1. CHIEF ALEX OLUSOLA OKE
2. PEOPLES DEMOCRATIC PARTY (PDP)

V.

1. DR. RAHMAN OLUSEGUN MIMIKO
2. LABOUR PARTY (LP)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
4. RESIDENT, ELECTORAL COMMISSIONER, ONDO STATE
5. THE STATE RETURNING OFFICER FOR THE ONDO STATE GOVERNORSHIP ELECTION

SUPREME COURT OF NIGERIA

SC.353/2013

WALTER SAMUEL NKANU ONNOGHEN, J.S C. *(Presided)*
IBRAHIM TANKO MUHAMMAD, J.S.C.
CHRISTOPHER MITCHELL CHUKWUMA-ENEH, J.S.C.
JOHN AFOLAB1 FABIYI, J.S.C. NWALI
SYLVESTER NGWUTA, J.S.C.
MARY UKAEGO PETER-ODILI, J.S.C. *(Read die Leading Judgment)*
STANLEY SHENKO ALAGOA, J.S.C.

THURSDAY, 29TH AUGUST 2013

ACTION - Preliminary objection to jurisdiction of court – Where raised - Duty on court to hear and determine first.

APPEAL - Concurrent finding of two lower courts - Attitude of Supreme Court thereto.

APPEAL - Evaluation of evidence by trial court - Review of by appellate court - How done - Whether appellate court bound to review line by line.

APPEAL - Finding of fact by trial court - Party challenging same on appeal - Onus thereon.

APPEAL - Ground of appeal - Particulars of error complained of therein - Nature of - How couched.

APPEAL - Issues for determination - issue formulated in brief of argument - Failure to link same with ground of appeal - Effect.

COURT - Jurisdiction - Preliminary objection to jurisdiction of court - Where raised - Duty on court to hear and determine first.

COURT - Technicalities - Attitude of court thereto - Duty on court to do substantial justice.

ELECTION - Polling agent - Who is - Functions of - Whether competent to testify on whole election.

ELECTION - Pre-election matters - What constitutes pre-election matter - Issue of revision and injection of fresh names in voters register - Whether amount to pre-election matter.

ELECTION PETITION - Non-compliance with Electoral Act -Allegation of - Onus on petitioner to prove that non-compliance substantially affected result of election.

ELECTION PETITION - Non-compliance with Electoral Act -Whether per se results in nullification of election - Nature of non-compliance that will result in nullification.

ELECTION PETITION - Non-compliance with Electoral Act -Where alleged - Respective duties on petitioner and respondent - How discharged.

ELECTION PETITION - Non-compliance with Electoral Act - . Where raised as ground of election petition - Duty on court or tribunal in respect of - How discharged.

ELECTION PETITION - Pre-election matters - What constitutes pre-election matter - Issue of revision and injection of fresh names in voters register - Whether amount to pre-election matter.

ELECTION PETITION - Non-compliance with Electoral Act and Constitution - Allegation of - Where amounts to commission of crime - Standard of proof required.

EVIDENCE - Evaluation of evidence by trial court - Review of by appellate court - How done - Whether appellate court bound to review line by line.

JURISDICTION - Preliminary objection to jurisdiction of court -Where raised - Duty on court to hear and determine first.

JUSTICE - Technicality - Attitude of court thereto - Duty on court to do substantial justice.

LEGAL PRACTITIONER - Mistake of counsel - Whether party should be punished therefor.

PRACTICE AND PROCEDURE - Appeal - Ground of appeal - Particulars of error complained of therein - Nature of - How couched.

PRACTICE AND PROCEDURE - Appeal - Issues for determination - Issue formulated in brief of argument - Failure to link same with ground of appeal - Effect.

PRACTICE AND PROCEDURE - Finding of fact - Concurrent finding of two lower courts - Attitude of Supreme Court thereto.

PRACTICE AND PROCEDURE - Finding of fact by trial court-Party challenging same on appeal - Onus thereon.

PRACTICE AND PROCEDURE - Preliminary objection to jurisdiction of court - Where raised - Duty on court to hear and determine first.

PRACTICE AND PROCEDURE - Technicality - Attitude of court thereto - Duty on court to do substantial justice.

WORDS AND PHRASES - Election - Meaning of.

WORDS AND PHRASES - Miscarriage of justice - What amounts to.

WORDS AND PHRASES - Polling agent - Who is - Functions of.

WORDS AND PHRASES - Pre-election matter - What constitutes.

Issues:

1. Whether the Court of Appeal was not in grave error when it held that the entry of additional names into the register of voters and the non-display or publication of same as required by the Electoral Act was not a non-compliance that substantially affected the outcome of the election.
2. Whether the failure by the Court of Appeal to consider the appellants' complaints against specific adverse findings of the election tribunal and its findings that PW45's evidence was hearsay and that majority of, if not all, the infractions against the Electoral Act enumerated by the appellants were criminal in nature were not erroneous thereby occasioning a miscarriage of justice against the appellants.

Facts:

On the 20th day of October, 2012 the Independent National Electoral Commission, the 3rd respondent herein, conducted the Governorship Election in Ondo State in South-West Nigeria. At the election, the 1st appellant was the candidate of the Peoples Democratic Party (PDP) which is the 2nd appellant, while the 1st respondent was the candidate sponsored by the 2nd respondent, Labour Party (LP).

Eleven other political parties also fielded candidates at the said election. At the end of the election, the 1st respondent was declared winner with the highest number of votes (260,197 votes) as against **the** 1st appellant who was declared second with a total of 155,196 votes. The 1st respondent was returned and declared as the winner of the election on the 21st October, 2012.

The appellants, being aggrieved with the return of the 1st respondent, filed a petition at the Ondo State Governorship Election Tribunal contending *inter alia,* that the election of

the 1st respondent was invalid by reasons of corrupt practices, non-compliance with the provisions of the Electoral Act and that the 1st respondent was not duly elected by majority of lawful votes cast at the election. The appellants therefore prayed that the 1st appellant be declared and returned as the winner of the election in place of the 1st respondent, or, in the alternative, that the result of the election be cancelled entirely and another election ordered.

The petition was consolidated with four others which were filed by some other parties but in the course of the hearing, the said petition was heard together with that of Oluwarotimi O. Akeredolu SAN along with his political party, the Action Congress of Nigeria (ACN)

At the hearing, the appellants called a total of 45 witnesses of **which** the 1st appellant testified as PW45 while the 1st respondent called 13 witnesses. The 2nd – 5th respondents did not call any witness but took the option of relying on the evidence, both oral and documentary, proffered by the 1st respondent together with the facts and materials derived from the petitioners' witnesses supporting the case of the 2nd – 5th respondents. After the trial, written addresses were filed and argued at the end of which the tribunal delivered its judgment on 3rd May, 2013 dismissing the petition on the main ground that the allegations of the petitioners were not proven as required by law.

Being dissatisfied, the appellants appealed to the Court of Appeal which affirmed the decision of the trial tribunal and dismissed the appeal. The Court of Appeal in its decision was of the view that majority of the allegations contained in the petition were criminal in nature and that the tribunal had properly weighed and evaluated the evidence led by the appellants and there was no reason to disturb the findings of the tribunal. It also held that the 2nd respondent's objection to some of the grounds of appeal had merit.

Being dissatisfied with the decision of the Court of Appeal, the appellants appealed to the Supreme Court. The 1st and 2nd respondents cross-appealed against the finding of the Court of Appeal that the complaint against the voters register did not amount to pre-election matter. The 4th and 5th respondents' counsel raised objections to the competence of grounds 1, 4 and 5 of the grounds of appeal on the ground that no issue was formulated from them. The 1st and 2nd

appellants also raised objections to the competence of the cross-appeal on the grounds that the particulars did not support the grounds of appeal.

Held *(Unanimously dismissing the appeal and the cross-appeal):*

1. *On What constitutes an election and whether complaint of injection of names in voters register a pre-election matter –*
An election is defined as a process spanning a period of time and comprises a series of actions from registration of voters to polling. Thus, in the instant case, the complaint about injected names in voters register, though relates to facts which predated the election, could not be regarded simply as a pre-election matter for which no jurisdiction would lie with an Election Tribunal to entertain. *[Abubakar v. Yar'Adua* **(2008) 19 NWLR (Ft. 1120) 1;** *A.N.N.P. v. Usman* **(2008) 12 NWLR (Ft. 1100)** *1;Odedo v. I.N.E.C* **(2008) 17 NWLR (Ft. 1117) 554;** *Dingyadi v. 1.N.E.C* **(2011) 10 NWLR (Ft. 1225) 347;** *Ibrahim v. I.N.E.C.* **(1999) 8 NWLR (PL 614) 334 referred to.]** *(P. 389, paras. A-C)*
Per PETER-ODILI, J.S.C. at page 389, paras. D-G:
"This is because the voters register with or without the injection of names was used for the election which election result is challenged for non-compliance with the Electoral Act on the basis of an improperly produced voters register with unlawful entry of names, multiple additions of names and non-display; a situation which cannot be tackled in isolation and outside the election matter. Therefore since there cannot be a dichotomy between the voters register issue being pre-election and what transpired in this instance at the contest grounds of the election, it is clear that the trial tribunal is most suitable for the holistic determination of the questions thrown up. Therefore since the tribunal is empowered to enter into the discourse of non-compliance with the Electoral Act whether before or on the polling day for the purpose of invalidating the election, then that jurisdiction of the tribunal is intact. I place reliance on section 138(1) of the Electoral Act."

2. *On Onus of proof on party alleging non-compliance wall Electoral Act –*
It was for the appellants to prove the allegation of very serious acts of infraction of the Electoral Act they made before the tribunal. Clearly, the majority of, if not all, the acts of the alleged infraction of the Electoral Act enumerated were criminal in nature and therefore required a higher standard of proof, that is, proof beyond reasonable doubt. It had become clear that the courts were not interested in the altogether common penchant for crying wolf but insist on proof, hard-nosed and concrete proof of allegations. ***(Pp. 365-366, paras. H-B)***

3. *On Onus of proof on party alleging non-compliance with Electoral Act –*
If the provisions of sections 138(1)(b) and 139(1) of the Electoral Act are closely examined it will be found to be equivalent to this: that the non-observance of these rules or forms which is to render an election invalid must be so great as to amount to conducting of the election in a manner contrary to the principle of an election by ballot and must be so great as to satisfy the Tribunal that it did affect or might have affected the majority of the votes; in other words the result of the election. ***[Awolowo v. Shagari*** **(1979) All NLR 120 referred to.]** ***(Pp. 367, paras. D-E; 395, paras. A-E)***

4. *On Onus of proof on party alleging non-compliance with Electoral Act –*
It is manifest that by virtue of sections 138(l)(b) and 139(1) of the Electoral Act, an election shall not be invalidated by mere reason that it was not conducted substantially in accordance with the provisions of the Act. It must be shown clearly by evidence that the non-substantiality has affected the result of the election. The petitioner must not only show substantial non-compliance but also the figures; that is votes that the non-compliance attracted or omitted. The elementary evidential burden that the person asserting must

prove has not been derogated from by the section. The petitioner must not only assert but must also prove to the court that the non-compliance has so affected the election result to justify its nullification. In view of the fact that the tribunal or court can only come to the conclusion in the light of the evidence before it, one of the parties must give that evidence to the contrary and the party is the one who will fail if that evidence is not given. That party in my humble view is the petitioner. He is the party who alleges that the election was not conducted substantially in accordance with the principles of the Electoral Act. ***[Buhari v. Obasanjo*** **(2005) 13 NWLR (Bt. 941) L;** ***Almbakar v. Yar'Adua*** **(2008) 19 NWLR (IM. 1120) 1 referred to.]** ***(Pp. 367-368, paras. F-E)***

5. *On Respective burdens of proof on petitioner and respondent where allegation of non-compliance with Electoral Act is made in election petition –*
By virtue of section 138(l)(b) of the Electoral Act, an election may be questioned on the ground that the election was invalid by reason of corrupt practice or non-compliance with the provisions of the Act. However, by virtue of section 139(1) of the Act, an election shall not be liable to be invalidated by reason of non-compliance with the provisions of the Act if it appears to the election tribunal or court that the election was conducted substantially in accordance with the principles of the Electoral Act and that the non-compliance did not affect substantially the result of the election. Having those two crucial sections of the Electoral Act in focus, for a petition to succeed on ground of non-compliance with the provisions of the Electoral Act, the petitioner must not only prove that there was non-compliance with the provisions of the Electoral Act, but that the non-compliance substantially affected the result of the election. It is a two-pronged process which are intertwined to such an extent that none can go without the other arm. [C .PC. *v. I.N.E.C.* **(2011) 18 NWLR (Pt. 1279) 493;** *Yusuf v. Obasanjo* **(2005) 18 NWLR (Pt. 956) 96;** *Ojukwu v. Yar'Adua*

(2009) 12 NWLR (Pt. 1154) 50; *Awolowo v. Shagari* **(1979) All NLR 120;** *Btthari* v. *Obasanjo* **(2005) 13 NWLR (Pt. 941) 1;** *Abubakar v. Yar'Adua* **(2008) 19 NWLR (Pt. 1120) 1;** *Buhari v.I.N.E.C.* **(2008) 19 NWLR (Pt. 1120) 246 referred to.]** *(Pp. 366-367, paras. E-D; 391, paras. C-D; F-H; 399-400, paras. F-A)* **Per ONNOGHEN, J.S.C. at pages 391-392, paras. H-C:**

> **"I should not be misunderstood as saying that the duty above stated is solely that of the petitioner after establishing the non-compliance complained of, as it equally applies to the respondent whose return is being challenged. He is to satisfy the court, after the petitioner has proved non-compliance, that the election in issue was conducted substantially in accordance with the principles of the Electoral Act and that the non-compliance complained of by the petitioner did not affect substantially the result of the election. In fact the duty under section 139(1) of the Electoral Act, 2010, as amended is more of the respondent than the petitioner but as I had stated in an earlier judgment, it is more in the interest of the petitioner to meet the requirements of section 139(1) of the Electoral Act, 2010, as amended, if he wants to succeed. It is a duty imposed by expediency and it is very strategic."**

6. *On What court considers in determining whether no n/ compliance with Electoral Act substantially affected the conduct of the election –*

The duty lies on the court to determine whether or not an election was conducted substantially in accordance with the Constitution and the Electoral Act. The court will look at circumstances of the case, including the state of the pleadings, especially the credibility of the petitioner's position and the nature and substance of the complaints of the petitioner, the attitude of the functionaries charged with the conduct of the election and whether the omissions complained of by the petitioner, even if proved, affected the conduct of the election. *[C.P.C. v. LN.E.C.* **(2011) 18 NWLR (Pt. 1279) 493 referred to.]** *(P. 368, paras. E-G)*

Per PETER-ODILI, J.S.C. at pages 368-369, paras. H-G:

> **"In this instance the allegations of noncompliance with the provisions of the Electoral Act and the electoral**

malpractices as pleaded in the petition are so interwoven as to become impossible of severing the criminal content from the civil and so the proof has to be of the higher standard being that beyond reasonable doubt. Therefore when the petitioners/ appellants set out to establish their case and in the evidence were that comparing the unit results; the entries in the CTC and duplicate copies of the result for the same unit were the same. They were signed and most of them stamped with a few not stamped. The CTCs of form EC8As were same in content with the duplicate copies tendered by the petitioners. They were all signed by the presiding officers and there was clear evidence of accreditation on them. All of these findings went along what should occur in a free, fair and credible election and so the tribunal had no difficulty in finding. The Court of Appeal could not depart from that finding obviously and this court does not seem to have a choice. The other documents dumped without evidence in support or where rendered the evidence was found not credible and then the star witness PW45 whose evidence had to do with facts and events not within his personal knowledge and which he was not qualified to speak on with value then a claim to proof of substantial non-compliance can only reside in dreamland and not for our purpose. Worse still is the attempt by the appellants to impugn the register of Voters alleging injection of names when the disputed register was not tendered in court and the appellants did not proffer a reason for that lapse. To impugn the content of the Register can only be done when the court has something to compare with what was available and in use and what the actual proper voters register should be.

What I am trying to say in effect is that the appellants' proposition to prove the noncompliance which substantially affected the outcome of the election fell far short of the requirements and seeing no redeeming feature in sight, I have no difficulty in going along with the concurrent findings of the two courts below and resolving this issue with an emphatic NO and against the appellants."

7. *On Whether every non-compliance with Electoral Act must he subjected to substantiality test –*
There are certain non-compliances that go to the root of an election in that they are absolute in the sense that once established the purported election is invalid and as such there will be no result to be substantially affected by the non-compliance. For instance, where an election is conducted with an invalid voters register there can be no result of an election to be substantially affected by the non-compliance. Obviously none, as the purported election is null and void *ah initio. [Ojukwu v. Yar 'Adua* **(2009) 12 NWLR (Pt. 1154) 50 referred to.]** *(P. 342, paras. D-F)*
Per ONNOGHEN, J.S.C. at page 392-393, paras. H-C:
> **"The question has, however, been asked as to whether the present non-compliance is one that does not call for the operation of section 139(1) of the Electoral Act, 2010, as amended which I answered in the negative. The reasons include the fact that there is the need for the tribunal or court to determine the effect of the injected names in the voters register on the result of the election which can only be done if there is evidence of participation of those people who were illegally included in the register in the voting exercise in the election in question; if they participated whether a deduction of their number from the total votes of the winner will tilt the scale in favour of the petitioner etc, etc.**
>
> **In the instant case, even the register in question is not in evidence before the court!!**
>
> **It is for the above reasons that I hold the view that to accept the contention of appellants that the fact of non-compliance** *simpliciter* **is sufficient to nullify the election in the circumstance of this case would cause injustice to a respondent who was declared the winner of the election by majority of lawful votes."**

8. *On Who is a polling agent and whether can give evidence about whole election –*
Polling agents whose functions are defined by section 45 of the Electoral Act, represent the respective political parties at the numerous polling units in obvious recognition of the enormity of the task of those monitoring the election in all the polling units of the State. Thus, a polling agent, being

human, is not qualified to testily as to what happened in disputed units other than the one he is physically present at. **(***P. 376, paras. D-F)*

Per PETER-OD1L1, J.S.C. at page 376, paras. C-H:

"On a revisit of the evidence of PW 45 who testified on what transpired in over 1000 polling units. That witness assumed the role of a polling agent whose functions are defined by section 45 of the Electoral Act. Polling agents represent the respective political parties at the numerous polling units in obvious recognition of the enormity of the task of those monitoring the election in all the polling units of the State. Even though the 1st appellant was at liberty to perform the duty of polling agent for himself and his party, being human he can only be physically present at only one polling unit at a given time and so cannot perform the same task with the same title as polling agent in any or all the other polling units and so when the evidence is to be provided as to what happened in disputed units other than the one he is physically available at then he is not qualified to testify thereto. This is because section 45(2) Electoral Act expects evidence directly from the relevant field officer at the required polling unit. Therefore when PW45 set out to testify as a State agent armed with all the evidence of what occurred throughout the State in relation to each polling unit, he did so under a misguided understanding of what the Electoral Act had prescribed. I place reliance on *Buhari v. Obasanjo* **(20(15) 13 NVVLR (Pt. 941) 1;** *A.C.N. v. Lamido* **(2012) 8 NVVLR (Pt. 1303) 560."**

9. *On What amounts to miscarriage of justice –*

Miscarriage of justice connotes a decision or outcome of legal proceedings that is prejudicial or inconsistent with the substantiated rights of the party. Miscarriage of justice means a reasonable probability of more favourable outcome of the case for the party alleging it. Miscarriage of justice is injustice done to the party alleging it. *[Gbadamosi v. Dairo* **(2007) 3 NVVLR (Pt. 1021) 282 referred to.]** *(P. 372, paras. A-C)*

10. *On What amounts to miscarriage of justice –*

Miscarriage of justice can be said to be such a departure from the rules which permeates all judicial process as to make what happened not in the proper sense of the word judicial procedure at all. What constitutes a miscarriage of justice varies, not only in relation to particular facts, but with regard to the jurisdiction invoked by the proceedings in question. It is enough if what is done is not justice according to law. *[Aigbobahi v. Aifuwa* **(2006) 6 NWER (Pt. 976) 270 referred to.]** *(P. 372, paras. C-F)*

11. On What amounts to miscarriage of justice -**Miscarriage of justice occurs when in the course of a proceeding the goal post is shifted to the detriment of one of the parties or where it can he said that from what had transpired from the very beginning of the judicial process or at any point during the exercise of the judicial proceedings that the scale of justice had been tilted to favour one party, thus jeopardising the equal right of the other party.** *(P. 372, paras. F-F)*

12. *On Duty on court to hear preliminary objection first where raised –*
A preliminary objection must be heard and determined firstly before anything else. *(P. 356, para. E)*

13. On Couching particulars of error alleged in ground of appeal –
The particulars and nature of the error or misdirection alleged in a ground of appeal which are required by Order S, rule 2(2) of the Supreme Court Rules 1985 are the specific reasoning, finding or observation in the judgment or ruling relating to or projecting the error or misdirection complained of. They should also not be independent complaint from the ground of appeal itself but ancillary to it. *[Globe Fishing hid. Ltd. v. Coker* **(1990) 7 NWLR (Pt. 162) 265 referred to and applied;** *Olaniyan v. University of Lagos (No. 2)* **(1985) 2 NWLR (Pt. 9) 599;** *Hani Akar Ent. Ltd. v. I.N.M.B. Ltd.* **(2011) 1 NWLR (Pt. 1228) 302 referred to.]** *(Pp. 380-381, paras. G-A; 381, para. D)*
Per PETER-ODILI, J.S.C. at page 381, paras. A-D:

> **"From the ground of appeal as stated earlier, the part of the judgment complained of and the particulars of error are not out of line. They may have been crafted in a way different from what learned counsel for the cross-respondent would have done. That does not qualify the particulars as incompetent and thereby**

rendering incompetent the ground of cross-appeal or the issues deriving therefrom. That is a matter of style, a technical point which does not detract from the substance and the other party not misled on account of that unique mode of drafting. It is neither here nor there and since it cannot be correctly interpreted as extraneous unrelated to the ground of appeal but rather clearly shows the reason behind the need to cross-appeal, at least to have a grievance put across, considered and determined one way or the other. The cross-appellant ought not to be shackled in letting out what grieves him."

14. *On Whether failure to indicate grounds of appeal from which issue formulated in brief of argument fatal –*

The courts had jettisoned technicalities for doing substantial justice to both sides in such a way that an appeal will be heard and determined on its merits. In the instant case, it can be seen that the question raised as issue 2 flowed from grounds 1, 4, 5 and 7 of the notice of appeal, though it was not so specifically stated. The respondents were not misdirected or misled; neither did they not know what they were called upon to defend. The appellants could not be penalized for inadvertence or clear mistake of counsel in failing to indicate the grounds from which he formulated issue. By raising this objection, the objector was seeking technical justice, a mode of adjudication the court had long departed from by rather insisting on substantial justice. *[Ajuwa v. S.P.D.C.N. Ltd.* **(2011) 18 NWLR (Pt. 1279) 797 referred to.]** *(Pp. 360-361, paras. F-B)*

15. *On Duty on appellate court in evaluation of evidence by trial court -*

Once the appellate court has fully taken cognizance of the evaluation of evidence alongside the pleadings by a trial court, it is not obligated in the process of review or consideration of the evaluation to deal, line by line or phrase by phrase, with the judgment of the tribunal or trial court before it can be said the appellate court carried out its duty. The important thing is that in its

appellate duty substantial justice was done. *(P. 376, paras. B-C)*

16. *On Onus on party challenging finding of fact by trial court on appeal -*

The two issues raised in this appeal are issues of fact upon each of which the trial tribunal made a definite pronouncement which pronouncement was endorsed by the Court of Appeal. In an appeal against a finding of fact by a trial court or tribunal, the appellant must show that the court:

(a) made improper use of the opportunity it had of seeing and hearing the witnesses; or

(b) did not appraise the evidence and ascribe probative values to it; or

(c) drew wrong conclusions from proved or accepted facts leading to a miscarriage of justice.

In the instant case, the appellants failed to discharge the burden. *[Ebba v. Ogodo* **(1984) 1 SCNLR 372;** *Alli v. Alesinloye* **(2000) 6 NWLR (Pt. 660) 177 referred to.]** *(P. 397, paras. G-H)*

17. *On Attitude of Supreme Court to concurrent findings of lower courts -*

The appellants have challenged the concurrent findings of facts made by the two courts below. The Supreme Court does not make a practice of interfering with such findings just for the asking. The court will not interfere in absence of a demonstration that the findings are perverse. Not having shown perversity in the concurrent findings of fact of the two courts below, the appellants failed in their bid to have the said findings disturbed. *[Ibodo v. Enarofia* **(1980) 5 - 7 SC 42;** *Chinwendu v. Mbamali* **(1980) 3 - 4 SC 31 referred to.]** *(P. 398, paras. A-B)*

Nigerian Cases Referred to in the Judgment:

A.C.N, v. Lamido (2012) 8 NWLR (Pt. 1303) 560
A.N.P.P. v. Usman (2008) 12 NWLR (Pt. 1100) 1
Abubakar v. Yar'Adua (2008) 19 NWLR (Pt. 1120) 1
Adekeye v. *Adesina* (2010) 18 NWLR (Pt. 1225) 449
Aigbobalti v. Aifuwa (2006) 6 NWLR (Pt. 976) 270
Ajasin v. Omoboriowo (1984) 1 SCNLR 108

Ajuwa v. S.P.D.C.N. Ltd. (2011) 18 NWLR (Pt. 1279) 797
Akintola v Balogun (2000) 1 NWLR (Pt. 642) 532
Alli v. Alesinloye (2000) 6 NWLR (Pt. 660) 177
Awolowo v. Shagari (1979) All NLR 120
Ayodeji v. Ajibola (2013) All FWLR (Pt. 660) 1327
Bamaiyi v. A.-G., *Fed.* (2001) 12 NWLR (Pt. 722) 468
Banigboye v. Olaurewaju (1991) 4 NWLR (Pt. 184) 132
Buhari v. I.N.E.C. (2008) 19 NWLR (Pt. 1120) 246
Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1
C.P.C. v. I.N.E.C. (2011) 18 NWLR (Pt. 1279) 493
Cluuni v. U.B.A. Plc (2010) 6 NWLR (Pt. 1191) 474
Chinwendu v. Mbamali (1980) 3 - 4 SC 31
Dingyadi **v.** *LN.E.C.* (2011) 10 NWLR (Pt. 1225) 347
Duru v. Nwosu (1989) 4 NWLR (Pt. 113) 24
Ebba v. Ogodo (1984) 1 SCNLR 372
Emordi v. Igbeke (2011) 9 NWLR (Pt. 1251) 24
Eamuroti v.Agbeke (1991) 5 NWLR (Pt. 189) 1
Eayemi v. Oni (2009) 7 NWLR (Pt. 1140) 223
Gbadamasi v. Dairo (2007) 3 NWLR (Pt. 1021) 282
Globe Fishing Bid. Ltd. v. Coker (1990) 7 NWLR (Pt. 162) 265
Hamza v. Kure (2010) 10 NWLR (Pt. 1203) 630
Hani Akar Ent. Ltd. v. l.N.M.B. Ltd. (2011) 1 NWLR (Pt. 1228) 302
Ibodo v. Enarofia (1980) 5 - 7 SC 42
Ibrahim v. LN.E.C. (1999) 8 NWLR (Pt. 614) 334
Igbeke v. Emordi (2010) 11 NWLR (Pt. 1204) I
Ige v. Olunloyo (1984) 1 SCNLR 158
Inakoju v.Adeleke (2007) 4 NWLR (Pt. 1025) 423
Iriri v. Erhurhobara (1991) 2 NWLR (Pt. 173) 252
K. T. & Ind. Pic v. The Tug Boat "M/V Japaul B" (2011) 9 NWLR (Pt. 1251) 133
Labiyi v.Anretiola (1992) 8 NWLR (Pt. 258) 139
Mogaji v. Odofin (1978) 4 SC 91
Ndiwe v. Okocha (1992) 7 NWLR (Pt. 252) 129
Nig. Bottling Co. Ltd. v. Ngonadi (1985) I NWLR (Pt. 4) 739
Nigercare Dev. Co. Ltd. v. A.S.W.B. (2008) 9 NW1 ,R (Pt. 1093) 498
Nwankwo v. Yar'Adua (2010) 12 NWLR (Pt. 1209) 518
Obisanya v. Nwoko (1974) 6 SC 69
Odedo v. I.N.E.C. (2008) 17 NWLR (Pt. 1117) 554
Ogualaji vA.-G., Rivers State (1997) 6 NWLR (Pt. 508) 209
Ojukwu v. Yar'Adua (2009) 12 NWLR (Pt. 1154) 50

Olaniyan v. University of Lagos (No. 2) (1985) 2 NWLR (Pt.9) 599
Onagbue v. Nnubia (1972) NSCC 478
Onoyom v. Egari (1999) 5 NWLR (Pt. 603) 416
Sonde v. Abdullahi (1989) 4 NWLR (Pt. 1 16) 387
SCC (Nig.) Ltd. v. Anya (2012) 9 NWLR (Pt. I 305) 21 3
Sorunke v. Odebunmi (1960) SCNLR 414
Sule v. Habit (2011) 7 NWLR (Pt. 1246) 339
Yusuf v. Obasanjo (2005) 18 NWLR (Pt. 956) 96
Woluchem v. Gudi (1981) 5 SC 291

Foreign Cases Referred to in the Judgment:
Kponuglo v. Kodadja (1933) 2 WACA 24
Morgan v. Simpson (1975) QB 151
Woodward v. *Sarsons* 10 L.R.CP. 733

Nigerian Statutes Referred to in the Judgment:
Constitution of the Federal Republic of Nigeria, 1999, S. 285(5)
Electoral Act, 2002, S. 135(1)
Electoral Act, 2006, S. 146(1)
Electoral Act, 2010 (as amended), Ss. 9, 20, 21(2), 45, 138(1)(b), 139(1) and 285(2)
Evidence Act, 2011, S. 135(1) and 137

Nigerian Rules of Court Referred to in the Judgment:
Supreme Court Rules, O. 6 r. 5(1)(b)

Appeal and Cross-appeal:
This was an appeal against the judgment of the Court of Appeal which upheld the decision of the Election Tribunal which had dismissed the appellants' petition for failure to prove it. The 1st and 2nd respondents cross-appealed on a finding of the Court of Appeal. The Supreme Court, in a unanimous decision, dismissed the appeal and the cross-appeal.

History of the ease:

Supreme Court:
Names of Justices that sat on the appeal: Walter Samuel Nkanu Onnoghen, J.S.C. *{Presided)* Ibrahim Tanko Muhammed, J.S.C; Christopher Mitchell Chukwuma-Eneh, J.S.C; John Afolabi Fabiyi, J.S.C; Nwali Sylvester

Ngwuta, J.S.C; Mary Ukaego Peter-Odili, J.S.C. *{Read the Leading Judgment);* Stanley Shenko Alagoa, J.S.C. *Appeal No.:* SC.353/2013 *Date of Judgment:* Friday, 29lh August, 2013 *Names of Counsel:* L. O. Fagbemi, SAN *(with him,* Yinka Orokoto, Esq.; Chief A. O. Ajana, Esq.; Dr. J. O. Olatoke, Esq.; O. A. Dare, Esq.; O. Oke, Esq.; J. Ola-Mafo, Esq.; A. O. Popoola, Esq.; O. Akuoyibo, Esq.; B. A. Oyon, Esq.; A. Umoru, Esq.; M. A. Adelodun, Esq.; Gbenga Adesioye, Esq.; Supo Igbademiyi, Esq.; Wole Akindiso, Esq.; Lawrence Fagbolagun, Esq.; Y. O. Ishola [Mrs.]; Debo Ikuesan, Esq.; T. S. Ojo, Esq. and C. D. Ezeh, Esq.) *-for the AppellantslCross-respondents* Dr. Oladapo Olanipekun, Esq. *(with him,* Olabode 01anipekun,Esq.; Kehinde Ogunwumiju, Esq.; Bamikole Aduroju, Esq.; Ademola Abimbola, Esq.; Ademola Adesina, Esq.; Adedayo, Adesina, Esq.; P. C. Wzegamba, Esq.; **Idaopu** Wakama, Esq.; Vanessa Onyemauvva [Miss] and Thompson Akinyemi, Esq.) - *for the **P'** Respondent! Cross-appellant* Yusuf Ali, SAN *(with him,* A. O. Adelodun, SAN; Prof. Wahab Egbewole, Esq.; Ayo Olanrewaju, Esq.; K. K. Eleja, Esq.; A. O. Abdulkadir, Esq.; S. O. Akangbe [Mrs.];S.A.Abdullaln,Esq.;TaofiqAlubarika,Esq.;T.E. Akintunde [Mrs.]; C. O. Mbam, Esq.; T. E. Umunnakwe, Esq. and T. U. Ekomaru, Esq.) - *for the **2nd** Respondent! Cross-appellant*
Dr. Onyechi lkpeazu, SAN *(with him,* Abdul Mohammed, Esq. and Sandy Tadafenua [Mrs.]) *-for the **J"'** Respondent! Cross-appellant*
Wale Balogun, Esq. *(with him,* Tinu Oshoba [Miss]) - *for the 4'1' and 5"' Respondents*

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Akure
Names of Justices that sat on the appeal: Mohammed Lawal Garba, J.C.A. (Presided); Aszira Gana Mshelia, J.C.A.; Ejembi Eko, J.C.A.; Obietonbara Daniel-Kalio, J.C.A.(Read the Leading Judgment); Emmanuel Akomaye Agim, J.C.A.
Appeal No.: CA/AK/EPT/GOV/08/13
Date of Judgment: Tuesday, L1 July 2013

Names of Counsel: N. O. Oke, SAN; Yinka Orokoto, Esq.; Yomi Akinfemiwa, Esq.; Olusola Dare, Esq.; Olusola Oke, Esq.; Mafimisebi Idovvu, Esq.; Prince John Ola Mafo, Esq.; Ijabadeniyi Supo, Esq.; Olumide Ogunleye, Esq.; A. O. Oladele, Esq.; Oluwaseyi Bamigboye, Esq.; Akintunde Adewumi, Esq.; Timilehin Oguntuase, Esq.; O. O. Odumosu [Miss]; M. E. Ejims [Miss] - *for the Appellants*

Chief Wole Olanipekun, OFR, SAN; Ricky Tarfa, SAN; Adebayo Adenipekun, SAN; John Baiyeshea, SAN; Abayomi Akamode, Esq.; Kunle Ijalana, Esq.; Abimbola Ajileye-George; Sesan Dada; Olumide Ogunje; Akeem Olaniyan; Thompson Akinyenu; Y. A. Dikko; Olabode Olanipekun; Wole Okenile; Adedayo Adesina; Kingsley Jephter; Oyebanji Oluwatobi; Duduyemi Ajewole; Stella C. Uda -*for 1st Respondent*

Yusuf O. Ali, Esq., SAN; A. O. Adelodun, SAN; Prof. Wahab Egbewole; Ayo Olarenwaju, Esq.; K. K. Eleja, Esq.; R. O. Balogun, Esq.; A. O. Abdulkadir, Esq.; A. S. Addullahi Esq.; Taoliq Alubarika, Esq; Hammad Muhammad, Esq.; ldris Suleiman, Esq. – *for 2nd Respondent*

Dr. Onyechi Ikpeazu, SAN; Onyinye Anumonye, Esq.; Wale Balogun; Chioma Wokeocha [Mrs.]; Ayotunde Ogunleye, Esq.; Peter Nwatu, Esq. – 3rd – *5th Respondent*

Tribunal:

Name of the Election Tribunal: Governorship Election Tribunal, Akure

Date of Judgment: Friday, 3rd May 2013

Counsel:

E. O. Fagbemi, SAN *{with him,* Yinka Orokoto, Esq.; Chief A. O. Ajana, Esq.; Dr. J. O. Olatoke, Esq.; O. A. Dare, Esq.; O. Oke, Esq.; J. Ola-Mafo, Esq.; A. O. Popoola, Esq.; 0. Akuoyibo, Esq.; B. A. Oyon, Esq.; A. Umoru, Esq.; M. A. Adelodun, Esq.; Gbenga Adesioye, Esq.; Supo Igbademiyi, Esq.; Wole Akindiso, Esq.; Lawrence Fagbolagun, Esq.; Y. 0. Ishola [Mrs.]; Debo Ikuesan, Esq.; T. S. Ojo, Esq. and C. D. Ezeh, Esq.) - *for the Appellants/ Cross-respondent*

Dr. Oladapo Olanipekun, Esq. *(with him,* Olabode Olanipekun, Esq.; Kehinde Ogunwumiju, Esq.; Bamikole Aduroju, Esq.; Ademola Abimbola, Esq.; Ademola Adesina, Esq.; Adedayo, Adesina, Esq.; P. C. Wzegamba, Esq.; Idaopu Wakama, Esq.; Vanessa Onyemauwa [Miss] and Thompson Akinyemi, Esq.) *-for the /" Respondent/ Cross-appellant*

Yusuf Ali, SAN *(with him, A.* O. Adelodun, SAN; Prof. Wahab Egbewole, Esq.; Ayo Olarenwaju, Esq.; K. K. Eleja, Esq.; A. O. Abdulkadir, Esq.; S. O. Akangbe [Mrs,]; S. A. Abdullahi, Esq.; Taoliq Alubarika, Esq.; T. E. Akintunde [Mrs.]; C. (). Mbam, Esq.; **T. E.** Umunnakwe, Esq. and T. **U.** Ekomaru, Esq.) - *for the 2nd Respondent/Cross-appellant* Dr. Onyechi Ikpeazu, SAN *(with him,* Abdul Mohammed, Esq. and Sandy Tadafenua [Mrs.]) - *for the* 3rd *Respondent/Cross-appellant*

Wale Balogun, Esq. *(with him,* Tinu Oshoba [Miss]) - *for the 4th and 5th Respondents*

PETER-ODILI, J.S.C. (Delivering the Leading Judgment):

Tins is an appeal against the judgment of the Court of Appeal sitting in Akure delivered on E[l] day of July, 2013 which court affirmed the decision of the tribunal which dismissed the petition of the appellants.

Dissatisfied with the decision of the Court of Appeal, the appellants have come before the Supreme Court on appeal. *FACTS BRIEFLY STATED:*

On the 20th day of October, 2012 the 3rd respondent conducted the governorship election at which election the P[l] appellant was the candidate of the 2"[d] appellant (PDP) while the P' respondent was the candidate sponsored by the 2nd respondent, Labour Party (LP). Eleven other political parties fielded candidates also at the said election. At the end of the election, the I[s1] respondent was declared winner with the highest number of votes of 260,197 votes as against the 1st appellant who was declared second with a total of 155,196 votes.

The 1st respondent having scored the majority of the lawful votes cast and satisfying the requirements of the Constitution, the 3rd – 5th respondents returned and declared the L[1] respondent as the winner of the election on the 21st October, 2012.

The appellants being aggrieved with the turn of events tiled a petition before the Ondo State Governorship Election Tribunal on the 10"' of November, 2012. The thrust of the petition was that the

election of the 1st respondent was invalid by reasons of corrupt practices, non compliance with the provisions of the Electoral Act and that the 1st respondent was not duly elected by majority of lawful votes cast at the election. The appellants therefore prayed that 1st appellant be declared and returned as the winner of the election in • place of the Is1 respondent or in the alternative that the result of the election be cancelled entirely and another election ordered.

The petition was consolidated with four others winch was filed by same parties but in the course of the hearing, the said petition was heard together with that of Oluwarotimi O. Akeredolu, SAN along with his political party, the Action Congress of Nigeria (ACN). At the hearing, the appellants called a total of 45 witnesses of which the 1st appellant testified as PW45 while the 1st respondent called 13 witnesses. The 2nd – 5th respondents did not call any witness but took the option of relying on the evidence both oral and documentary as proffered by the 1st respondent together with the facts and materials derived from the petitioners' witnesses supporting the case of the respondents 2nd – 5th. Written addresses were filed and argued at the end of which the trial tribunal delivered its judgment on 3rd May, 2013 dismissing the petition on the main ground that the allegations of the petitioners remained not proven as known to law.

Again dissatisfied, the appellants went to the Court of Appeal which affirmed the decision of the tribunal and dismissed the appeal. The Court of Appeal in its decision was of the view that the 2'"' respondent's objection to some grounds of appeal had merit. Also that majority of the allegations contained in the petition were criminal in nature and that the tribunal had properly weighed and evaluated the evidence led by the appellants and there was no reason to disturb those findings of the trial tribunal.

Being not satisfied with the decision of the Court of Appeal, the appellants have now come before the Supreme Court with seven grounds of appeal. The respondents cross-appealed.

On the 27"' August, 2013 date of hearing, learned counsel for the appellants, Lateef Fagbemi, SAN adopted their brief tiled on 31/7/2013. Appellant's reply briefs filed on 7/8/13, 3/8/13, 3/8/13, 7/8/13 respectively.

In the appellants' brief were raised two issues for determination, viz:

1. Whether the lower court was not in grave error which occasioned a miscarriage of justice when it

held that the entry of additional names into the register of voters and the non-display or publication of same as required by the Electoral Act was not a non-compliance that substantially affected the outcome of the election (Grounds 2, 3 and 6).

2. Whether the lower court's failure to consider appellants complaints against specific adverse findings of the trial tribunal and its findings that PW45's evidence is hearsay and that majority, if not all the infractions against the Electoral Act enumerated by the appellants are criminal in nature, were not erroneous thereby occasioning a miscarriage of justice against* the appellants.

Learned counsel for the 1st respondents, Dr. Oladapo Olanipekun adopted their brief of argument filed on 5/8/13 and in it were formulated two issues for determination which are as follows:

(i) Considering the nature of the allegation in appellants' pleadings *qua* petition and evidence proffered at the trial tribunal, whether the Court of Appeal was not right in affirming the trial tribunal's dismissal of the petition. (Grounds 1, 2, 2, 5, 6 and 7).

(ii) Whether the Court of Appeal properly classified the evidence of PW45 as hearsay evidence (Ground 4).

Yusuf Ali, SAN, for the 2nd respondent adopted their brief of argument filed on the 1/8/13 and in which were crafted two issues for determination stated hereunder. Viz:

1. Whether the court below was not right in coming to the same conclusion like the trial tribunal, that the appellants failed woefully to prove the various allegations of noncompliance and commission of crimes made in the petition as required by law and whether the findings of PW45 was not correct and the Court of Appeal breached the appellants' right to fair hearing.

2. Whether the court below was not correct and on *terra firma* in holding that the appellants woefully failed to show that the alleged injection of names into the voters' registers substantially affected the outcome of the election,

For the 3rd respondent was adopted the brief of argument by Dr. Ikpeazu, SAN, settled by Chief Awomolo, SAN and filed on

2/8/13. He distilled two issues for determination which are as follows:

1. Was the Court of Appeal correct in upholding the decision of the tribunal to the effect that

   The party failed to establish that the acts of non-compliance A' with the Electoral Act alleged by them, vitiated the Governorship election in Ondo State?

2. Was the Court of Appeal correct in upholding the decision of the tribunal to the effect that the appellants , failed to discharge the burden placed on them to ^{0} succeed in the petition?

Wale Balogun, learned counsel for the 4^{Ul} and 5^{lh} respondents adopted their brief of argument tiled on 2/8/13.

In the brief of the argument, learned counsel for the 4^{lh} and 5^{lh} respondents formulated two issues for determination which are as follows:

1. Whether the lower court was right when it held that entry of additional names into the register of voters and the non-display or publication of the voters register did not substantially affect the outcome of the election. (Grounds 2, 3 and 6).
2. Whether the lower court was right when it upheld the decision of the trial tribunal that the appellants failed to discharge the burden placed on them to succeed in the petition. (Grounds 1,4,5 and 7).

In the brief of the 4^{th} and 5^{th} respondents, the learned counsel on their behalf raised a preliminary objection which arguments were therein incorporated and must be dealt with before anything else can happen since it goes to the competence or otherwise of the appeal.

PRELIMINARY OBJECTION:

The grounds upon which the objection is taken are thus:

1. The appellants formulated no issues for determination from grounds 1,4,5 and 7 of the notice of appeal.
2. Issue 2 formulated for determination by the appellants (their briefs of argument does not relate to any ground of appeal contained in the appellant's notice of appeal.

Arguing, learned counsel for 4^{th} and 5^{th} respondents/objector submitted that appellants having formulated no issues for

determination from grounds 1, 4, 5 and 7 contained in the notice of appeal are deemed to have abandoned the said ground and therefore the grounds of appeal are liable to be struck out. He cited *Sule v. Habu* (2011) 7 NWLR (Pt. 1246) 339 at 365; *Ndiwe v. Okocha* (1992) 7 NWLR (Pt. 252) 129 at 138 - 139 etc.

Mr. Balogun further contended that issue 2 formulated for determination in the appellants' brief of argument which is not related to any ground of appeal contained in the appellants' notice of appeal is incompetent and liable to be struck out. That for an issue formulated for determination in an appeal to be valid, it must derive from at least a ground in the notice of appeal. That this issue 2 did not relate to the grounds of appeal and so should be struck out. He referred to *K. T. & bid. Pcl. The Tug Boat "M/V Japaul B"* (2011) 9 NWLR (Pt. 1251) 133 @ 152; *Bamgboye v. Olanrewqju* (1991) 4 NWLR (Pt. 184) 132; *Labiyi v. Anretiola* (1992) 8 NWLR (Pt. 258) 139.

Reacting by way of reply on points of law flowing from the reply brief of the appellant filed on 7/8/13, Mr. Fagbemi, SAN said that grounds of appeal can only be deemed abandoned where arguments are not canvassed on them or where the argument canvassed in the brief do not relate to the grounds. That from the appellants' brief as well as that of 4th and 5th respondents/objector issue 2 is in the main to challenge the lower court's decision that the appellants did not adduce sufficient evidence to prove their ease and these are found in grounds 1, 4, 5 and 7.

Learned senior advocate said what the objector is seeking is technicality of form overriding substance and the courts have moved away from such a narrow perspective in administration of law. That it is all the more so since the respondents are not misled by the appellants' brief of argument on what they are to defend. He cited *Ajuwa v. SPDC* (2012) All FWLR (Pt. 615) 200 at 223, (2011) 18 NWLR (Pt. 1279) 797 and Order 6, rule 5(1)(b) of the Rules of this court.

This objection from what can be seen has to do with the second issue of the appellant having been distilled but the grounds from which that distillation took place were not stated. Mr. Balogun of counsel for the 4th and 5th respondents/objector contends that the omission of stating the grounds of appeal vitiated the issue derived from those grounds.

Mr. Fagbemi, SAN for the appellant admits the omission which he explained as a human error or incompetence that cannot be pushed beyond the realm of technicality and would not have the

effect of making incompetent the issue 2 which can be seen to be related to and being distilled from grounds 1, 4, 5 and 7. That the issue 1 was well stated to be distilled from grounds 2, 3 and 6 and so issue 2 which shows to be derived from the remaining grounds of a 7 ground appeal would then be anchored properly on grounds 1, 4, 5 and 7,

In view of this objection, it is necessary to recapture the grounds 1, 4, 5 and 7 aforesaid which are thus:

GROUND 1 :

The learned Justices of the Court of Appeal erred in law and came to a perverse decision which occasioned miscarriage of justice, when they held:

> "That appellants' counsel gave a litany of infractions of the electoral Act by the respondents in paragraphs G 4.2 of his brief of arguments. They include among others:
>
> 1. That people were allowed to vote without accreditation;
> 2. That there were multiple accreditations and voting;
> 3. That the number of voters recorded is not the same as the number ticked to have voted;
> 4. That the number of voters ticked to have been accredited in the voters register differs from the number of accredited voters entered on Form EC8A(1);
> 5. That the number of used and unused ballot papers entered in Form EC8A (1) exceeded the number of ballot papers issued in the affected polling units;
> 6. That alterations were made on Form EC8A (1) without same being authenticated;
> 7. That there was swapping of results sheets;
> 8. That Forms EC8A (1) were not signed, stamped and dated and did not have the name of the presiding officer;
> 9. That unidentified persons and objects were accredited and voted;
> 10. That unknown Form EC8A (1) having no serial number were used in the election;
> 11. That Form ECS A (1) did not reflect the votes of some of the political parties that participated in the election; and

12. Failure to use the appropriate register of voters to conduct the election.

It was for the appellants to prove these very serious acts of infractions of the Electoral Act before the tribunal. Clearly, majority if not all the acts of infraction of the Electoral Act enumerated above were criminal in nature and therefore require a higher standard of proof, that is, proof beyond reasonable doubt".

PARTICULARS OF ERROR:

(i) The instances of non-compliance listed by the appellants and reflected in the judgment of the lower court are merely civil and not criminal allegations.

(ii) Being civil allegations, they are to be *proved on preponderance of evidence* based on *balance of probability* and not beyond reasonable doubt.

(iii) The wrongful holding that majority or all of the infractions enumerated above are criminal in nature, led the court below to its failure to hold that the infractions have been established on balance of probability.

(iv) The enumerated infractions were all established on preponderance of evidence.

(v) The holding of the Court of Appeal that they were to be proved beyond reasonable doubt occasioned to the appellants a miscarriage of justice.

GROUND 4:

The learned Justices of the Court of Appeal erred, when they held:

"From the submission in the appellants' brief of argument at P.8 thereof, PW45 has to be more than a superman. According to the submission, the "comprehensive" evidence of PW 45 covered 372 polling units across 10 local Governments; it covered 659 polling units across 7 Local Government Areas and also covered 591 polling units across the State. It is only an omnipresent being that can give first hand evidence of all that transpired in the hundreds of polling units. Mere mortals can only give second hand evidence about what happened in distant places. The evidence given by PW 45 can only be hearsay. The tribunal was right to have so held"

PARTICULARS OF ERROR:

(i) PW45's testimonies were both oral and documentary.
(ii) PW 45 did not claim to have been at every polling unit in the State during the election.
(iii) Appellants tendered and relied on relevant election documents (Forms EC8A - EC8E Series, Register of Voters and INEC Election Manual 2011).
(iv) Evidence based on documents tendered and admitted is not hearsay.
(v) The decision of the lower court with regard to the evidence of PW 45 is perverse.

GROUND 5:

The lower court erred in law and came to a wrong decision when it failed to consider appellants complaint against specific adverse findings of the trial tribunal thereby breaching appellants' right to fair hearing.

PARTICULARS OF ERROR

(i) Appellants' complaint against wrongful and non-evaluation of the testimonies of PW6 , 20, 2 1, 23, 24, 33, 37, 39 and 41-44 were not considered.
(ii) Appellants' complaint against the tribunal's finding El that the voters register were ticked to evidence accreditation was not considered.
(iii) Appellants' contention that the inclusion of unlawful registrants rendered the register of voters null and void, was not considered.

GROUND 7:

The judgment is against the weight of evidence.

Those grounds inclusive of the particulars can be seen to be the foundation of the issue 2 or that issue 2 is distilled from those grounds and no way can any argument be led that the respondents were misdirected or misled or did not know what they are called to defend. The issue 2 asks the question whether the lower court's failure to consider appellants' complaints against specific adverse findings of the trial tribunal and its (hidings that PW45's evidence is hearsay and whether the infractions against the Electoral Act are criminal in nature were not erroneous, occasioning a miscarriage of justice against appellants.

Clearly that question raised as issue 2 flows from the grounds though not specifically stated the appellants cannot be penalized on an inadvertence clearly a mistake that is easy for a lawyer to make.

I agree with learned senior counsel for the appellants that the objector is seeking a technical justice, a mode of adjudication the court has long departed from rather insisting on substantial justice. As my learned brother, Fabiyi, JSC stated in *Ajuwa v. SPDC* (2012) All FWLR (Pt. 615) 200 at 223, (2011) 18 NWLR (Pt. 1279) 797. The days of technicalities are gone. The current vogue is the doing of substantial justice to both sides in such a way that the main appeal will be heard and determined on its merits.

On that note, I have no difficulty in dismissing this preliminary objection which cannot be justified. Objection is therefore dismissed.

APPEAL:

Inspite of the differently formulated issues of each of the parties, the two questions each raised were basically the same D though portraying the individual style of the respective counsel. It is therefore for convenience that 1 shall make use of the two issues as formulated by Lateef Fabgemi, SAN, for the appellants.

ISSUE NO 1:

> Whether the lower court was not in grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the register of voters and the non-display or publication of same as required by the Electoral Act, was not a non-compliance that substantially affected the outcome of the election.

Lateef-Fagbemi, SAN, learned counsel for the appellants contended that they are questioning the holding by the lower court that although the entry of additional names into the register of voters and the non-display and publication of same as required by the Electoral Act constitute non-compliance, the non-compliance did not substantially affect the outcome of the election. That the, register of voters used in the conduct of the election was not the one that ought to be used, in that, the entry of additional names of over 100,000 registrants thereto was not done in compliance with the Electoral Act and the register of voters was not displayed

or is hearsay and whether the infractions against the Electoral Act are ji published as mandatorily required by the Electoral Act. Also that the register of voters compiled in breach of the mandatory provisions of the Electoral Act and used in the conduct of the election by the 3"' respondent is illegal and thus a nullity and by extension the election based on it is a nullity.

Learned senior advocate for the appellants said how substantially an established non-compliance affects the outcome of an election, is an issue of fact or law or both depending on the nature of the non-compliance involved. That in the case at hand; what is in issue is the vitiating effect of the 3ld respondent's failure to comply with the mandatory procedure prescribed by sections') to 20 of the Electoral Act in producing the voters register used for the purported election. That the lower court failed to consider that the 3"' respondents' failure to comply with the Electoral Act in adding over 100,000 names into the register and its failure to display or publish same as required by the said Act had nullifying effect on the register and o *fortiori,* the election. That the Court of Appeal had failed to consider and pronounce on this crucial issue had to do with the legitimacy of the election itself, since it is a condition precedent to having a result under the provision of section 138(l)(b) of the Electoral Act. fie referred *to Nwatikwo v. Yen* 12 NWLR (Ft. 1209) 5)8 at 589; *Bamuiyi v. A.-C, Federation* (2001) 12 NWLR (Pt. 722) 468; *Enwrdi v. Igbeke* (2011) 9 NWLR (Ft. 1251) 24 at 29; *Inakoju v. Adelckc* (2007) 4 NWLR (Pt. 1025) 423 at 478 -479.

Mr. Fagbemi, SAN of counsel said that the Court of Appeal having found that the non-compliance complained of with regard to the voters register occurred, it ought to hold that its substantiality on the outcome of the election lies in its vitiating effect. That this occasioned a miscarriage of justice which this apex court cannot ignore. He cited *Gbadamasi v. Dairo* (2007) 3 NWLR (Ft. 1021) P. 282 at 306; *Aiybobalu v. Aifuwa* (2006) 6 NWLR (Ft. 976) 270 at 290 - 291.

It was further submitted for the appellants that the appellants had led evidence of the non-compliance which the Court of Appeal agreed was proved and having regard to the natural vitiating consequence of its occurrence on the election, it became the burden of the 3rd - 5"1 respondents to show that the election could stand inspite of the non-compliance. That this failure at rebuttal evidence coupled with admission on pleading strengthened the

case of the appellants and rendered the failure of the lower courts to give j| judgment in appellants' favour perverse. He relied on *Chami v. U.B.A. Plc* (2010) 6 NWLR (Ft. 1191) 474 at 496; *Igbeke v. Emordi* (2010) 11 NWLR (Ft. 1204) 1 at 49; *Ojukwu v. Yar'Adua* (2009) 12 NWLR (Ft. 1 154) 50.

In response, Dr. Olanipekun for the 1" respondent stated that the assertion of the appellants over unlawful injections into the voters register were not substantiated and so those allegations should be discountenanced. He cited section 139(1) of the Electoral Act.

That where allegations of non-compliance are made in the pleadings generally, it is the law that the non-compliance and/or perpetration of same must be linked to the candidate returned as winner of the election before same can vitiate his return. That this burden is even higher in this instance where the petitioners have made allegations against the 1st respondent, lie cited *Buhari v. Obasanjo* (2005) 13 NWLR (Ft. 941) 1 at 264 - 265 etc.

Dr. Olanipekun of counsel stated further that it is all the more germane where the allegation connotes a crime against a named individual and in the case at hand, the respondents in this appeal played by each party in the alleged crime which must he proved beyond reasonable doubt no less. He referred to section 135(1) of the Evidence Act, 2011 (as amended); *Ige v. Olunloyo* (1984) 1 SCNLR 158; *Ajasin v. Omoboriowo* (1984) 1 SCN1.R 108 at 156; *Nwobodo v. Onoh* (1984) 1 SCNLR 1.

It was also contended for the 1st respondent that the matter J cannot be said to be proved in respect of the non-accreditation where the register of voters at the centre of it was not tendered in evidence. Reliance was placed on the following, cases: *Avodeji v. Ajibola* (2013) All FWLR (Pt. 660) 1327 at 1 370 - 137 1; *Fayemi v. Oni* (2009) 7 NWLR (Pt. 1140) 233.

Mallam Yusuf Ali, SAN on his part for the 2nd respondent went along the same line of thought and reasoning of the 1st respondent's counsel and submitted that this court has no basis m upsetting the concurrent findings of the two courts below when they found and held that the non-compliance alluded to by the appellants remained not proven. He cited *Adekeye v. Adesina* (2011) All FWLR (Ft. 57 1) 1509 at 1544, (2010) 18 NWLR (Ft. 1225) 449 etc. That what the appellants had done at the court of trial was to dump documents and make allegations without flesh. He cited *A.C.N,* v. *Nyako* (2012) 1 1 MJSC 1 at 70 reported as *A.C.N. v. Lamido* (2012) 8 NWLR (Ft. 1303) 560.

For the 3rd respondent, Dr. lkpeazu, SAN submitted that there are no pleadings or evidence offered by the appellants that the voters register used was an "unofficial voters register". That the pleading of the appellants read comprehensively was that there {was injection of names into the register of 2011. That it has to be stated that, that fact did not make the register unofficial when those names in the register were used in 2011 are still embodied in the register used for the election.

That the law is trite that where there is allegation of manipulated voters register, the manipulation is criminal in nature and must be not only pleaded with specificity but must be proved beyond reasonable doubt which burden is upon the party alleging manipulation. Learned senior counsel said in this case no such proof was affected by the appellants.

Dr. Ikpeazu, SAN for the 3rd respondent contended that there was no evidence of fresh registration of voters for which the issue of display or publication may arise. It therefore translated that it is not important whether or not delivery of soft copies of the register of voters was on display or publication. He said the matter did not arise and the case cannot amount to non-compliance that will vitiate an election.

For the 4lh and 5lh respondents, Mr. Balogun on their behalf contended that the appellants by their own pleadings received, scrutinized, viewed and accessed the voters register given to them by the 3'd respondent before the election. That since the parties are bound by their pleadings especially concessions made therein and so cannot change the case with which the appellants approached the court in the first place.

To settle the question herein raised in this issue 1 would entail a consideration of whether the Court of Appeal fell into a grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the register of voters and non-display or publication of same as required by the Electoral Act, was not a non-compliance that substantially affected the election, recourse has to be made to the record of appeal volume V with specificity thereof and I will quote.

> "The issue being considered here has to do with the burden of the petitioners in respect of non-compliance with the provisions of the Electoral Act. In order to succeed, our courts have held that it must be established by the petitioner (I) that there was non-compliance with the Electoral Act; (2) that the non-

> compliance with the Electoral Act was substantial; and (3) that the substantial non-compliance substantially affected the result of the election. See *Buhari v. Obasanjo* (2005) 8 NWLR (Ft. 910) P. 241. It would appear, having regard to section 139(1) of the Electoral Act that there will also be the need for someone questioning an election to show that the election was not conducted substantially in accordance with the *principles* of the Act, not merely the provisions of the Act".

The appellants' counsel gave a litany of the infractions of the Electoral Act, the respondents perpetrated in his brief of argument. They include among others:

1) That people were allowed to vote without accreditation;
2) That there was multiple accreditation and voting;
3) That the number of voters recorded is not the same as the number ticked to have voted;
4) That the number of voters ticked to have been accredited in the voters register differs from the number of accredited voters entered on Form EC8A (1);
5) That the number of used and unused ballot papers entered in Form ECS A (I) exceeded the number of ballot papers issued in the affected polling units;
6) That alternations were made on some Form ECS A (1) without same being authenticated;
7) That there was swapping of results sheets;
8) That Forms ECS A (1) were not signed, stamped and dated and did not have the name of the presiding officer;
9) That unidentified persons and objects were accredited and voted;
10) That unknown forms ECS A (1) having no serial number were used in the election;
11) That form EC 8 (1) did not reflect tire vote of some of the political parties that participated in the election; and
12) Failure to use the appropriate register of voters to conduct the election.

It was for the appellants to prove these very serious acts of infraction of the Electoral Act before the tribunal. Clearly majority if not all the acts of infraction of the Electoral Act enumerate above were criminal in nature and therefore required a higher standard of A] proof, that is, proof beyond reasonable doubt.

It must be clear by now that the courts are not interested in the altogether common penchant for crying wolf but insist on proof, hardnosed and concrete proof of allegations.

The Court of Appeal in taking the position above quoted [B] agreed with the tribunal when that trial court held as follows:

> "From what we have stated thus far, we come to the conclusion that head or tail, the petitioners have not only failed to discharge the burden on them to establish that the governorship election conducted in Ondo State on October 20th 2012 was not conducted substantially in accordance with the principles and spirit of the Electoral Act but could not establish that the alleged non-compliance and/or electoral malpractices substantially affected the outcome of the election. The burden does not shift to the respondents to prove otherwise, for the case of petitioners is completely lacking merit".

It is clear that the tribunal and then later the Court of Appeal did not lose sight of sections I 3S(hand 139(1) of the Electoral Act. Those sections provide as follows:

> *"Section 138(1):*
> An election may be questioned on any of the following grounds, that is to say:
> (a) That a person whose election is questioned was at the time of the election not qualified to contest the election.
> (b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act.
> (c) That the respondent was not duly elected by majority of lawful votes cast tit the election; or
> (d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election".

"Section 139(1):

> An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the election tribunal or court that the election was conducted substantially

> in accordance with the principles of this Act and that the noncompliance did not affect substantially the result of the election".

Having those two crucial sections of the Electoral Act in focus at all time material by the two courts below and this court being so focused it would then be said that at the risk of over repetition, a petition can only succeed on non-compliance with the provisions of the Electoral Act, the petitioner must not only prove that there was non-compliance with the provisions of the Act but that the non-compliance substantially affected the result of the election. A two pronged process which are intertwined to such an extent that none can go without the other arm. See *C.P.C, v. I.N.E.C.* (2011) 12 SCNJ 644 at 710, (2011) 18 NWLR (Pt. 1279) 493.

A similar interpretation was given earlier in lime to sections of the Electoral Act in operation previously with provision that are *in pari materia* to the current sections 138 and 139 of the Electoral Act. In *Awolowo v. Shagari* (1979) All NLR 120 at 161, the Supreme Court had held in relation to allegations of non-compliance thus:

> "If this proposition is closely examined it will be found to be equivalent to this that the non-observance of these Rules or Forms which is to render the election invalid must be so great as to amount to concluding of the election in a manner contrary to the principle of an election by ballot and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of the votes, in other words the result of the election".

For effect, I shall cite a few more related judicial authorities, no less judgments of this court. See *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1 @ 191, paras. A-C:

> "It is manifest that an election by virtue of section 135(1) of the Act shall not be invalidated by mere reason it was not conducted substantially in accordance with the provisions of the Act, it must be shown clearly by evidence that the non-substantiality has affected the result of the election. Election and its victory, is like soccer and goals scored. The petitioner

> must not only show substantial non-compliance but also the figures i.e. votes that the compliance attracted or omitted. The elementary evidential burden of "The person asserting must prove" has not been derogated from by section, 135(1). The Petitioner must not only assert but must , also prove to the court that the non-compliance has so ; affected the election result to justify nullification".

In more recent times in the case of *Abuhakar v. Yar'Adua* (2008) 19 NWLR (Pt. I 120) P. 1 at Pp. 163 - 164, paras. H-B,the
Supreme Court said that:

> "The operative words in section 146(1) are 'if it appears to the election tribunal or court that the ; election was conducted substantially in accordance \ vvitli the principles of the Act, In view of the facts that; the tribunal or court can only come to the conclusion in the light of the evidence before it, one of the parties } must give that evidence to the contrary and the parly is the one who will fail if that evidence is not given. That j party in my humble view is the petitioner, fie is the party who alleges that the election was not conducted substantially in accordance with the principles of Electoral Act".

Section 135(1) Electoral Act, 21)02 and section 146(1) of the [1] 2006 Electoral Act are now section 139(1) of the Electoral Act, 2010 (as amended).The Supreme Court in *C.P.C. v. I.N.E.C.* (2011) 18 NWLR (Pt. 1279) 493 at 546 to 547, paras. H-B held thus:

> "The duty lies on the court to determine whether or not an election was conducted substantially in accordance with, the Constitution and the Electoral Act, 2010. The court will look at circumstances of the case, including the state : of pleadings, especially the credibility of the petitioner's **j** position and the nature and substance of the complaints of the petitioners, the attitude of the functionaries charged with the conduct of the election and whether the

omissions complained of by the petitioner even if proved, affected the conduct of the election."

These legal and judicial principles taken in context of the case in hand, what the appellants had done in proof of their allegations seem a far cry from the standard prescribed by the relevant Electoral Law,

In this instance the allegations of non-compliance with the provisions of the Electoral Act and the electoral malpractices as pleaded in the petition are so interwoven as to become impossible of severing the criminal content from the civil and so the proof has to be of the higher standard being that beyond reasonable doubt. Therefore when the petitioners/appellants set out to establish their case and in the evidence were that comparing the unit results; the entries in the CTC and duplicate copies of the result for the same unit were the same. They were signed and most of them stamped with a few not stamped. The CTCs of form EC8As were same in content with the duplicate copies tendered by the petitioners. They were all signed by the presiding officers and there was clear evidence of accreditation on them. All of these findings went along what should occur in a free, fair and credible election and so the tribunal had no difficulty in finding. The Court of Appeal could not depart from that finding obviously and this court does not seem to have a choice. The other documents dumped without evidence in support or where rendered the evidence was found not credible and then the star witness PW45 whose evidence had to do with facts and events not within his personal knowledge and which he was not qualified to speak on with value then a claim to proof of substantial non-compliance can only reside in dreamland and not for out-purpose. Worse still is the attempt by the appellants to impugn the Register of voters alleging injection of names when the disputed register was not tendered in court and the appellants did not proffer a reason for that lapse. To impugn the content of the Register can only be done when the court has something to compare with what was available and in use and what the actual proper voters register should be.

What I am trying to say in effect is that the appellants' proposition to prove the non-compliance which substantially affected the outcome of the election fell far short of the requirements and seeing no redeeming feature in sight, I have no difficulty in going along with the concurrent

findings of the two courts below and resolving this issue with an emphatic NO and against the appellants.

ISSUE No. 2:

> Whether the lower court's failure to consider appellants' complaints against specific adverse findings of the trial tribunal and its findings that PW45's evidence is hearsay and that majority, if not till the infractions against the Electoral Act enumerated by the appellants an- criminal in nature were not erroneous thereby A occasioning a miscarriage of justice against the appellants.

Learned counsel for the appellants stated that at the lower court, the appellants made specific and clear submissions in support of each of the non-compliance allegations but that the court failed to consider each of those items of non-compliance but rather lumped all the particulars of non-compliance' together and in one sentence dismissed them on the erroneous ground that majority, if not all of them are criminal allegations which required proof beyond reasonable doubt.

He submitted further that an allegation of non-compliance based on non-accreditation, disparities between entries in the voters register and Form EC8A, accrediting unidentifiable persons and not using appropriate register of voters cannot by any stretch ot imagination constitute criminal allegations requiring proof beyond D reasonable doubt since the allegations were civil and the proof is on the preponderance of evidence. He cited *Mogaji v. Odofin* (1978)4 SC 9 1.

For the appellants, Mr. Fagbemi, SAN stated that the Court of Appeal distracted itself with the nature of the non-compliance not whether it was substantial enough to invalidate the election. He cited *C.P.C. v. EN.E.G.* (2011) 12 SC (Ft. V) 80 at 128, (2011) 18 NWF.R (Ft. 127')) 493.

For the appellants was canvassed that the lower court did not consider the failure of the trial tribunal to review or properly Fj evaluate evidence of some of the witnesses of the appellants. He relied on *Onagbue v. Nnubia* (1972) NSCC 478.

That this failure of the trial tribunal to consider the issues properly raised and the appellate court's equal lapse to review and evaluate the evidence which was largely documentary amount to a denial of fair hearing to the

appellants thereby calling for the intervention of this court to do the needful. He cited *Mogaji v. Odofin* (1973) 4 SC 91; *Duru v. Nwosu* (1989) 7 SC (Ft. 1) 1, (1989) 4 NWLR (Ft. 113) 24; *Akintola v Balogun* (2000) i NWLR (Ft. 642)533.

In response, learned counsel for the 1st respondent, Dr. Olanipekun said there was a failure to present sufficient quality evidence throughout the entire proceedings at the tribunal. This seems to emanate from the assumption of the appellants that PW45 competent to proffer evidence on things and events he did not witness which the court was bound to swallow without more. That the appellants admit that their agents were ear-workers of the documents on which PW45 gave evidence but the agents were not called as witnesses.

Dr. Olanipekuu of counsel said the appellants failed to tender the original voters' register and therefore failed to prove the allegation of non-accreditation.

Mallam Yusuf Ali, SAN said for the 2nd respondent that the evidence of PW45 was successfully discredited under cross-examination and specifically on the effect of the purported injection of names on the voters registers was also found by the court below to be worthless and incredible. That these concurrent findings of the two courts should not be interfered with without reason.

Dr. Ikpeazu, SAN for the 3rd respondent contended that the Court of Appeal carried out its appellate function correctly after a dispassionate consideration of what the trial tribunal did in its evaluation of the evidence before. There was no basis from what the Court of Appeal found upon which it could re-evaluate the evidence adduced or interfere with what the court of trial had done. He referred to *Woluchem v. Gudi* (198 I) 5 SC 291; *Mogaji v. Odofin* (1978) 4 SC 91; *Obisanya v. Nwoko* (1974) 6 SC 6; *Hamza v. Kure* (2010) 10 NWLR (Ft. 1203) 630 at 654.

Mr. Balogun, learned counsel for the 4th – 5th respondents stated that the appellants had a burden to call witnesses who were registered to vote and tender both their voters' cards and the voters register and compare same to show that they were not accredited on the voters register and did not vote. That this *onus* does not shift until the appellants had carried out their duty for the respondent their duty for the respondents to proceed to rebuttal thereof. He cited

Onoyom v. Egari (1999) 5 NWLR (Ft. 603) 4 16 at 425; *Buhari v. Obosanjo* (2005) 13 NWLR (Ft. 941) I.

The crux of the question herein raised has to do with the correctness of the Court of Appeal in dealing with the specific findings of the tribunal inclusive of what the tribunal held in relation to PW45's evidence. The appellants through learned senior counsel, Lateef Fagbemi held the view that the court below failed to address the specific and adverse findings of the trial court. This view is not acceptable to the respondents who contend through their respective counsel that the Court of Appeal adequately handled those specific findings properly without fault.

From the standpoint of the appellants, a miscarriage of justice had been visited on them. On what amounts to miscarriage of justice this court has in a long line of judicial authorities set out some definitions on what can m the course of adjudication be termed "miscarriage of justice". Tobi, JSC in *Gbadantosi v. Dairo* (2007)3 NWLR (Pt. 1021) 282 at 306 treated it thus:

> "Miscarriage of justice connotes decision or outcome of legal proceedings that is prejudicial or inconsistent with the substantiated rights of the party. Miscarriage of justice means a reasonable probability of more favourable outcome of the case for the parly alleging it. Miscarriage of justice is injustice done to the party alleging it".

In *Aigbobaht v. Aifttwa* (2006) 6 NWLR (Pt. 976) 270 at 290 - 291 this court said,

> "... miscarriage of justice can be said to be such a departure front the Rules which permeate all judicial j process as to make what happened not in the proper sense of the word judicial procedure at all. What constitutes a miscarriage of justice vary, not only in relation to particular facts, but with regard to the jurisdiction invoked by the proceedings in question, it is enough if what is done is not justice according to law".

The two definitions above say it as it is and in simple term would mean that when in the course of a proceeding the goal post is shifted to the detriment of one of the parties or where it can be said that from what had transpired from the very beginning of the judicial process or at any point during

the exercise of the judicial proceedings that the scale of justice had been tilted to favour one party thus jeopardizing die equal right of the other party then a miscarriage has occurred.

As a follow up in this context can what the Court of Appeal did with the findings and decision of the tribunal be taken as falling short of the required appellate duty of the lower court to review and consider what the trial court did and come to a fair and justice decision.

I would hereunder recast a salient part of the (hidings of the tribunal and situate also part of the relevant portion of what the Court of Appeal did in relation to those trial tribunal findings, Hereunder are the findings of the tribunal, thus:

> "We therefore find and established that while the 2011 voters register contain 1553,580 voters, the 2012 register contains 1,654,205 voters. *The difference between the two registers is what the petitioners call illegal or unauthorized entries* or *injections into 20/2 voters register.* We also find established that as at 20"' of .September 2012, the register of voters in soft copy was given to the petitioners. This is the register that contains the illegal or unauthorized injections or entries. That means, about one month before the election of October, 20"' 2012, the petitioner were given the 2012 register which contains the illegal and unauthorized entries or injections. *Unit places the matter of the complaint on the contents of the register outside our jurisdiction being a pre-election issue.* See *Amaechi v. I.N.E.G. (supra); Ibrahim* r. *I.N.E.C. (supra)* and *Saidu v. Abubakar* (2008) 12 NWLR (Pt. 1100) 201 at 263.
>
> A distinction must be made between the contents of the 2012 voters register and the use to which the 3rd – 5th respondents put it at the governorship election of October 20"' 2012. While the contents of the register will be pre-election matter to be adjudicated on at the Ondo State or Federal High Court, the impact of that register on the over-all election is the matter that is within our jurisdiction. *The impact will be in the form of the injected or illegal voters voting at the election.* No

evidence has been placed before us to establish that the injected voters voted. Establishment of linger print impression which we held earlier is not a condition precedent to a valid vote or ticking to the left or right of the register will not do. In *any case, only very few instances of these were shown compared to the overall result and it has not been established that the 1st respondent is implicated in the unlawful injection into 2012 voters register.* See *Anazodo v. Audit (supra). The 2011 register of voters which the petitioners accept contains 1,552,580 registrants. EW45 answered under cross-examination that the total number of votes cast which he termed "Legal and Illegal" valid and invalids" were 624,6507 See exhibit PP18A. Form ECSD. He also answered that this number is far less than the number of registrants in the 2011 register of voters. How many of these were illegal or unauthorized insertions, he did no say. The impact of the invalid registrants on the overall election is therefore not proved..*

After all, these injections into the register if indeed they are, is a fraud proof of which must be beyond reasonable doubt. See *Wali v. Bafarawa (supra).* We tint] no proof of this.

The complaint about failure to display the list of voters is neither here nor there. The supplementary voters list Q ought to be published or displayed 30 days before the: general election. See section 20 of the Electoral Act and by section 21(1) of the same Act, the commission shall appoint a Revision Officer. Apart from the fact that even this complaint is a pre-election matter the objections are to be made to the Revision Officer not the tribunal".

The Court of Appeal stated as follows:

"Issue 2 is whether the tribunal was right to have refused to consider the matter of the injection of new E; names in the voters register on the ground that it lacked jurisdiction, the same being a pre-election matter. On the issue of whether the trial tribunal was not correct in. holding that all the allegations about injection of : names into voters

register of 2012 was not proved | ; and that the allegations were a pre-election matter which the tribunal had no jurisdiction over, 1 think that : since the register of voters was used in the election as part of the election process and therefore a material in the election and since the tribunal has jurisdiction, to deal- with matters arising from the election, it had J jurisdiction to deal with the complaint of whether the register used was the proper register used to the extent that additional names has been introduced or injected into it".

The Court of Appeal on the evidence of PW45 held thus:

> The complaint of the appellants was that the entry of the additional names was not done in compliance with the Act and that the register used was not displayed or published as required by the electoral Act. In the case of *Ojukwu v. Yar'Adua* & Ors (201)9) 12 NWLR (Pt. 1154) P. 50, the election was questioned on the ground among others, that the voters register was not displayed or published in accordance w ith the Electoral Act. It is noteworthy that the petition was entertained and determined. The court did not decline jurisdiction in the matter. *Even though the tribunal had jurisdiction, it does not appeal to me that the entry of the additional names and the non-displayed or publication of the voters register as required by the Electoral Act was a non-compliance that substantially affected the outcome of the election.*
>
> What remains is to consider the correctness of the holding of the tribunal with regard to the evidence of PW45. This is what the tribunal held concerning his evidence.
>
> *"PW 45 cannot give evidence of events that took place in all the other polling units in the State. PW 45 said he was going to rely on the report of experts but he did not call any expert and answered that he himself is not an expert. We therefore agree with the submission of learned senior counsel for the T'*

> *respondent at paragraph 4.72 at PJ5 of his final address and indeed of all the other respondents that the statement on oath of PW 45 is a bundle of primary and secondary hearsay.*
>
> From the submission in the appellant's brief of argument, PW 45 has to be more than a superman. According to the submission, the "'comprehensive" evidence of PW 45 covered 372 polling units across 10 Local Governments, it covered 659 [rolling units across 7 Local Government Areas and also covered 591 polling units across the State. It is only an omnipresent being that can give first hand evidence of all that transpired in the hundreds of polling units. Mere mortals can only give second hand evidence about what happened in distant places. The evidence given by PW45 can only be hearsay. The tribunal was right to have so held".

Learned counsel for the appellants had said for the findings of the tribunal, all the Court of Appeal did is the following:

> "Having been satisfied, the tribunal properly weighed and evaluated the evidence led by the appellants; I find no reason to disturb the findings of the tribunal".

Clearly from the excerpts captured earlier, this brief conclusion just quoted does not represent the full process of review or consideration by the court below of what the tribunal did. Also once the appellate court has fully taken full cognizance of the evaluation, of evidence alongside the pleadings by a trial court, the Court of Appeal is not obligated to deal, line by line, phrase by phrase on the judgment of the tribunal before it can be said the Court of Appeal carried out its duty. The important thing is that in its appellate duty substantial justice was done.

On a revisit of the evidence of PW 45 who testified on what transpired in over 1000 polling units. That witness assumed the role of a polling agent whose functions are defined by section 45 of the Electoral Act. Polling agents represent the respective political parties at the numerous polling units m obvious recognition of the enormity of the task of those monitoring the election in all. The polling units

of the State. Even though the 1st appellant was at liberty to perform the duty of polling agent for himself and his party, being human he can only be physically present at only one polling unit at a given time and so cannot perform the same task with the same title as polling agent in any or all the other polling units and so when the evidence is to be provided as to what happened in disputed units other than the one he is physically available at then he is not qualified to testify thereto. This is because section 45(2) Electoral Act expects evidence directly from the relevant field officer at the required polling unit. Therefore when PW45 set out to testify as a State agent armed with all the evidence of what occurred throughout the State in relation to each polling unit, he did so under a misguided understanding of what the Electoral Act had prescribed. I place reliance on *Bithari v. Obusanjo* (2005) 13 NWLR (Pt. 941) 1 at 315; *ACN v. Nyako* (2012) 11 MJSC 1 reported as *A.C.N. v. Lamido* (2012) 8 NWLR (Pt. 1303) 560.

In conclusion, the grouse of the appellants against the Court of Appeal's going along with what the tribunal found and decided upon cannot be sustained. Indeed the specific adverse findings of 1 the tribunal affirmed by the Court of Appeal being that PW 45 gave evidence which is hearsay and that majority if not till the infractions against the Electoral Act enumerated by the appellants are criminal in nature were not erroneous and no miscarriage of justice has occurred.

Indeed, I see no basis for departing from those concurrent findings of the two courts below and nothing upon which any of those findings could be upset and so this issue 2 is also resolved against the appellants and in favour of the respondents.

The two issues now resolved against the appellants this appeal is dismissed for lacking in merit. Parties are to bear their own costs. *CROSS-APPEAL:*

This cross-appeal by Dr. Rahman Olusegun Mimiko, the 1st respondent in the main appeal is predicated on the findings of the Court of Appeal in respect of the nature of the allegation of injection of voters register which cross-appellant contends is a pre-election matter outside the jurisdiction domain of the tribunal. Thai this fact ought to have been decided by the Court of Appeal.

In the quest to push the question on this jurisdictional issue of the tribunal to deal with the matter of the injection of names into the voters register as a pre-election matter thus with the result of an ousting of the jurisdiction of the tribunal to enter into the discourse, the cross-appellant in the brief of argument filed on 26/7/13 raised a single issue as follows:

> Considering the nature of the pleadings in the petition in respect of the register of voters, whether the allegations therein do not qualify as pre-election issues that are outside the limited jurisdiction of an election petition tribunal.

The Labour Party (LP) as 2nd respondent in the mam appeal also cross-appealed. The brief of argument was incorporated in the brief of argument for the 2nd respondent in the main appeal filed on 1/8/13 and adopted by Yusuf Ali, SAN, counsel on their behalf. He formulated a sole issue for determination thus:

> Whether the court below was right in setting aside the findings of the tribunal that declined jurisdiction to entertain the allegation of injection of names into the voters register when, factually and legally, it is a pre- election matter.

The 1st and 2nd cross-respondents had the brief of argument settled by Lateef Fagbemi, SAN and filed on 6/8/13. In that brief was also raised a single issue, viz:

> Whether the lower court was not right to have held that the trial tribunal has jurisdiction to entertain complaint as to whether or not the voters register used in the conduct of the October 20,2012 election was the proper register.

However the 1st and 2nd respondents had raised a preliminary objection as to the competence of the ground of appeal and flowing therefore the competence of the issue thereby derived since the particulars were not related to the ground or issue.

It is now trite to say that this preliminary objection must be handled and determined firstly before anything else.

PRELIMINARY OBJECTION:

In arguing the objection, learned counsel for the objector, Lateet Fagbemi, SAN said the grievance of the cross-appellant must be demonstrated in the particulars

showing or seeking to show that the factual assertions in the text are not correct. That a careful examination I and analysis of the particulars in support of the sole ground of appeal would reveal that most of them are totally unrelated and constitute no challenge to any of the assertions in the passage of the judgment rather they mostly constitute independent complaint from the ground of appeal and not in any way ancillary to it.

He further stated that the lower court made findings against the cross appellant when it held that the tribunal had jurisdiction and that there was entry of additional names into the register and no display of the register made. On the other hand, the Court of Appeal made findings against the 1st and 2nd cross-respondents that those findings constitute non-compliance which did not substantially affect the outcome of the election. That what followed is that while the cross respondents appealed against the adverse finding the cross-appellants failed to appeal the findings they were aggrieved over. Therefore, the cross-appellants having not appealed against the lower court's findings with regard to non-display or publication are deemed to have accepted same and cannot be seen to be doing so through particulars in support of a ground of appeal, raising issues other than non-display and publication. The implication being that the ground of appeal infested by incompetent particulars is incurably bad and therefore incompetent and should along with the notice of appeal be struck out. He cited *SCC Nig. Ltd. v. Anya* (2012) 9 NWLR (Pt. 1305) 213 at 222; *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599.

The grouse for which the cross-respondent have raised the preliminary objection is that the particulars in the sole ground of the cross-appeal are unrelated to that ground thereby rendering that ground and the cross-appeal incompetent and liable to be struck out.

I shall lay out the ground of appeal made and the particulars as framed for ease of understanding and that stated hereunder, viz:

GROUNDS OE APPEAL

GROUND ONE:

The lower court erred in law and came to a wrong decision when it held:

"1 think that since the register of voters was used in the election as part of the lection process and therefore a material in the election and since the tribunal has jurisdiction to deal with the matters arising from the election, it had jurisdiction to deal with the complaint of whether the register used was the proper register used to the extent that additional names had been introduced or injected into it.

The complaint of the appellants was that the entry of the additional names was not done in compliance with, the Act and that the register used was not displayed or published as required by the Electoral Act".

PARTICULARS OF ERROR:

i) Sections 19 and 20 of the Electoral Act, 2010 (as amended) deal extensively with the issues of voters register and supplementary voters register.

ii) By *section 19(1)* of the *Electoral Act 2010* (as amended), it is the main voters' register that has to be displayed for a period of not less than *Five (5) days* and not exceeding *fourteen (14) days.*

iii) *Section 19 and 20* of the *Electoral Act 2010* (as amended) do not provide for the display of the supplementary voters register.

iv) Both the display of the voters register and compilation of the supplementary voters' register are matters that come long before the holding of the election.

v) Further to (iv) *supra,* both the display of the voters register and compilation of the supplementary voters register are not contemporaneous with the holding of an election.

vi) There is no cogent evidence presented before the trial tribunal that any of the persons whose name were allegedly injected into the voters register voted in the election.

vii) That facts grounding the petitioners' complaints were known/available to them one (1) month before the holding of the election.

viii) It was not the case of the petitioners that a different or separate voters register was used during the election.

ix) The trial tribunal gave sufficient reasons, backed up by binding decisions of appellate courts, before coming to the conclusion that the complaint of the petitioner on this subject is a pre-election matter on which it has no jurisdiction.

x) Section 265(5) of the *1999 Constitution of the Federal Republic of Nigeria* (as amended) restricts the jurisdiction of the trial tribunal to determining whether any person has been validly elected to the office of Governor or Deputy-Governor.

xi) *Section 21* of the *Electoral Act, 2010* (as amended) creates a medium/forum for complaints in respect of any issue arising out of the voters' register.

xii) The lower court wrongly set aside the decision of the trial tribunal on this issue".

Mr. Lateef Fagbemi, SAN for the objector is of the view that particulars seem independent of the ground of appeal and that not allowed. I set out the ground of cross-appeal inclusive of the excerpt from the court below in its judgment which I see as self explanatory. I cannot see what makes it difficult to be taken as particulars showing the error which necessitated the cross appeal. I do not see a disconnection between the particulars and the ground of cross-appeal. Therefore the cross-appeal ground and particulars are within what the case of *Globe Fishing Industries Ltd. v. Folarin Coker* (1990) 7 NWLR (Pt. 162) 265 at 300 stated to be the position of the law. This court had in that case held thus:

> "The particulars and nature of the error or misdirection alleged in a ground of appeal which are required by Order 8, rule 2(2) of the Supreme Court Rules 1985 are the specific reasoning, finding or observation in the judgment or ruling relating to or projecting the error or misdirection complained of. They should also not be independent complaint from the ground of appeal itself but ancillary to it".

From the ground of appeal as stated earlier, the part of the judgment complained of and the particulars of error are

not out of line. They may have been crafted in a way different from what learned counsel for the cross-respondent would have done. That does not qualify the particulars as incompetent and thereby rendering incompetent the-ground of cross-appeal or the issues deriving therefrom. That is a matter of style, a technical point which does not detract from the substance and the other party not misled on account of that unique mode of drafting. It is neither here nor there and since it cannot be correctly interpreted as extraneous unrelated to the ground of appeal but rather clearly shows the reason behind the need to cross-appeal, at least to have a grievance put across, considered and determined one way or the other. The cross-appellant ought not to be shackled in letting out what grieves hint. Therefore, the cases cited by the cross-respondent such as *Olaniyan* v. *University of Lagos* (1985) 2 NWLR (Pt. 9) 599 at 222; *Hani Akar Fin. Ltd. v. LNM.B. Ltd.* (2011) 1 NWLR (Pt. 1228) 302 at 326 do not apply here to enhance the position of the cross-respondent/objector. The objection lacking in merit is therefore dismissed.

CROSS-APPEAL ARGUMENTS:

Dr. Olanipekun, learned counsel for the cross-appellants stated that it is the pleadings as presented in the chum of the petitioners that will determine if the case falls within the limited jurisdiction of an Election Petition Tribunal or not. That with that in mind a perusal of the pleadings in this case show that the petitioners had unequivocally stated that the irregularity in the register was already concluded over a month before the election and so without doubt the case of the petitioners is a pre-election issue to which the tribunal had no jurisdiction. He relied on *Ibrahim v. LN.F.C. (*1999) 8 NWLR (Pt. 614) 334 at 35 1; *Odedo v. I .N .E .C* (2008) 17 NWLR (Pt. 1117) 554 at 502.

That the matter of the register juxtaposed in the jurisdictional arena had been covered by section 21 of the Electoral Act, 2010 which provided for the Revision Officer of the 3rd respondent/INEC to hear and determine the claim for and objection to any entry in or omission from the preliminary list of voters and section 21(2) of the Act providing for a further right of appeal from the decision of the Revision Officer to the Resident Electoral Commissioner before a process before the proper forum which would be the

State High Court or Federal High Court. He cited *Sonde v. Abdulluhi* (1989) 4 NWCR (Pt. 116) 387 at 422; *Nigeratre Dev. Co. Ltd. v. A.S.W.B.* 12008) 9 NWLR (Pt. 1093) 498 at 527.

Learned senior advocate, Yusuf Ali for the 2nd respondent cross-appellant arguing along the same lines as Dr. Olanipekun and submitted that registration of voters are not within the purview of an election. That the meaning of election can only accommodate the process of voting starting from accreditation of voters up till announcement of results. Therefore those complaints against the voters register are for the regulars while whatever transpires at the election is within the narrow limited jurisdiction of the Election Tribunal.

Reacting against these views of the cross-appellants, Mr. Lateet Fagbemi, SAN or the cross-respondent disagreed stating that once non-compliance is pleaded as a ground for questioning an election, the jurisdiction of the tribunal is activated. That in the case such as the one at hand where the non-compliance with regard to the use of an improper register, the cause of action (non-compliance) became vested in the cross-respondent at the point when the invalid register of voters was put to use as a material in the election process during j polling. He cited section 138(1)(b) of the Electoral Act, *Abubakar v. Yar'Adua* (2008) 19 NWLR (Pt. 1120) 1 at 70.

For the cross-respondents was submitted that sections 19 and 20 of the Electoral Act must be read together when the infraction of the Electoral Body in failing to display the voters register and when that is done, the public scrutiny, claims and objections made would be published. That the law is settled that when a procedure has been prescribed for doing a thing, only that prescribed procedure and no other is permissible and any other method is excluded. He placed reliance on the case of *Ogualaji v A.G., Rivers State* (1997) 6 NWLR (Pt. 508) 209 at 234 - 235.

These two cross-appeals and the arguments in favour are anchored on the position of the cross-appellants that from the state of pleadings and the findings of the tribunal after due consideration of the facts, circumstances and evidence led by the parties that the issue of injection of names alleged by the appellants in the voters register was a pre-election matter occurring before the election and which the appellants

in the main appeal became aware of about a month before the conduct of the Governorship election in Ondo State for which the ventilation of the grievance arising from the voters register was a pre-election matter which could only be addressed in the State or Federal High Court and not the tribunal.

The grouse of the cross-appellants was not ended by the mere findings of the tribunal above stated but the matter of the tribunal in spite of those findings going ahead to consider the evidence led and the totality of the case and arrived at the conclusion that the matter of injections was a criminal allegation which criminal content was not proved as required by law on the prescribed standard which is proof beyond reasonable doubt.

In arguing the sole issue which each of the two cross-appellants crafted and that of the cross-respondents being the same thinking differently couched being whether the Court of Appeal was right in setting aside that finding of the tribunal declined jurisdiction to entertain the allegation of injection of names into the voters register when factually and legally it is a pre-election matter.

For a clearer view of what the contest is, I shall have recourse to section 285(2) of the Constitution which provides thus:

> "There shall be established in each State of the Federation an election tribunal to be known as the Governorship Election Tribunal which shall, to the exclusion of any court or tribunal have original jurisdiction to hear and determine petition as to whether any person has been validly elected lo the office of the Governor or Deputy Governor of a State".

It needs be stated that what happens where a grievance arises in relation to the voters register production thereof, display and publication albeit before the election as without dispute the voters Register was made aware to the parties at least a month to the election. The cross-appellants say that brought it within the ambit of a pre-action matter which justiciability or ventilation of a grievance is for the State or Federal High Court being a pre-election scenario to the cross-respondents who are of the view that the voters register, whether altered or had names injected before the

election cannot be a matter treated in isolation, since the voters register is what would be used during the election which by implication is a continuous exercise and leaves no room for a surgical operation removing the disagreement over the contents of the voters register as different from the election proper which dichotomy would lead to the first part on the voters register being handled by the State or Federal High Court while the issue of accreditation, election processes taken at the tribunal without either of those two situations entering into the forum of the other.

On this matter of voters registration concerns, it is necessary to see what the Electoral Act has provided and in that regard, 1 shall quote sections 19. 20 and 21 thereof which are stated hereunder.

"19(1) Subject to the provisions of 9(5) of this Act, the commission *shall,* by notice, appoint a period of not less than 5 days and not exceeding 14 days, during which a copy of the voters' register for each Focal Government Area council or ward shall be displayed for public scrutiny and during which period any objection or compliant in relation to the names omitted or included in the voters register or in relation to any necessary correction or in relation to any necessary g correcuon, shall be raised or filed.

"(2) During the period of the display of the voters' list tinder this Act, any person may -

(a) Raise an objection on the form prescribed by the commission against the inclusion in the supplementary voters' register of the names of a person on grounds that the person is not qualified to be registered as a voters m the slate, Local Government or area council, was or registration or that the name of the deceased person is included in the register; or

(b) Make a claim on the form prescribed by the commission that the name of a person registered to vote has been omitted.

"(3) Any objection or claim tinder subsection (2) of this section shall be addressed to the resident electoral commissioner through the electoral officer in charge of the

local government or council".

"20 The supplementary voters' list shall be integrated with the voters' register and published not later than 3D day before a general election".

"2 l(1) The commission may appoint as a revision officer any person to heal and determine claims for and objection to any entry in or omission from the persons as it deems necessary to assist the revision officer".

(2) Any person dissatisfied with the determination by a revision officer or person or persons assisting revision of his claims or objection as mentioned in subsection (I) of this section, shall within seven days, appeal against the decision to the resident electoral commissioner in charge of that state whose decision shall be final".

In regard to the matter of the voters register whether properly brought in at the election tribunal thereby bringing into question the jurisdiction of the tribunal to consider the validity or otherwise of the voters register in relation to the validity of the election and return of the 1st cross-appellant, I would refer to the relevant part of the judgment of the Court of Appeal to that issue and that is,

> "I think that since the register of voters was used in the election as part of the election process and therefore a material in the election and since the tribunal has jurisdictions to deal with matters arising from election, it had jurisdiction to deal with the complaint of whether the register used was proper register used to the extent that additional names had been introduced or injected into it",

I shall quote hereunder relevant portions of the petition to dear the air of what is at stake. Of mention are paragraphs 72, 73, 74, 75 and 76 thereof:

"72: Your petitioners state that a registration exercise by 1NEC, once decided upon, is widely publicized in designated places/centres with her equipment and officials prominently identifiable by all. Names and particulars of person can only be integrated into the voters register during such open

registration or by way of transfer of registration. Any name on the voters register other than as prescribed is unlawful."

"73: *Your petitioners state that before the conduct of the 20'1' October, 2012 Governorship Election in Ondo State, the 3rd and 4th respondents did not give notice of the time to display the voters' registers as prescribed by law but pave out soft copies of same to the political parties that participated in the election including the Peoples Democratic Party (PDP).*

"74: Your petitioners state that during the election, it became revealed that persons whose names and particulars were not in the 2011 official voters' registers used for the governorship election by the 3rd and 4lh respondents or their agents.

"75: *Your petitioners state that a total of97,533 illegal or unauthorized entries of names were secretly imputed into the various voters' registers in the wards and in all the local governments in the States.* This could be known before the election as the 3rd respondent failed to give public notice of any appointed date for the public display of the voters' registers for the election and did not display the voters registers for the said election.

"76: Your petitioners state that the details of the illegal/ unauthorized insertions into the voter's registers used for the election, subject matter of this petition are set out in the schedule to this petition. The petitioner will at the trial contend *that the unauthorized/illegal voters register by agents of the 3rd respondent was done in collaboration with the agents of 1st and* 2nd *respondents and their agents and goes to the root of the election".*

How the trial tribunal saw those pleadings are necessary to be recast below:

"We therefore find and established that while the 2011 voters register contain 1,553,580 voters, the 2012 register contains 1,654,205 voters. *The difference between the two register is what the petitioners call illegal or unauthorized entries or injections into 2012 voters register. We also find established that as at 20'1' of September 2012, the register of voters in soft copy was given to the petitioners. This is the register that contains the illegal or unauthorized injections OR entries. 'That means, about one month before the election of October,*

20"' 2012, the petitioner were given the 2012 register which contains the illegal and unauthorized entries or injections. That places the matter of the complaint on the contents of the Register outside our jurisdiction being a pre-election issue. See *Amechi v. I.N.E.C. (supra); Ibrahim v. I.N.E.C. (supra)* and *Saidu v. Abubakar* (2008) 12 NWLR (Pt. 1100) 201 at .263.

A distinction must be made between the contents of the 2012 voters registers and the use to which the 3rd -5th respondents put it at the governorship election of October 20th 2012. While the contents of die register will be pre-election matter to be adjudicated on at the Ondo State or Federal High Court, the impact of that Register on the over-all election is the matter that is within our jurisdiction. The impact will be in the form of the injected or illegal voters voting at the election. *No evidence has been placed before us to establish that the injected voters voted. Establishment of finger print impression which we held earlier is not a condition precedent to a valid vote or ticking to the left or right of the register will not do.* In any case only very few instances of these were shown compared to the overall result and it has not been established that the 1st respondent is implicated in the unlawful injections into 2012 voters register. See *Anaz.odo v. Audit (supra).* The 2011 register of voters which the petitioners accept contains 1,553,580 registrants. PW45 answered under cross-examination that the total number of votes cast which he termed "legal and illegal" "valid and invalids" were 624,659? See exhibit PPI8A, Form EC8D. He also answered that this number is far less than the number of registrants in the 201 I register of voters. How many of these were illegal or unauthorized insertions, he did not say. The impact of the invalid registrants on the overall election is therefore not proved.

After all, these injections into the register if indeed they are is a fraud proof of which must be beyond reasonable doubt. See Wali v. Bafarawa (supra). We find no proof of this.

The complaint about failure to display die list of voters is neither here nor there. The supplementary voters list ought to be published not displayed 30 days before the general election . See section 20 of the Electoral Act and by section 2 1 (l) of the same Act. the commission shall appoint a Revision Officer. Apart from the fact that even this complaint

> *is a pre election matter the objections ore to be made to the Revision Officer not the tribunal.* (Emphasis supplied)

The reaction by the Court of Appeal is restated below thus:

> "Issue 2 is whether the tribunal was right to have refused to consider the matter of the injection of new names in the voters register on die ground that it lacked jurisdiction, the same being a pre-election matter. On the issue of whether the trial tribunal was not correct in holding that all the allegations about injection of names into voters register of 2012 was not proved and that the allegations were a pre-election matter which the tribunal had no jurisdiction over, I think that since the register of voters was used in the election as part of the election process and therefore a material in the election and since the tribunal has jurisdiction to deal with matters arising from the election, it had jurisdiction to deal with the complaint of whether the register used was the proper register used to the extent that additional names has been introduced or injected into it.
>
> The complaint of the appellants was that the entry of the additional names was not done in compliance with the Act and that the register used was not displayed or published as required by the Electoral Act. In the case of *Ojukwu v. Yar'Adua & Ors* (2009) 12 NWLR (Pt. 1154) P. 50, the election was questioned on the ground among others, that the voters register was not displayed or published in accordance with the Electoral Act. It is noteworthy that the petition was entertained and determined. The court did not decline jurisdiction in the matter. Even though the tribunal had jurisdiction, Q it does not appear to me that the entry of the additional names and the non-display or publication of the voters register as required by the Electoral Act was a noncompliance that substantially affected the outcome of the election".

On this vexed issue, I would want to hang for support on the case of *Abubakar v. Yar'Adua* (2008) 19 NWLR (Pt. 1120) 1 at 70 in which "election" was defined thus:

> "Election is a process spanning a period of time and comprises a series of actions from registration of voters to polling".

Being at one with the *dictum* of this court in the *Abubakar v. Yar'Adua (supra)* stated above, the point has to be made that the

matter of complaint on the voters register though facts which predated the election cannot in this instance be left simply as a pre-election matter for which no jurisdiction would lie with an election tribunal. In that light the cases of *A.N.P.P. v. Usman* (20081 12 NWLR (Pt. 1100) 1 at 55; *Ode do v. I.N.E.C.* (2008) 17 NWLR (Pt. 1117) 554 at 602; *Dingiyadi v. LN.E.C.* (2001) All EWLR (Pt. 581) 1426 at 1463,(2011) 10 NWLR (Pt. 1225) 347; *Ibrahim v. LN.E.C.* (1999) 8 NWLR (Pt. 614) 344 at 351 etc are of no help to the cross-appeals because these authorities were outside the purview of the present circumstances. In those matters dealt with in those cases cited by the cross-appellants, they were purely, undiluted pre-election scenario which the present situation is not. This is because the voters register with or without the injected names was used for the election which election result is challenged for non-compliance with the Electoral Act on the basis of an improperly produced voters register with unlawful entry of names, multiple additions of names and non-display; a situation which cannot be tackled in isolation and outside the election matter. Therefore since there cannot be a dichotomy between the voters register issue being pre-election and what transpired in this instance at the contest grounds of the election, it is clear that the trial tribunal is most suitable for the holistic determination of the questions thrown up. Therefore since the tribunal is empowered to enter into the discourse of non-compliance with the Electoral Act whether before or on the polling day for the purpose of invalidating the election, then that jurisdiction of the tribunal is in tact. 1 place reliance on section 138(1) of the Electoral Act.

For a fuller effect therefore, I would say that the thread of bifurcation, dichotomy or a possible surgical excision of a pre-election process as against an election process or post election having been broken these cross-appeals have no leg to stand and so agreeing completely with what the Court of Appeal decided in that regard, these two cross-appeals are dismissed for lacking in merit. Parties are to bear their own costs.

ONNOGHEN,J.S.C.: I have had the benefit of reading in draft, the lead judgment of my brother, Mary Peter-Odili, JSC, just delivered t and I agree with his rettsoning and conclusion that the appeals lack ; merit and should be dismissed.

The facts of the ease are straight forward and have been stated in detail in the lead judgment making it unnecessary for me to repeat same in this judgment except as may be needed to emphasize the point being made.

Learned senior counsel for appellants L.O. Fagbemi, SAN leading others, submitted two issues for the determination of the appeal in the appellants brief tiled on 3E[1] July, 2013. These are as follows:

"1. Whether the lower court was not in grave error which occasioned a miscarriage of justice when it held that **1** the entry of additional names into the register of votes and the non-display or publication of same as required by the Electoral Act, was not a non-compliance that , substantially affected the outcome of the election? Distilled from the grounds 2, 3 and 6.

2. Whether the lower court's failure to consider appellant's complaints against specific adverse findings of the trial tribunal and its findings that PW 45's evidence is hearsay and that majority, if not all the infractions against the Electoral Act enumerated by the appellants, are criminal in nature were not erroneous thereby occasioning a miscarriage of justice against the appellants."

On issue 1, it is the case of appellants that the register of voters used in the conduct of the election was not the one that ought to be used in that the entry of additional names of over 100,000 thereto was not done in compliance with the Electoral Act and that the said register of voters was not displayed or published as mandatorily enquired by the Electoral Act. The lower court held that although the entry of additional names into the register of voters and the non-display and publication of the said register as required by the Electoral Act constitute non-compliance, the non-compliance so found did not substantially affect the outcome of the election.

It is however, the contention of the appellants that the register of voters compiled in breach of the mandatory provisions of the Electoral Act and used in the conduct of the election by the 3rd respondent is illegal, and thus a nullity which also nullified the election conducted with it. It is also

the contention of appellants that the nature of the non-compliance involved in this case has to do with the vitiating effect of the non-compliance on the election process in that the failure of the 3rd respondent to comply with the mandatory procedure prescribed in the Electoral Act in producing the voters registered used in the election had a nullifying effect on the register and consequently the election.

It is not in dispute that one of the grounds relied upon, by appellants in challenging the election of 1st respondent is that of non-compliance with the provisions of the Electoral Act, 2010, as amended, as provided for in section 138(l)(b) of the said Electoral Act, 2010, as amended. The section provides, *inter alia*, as follows:

> "138(l) An election may be questioned on any of the following grounds, that is to say:
>
> (b) That the election was invalided by reason of corrupt practice or non-compliance with the provisions of the Act".

It is settled law that for a petitioner who relies on the above ground to succeed, he has the duty to prove the non-compliance alleged as it is trite law that he who asserts must prove.

However, it is not sufficient for the petitioner to prove the noncompliance as alleged. The petitioner must, in addition comply with the requirements of section 139(1) of the Electoral Act, 2010, as amended which enacts thus:

> "l39(l)An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the election tribunal or court that the election was conducted substantially in accordance with the principles of Act and that the non-compliance did not affect substantially the result of the election".

In other words, a petitioner after establishing the non-compliance complained of has the additional duty to satisfy the court that the election in question was not conducted in substantial compliance with the principles of the Electoral Act and that the non-compliance alleged did substantially affect the result of the election.

I should not be misunderstood as saying that the duty above stated is solely that of the petitioner after establishing

the noncompliance complained of, as it equally applies to the respondent whose return is being challenged. He is to satisfy the court, after the petitioner has proved non-compliance, that the election in issue was conducted substantially in accordance with the principles of the Electoral Act and that the non-compliance complained of by the petitioner did not affect substantially the result of the election. In fact the duty under section 139(1) of the Electoral Act, 2010, B as amended is more of the respondent than the petitioner but as 1 had stated in an earlier judgment, it is more in the interest of the petitioner to meet the requirements of section 139(1) of the Electoral Act, 2010, as amended, if he wants to succeed. It is a duty imposed by expediency and it is very strategic.

Turning now to the facts of the case and the decision on appeal, can it be said that the non-compliance complained of is of the nature that makes the provisions of section 139(1) inapplicable, as contended by the appellants? I do not think so.

The attention of this court has been drawn to my opinion expressed in the judgment in the case of *Ojukwu v. Yar'Adua* (2009) 12 NWLR (Pt. 1154) 50 in which 1 stated thus:

> "There are certain non-compliances that go to the root of an election in that they are absolute in the sense that once established the purported election is invalid and as such there will be no result to be substantially affected by the non-compliance. For instance, where an election is conducted with an invalid voters register can there be a result of an election to be substantially affected by the non-compliance? Obviously none as the purported election is null and void *ab initio".*

I must state that I still stand by that opinion, which was, in any event an *orbiter dictum,* as there has been no reason for me to change my position. Secondly that view is completely in accord with my dissenting judgment in the *Buhari v. Yar'Adua's* case dealing with the consequences of a presidential election conducted with non-serialized 'ballot papers', which election I held to be void *ab initio* for non-compliance with the provisions of the Electoral Act, as the

said, non-compliance is very substantial as to affects adversely, the result of the election.

The question has, however, been asked as to whether the present non-compliance is one that does not call for the operation of section 139(1) of the Electoral Act, 2010, as amended which I answered in the negative. The reasons include the fact that there is the need for the tribunal or court to determine the effect of the injected names in the voters register on the result of the election which can only be done if there is evidence of participation of those people who were illegally included in the register in the voting exercise in the election in question; if they participated whether a deduction of their number from the total votes of the winner will tilt the scale in favour of the petitioner etc, etc.

In the instant case, even the register in question is not in evidence before the court.

It is for the above reasons that I hold the view that to accept the contention of appellants that the fact of non-compliance *simpliciter* is sufficient to nullify the election in the circumstance of this case would cause injustice to a respondent who was declared the winner of the election by majority of lawful votes.

The issue is therefore resolved against appellants.

It is for the above reasons and the more detailed reasons contained in the lead judgment of my learned brother that I too find no merit in the appeal and cross appeals and consequently dismiss same.

I abide by the consequential orders made in the said lead judgment including the order as to costs. Appeals dismissed.

I. T. MUHAMMAD, J.S.C.: I had a preview of the judgment just delivered by my learned brother, Odili, JSC. I am m agreement with him that all the objections raised are unmerilorious. They are accordingly dismissed.

Both the main appeal and the cross-appeals have been adequately covered by my learned brother who found them to be unmeritorious and dismissed same. I, too, came to same conclusion and 1 dismiss same as having no merit at all. Parties in both the main and the cross-appeals should bear their own costs.

CHUKWUMA-ENEH, J.S.C.: This appeal is against the judgment of the Court of Appeal that has affirmed the decision of the tribunal dismissing the petitioners/ appellants' petition in this matter.

The facts and statements of the cases of the parties to this appeal have been ably set out in all their respective detail in the lead judgment of my noble Lord Peter-Odili, JSC that I see no need to repeat them hem save to say that I stand them as having been adopted as mine for this short contribution.

I must also state that this appeal has arisen from the said tribunal's consolidated decision with appeal No. SC. 352/2013.

The appellants in their joint brief of argument have raised two issues to wit:

(1) Whether the lower court was not in grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the Register of voters and the non-display or publication of same as required by the Electoral Act was not a non-compliance that substantially affected the outcome of the election (Grounds 2, 3 and 6).

(2) Whether the lower com t's failure to consider appellants complaints against specific adverse hirelings of the trial tribunal and its findings that PW45's evidence is hearsay and that majority, if not all the infractions against the Electoral Act enumerated by the appellants are criminal in nature were not erroneous thereby occasioning a miscarriage of justice against the appellants.

The respondents' issues for determination in this appeal have been predicated on the foregoing appellants issues for determination excepting that they are differently worded; again, I see no need setting them out here, after all, it is the appellants' issues for determination as raised in the court below that have been the grounds relied upon by that court in determining this matter before it. In this regard, 1 must also add that the central complaint arising from issue one for determination is that the instant register of voters have been

compiled in breach of the mandatory provisions of the Electoral Act, 2010 (as amended) and that the use of the same in the conduct of the instant election by the 3rd respondent in spite of the nullifying effect of the enumerated infractions of non-compliance is therefore illegal, thus by extension, the said election has also been rendered a nullity. And that against this natural consequence on the said election that as a matter of requirement of the law that the burden of proof has fallen on the respondents to show that the instant election can stand in spite of the alleged non-compliance m this appeal. These issues are coterminous with the issues raised and decided by this court and as per my contribution in the appeal No. SC.352/2013 already delivered. I adopt my reasoning and findings in the said contribution thereto *mutatis mutandis* in deciding this appeal.

However, the pronouncements of this court in construing of the instant provisions of sections I38(l)(b), and 139(1) of the Electoral Act, 2010 as amended or similar provisions in election matters have remained constant as stated in the case of *Awolowo v. Shagari* NSCC (Vol. 12) 87 at 123 - wherefore this court in the respectful opinion of Obaseki JSC on the position of the law in England as per *Morgan v. Simpson* (1975) QB 151 and *Woodward v. Sarsons* 10 1 .R.C.R 733 as referred to in *Sorunke v. Odebunmi* (1960) 5 ESC 175 at 177 - 178, (1960) SCNLR 414 has approved and followed the decision in the latter cited case of *Woodward v. Sarsons* precisely on the question of non-compliance in circumstances as here and has culled from the said cited case as follows:

> "If this proposition is closely examined, it will be found to be equivalent to this, that the non-observance of the rules or forms which is to render the election invalid, must be so great as to amount to a conducting of the election in a manner contrary to the principle of an election by ballot and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of the voters, in other words the result of the election".

This court in deciding Awolowo's case has followed with approval the foregoing principle as per the above abstract as propounded in *Woodward v. Sarsons (supra),* again, precisely,

if 1 may respectfully repeat, on what constitutes substantial non-compliance capable of nullifying an election construing a similar provision as here. As I have said in appeal No. 352/2013 this court has rightly approved and followed the views so expressed in Woodward's case as expounded in *Awolowo v. Shagari (supra).* And I see no reason to disagree.

It is noteworthy that this court has followed the said principle in a number of cases decided by this court including *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) I; *Abubakar v.Yar'adua* (2008) 19 NWLR (Pt. 1120) 1 and as lately as in the case of *CPC v. **I**.N.E.C.* (2011) 18 NWLR (Pt. 1279) 493 at 546 to 547. And so, the construction of non-compliance in the context of sections I38(1) (b) and 139(1) of the Electoral Act . 2010 as amended cannot now be an easy pushover as the appellants have appeared to suggest in their i submissions on this issue thus without adverting to the binding effect of these cited cases in this appeal. This court on the basis of the doctrine of *stare decisis* is bound by the above cited cases which have earlier on construed the provisions of these sections.

I therefore have to rely on these cited cases, even then on their backdrop in construing the provisions of section 139(1) accordingly and in holding that the two limbs of the said provisions of the section 139(1) read with other provisions of the said Electoral Act, 2010 as amended dealing with the same subject matter do not admit of being read disjunctively as submitted by the appellants to the effect as per the first limb of the said provisions of section 139(1) (supra) that an election may be automatically nullified without more where the conduct of the election is not in accordance with "substantial compliance" with the instant Electoral Act or as per the second limb of the said provisions that the non-compliance substantially has affected the outcome of the election. To hold to this view i.e. of construing the provisions of section 1 39(1) (supra) disjunctively clearly runs counter to this court's position in the above cited cases and will tantamount to a gross misconception of the import and purport of the provisions of section 139(I) (supra).

Furthermore this view of the said provisions cannot be a true intention of the lawmaker as gathered from construing them on the backdrop of the Act as whole as that will produce incongruous results. In sum, what 1 am saying here is that the two limbs of the said section have to be read conjunctively and must be satisfied by a petitioner alleging non-compliance as the appellants in the

instant appeal in order to nullify an election (as the instant election). The two limbs of the said section, again, I must emphasize on the authorities cannot be construed disjunctively.

Flowing from the foregoing it is clear that the said provisions have placed the onus of droving the acts of non-compliance as alleged in an election petition squarely on the party who is so asserting them as that party stands to fail where no evidence is called in proof of the same as the appellants in this matter. See sections 135(1) and 137 of the Evidence Act (on the onus of proof). The appellants therefore have apparently misconceived the standard of proof duly placed on them by virtue of section 137 of the Evidence Act i.e. to prove their case of non-compliance before the tribunal.

Finally, there is a concurrently findings of facts and law by the two lower courts in this matter which the appellants have grossly failed to disprove. In that event, there is no miscarriage of justice to dislodge their decisions in this matter.

For the above reasons and more solid reasons contained in the lead judgment of my Noble Lord Peter-Odili, JSC, 1 have no hesitation in holding the appellants' appeal in this matter as lacking in merit and should be dismissed. I too dismiss the same and abide by orders contained therein.

Appeal and cross appeals dismissed.

FAB1YI, J**.S.C.:** I have had a preview of the judgment just delivered by my learned brother, Peter-Odili, JSC. I completely agree with, and adopt the reasons therein advanced to arrive at the conclusions that the main appeal and the cross-appeals should be dismissed. I order accordingly.

NGWUTA, J**.S.C.:** I read in advance the lead judgment delivered by my learned brother, M. U. Peter-Odili, JSC. 1 have considered the exhaustive reasons advanced in respect of the preliminary objection, the main appeal and the cross-appeal and I entirely agree with same and the conclusions reached.

I desire to add only a few brief observations on the two issues addressed in the main appeal.

The two issues are issues of fact upon each of which the trial tribunal made a definite pronouncement which product was

endorsed by the court below. In an appeal against a finding of fact by a trial court or tribunal, the appellant must show that the court made improper use of the opportunity it had of seeing and hearing the witnesses, or did not appraise the evidence and ascribe probative values to it or has drawn wrong conclusions from proved or accepted facts leading to a miscarriage of justice. See *libba v. Ogodo* (1984) 1 SCNLR 372; *Lawan Alii v. Alesinlove* A *Ors* (2000) 4 SCNJ 264, (2000) 6 NWLR (Pt. 660) 177.

The appellant failed to discharge the burden he assumed by asking an appellate court to disturb a finding of fact made by the trial tribunal. The Court of Appeal rightly declined to disturb the Finding of the trial tribunal

Before us is a concurrent finding of facts made by the two courts below. This court does not make a practice of interfering with such findings just for the asking. The court will not interfere in absence of a demonstration that the findings are perverse. See *Ibodo v. Enasofia* **(**1980) 5 - 7 SC 42; *Chiwendu v. Mbamali* (1980) 3 - 4 SC 31; *Kponulgo v. Kodadja* (.1933) 2 WACA 24.

Not having shown perversity in the concurrent findings of fact of the two courts below, the appellants have failed in their bid to have the said findings disturbed by this court.

For the above and the fuller reasons in the lead judgment, I also dismiss the appeal and order that parties bear their respective costs.

ALAGOA, J.S**.C.:** This is an appeal against the judgment of the Court of Appeal Akure Division (hereinafter simply referred to as the lower court or the court below) which affirmed the judgment of the Governorship Election Tribunal sitting in Akure dismissing the petition filed by the petitioners Chief Alex Olusola Oke and the Peoples Democratic Party (PDP) which party sponsored him to run as its candidate at the said election. In contention at the said election which was conducted by the 3rd respondent the Independent National electoral Commission (I.N.E.C.) on the 20th October, 2012 in Ondo State was the governorship seat for Ondo State which was keenly contested not only by the present parties to this appeal but also by other candidates sponsored by their various political parties. The 1st respondent Dr. Rahman Olusegun Mimiko who was

sponsored by the 2nd respondent, the Labour Party was declared duly elected having been adjudged by the 3rd respondent (I.N.E.C.) as having scored a majority of lawful votes cast at the said election. Aggrieved at having failed to upturn the result of the election to his favour at the Governorship election tribunal, the appellants appealed to the court below which dismissed their appeal and upheld die decision of the tribunal. Further aggrieved, they as appellants, appealed to the Supreme Court on a number of grounds out of which the following issues were distilled by the appellants in their brief of argument tiled on the 31st July, 2013 by senior counsel, Lateef O. Fagbemi, for determination by this court.

1. Whether the lower court was not in grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the register of voters and the non display or publication of same as required by the Electoral Act was not a non compliance that substantially affected the outcome of the election? Distilled from grounds 2, 3 and 6.

2. Whether the lower court's failure to consider appellants' complaints against specific adverse findings of the tribunal and its findings that PW 45's evidence is hearsay and that majority if not at all tire infractions against the Electoral Act enumerated by die appellants are criminal in nature were not erroneous thereby occasioning a miscarriage of justice against the appellants."

Issues have been formulated by the respondents. However, I am of the firm view that the above distilled issues by the appellants blare appropriate enough to adequately dispose of this appeal and I intend to adopt them.

On issue 1, heavy weather has been made by the appellants of the lower court's holding that additional names had been injected into the register of voters and the non-display and publication of die said register of voters as required by the Electoral Act as amended. This, the appellants reasoned should have had the effect of vitiating the election. The lower court's position was that while these lapses may have amounted to non-compliance, substantial non-compliance had not been established by evidence by the

appellants. A clearer picture emerges when one considers side by side the provisions of sections 138(1) and 139(1) of the Electoral Act, 2010 as amended. They are reproduced hereunder as follows.

138(1) An election may be questioned on any of the following grounds, that is to say:

(b) that the election was invalidated by reason of corrupt practices or non-compliance with the provisions of die Act.

139(1) An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or court that die election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election.

See *Yusuf v. Obasanjo* (2005) 18 NWLR (Pt. 956) 96; *Ojukwu v. Yar'Adua* (2009) 12 NWLR (Pt. 1154) 50 at page 140; *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 80; *Buhari v. 1.N.E.C* (2008) 19 NWLR (Pt. 1120) 246 at 435.

Section 138(1)(b) dovetails into section 139(1) of the Act and what emerges is the following breakdown:

i. Proof of non-compliance with the provisions of the Electoral Act 2010 as amended.

ii. The non-compliance must be substantial.

iii. The substantial non-compliance must affect the result of the election.

With respect to this, what for example is the effect of the injected names in the voters register on the result of the election?

Here there is need for evidence which was not forthcoming.

With respect to issue 2, the evidence of PW45 comes into sharp *locus.* Of the evidence of this witness (PW45) the trial tribunal had held as follows,

> "PW45 cannot give evidence of events that took place in all the other polling units in the State. PW45 said he was going to rely on the report of experts but he did not call any expert and answered that he himself is not an expert. We therefore agree with the submission of learned senior counsel for the 1st respondent at paragraphs 4.72 at p. 30 of his final address and

> indeed of all the other respondents that the statement on oath by PW45 is a bundle of primary and secondary *hearsay."*

(Italics mine for emphasis.)

The learned Justices of the court below could not agree more. It is apposite to reproduce what they held in the lead judgment signed by all live of them. It is as follows,

> "From the submission in the appellants' brief of argument at page 8 thereof, PW45 has to be more than a superman. According to the submission, the "comprehensive" evidence of PW45 covered 372 polling units across 10 local governments. It covered 659 polling units across 7 Local Government Areas and also covered 591 polling units across the state. It is only an Omni-present being that can give first hand evidence of all that transpired in the hundreds of polling units. Mere mortals can only give second hand evidence about what happened in distant places. The evidence given by PW45 can only be hearsay. The tribunal was right to have so held."

(See page 3508 of the records).

I cannot agree more with the finding of the court below. PW45 could not possibly have visited all the polling units spread throughout the state and his evidence of what transpired in each and every one of them could not have been first hand but hearsay.

The attitude of the Supreme Court to concurrent findings of fact by two lower courts is not to interfere with such findings except there is established miscarriage of justice or some violation of some principles of law or procedure or the findings are perverse. The authorities on this important legal principle are legion. See however the following -

Abiodun Famuroti v. Madam S. Agbeke (1991) 5 NWLR (Pt. 189) 1; *Nigerian Bottling Co. Ltd. v. Constance Ngonadi* (1985) I NWLR (Pt. 4) 739; *Ogbechie v. Onochie (No. 2)* (1988) 1 NWLR (Pt. 20) 370; *Oyibo lriri & Ors v. Esewraye Erhurhobara & Anor.* (1991) 2 NWLR (Pt. 173) 252; *Woluchem v. Gudi & Ors* (1981) 5 SC 291.

The findings of fact by the trial tribunal and the court below are not bedeviled by any of these lapses or shortcomings and I see no need to interfere with the said findings.

It is for these reasons and the fuller reasons contained in the incisive and comprehensive lead judgment of my learned brother Mary Ukaego Peter-Odili, JSC, which I had the privilege to read in draft before now and with which I entirely agree, that I too find no merit in this appeal.

I also dismiss same while abiding by all order/s in the said lead judgment including the order on costs.

Appeals dismissed.