1. ALHAJI (DR.) ALIYU AKWE DOMA
2. PEOPLES' DEMOCRATI C PARTY (PDP)

V

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. RESIDENT ELECTORAL COMMISSIONER, NASARAWA STATE
3. RETURNING OFFICER, GUBERNATORIAL ELECTION, NASARAWA STATE
4. UMARU TANKO AL-MAKURA

SUPREME COURT OF NIGERIA

MAHMUD MOHAMMED -JSC (Presided)

CHRISTOPHER MITCHELL CHUKWUMA-ENEH JSC

MUHAMMAD SAIFULLAH MUNTAKA-COOMASSIE JSC

JOHN AFOLABI FABIYI JSC (Read the Lead Judgment)

BODE RHODES-VIVOUR JSC

SC.35/2012

TUESDAY 6 MARCH 2012

APPEAL - *Concurrent findings of lower courts - Attitude of Supreme Court thereto*

APPEAL - *Ground of appeal - Where it fails to disclose particulars –Duty on Court of Appeal to strike out.*

COURT- Supreme Court - Concurrent findings of lower courts below – Attitude of

ELECTION PETITION - Hearsay evidence - Inadmissibility thereof

ELECTION PETITION - Non-compliance with provision of Electoral Act 2010 - Where petition alleges -Burden of proof therein – on whom lies

JUDGMENT AND ORDERS - Judgment - Duty- on court to give reasons for

Issues:

1. Whether on a proper consideration of ground 8 of the appellants' ground of appeal (in the notice of appeal to the Court of Appeal) and the dismissal of the 4th respondent's preliminary objection

against the appeal on the ground that the same was unfounded, the lower court was right in its decision striking out that ground 8.

2. Whether having regard to the different issues raised by the appellant's appeal in the lower court relating to various errors of law committed by the tribunal the lower court properly reduced the issues to a matter of proof and standard of proof, thereby leaving other issues unconsidered and unresolved and whether in all the circumstances of the appeal, it can be said that the lower court did justice to the appeal of the appellants.
3. Whether the lower court was right when it held that PW14 and PW44 were justifiably discredited by the tribunal without showing what evidence they relied on for that holding.
4. Whether having regard to the materials on record including. inter alia, the pleadings, the evidence, the issues raised in the appeal at the lower court, the submissions of the parties and relevant law, it can be said that the lower court gave proper consideration to the evidence of PW40 and the other witnesses called by the appellants.
5. Whether the lower court has not denied the appellants/cross-respondents fair hearing by deciding the cross-appeal without any consideration of the appellants/cross-respondents' brief against same and whether in the circumstances, the decision of the lower court can be allowed to stand.
6. Whether having regard to the pleadings of the parties, the evidence on record and the submissions on the issues raised in the appeal before the lower court, the court below is right in overruling the tribunal on the results of Oshugu and Anna town polling units.
7. Whether the lower court was right in resolving issue 3 of the cross-appeal against the appellants on -grounds not covered by cross-appeal and not canvassed by the parties.
8. Whether in view of the pleadings of the cross-appellants (sic) on the votes objected to in Doma, KoKona and Obi Local Government Areas treated by the lower court as ground 5, which raised criminal allegations, the pleadings of the cross-respondents on same, the evidence on record, the failure of the 4th respondent to prove the allegations beyond reasonable doubt as required by law, and failure of the lower court to consider the submissions of the cross-respondent on same, the lower court can be held in the circumstances to have properly considered the objection to the votes and whether justice has been done to the appellants/cross-respondents.

Facts:

The 1st respondent conducted election into the office of Governor- of Nasarawa State on 26 April 2011. At the conclusion of the election, the 4th respondent, who was the candidate of the Congress for Progressive Change (CPC) was declared winner and returned as duly elected.

The 1st appellant who contested the election on the platform of the Peoples' Democratic Party (PDP) and his party (2nd appellant herein) filed a petition before the Governorship and Legislative Houses Election Tribunal.

The appellants alleged exclusion of results in some wards, despite that the elections conducted therein were free and fair. They also alleged that there was evidence of multiple thumb-printing, ballot stuffing, over-voting and inflation of results leading to non-compliance with the provisions of the Electoral Act, 2010.

The respondents on their part argued that the exclusion of results in the polling units and wards in question were justified as thugs threatened violence on the presiding officers and other electoral officials during the election.

The tribunal dismissed the petition. Dissatisfied, the appellants appealed to the Court of Appeal, which court dismissed the appellants' appeal and allowed the 4th respondent's cross-appeal in part.

Dissatisfied still, the appellants appealed to the Supreme Court.

Held: (Dismissing the appeal)

1. Duty of Court of Appeal to strike out ground of appeal without particulars -

The Court of Appeal is empowered upon application by the respondent or on its own motion to strike out any ground of appeal which discloses no reasonable particulars. In the instant case, the Court of Appeal was right when if found that particular (i) has no nexus with ground 8 which appeared general in terms and vague. The same is liable to be struck out. Such a step which was taken can be done *suo motu* **by the court or on application by the respondent**. [Honika Saw/mill (Nig.) Lid v. Hoff **(1994) 2 NWLR (Pt. 326) 252**; Nsirim v. Nsirim **(1990) 3 NWLR (Pt. 138) 285 referred to]** [P. 827. paras. D-E]

Attitude of Supreme Court to concurrent findings of courts below -

2. **The Supreme Court will be loathe, reluctant, and hesitant to interfere with the concurrent findings as in the instant case, where the appellants have made no attempt to show that the concurrent findings/decisions were perverse or not supported by credible evidence. In the instant case, the two courts below were concurrent in their findings that the appellants have failed to prove their entitlements to the reliefs being sought in their petition. This finding was not tampered with by the Supreme Court.** *[Nwosu v Board of Customs & Excise (1988)* **12 SC (Pt. 3) 27**; Olugbode v. **Sangodeyi (1996) 4 NWLR (Pt. 444) 500 referred to**] [P. 835. paras. B - C]
3. Duty on courts to give reasons for their judgment –

   Trial courts and appeal courts must give reasons for their judgment. That is the hallmark of a well written judgment. [Agbanelo v. Union Bank of Nigeria Ltd (2000)

FWLR (Pt. 13) 2197; Obi-Odu v. Duke (No.2) (2005) All FWLR (Pt. 250) 171, (2005) 10 XWLR (Pt. 932) 105; Oyeneye v. Odugbesan (1972) 4 SC 244; Bhojwani v. Bhojwcmi **(1996) 6 XWLR (Pt. 457) 661 referred to**] [P.836, paras. B - C]

4. Inadmissibility of hearsay evidence in election petition cases -

Per FABIYI JSC: [P. 829, paras. E - H]

"It is basic that a person who says he was only in the polling unit where he voted on the day of election would not know of malpractices that happened in the polling units. To that extent, (the evidence of PW14 and PW44 is clearly hearsay. Same is not in with the provision of section 38 of tin Evidence Act. 2011: Hshidu v. Goje. it is incomprehensible that PW14 and PW44 could embark upon falsehood by deposing to spurious allegations of malpractices which did not happen in their presence and to their direct knowledge. The trial tribunal rightly disregarded their hearsay evidence and the Court of Appeal was on a firm stand when h held as follows:

> ‘We have careful h read all the briefs vis-a-vis the proceedings of the trial tribunal.
>
> PW14 and PW44 were justifiably discredited by the trial tribunal.’

The reason given by the court below was that the hearsay evidence of PW14 and PW44 was justifiably excluded. The fact that this finding is correct is not contestable. I support both courts below.”

Per RHODES-VIVOUR JSC: [Pp. 835 - 836, paras. F -A. C - E]

"PW14 and PW44 gave evidence on oath that on election day, there was violence, multiple thumb-printing, exclusion of results without justification in polling units they admitted they never went 10. Their evidence was to the effect that on election day they remained at their polling units. The tribunal quite rightly held that the evidence of both witnesses amounted to hearsay evidence. This finding was affirmed by the Court of Appeal. The complaint of the appellants is that the Court of Appeal in affirming this finding did not give reasons.

"PW14 and PW44's testimony that there were malpractices in polling units they admitted they never went to is evidence of what they were told or what they heard from someone else. This is secondhand evidence, clear hearsay evidence and it is inadmissible to prove that there were actually malpractices in the polling units they never went to. Hearsay evidence is thus inadmissible to prove that fact. The finding of the tribunal that the evidence of PW14 and PW44 amounts to hearsay evidence was not challenged by the appellants. It was correctly conceded. The issue is no longer a live issue. It is thus safe in the circumstances for the Court

of Appeal to simply say that the evidence of PWI4 and PW44 was justifiably discredited by the trial tribunal, more so as that finding is correct. There was no need for the Court of Appeal to give reasons why the evidence of PW14 and PW44 found by the trial tribunal to be hearsay is hearsay."

5. *On whom lies burden of proof in electoral matters non-compliance with provision of Electoral Act. 2010 –*
   The burden remained on the appellants to prove that not only were the elections invalidated by reasons of non-compliance but that the non-compliance with the Electoral Act was so substantial that the results of the elections had been affected thereby. The Court of Appeal was therefore on very strong grounds in coming to the conclusion that the appellants failed to prove their case to justify granting them the reliefs sought. [Buhari v. I.N.E.C. (2008) All FWLR (Pt. 437) 42, (2008) 4 NWLR (Pt, 1078) 546; Abubakar v. l.N.E.C. (2004) 1 NWLR (Pt. 854) 207; Buhari v. Obasanjo (2005) All FWLR (Pt. 258) 1604, (2005) 2 NWLR (Pt. 910) 241 referred to] [Pp. 834 - 835, paras. G - A]

Nigerian Cases Referred to in the Judgment:

A. G Leventis (Nig.) Pic v. Akpu (2007) All FWLR (Pt. 388)1028, (2007) 17 NWLR (Pt. 1063) 416

A.N.P.P. v. Usman (2008) 2 NWLR (Pt. 1100) 1

Abubakar v. l.N.E.C. (2004) 1 NWLR (Pt. 854) 207

Agbanelo v. Union Bank of Nigeria Ltd (2000) FWLR (Pt. 13) 2197, (2000) 7 NWLR (R. 666) 534

Agbi v. Ogheh (2006) All FWLR (Pt. 329) 941

Bhojwani v. Bhojwani (1996) 6 NWLR (Pt. 4571 661

Buhari v. l.N.E.C. (2008) All FWLR (Pt. 437) 42. (2008) 4 NWLR

Buhari v Obasanjo 2005) All FWLR (PL. 258) 1604. (2005) 2 NWLR (Pt. 910) 241

Buhari v. Obasanio (2005; All FWLR (Pt. 273)1

Edem v Canon ball is Ltd (2005); All FWLR (Pt. 276) 693, (2005) 12 NWLR (Pt. 938)27

Fagbenro v Arobadi (2006) All FWLR (Pt. 310) 1575. (2006) 7 NWLR (Pt. 978) 172

Haruna v. Modibbo (2004) All FWLR (Pt. 238) 740. (2004) 16 NWLR (Pt. 900) 148

Hashidit v Goje (2003) 15 NWLR i'Pi. 843 j 352. (2004) All FWLR(Pt. 228)662

Honika Sawmill (Nig. i Ltd v. Hoffi 1994; 2 NWLR (Pi. 326) 252

l.N.E.C. v. Oshiomolc (2009; 4 NWLR (Pt. 1132) 607

Ibrahim v. Snagari (1983) 14 NSCC 431

Mogajiv. Odofin (1978) 4 SC 91

Muka r. State (1976) 9-10 SC 305

Nsinm v Nsmm (1990) 3 NWLR (Pt. 138) 285

Nwosu r. Board of Customs & Excise (1988) 12 SC (Pt. 3) 27

Obi-Odu v. Duke (No.2) (2005) All FWLR (Pt. 250) 111. (2005) 10 NWLR (Pt. 932: 105

Odedo v I.N.E. C(2007) All FWLR (Pt. 392)1907. (2008) 17NWLR (Pt. 1117) 554

Ogba v. Onwuzo (2005) All FWLR (Pt. 275) 58 I. (2005) 6 SC (Pt. 1)41.(2005) 14 NWLR (R 945) 331

Olugbodi v. Sangodeyi (1996) 4 NWLR (pt. 444) 500

Olujinle v. Adeagbo (1988) 2 NWLR (Pt 75) 238

Omotola v. State (2009) All FWLR (Pt 464) ; 1490. (2009) 2-3 SC (Pt. 11)196

Onajobi v Olanipekun (1985) 4 SC (Pt. 2) 156

Onifade v. Oiayiwola (1990) 7 NWLR (Pt. 161)1 30

Onyemena v State (1974) All NLR 522

Oyencyc v. Odugbesan (1972) 4 SC 244

Seriki v. Are (1999) 3 NWLR (Pt. 595) 469

Shashi v. Smith (2009) 18 NWLR (Pt. 1173) 330

Titiloye v. Olupo (1991) 7 NWLR (R. 205) 519

Tukur v. Government of Gongola State (1988) NWLR (Pi. 68) 39

Nigerian Statutes Referred to in the Judgment:

Electoral Act.2010 (as amended), section 138 (1)

Evidence Act.2010, sections 38 and 126

Nigerian Rules of Court Referred to in the Judgment:

Court of Appeal Rules. 2011. Order 6, rule 3

Counsel:

Lateef O. Fagbemi, SAN(with him, Chief Akinlolu Olujimi SAN) Adeboavo Adelodun, SAN: Roland Otaru, SAN: Hassan T Fajimite, Esq;Dr. o. Olatokc. Esq;,B. 0. Adesina. Esq; O.A. Dare. Esq;

H. O. Afolabi. Esq.; A. O. Popoola. Esq.; A. F.Yusuf. Esq.; B. A.Oyun. Esq.: K Abiodun (Mrs.);

J. 0. Nwota (Miss); M. A. Adelodun esq.; Taiwo Shodcide. Esq.; Dare Oketade. Esq.; Ibukun Fasanmi. Esq. and Olukayode Ariwoola. Esq. -for theAppellants.

Hassan M. Liman, SAN (with him. A. B. Bello. Esq.. Dr. A. K. Usman: I. M.Dikko: A.M. Mohammed. Esq.: A.D.Auta. Esq.: Y. D. Dangama, Esq.; A. M. Imam. Esq.; Fatima Bukar (Miss); M. M. Ogah, Esq.; Mahmud Lsman Esq.; M. Abdulkayyima. Esq. and J. A. Ayoogu. Esq. -for the 1st. 2nd and 3rd Respondents. Chief Wole Olampekun. SAX (with him. Yusuf Ali. SAX: Dr.Alex Izinyon. SAX; Chief (Sir) E. C. Xwanedo: A. A. Jatau: Joshua Atobo: Z. Z.Atlumagg: S. O. Oke; M. O. Abubakar; BukolaAraromi (Miss): P. I. Ikpegbu (Mrs.) A. W. Raji; K. O. Lawal; AishaAli (Miss):

L.O. Fagbemi; Alex Izinyon (11); M. S. Bawa: Tim Y'iga: Samuel Abbah: I.O. Atofarati; Uzeh A. O. (Miss) and ZaidAbduliahi -for the 4th Respondent.

FABIYIJSC (Delivering the Lead Judgment.): This is an appeal against the judgment of the Court of Appeal. Markurdi Division delivered on 7 January 2012, in which the majority decision of the trial tribunal handed out on 12 November 2011 was in essence affirmed. The main appeal was dismissed while the cross-appeal was allowed in part.

It is apt to assemble the facts leading to this appeal, albeit, briefly. On 26 April 2011. The 1st respondent conducted election into the office of Governor of Nasarawa State. After the completion of

the election, the 4th respondent who was the candidate of Congress for Progressive Change (CPC) was declared winner and returned as duly elected.

The1st appellant who contested on the platform of the 2nd appellant. Peoples' Democratic Party was not happy with the outcome of the election. The 1 st appellant and his party jointly filed a petition before the trial tribunal in Lafia, Nasarawa State on 17 May 2011. The 1st, 2nd and 3rd respondents filed a joint reply. The 4th respondent, as well as filed his own reply.

The appellants in their petition before the trial tribunal maintained that the election was conducted peacefully, freely and fairly in the nine (9) polling units of Laminga Electoral ward and Oshugu polling units of Loko Electoral ward of Nasarawa Local Government Area and in Anna town of polling unit of Alagwe ward of Doma Nasarawa Local Government Area during the slated election but the 1st, 2nd and 3rd respondents unjustly excluded and/ or refused to include the results and discountenanced the results from the above stated units and wards. Another ground of note for the petition relate to multiple thumb-printing, ballot stuffing, over voting and inflation of results leading to non-compliance with the provision of the Electoral Act.2010 (as amended).

The respondents maintained that the exclusion of results in the stated polling units and wards was justified in that results of election in the affected polling units and wards were cancelled because thugs threatened violence on the respective presiding officers and other electoral officials during the election.

The 4th respondent at the trial tribunal objected to some votes credited to the appellants by the 1st, 2nd and 3rd respondents in three Local Government Areas of Doma, Kokona and Obi in Nasarawa State.

The trial tribunal considered the evidence placed before it and was duly addressed by all senior counsel for the parties after written addresses p were duly filed. In its considered majority judgment of 11 November 2011. the petition was dismissed. The 4th respondent's objection to votes was also dismissed. The appellants appealed to the Court of Appeal against the dismissal of their petition. The 4th respondent cross-appealed against the part of the decision which overruled his objection to votes credited to the appellants in the above stated Local Governments. At the Court of Appeal, the appellants' appeal was dismissed while the 4th respondent's cross-appeal was allowed in part. This is a further and final appeal by the appellants to this court.

In this court, briefs of argument were filed and exchanged by senior counsel for the parties. On 27 February 2012. when this appeal was heard, each learned senior counsel for the parties adopted and relied on the brief of argument filed on behalf of his client. Each senior counsel made

submissions galore in a keenly contested petition which was based on a closely contested election with a near photo finish end result.

On behalf of the appellants, the eight (8) issues formulated from the 21 grounds of appeal in their notice of appeal read as follows:

"(1) whether on a proper consideration of ground 8 of the appellants' ground of appeal (in the notice of appeal to the Court of Appeal) and the dismissal of the 4th respondent's preliminary objection against the appeal on the ground that the same was unfounded, the lower court was right in its decision striking out that ground 8, Ground 1.

(2) Whether having regard to the different issues raised by the appellant's appeal in the lower court relating to various error of law committed by the tribunal, the lower court properly reduced the issues to a matter of proof and standard of proof, thereby leaving other issues unconsidered and unresolved and whether in all the circumstances of the appeal. It can be said that the lower court did justice to the appeal of the appellants. Grounds 2,8,20 and 21.

(3) Whether the lower court was right when it held that PW14 and PW44 were justifiably discredited by the tribunal without showing what evidence they relied on for that holding Ground

(4) Whether having regard to the materials on record including inter alia, the pleadings, the evidence, the issues raised in the appeal at the lower court, the submissions of the parties and relevant law. it can be said that the lower court gave proper consideration to the evidence of PW40 and the other witnesses called by the appellants. Ground4. 5. 6 and 7.

(5) Whether the lower court has not denied the appellants/cross-respondents fair hearing by deciding the cross-appeal without any consideration of the appellants/cross-respondents' brief against same and whether in the circumstances, the decision of the lower court can be allowed to stand. Grounds 9 and 1 3.

(6)Whether having regard to the pleadings of the parties, the evidence on record and the submissions on the issues raised in the appeal before the lower court, the court below is right in overruling the tribunal on the results of Oshugu and Anna Town Polling Units. Grounds 10, 14 and 15.

(7)Whether the lower court was right in resolving issue 3 of the cross-appeal against the appellants on grounds not covered by cross-appeal and not canvassed by the parties. Ground 11.

(8) Whether in view of the pleadings of the cross-appellants (sic) on the votes objected to in Doma. Kokona and Obi Local Government Areas treated by the lower court as ground 5, which raised criminal allegations, the pleadings of the cross-respondents on same, the evidence on record, the failure of the 4th respondent to prove the allegations beyond reasonable doubt as required by law, and failure of the lower court to consider the submissions of the cross-respondent on same, the lower court can be held in the circumstances to have properly considered the objection to the votes and whether justice ha-- tie en done to the appellants /cross-respondents. Grounds 12, 16, 17 and 18."

On behalf of the 1st, 2nd and 3rd respondents, similar issues with slight modification in tone were submitted for determination as those time and space.

On behalf of the 4th respondent, the six issues distilled for the determination of the appeal are fairly different. They read as follows:

> ''(1) considering the entirety of the decision of the lower court, whether the lower court was right in striking out ground 8 of appellants' notice of appeal. Ground1.
>
> (2) Whether the lower court was not correct in dismissing the appeal before it on the basis that appellants did not prove their entitlements to the reliefs being sought and whether proof qua evidence is not substantial enough to influence the decision of the court one way or the other. Grounds 2, 8, 20 and 21.
>
> (3) In view of the totality of the evidence presented at the lower court, including those of PW14, PW44 and PW40. Whether the lower court was not right in affirming the decision of the trial tribunal. Grounds 3,4,5,6 and 7.
>
> (4.) Was the lower court correct to have allowed the respondent's cross-appeal with respect to its objection to votes in Doma, Kokona and Obi Local Government. Grounds 9, 13, 12, 16, 17 and 18.
>
> (5) Whether this appeal presents sufficient reasons in fact and law to set aside the decision of the lower court in respect of the result of Oshugu and Anna Town Polling Units. Grounds 10, 14 and 15.

(6) Whether the lower court rightly resolved issue 3 in the respondent's brief before it. Ground 11.

1 shall consider this appeal based on the issues formulated by the appellants which are basically the same with those couched on behalf of the 1st, 2nd and 3rd respondents.

Issue one relates to the propriety of the decision of the Court of Appeal in striking out ground 8 of the grounds of appeal before it. Senior counsel for the appellants maintained that the reasoning of the court below is untenable as it is totally foreign to the preliminary objection of the 4th respondent who did not say that no error of law was stated and that there was no nexus between particular I and the main ground. He felt that the appellants were not afforded a hearing on that ground before the court arrived at its conclusion. He submitted that should not descend into the arena of conflict to make a to make a different case for the parties: Fagbenroye Arobade (2006) All FWLR (Pt.310) 1575, (2006) 7 NWLR (Pt. 978) 172 at 173; A.G Leventis (Nig.) Plc v Akpu (2007) All FWLR (Pt. 388) 1028. (2007) 17 NWLR (Pt. 1063) 416.

Senior counsel for the 1st, 2nd and 3rd respondents submitted that in a situation where particulars furnished in support of a ground of appeal are no; related to the ground, it should be struck out: Honika sawmill Ltd (Nig) v. Hoff (1994) 2 XWLR (Pt. 326) 252 at 262. A -B. Senior counsel further submitted that where a ground is vague of general in terms or discloses no reasonable ground, it can be struck out by the court on its own. motion or on application by the respondent. He referred to Order 6, rule 3 of the Court of Appeal Rule 2011 and cited the case of Nsirim v. Nsirim (1990) 3 NWLR (Pt.138) 285 at 29, F-G.

Senior counsel for the 4th respondent observed that the appellant, did not present and argument to the effect that the reasons stated by the lower court were wrong. He maintained that what is germane in the determination of an appeal is the tightness or wrongness of the decision of the lower court: Tukur v. Government of Gongola State (1988) NWLR (Pt. 68.1 39). He felt that the cases of Faghenro v. Arobadi and Adewnmi v. Olowu cited by the appellants arc of no moment to the facts of the case. For a proper appreciation, it is necessary to quote ground 8 of the grounds of appeal before the lower court along with its particulars:

> "Ground 8 - The Governorship Election Tribunal erred when it held that to prove the criminal allegations in the petition beyond reasonable doubt, the petitioners must establish that the respondents, particularly the 4th respondent, committed these criminal acts personally or aided, abetted, or counselled or procured the commission of the alleged violations of electoral laws and rules and that an election or votes will not be nullified merely because a candidate benefited from alleged irregularities and/or malpractices.

Particulars of errors in law

(i) In holding as the tribunal did. it failed to appreciate its jurisdiction to nullify results of elections in given units, wards or Local Governments which are found to be unlawful and that would affect all contestants as have been done in several cases.

(ii) It was the holding under attack in this ground which prevented the tribunal from, giving proper consideration to all the allegations pinpointing unlawful results."

The Court of Appeal found that ground 8 has no error of law stated and that there was no nexus between particulars (i) and the main ground. The appellants did not present any argument that the reasons stated by the lower court were wrong. The appellants felt that they were not heard the lower court on the reasons given by it.

The court below was right when it found that particular (i) has no nexus with ground 8 which appears general in terms and vague. The same is liable to be struck out as done by the court below: Honika Sawmill (Nig.) Ltd v. Hoff at 262. Such a step which was taken can be done suo motu by the court or on the application, by the respondent, as provided by Order 6, rule 3 of the Court of Appeal Rules. 2011 which states as follows:

"Any ground which is vague or general in terms or which discloses no reasonable ground of appeal shall not no permitted save the general ground mat the judgment is against the weight of evidence, any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the court of its own motion or on application by the respondent."

This court in a similar situation in the case of Nsirim v. Nsirim pronounced that the Court of Appeal is empowered upon application by the respondent or on its own motion to strike out any ground of appeal v cl discloses no reasonable particulars.

The court below was right in the stance taken by it in striking out ground 8 of the grounds of appeal before it for being incompetent. The issue is resolved against the appellants.

In respect of issue 2, the senior counsel for the appellants maintained that the issue presents a classical example of abdication of statutory and constitutional responsibility of a court of law, especially a non-apex appellate court to consider each and every issue raised by an appellant or indeed all the parties in an appeal. Senior counsel felt that it was wrong for the lower court to have treated the appeal as one relating to evaluation of evidence touching on proof and standard of proof. He felt that issues agitated in the court below were not dealt with: Lamulatu Shashi and Ors. v. Shadia Smith (2009) 18 NWLR (Pt. 1173) 330 at 366; Titiloye v. Olupo (1991) 7 XWLR (Pt. 205) 519 at 537 and Paul Edem v. Canon Balls Ltd and Anor. (2005) All FWLR (Pt. 276) 693, (2005) 12 XWLR (Pt. 938) 27 at 54.

On behalf of the 1st, 2nd and 3rd respondents, the senior counsel submitted that the summation of the 20 issues formulated by the appellants is actually that of proof and standard of proof. The real issue is whether the appellants have proved their case at the trial tribunal.

Senior counsel for the 4th respondent maintained that the twenty (20) issues for determination formulated at the court below by the appellant give them away to the effect that their arguments are not candid because every single issue contains the word evidence and also relates to evidence. He felt that issue 2 should fail on this score.

I have carefully read over several times, the twenty (20) issues presented by the appellants to the court below for determination. None of the parties can contest with clear mind that all the issues except perhaps issue 14 touch on evidence. The appellants' senior counsel argued some issues together in one fell swoop. For example issues 11, 12, 13, 15 and 18 in the appellants' brief all the lower court were argued together.

It is basic that in an ejection petition like the appellants' own herein complaining of non-compliance with the Electoral Act based on electoral malpractices and fraud, once the issue of proof is resolved against a petitioner, the petition is effectively determined. The approach adopted by the lower court was dictated by the myriad of issues which principally touch or, evidence in respect of allegations touching on crime, I am unable to impugn the stance taken by the court below. I will not in any respect undermine the lower court's art or approach in the writing of its judgment: Omotola v.The State (2009) All FWLR (Pt. 464) 1490. (2009, 2-3 SC (Pt. 11) 196 at 208; Ogba v. Onwuzo, (2005) All FWLR (Pt. 275) 581, (2005)1 o SC (Pi. 1 141. (2005, 14.\WLRCPt. 945; 331.

This issue, to my mind, is not a big deal. I now move to the next issue which is very relevant and directly touches on the merit of the appeal.

Issue 3 deals with whether or not the court below was right in its holding that PWI 4 and PW44 were justifiably discredited. Senior counsel for the appellants maintained that the lower court did not offer any reason for the finding in its judgment. Senior counsel observed that the trial tribunal held that the evidence on record by PW14. PW44 and PW45 constituted hearsay evidence because the witnesses especially PW14 and PW44 admitted that they did not move beyond their respective polling units on the election day and therefore would not know what happened in the other units. The discountenance of their evidence included their testimony on their respective observation on result sheets and other electoral documents which they directly observed winch was contrary to the provisions of sections 38 and 126 of the Evidence Act. 2010.

Senior counsel submitted that a court must give reasons for its judgment: Emmanuel Agbanelo v. Union Bank of Nigeria Ltd (2000) FWLR (Pt. 13) 2197. (2000) 7 NWLR (Pt. 666) 534 at 557.

Senior counsel for the 1st, 2nd and 3rd respondents observed that PW14 and PW44 whose witness statements on oath, replicate various malpractices contained in the petition admitted that each of them only stayed at this unit on the day of election. They admitted that they were not at the polling units where the alleged that results were excluded without justification. He further stated that they were not at the polling units where they alleged that there was violence, multiple thumb printing and other malpractices.

Senior counsel observed that PW14 under cross-examination admitted that all lie said were hearsay. He submitted that hearsay evidence to inadmissible. He referred to section 38 of the Evidence Act. 2010 and cited Buhari v. Obasanjo (2005) All FWLR (Pt. 273) 1 and Hashidu v. Goje (2003) 15 NWLR (Pt. 843) 352 at 393 (2004), All EWLR (Pt. 228) 662.

Senior counsel for the 4th respondent observed that all the appellant-are complaining about is the fact that the lower court did not give any reason. He submitted that is the correctness of the decision of a court and not the manner of reaching the decision that matters: Onifade v. Olayiwola (1990) 7 NWLR; (Pt.161) at 159; Onajobi v. Olanipekun (1985) 4 SC (Pt.2)156. He submitted that the reason, given by the tribunal was not challenged and same affirmed by the lower court has not been challenged and thus conceded: (Odedo v. I.N.E.C. (2007) All FWLR (Pt.392) 1907. (2008) 17 NWLR (Pt.17) 554 at 630.

Senior counsel also submitted that the two witnesses, under cross-examination, admitted that they were only at their respective units were they voted on the day of election and did not know what happened In other polling units where they maintained that various malpractices took pta.: nine Local Governments of Nasarawa State.

It is basic that a person who says he was only in the polling unit where he voted on the day of election would not know of malpractices that happened in other polling units. To that extent, the evidence of PWI 4 and PW44 is clearly hearsay. Same is not in tune with the provision of section 38 of the Evidence Act. 2011: Hashidu v. Goje. It is incomprehensible that PWI4 and PW44 could embark upon falsehood by deposing to spurious allegations of malpractices which did not happen in their presence and to their direct knowledge. The trial tribunal rightly disregarded their hearsay-evidence and the Court of Appeal was on a firm stand when it held as follows:

"We have carefully read all the briefs vis-a-vis the proceedings of the trial tribunal. PWI4 and PW44 were justifiably discredited by the trial tribunal.'"

The reason given by the court below was that the hearsay evidence of PWI 4 and PW44 was justifiably excluded. The fact that this finding is correct is not contestable. I support both courts below.

I have no hesitation in resolving the issue against the appellants and in favour the respondents.

The next issue which is issue 4 is whether the court below properly considered me evidence of PW40. Senior counsel for the appellants submitted that the lower court fell into grave error when it failed 10 consider all the related issues raised by the appellants but only considered the evidence of in arriving at its decision as if PW40 was the only witness of the appellants.

Senior counsel maintained that the evidence of PW40 was general and imprecise and should not be preferred to the evidence of their other witnesses: l.N.E.C. v. Oshiomole (2009) 4 NWLR (Pt. 1132) 607 at 661.

Senior counsel for the 1st, 2nd and 3rd respondents maintained that the appellants applied for subpoena to issue on PW40 - Independent National Electoral Commission's Head of Operations to be their witness. He opined that the trial tribunal ascribed probative value to the evidence of PW40 and same was affirmed by the court below: Agbi v. Ogbeh (2006) All FWLR (Pt. 32) 941 at 968. Senior counsel maintained that the decision in I.N.E.C. v. Oshiomole cited by the appellants counsel is distinguishable.

Senior counsel reiterated the fact that the appellants called PW40 on their own volition and they are bound by his evidence: Waziri Ibraim v. Shehu Shagari and Anor. (1983) 14 NSCC431 at 434.

Senior counsel for the 4th respondent observed that for all intents and purposes PW40 being appellants" witness, they must swim or sink with the evidence proffered by him. He submitted that the appellants cannot pick and choose which part of the testimony of PW40 is to be, believed or attempt to bring in evidence of other witnesses to substitute his own: .Boy Muka v. The State (1976)9 - 10 SC 305.

Senior counsel observed that PW40 was not declared as a hostile witness and was not re-examined by appellants' counsel. He maintained that contrary to the failure of the appellants to prove their case, the respondents brought primary and raw evidence in areas being challenged in terms of ballot papers and ballot boxes in order to satisfy pre-conditions laid down in Haruna v. Modibbo (2004) All FWLR (Pt. 238) 740. (2004) 16 XWLR (Pt. 900) 487 at 551 and A.N.P.P. v. Usman (2008) 2 XWLR (Pt. 1100) 1 at 85-86 and also called witnesses to disprove the petitioners' claim. He felt that the imaginary scale referred to in Mogaji v. Odofin (1978) 4 SC 91 was properly applied and same tilted against the appellants.

PW40, the Director of Operations of Independent National Electoral Commission was called by the appellants as their witness. Their case must stand or fall with his evidence which did not help their case at all. He gave evidence that contradicted the evidence of other witnesses. PW40 stated that elections where the 4th respondent won were free and fair. He said there was non-compliance with the electoral Act in Doma Local Government. Laminga Ward, Anna town of Alaye Ward in Doma Local Government, Oshugu Polling unit of Loko Ward in Nasarawa Local Government where 1st appellant had upper hand. This is admission against interest. The evidence of other witnesses cannot be employed to counter that of PW40 who was not declared a hostile witness and not re-examined. Same points at internal contradiction in the evidence adduced by the appellants. The court will not pick and choose which one to believe and which to disbelieve: Boy Muka v.The State (1 976) 9 - 10 SC 305: Onyemena v. The State (1974) All NLR 522 at 530. Like it happened in the case of Wasiri Ibrahim v. Sheu Shagari PW40 called by the appellants herein helped to disprove most of the allegations they sought to rely upon. It is not like the position in I.N.E.C Oshiomole where PW47 therein testified in support of Comrade Oshiomole.

The lower court was in order in the stance posed by it. The issue is without any equivocation, resolved in favour of the respondents.

Senior counsel for the appellants agued issues 5 and 8 together. At this point issue 7 is also of moment. Senior counsel for the appellants maintained that these issues question the decision of the lower court allowing the cross-appeal without proper consideration of the cross-respondents brief of argument. He made submission galore on the point.

Senior counsel for the 1st, 2nd and 3rd respondents felt that what the appellants seems to be challenging was that their issues as submitted by them was not considered and that same is a challenge to the way and manner in which the court wrote its judgment: Omotola and Ors. V. The State.

Senior counsel maintained that the Court of Appeal found that evidence on record has shown that there was over voting in the polling units of the Local Government Areas of Doma, Kotona and Obi which were objected to by 4th respondent upon which the Court of Appeal allowed the objection to votes. Upon finding over-voting, the Court of Appeal acted rightly.

Senior counsel for the 4th respondent maintained that objection to votes credited to the appellants in Kokona, Doma and Obi Local Government Areas was proved by the evidence of DW28 and DW29. Ballot boxes and ballot paper used for the election in the disputed areas and units were produced. On the order of the tribunal, the ballot papers were counted against the ballot boxes in the presence of parties and duly signed by them. At the end, the number of ballot papers issued to the respective polling units as indicated in form EC8A's far exceeded the actual ballot papers which is a

combination of used and unused ballot papers issued to the respective polling units. He maintained that the only rational conclusion to be reached is that of ballot stuffing and/or multiple voting in the three Local Government Areas and in tune with paragraph 53 (2) of the Manual for Election Officials, 2011 , and as held in Seriki v.Are (1999)3 NWLR(Pt.595) 469 at 481 such election result should be automatically cancelled.

In respect of the issues, the lower court found as follows:

> "The evidence before the tribunal was that there was over voting in Doma, Kokona and Obi Local Government Areas. The register of voters in respect of these units was tendered at the tribunal. It showed differential between the form EC8A's and the actual ballot papers used at the election. The counting was consequent upon the order of the tribunal. The evidence of PW40 supports the stand of the cross-appellant
>
> Since the materials were before the tribunal, the tribunal would have considered them in view of the differentials pointing to the issue of over-voting in respect of the three Local Governments. The tribunal would have upheld the objection but regrettably he (sic) did not. Accordingly, this issue is resolved in favour of the cross appellants.

I cannot see how the findings of the court below as quoted above can be impugned. The complaint of the cross-respondent which by inference touch on the mode of writing the judgment of the court below cannot obliterate the fact that as found by the court below, over-voting was clearly proved and duly found by the court below. The objection to votes by the 4th respondent was rightly upheld by the court below. In tune with the directive in paragraph (53) 2 of the Manual for Election Officials. 2011 the result was rightly cancelled by the 1st respondent: Seriki v. Are.

It is the truth of the matter, as established in this case that should be considered. There is no need to rove into intricacies. I affirm the stance taken by the court below. The issues are resolved in favour of the respondents.

Issue 6 relates to the propriety or otherwise of the lower court's overruling of the tribunal on the results of Oshugu and Anna town poling units.

Senior counsel for the appellants maintained that there is contradiction in the evidence of DW3 and DW9 as to whether it was DW3 - the collation officer or DW9, the presiding officer who cancelled the result for Oshugu polling unit. Learned counsel submitted that the conflict in the evidence of DW/T3 and DW9 should be resolved from available documentary evidence to wit exhibit 44(3): Olujmle v. Adeagbo (1988) 2 NWLR (Pi. 15) 238.

Senior counsel for the 1st, 2nd and 3rd respondents maintained that there was no conflict in the evidence of DW3 and DW9.

Senior counsel for the 4th respondent also maintained the same stand.

The Court of Appea. lounc. as toiiow:

> "We have read the evidence of DW3 and DW9 and there are no contradictions and contrary to the finding of the tribunal that there were contradictions in their evidence, the result in exhibit 19 as admitted by the presiding officer-DW9 who saw everything was cancelled by him because of violence."

As there is conflict in the evidence of DW3 and DW9, such should be resolved by the consideration of exhibit 4-4(3) certified true copy of the report of the electoral officer for Nasarawa Local Government Area:

Olujinle v. Adeagbo (1988)2: NWLR (Pt. 75) 238.

The report which should have been considered by the court below but was not read- as follows:

> "In Loco Registration Area, the collation office; cancelled me results of the election in Oshugu (004) because of incorrect and inappropriate entries in form EC8A and EC8A (1)."

From the above, it is clear that the result was cancelled by DW3, a collation officer and not by DW9 the presiding officer who had the vires to do same at the polling unit.

The trial tribunal was correct on this point. The stance of the court below rests on quick sand. The position taken by the trial tribunal is restored. This will however not tilt the status quo.

In conclusion, I resolve all the issues except issue 6 against the appellants, in effect, the appeal is hereby dismissed. The judgment of the Court of Appeal is in essence, hereby affirmed. I make no order on costs.

MOHAMMED JSC: I have been privileged before today of reading in draft the judgment of my learned brother, Fabiyi JSC which he has just delivered. I completely agree with the reasoning and the conclusion reached in the judgment that the appeal is not meritorious and should be dismissed. However, let me say a word or two on the appellants' complaint that they were denied fair hearing by the court below which lumped their 20 issues identified from their 35 grounds of appeal in their brief of argument into one single issue upon which their appeal was determined. This complaint is captured in issue number two in the appellants' brief of argument in this court. The issue reads:

"2. Whether having regard to the different issues raised by the appellants, appeal in the lower court relating to various errors of law committed by the tribunal, the lower court properly reduced the issues to a matter of proof and standard of proof, thereby leaving other issues unconsidered and unresolved and whether in all circumstances of the appeal. It can be said that the lower court did justice to the appeal of the appellant.

In his argument, learned senior counsel of the appellants accused the court below of abdicating its constitutional responsibility as an intermediate Court of Appeal in failing to consider all the issues placed before that court for the determination of the appellants' appeal. The approach of the court below, in the consideration of the appellants' appeal is contained at page 4044 of volume 6 of the record of appeal where the court said:

"Now we shall proceed to the consideration of the main appeal. We have considered all the grounds of appeal and the various issues formulated therefrom by all the counsel appearing in this matter and we have come to the conclusion that the core issue arising from all these various, issues is that of proof and standard of proof. The question is whether the petitioners proved the allegations in the manner required by law."

The observation of the court below on the real issue arising for determination of the appellants" appeal from the 20 issues formulated in the appellants' brief of argument is fully supported by the appellants' issues as formulated in their appellants" brief at the court below, it can be seen that proper appraisal of the petition and proper consideration of the evidence led by the appellants, is the central complaint in the first issue. Whether credible evidence was led to justify nullification of votes, is the subject of the second issue. Also the question of whether the trial tribunal gave proper consideration of the evidence of PW40, is the complaint in the third issue. In fact the subject of consideration of evidence or credible evidence ran through all the remaining issues 4 to 20 to justify, in my view, the stand taken by the court below in lumping all the issues into one central or an all-embracing issue of whether the petitioners indeed proved the allegations in their petition in the manner required by law. Taking into consideration the grounds upon which the appellants' petition was filed at the trial tribunal, which grounds 1 have earlier quoted in this judgment, it is not in dispute that the election and return of the 4th respondent was not being challenged on the ground of non-qualification to contest the election as stated in section 138(1) of the Electoral Act. 2010(as amended). All the same, the burden remained on the appellants to prove that not only were the elections invalidated by reasons of non-compliance, but that the non-compliance with the Electoral Act was so substantial that the results of the elections had been affected thereby. This requirement of proof vested on the appellants, is in line with the decisions of this court in several cases including Buhari v. I.N.E.C. (2008) All FWLR (Pt. 437) 42, (2008)4 NWLR (Pt. 1078)546; Abubakar v. I.N.E.C (2004)1 NWLR (Pt. 854) 207 and Buhari v. Obasanjo (2005), All FWLR(Pt.258)1604,(2005)(Pt.910)241].The

court below was therefore on very strong ground in coming to the conclusion that the appellant have failed to prove their case to justify granting them the reliefs sought, in addition, the two courts below were concurrent in their findings that the appellants have failed to prove their entitlements to the reliefs being sought in their petition. The law is trite that this court will be loathe, reluctant and hesitant to interfere with, such concurrent findings in the present case where the appellants have made no attempt to show that the concurrent findings decisions were perverse or not supported by credible evidence. I find support for this stand in the cases of Nwosu v.Board of Custom &Excise (1988)12 S.C (Pt.3)27 at 88 1988; 88 and Olugbode v. Sangodeyi (1996) 4 NWLR (Pt. 444)500 at 512.

It is for the above reasons and more, particularly those carefully laid out in the lead judgment that I also feel that this appeal must be dismissed.

I order accordingly and endorse all the orders made in the lead judgment, that relating to cost inclusive.

CHUWUMA-ENEH JSC: I have read in advance the judgment prepared and delivered by my learned brother. Fabiyi JSC and i agree with his lordship's reasoning and conclusions that the appeal should be dismissed. I abide by the orders contained in the lead judgment.

RHODES-VIVOUR JSC: I read in draft the lead judgment prepared by my learned brother, Fabiyi JSC. 1 agree with his lordship's reasoning and conclusion. I shall say a thing or two on issue 3. This issue is on whether the Court of Appeal was right to affirm the holding of the trial tribunal, discrediting the evidence of PW14 and PW44 without giving reasons of its own.

PW14 and PW44 gave evidence on oath that on election day, there

was violence, multiple thumb-printing, exclusion of results without justification in polling units they admitted they never went to. Their evidence was to the effect that on election day, they remained at their polling units. The tribunal quite rightly held that the evidence of both witnesses amounted to hearsay evidence. This finding was affirmed by the Court of Appeal. The complaint of the appellants is that the Court of Appeal in affirming this finding did not give reasons.

PW14 and PW44's testimony that there were malpractices in polling units, they admitted they never went to is evidence of what they were told or what they heard from someone else. This is second hand evidence, clear hearsay evidence and it is inadmissible to prove that there were actually malpractices in the polling units they never went to. Hearsay evidence is thus inadmissible to prove that fact.

The Court of Appeal said on this issue:

> "We have carefully read all the briefs vis-à-vis the proceeding of the trial tribunal. PW 14, PW44 were justifiably discredited by the trial tribunal."

Trial courts and appeal courts must give reasons for their judgment. That is the hallmark of a well written judgment: E. Agbanelo v. Union Bank of Nigeria Ltd (2000) FWLR (Pt.13)2197. Courts are set up to determine live issues: Obi-Odu v. Duke (No.2) (2005) All FWLR (Pt. 250) 171. (2005) 10 NWLR (Pt.932)105; Oyeneye v. Odugbesan (1972) 4 SC 244; Bhojwani v. Bhojwani (1996) 6 NWLR (Pt. 457) 661.

The finding of the tribunal that the evidence of PW 14 and PW44 amounts to hearsay evidence was not challenged by the appellants. It was correctly conceded. The issue is no longer a live issue. It is thus safe in the circumstances for the Court of Appeal to simply say that the evidence of PW 14 and PW44 was justifiably discredited by the trial tribunal, more so as that finding is correct.

There was no need for the Court of Appeal to give reasons why the evidence of PW14 and PW 44 found by the trial tribunal to be hearsay is hearsay.

Once again, I am in complete agreement with my learned brother, Fabiyi JSC that the appeal be dismissed with no order on costs.

Appeal dismissed