated in the lead judgment.

For emphasis, pursuant to the powers vested in this Court by Section 22 of the Supreme Court Act, and in order to bring this matter to a definitive and conclusive end, I hereby sanction and approve the Scheme of Merger between the 1st Respondent and the 2nd Respondent as prayed in their Joint Ex-Parte Originating Summons dated 27th October, 2025. The merger shall take effect in accordance with the terms of the approved Scheme and the applicable provisions of the Companies and Allied Matters Act, 2020.

I abide by all the consequential orders inclusive of the order as to costs as made in the lead judgment.

Appeal Dismissed.


STEPHEN JONAH ADAH
JUSTICE, SUPREME COURT

 10/6/2026

Certified True Copy
Alsha Garama Esq
REGISTRAR

SUPREME COURT OF NIGERIA

Ofhree

APPEARANCES:

M.A. Attah, SAN, with N.H. Obah, Esq., Sadiq Samaila, Esq., B. Ali, Esq., Abduraman Ibrahim, Esq., H.B. Usman, Esq., and S.B. Ibrahim, Esq., **for the Appellants.**

Mahmud Abubakar Magaji, SAN, with Mark Mordi, SAN, A.G. Soyibo, Esq., Affis Matanmi, Esq., Cyril Irorakpor, Esq., Ndentuokid Essang, Esq., Nabila Abdullahi, Esq., Yusuf S. Zulu-Gambari, Esq., Genevieve Okoli, Esq., and Sharon Abraham, Esq., **for the 1st Respondent.**

D.D. Dodoh, SAN, with R.O. Atabo, SAN, O.E. Adah, Esq., R.I. Idakwo, Esq., Chimezie Ndubuisi, Esq., Abdulmalik Ahmad-Zaruq, Esq., Emmanuel Ameh, Esq., Emmanuel Lawal, Esq., Arnold Daniel, Esq., Adeayo Olusola, Esq., and Mark Asu-Obi, Esq., **for the 2nd Respondent.**

J.A. Oguiche, Esq., with A.G. Haruna, Esq., and Emmanuel Okwoli, Esq., **for the 3rd Respondent.**

Ugbede Idachaba, Esq., with R.A. Ugbane, Esq., and U. Usman, Esq., **for the 4th Respondent.**

C.T. Ahmadu, Esq., with P.A. Achuara, Esq., D.A. Onyioacha, Esq., and V.O. Ebute, Esq., **for the 5th Respondent.**

L.M. Anengha-Arthus, Esq., with B.O. Adaji, Esq., and S.O. Emukai, Esq., **for the 6th Respondent.**

Patrick Okoh, Esq., with Luqman Olanrewaju Salman, Esq., Adavize Sanni, Esq., and Suleiman Joseph, Esq., **for the 7th Respondent.**

I.O. Alaba, Esq., **for the 8th Respondent.**

P.E. Ozioko, Esq., **for the 9th Respondent.**

L.I. Onyenyeonwu, Esq., **for the 10th Respondent.**