

1. ALHAJI (DR.) ALIYU AKWE DOMA
2. PEOPLES DEMOCRATIC PARTY (PDP)

V

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

*COURT OF APPEAL
(MAKURDI DIVISION)*

ABDU ABOKI JCA (*Presided and Read the Lead Judgment*)
AHMAD O. BELGORE JCA
EJEMBI EKO JCA
RITA NOSAKHARE PEMU JCA

CA/MK/EPT/42/2011

SATURDAY, 7 JANUARY 2012

CRIMINAL LAW AND PROCEDURE - Allegation - Contradicting versions of - Prosecution - Where gives - Effect of

ELECTION PETITION - Hearing of - Spurious application to delay - Filing of - Impropriety of

EVIDENCE - Who asserts - Onus on to prove

EVIDENCE - Witnesses called by party - Where contradict each other - Court Attitude of thereto

Issues:

1. Whether the petitioners proved the allegations in the petition in the manner required by law.
2. Whether the petition was not incompetent and therefore liable to be struck out.

3. Whether on the pleadings and evidence led, the tribunal rightly validated the results of the election in Oshugu polling unit and Anna Town polling unit.
4. Whether the cross-appellant made out a case for the nullification of the votes returned by the 1st - 3rd respondents in the cross-appellant's objection to votes in the cross-appellants' reply to the petition.

Facts:

The Nasarawa State gubernatorial election was contested by the 1st petitioner and the 4th respondent among other candidates under the platforms of the Peoples' Democratic Party and C.P.C. respectively. The 4th respondent was declared and returned as winner of the election. Aggrieved, the petitioners filed a petition at the Governorship and Legislative Houses Election Tribunal, sitting in Nasarawa State, challenging the electoral results on ground that; the 4th respondent was not duly elected by a majority of lawful votes cast, the election in the disputed polling units was invalid by reason of corrupt practices and the election and return of the 4th respondent was vitiated by non-compliance with the electoral provisions. The tribunal dismissed the petition. Dissatisfied, the petitioners appealed to the Court of Appeal. The 4th respondent filed a preliminary objection and a cross-appeal.

Held: *(Dismissing the appeal and allowing the cross-appeal in part)*

1. *Impropriety of filing spurious applications to delay hearing of election petition –*

It is imperative, indeed desirable, by the very nature of election petitions that appellate courts are not inundated with spurious applications including preliminary objections that carry the complexion of undue distraction at the expense of hearing the merits of a case. [P. 595, paras. F - G]

2. *Attitude of court where witnesses called by a party contradict each other -*

When witnesses called by a party contradict one another, the court cannot pick and choose which one to believe and which one to disbelieve. In the instant case, where the witness called by the petitioner was an employee of the respondents and gave evidence contradicting the evidence of the petitioners, the tribunal rightly dismissed the petition. [Muka v. State (1976) 10 - 11 SC 305 referred to] [P. 596, para. F]

3. *Effect of prosecution giving contradicting versions of an allegation –*

Where prosecution puts before the court two versions of an allegation, one disproving the allegation and the other proving same, it cannot be said to have proved the allegation against the accused beyond reasonable

doubt. [*Ameh v. State (1978) NSCC 368 referred to*] [*p. 597, para, B*]

4. *Onus on who asserts to prove –*
He who asserts must prove. [*P. 598, para. D*]

Nigerian Cases Referred to in the Judgment:

Ameh v. State (1978) NSCC 368
Haruna v. Modibbo (2004) All FWLR (Pt. 238) 740, (2004) 16 NWLR (Pt. 900) 487
Ibrahim v. Shagari (1983) NSCC 431 Muka v. State (1976) 10 - 11 SC 305
Onuoha v. Ndubueze (2002) 2 NWLR (Pt. 750) 172 Onyemcna v. Stale (1974) All NLR 522

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999 (as amended)
 Electoral Act, 2011 (as amended) Evidence Act, section 168

Counsel:

L. O. Fagbcmi, SAN (with him, Chief Akin Olujimi, SAN, A. O. Adelodun, SAN, RowlandOtaru, SAN,TO. Baiycshea, SAN, DR. .I. O. Olatoke, Esq., B. O. Adcshina, Esq., II. O. Afolabi, Esq., A. O. Popoola, Esq., Hassan A. Yakubu. Esq., A. F. Yussuf, Esq., F. Abiodun, (MS)., B. A. Oyun, Esq., Dare Oketade, Esq.) - *for the Apellants.*

Hassan M. Liman, SAN (*with* him, M. B. Usman, I. M. Dikko, A. M. *Mohammad*, A. M. Imam, M. M. Oga, Mohammed Abdul Kayyimu) -*for the 1st, 2nd and 3rd Respondents.*

Chief Wole Olanipekun, SAN (with him, Yusuf Ali, SAN, Dr. Alexb Izinyon, SAN, A. Jatau, Esq., Muhamed Abulhameed, Esq., Abdulahi Saidu, Esq., Gbenga Adeyemi, Esq., F. O. Iziyon, Esq., I. O. Atofarati, Esq., M. O. Abubakar, Esq., N. N. Adegboye, Esq., A. W. Raji, Esq., L. A. Ikhanoba, Esq.) - *for the 4th Respondent.*

ABOKI JCA (Delivering the Lead Judgment): On 26 April 2011, Gubernatorial Elections were held in most States of the Federal Republic of Nigeria and Nasarawa State in particular. The 1st appellant and the 4th respondent contested the election under the platform of their individual political parties.

The 1st appellant contested the election under the platform of the second appellant - People" Democratic Party (PDP) while the 4th respondent contested under the platform of Congress for Progressive Change (CPC).

The 1st - 3rd respondents including other officers and/or agents of the 1st respondent conducted the election as empowered by

the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2011 (as amended).

At the conclusion of the election, the 4th respondent was returned and declared winner of the election by the 1st - 3rd respondent with a total vote of 324,823 as against the 1st appellant who scored 320,938, a difference of 3,885 votes

The appellants being dissatisfied with the return of the 4th respondent as Governor of Nasarawa State duly filed a petition before the Governorship Election Petition Tribunal for Nasarawa State on 17 May 2011. The said petition is in volume 1, pages 1 - 347 of the record of appeal.

The grounds of the petition and the reliefs sought by the petitioner are contained on pages 88 - 93 of volume 1 of the record of appeal and they are hereby adumbrated as follows:

"Petitioners state that the grounds for bringing this petition are as follows:

- (i) The 4th respondent was not duly elected by a majority of lawful votes cast at the Nasarawa State gubernatorial election held on 26 April 2011;
- (ii) The election in the disputed polling units and wards, fully A stated facts in support of this petition, was invalid by reason of corrupt practices; and
- (iii) The election and return of the 4th respondent was/is vitiated by non-compliance with the provisions of the Electoral Act, 2010 (as amended)."

The relief sought by the petitioners are as follows:

"Whereof the petitioners claims against the respondents jointly and severally as follows:

1. An order nullifying the results of the Governorship election of 26 April 2011 in Nasarawa State in the disputed polling units namely:
 - (i) Kofar liman, Kofar Makama (003); Kofar Makama (Code 09) in Zanwa Ward of Lafia Local Government Area of Nasarawa State; "
 - (ii) Ungwan Mangu, Bukan Sidi, K/Danburam, Ungwan Dilale, Kofar Sanda, K/Iaa Ugah, D Ungwan WajenLale, Kofar AlhajiYau, Ungwan Doka, Tundun Kwari, Kofar Idi Gwanati, Lafia North, Ang. Sadini Laminor, ShabuAngArgubga, Bakin Gongoro, Bariwa in chiroma Ward of Lafia Local Government Area of Nasarawa State;
 - (iii) Adogi Primary School, Angwan Sugu, Nasarawa Zanwa, K/Makama, Kaura Moyi, Kofar/Mal/ Isiaka, Kofar Sarikim makera, Shabu/Tagabas, Shabu Kofar Sarki, azuba in Agodi Ward of Lafia Local Government Area of Nasarawa State;
 - (iv) Ruwayo, Akunza Ubanka, Bukar Mayaki, K/Gwanki, Kofar Tafida, Angwan Wagen

- Rabo in Wamba Ward of Lafia Local Government Area of Nasarawa State;
- (v) Fadama K Sarki, Wiji, Arkia Primary School, Kapaura/Ung. Dogo in Arikya Ward of Lafia Local Government Area of Nasarawa State;
- (vi) Ung. Amadi, Akura Primary School, Abu Ung. Musa, Agyaragu Koro, Akura Reading Room, Kura Primary School in Agogi Ward of Lajia Local Government Area of Nasarawa State;
- (vii) Ungah Ung. Madaki, Ashangua, Angwa Mission, Angwa Koro, Alawagana, Ugah West in Ashige Ward of Lafia Local Government Area of Nasarawa State
- (viii) Gidan Gambo in Assakio Ward of Lafia Local Government Area of Nasarawa State;
- (ix) Ambana, Keffi Wambai Police Station, Keffi Wambai Primary School, Aridi Kuje, Raftn Kudi, Kuya Sum, Koron Kuje, Primary School Keffi/ Wambai, Aridi Usman, Takpa, B.A.D. Police Station in Keffi Wambai Ward of Lafia Local Government Area of Nasarawa State;
- (x) Yelinan Tofa, Kongo, Gangaren Karofi, Karfi in Iya II Ward of Keffi Local Government Area of Nasarawa State;
- (xi) Gangaren Aboki - Op, Gangaren Aboki II, Tshohon Kasuwa Tajabas, Kofar Malam Ladan, Kofar Alkali in Liman Abaji Ward of Keffi Local Area of Nasarawa State;
- (xii) BCG Ang Jaba, Kaibo Mada Primary School, Angwan Rimi, Kofa Masa, Angwan Mada, Makera, GRA, EWCA Primary School (code 001), ECWA Primary School (Code 002), Police Station, Kofar Na Malama, Kofar Hausa Primary in Angwan Rimi Ward of Keffi Local Government Area of Nasarawa State;
- (xiii) Kofar Hausa Primary School (Code 002), Kofar malam Sadan. GidinDutse, Ang. Nepa, SaboLayi in Kofar Angwan Iya I Ward of Keffi Local Government of Nasarawa State;
- (xiv) Gangaren Tudu, Kofar AlhajiAhmaduSabongari, Saura, Prison Service, LGC Guest Hose, Tundun Kupa, PadaKofar Salam Modibbo in Gangaren Tudun Ward of Keffi Local Government Area Nasarawa State;
- (xv) Kalachi, Kofar Sarki Orume, Central Primary School, Kofar Oseku, Kofan Isono, Kofan Sarki II, LGEA Primary Kadarko Norlli, Kofan Awon, Angwan Ubangari, Ungwan Stakuwa II, RGM

- Deddere, Kofar Bonu Public Square, Riti Kofar Sarki, Riri Primary School, Kofar Madaki. Ungwan Kasuwa, Kofar Bunu II, Kolai Sich I. Ungwan Borokonu Public Square, Kofar Sarki. Ungwan Tsamiya, Akaba, Atabula, Aguade East Primary school in A Duduguru Ward of Obi Local Government of Nasarawa State;
- (xvi) Kofar Amawa, Riri Kofar Sarki, Kofar Madiki Kiki, Ung Sarki Noma/Public Square, Kofar Magaji, Angwa Ubangari, Kofar Sulei, RCM Deddere, Public Building, Kofar Sarki, Ungwa Kasua/Public Square Ungwa Sarki Mada, Kofar Bunu II/Public Square, Deddere, Kofar Sidi II in Deddere Ward of Obi Local Government Area of Nasarawa State;
- (xvii) Tudun Adebu/Kwaghshiriwar Kofar Sarki in ^ Tudun Adebu Ward of Obi Local Government Area of Nasarawa State;
- (xviii) Ring Sabo Open Square I, Ring Sabo Open Square II, Gbombu Open Square, Kofar Fada I, Kofar Fada ii, New Bank behind UBA, New D Bami. G.S.S. Wamba and Waja, °Mama Primary School, CMS Primary school "A", CMS Primary School "B", Old Central Office, Ungwan Zanwa, Bye Pass Open Space, Wamba Kurmi, ungu Open Space In Wamba East of Wamba Local g Government Area of Nasarawa State;
- (xix) Police station, Kofar Hakimi, Motor Park I, Motor Park II, Central School I, Central school II, Central School III in Akwangu West of Akwanga Local Government of Nasarawa State;
- (xx) Kofa B, Ilausa Liman, Ukyia Ycwuye, Gbawodi, ^ Adadu, Kofa A in Toto Ward of Toto Local Government Area of Nasarawa State;
- (xxi) Yelwa Bassa, Ogaza B, Yelwa In Umaisha Ward of Toto Local Government Area of Nasarawa Ihempke B In Shege Ward Of Toto Local Government Area of Nasarawa State;
- (xxii) Gadabuke A, Shashe Genshe, Anguwan Sarki in Shafan Kwato Ward of Toto Local Government Area of Nasarawa State;
- (xxiii) Gombe in Gwargwada Ward of Toto Local Government Area of Nasarawa State;
- (xxiv) Katakpa In Katakpa Ward of Toto Local Government Area of Nasarawa State;
- (xxv) Kuru, Tawana Kuru, Dare, Dajie, Shafan Abakpa Primary School, Chereku in Shafa

Abakpa Ward of Toto Local Government
Area of Nasarawa State.

2. An order of the tribunal validating the election results for the following Units namely:
 - (i) Shamage, Zakun Bello, Marmara, Gunki, Kawo Kawo, Nauchel Araba 1, Laminga II, Laminga I, Laminga III in Laminga Ward of Nasarawa Local Government Area of Nasarawa State;
 - (ii) Oshugu in Loko Ward of-Nasarawa Local Government of Nasarawa State; and
 - (iii) Anna Town Polling Unit in Alagye Ward of Doma Local Government of Nasarawa State.
3. A declaration that the 4th respondent - Umaru Tanko Al-Makura did not score a majority of lawful votes cast in the Governorship election for Nasarawa State held on 26 April 2011 and was, therefore, not lawfully or validly elected and returned as the winner of the said election.
4. A declaration that the 1 st petitioner scored the majority -of lawful votes cast at the Governorship election for Nasarawa State held on 26 April 2011 and was therefore entitled to be elected and returned as the winner of the said election.
5. An order declaring the 1st petitioner as the winner of the Governorship election held on 26 April 2011 in Nasarawa State having won the majority of lawful votes cast at the said election and has satisfied other constitutional requirements and should be returned.
6. An order directing the 1st - 3rd respondents to issue a certificate of return to the 1st petitioner forthwith. The 1st - 3rd respondent in response filed their joint reply to the petition on 6 June 2011 while the 4th respondent filed his reply to the petition also on the same date. See pages 910 -1194 and 394 -909 of vol. 3 and 2 respectively of the record of Appeal.

At the substantive hearing of the petition. The appellant called 45 witnesses PW1 - PW45.

The 1st - 3rd respondents called DW1 - DW26 while the 4th respondent called 37 witnesses DW27 - DW36.

At the conclusion of the hearing, the tribunal delivered its judgment through a split decision of two to one in favour of the respondents'.

The majority judgment dismissed the petition while the minority judgment allowed the petition and granted the reliefs sought by the petitioners.

In the judgment delivered on 12 November 2011, the Election Petition Tribunal dismissed the appellant petition. Aggrieved and dissatisfied with the decision of the lower tribunal, the appellants appealed to this court *vide* a notice of appeal dated 25 November 2011, and filed the same date. The notice of appeal contains a total of 35 grounds of appeal as shown on pages ^ 3658:3685 of volume VIII of the record of appeal.

The 4th respondent filed a notice of preliminary objection dated 13 December 2011, and filed the same date. The grounds of the

preliminary objection and its particulars reads as follows: ~

1. Ground 1
 - i. The ground does not arise from the judgment of the lower tribunal.
 - ii. The particulars are argumentative
 - iii. Particular (iii) is unnecessarily lengthy and prolix.
2. Ground 2
 - i. The ground does not arise from the judgment of the lower tribunal
 - ii. Numbering of the particulars is not consecutive.
 - iii. Particulars (i), (ii) and (iii) are argumentative.
3. Ground 3
 - i. The ground does not emanate from the judgment of the lower tribunal.
 - ii. Particular (iii) is argumentative.
4. Ground 4
 - i. The ground is vague.
 - ii. Particular (iii) is argumentative
5. Ground 5
 - i. The ground does not flow from the decision of the lower tribunal.
 - ii. Particulars (i), (ii) and (iii) are argumentative
6. Ground 6
 - i. The ground does not flow from the judgment of the lower tribunal.
 - ii. Particulars (i) (iii) (iv) and (v) are argumentative
7. Ground 7
 - i. The ground does not flow from the judgment of the lower tribunal
 - ii. The ground is vague, prolix argumentative and unnecessarily narrative.
 - iii. Particulars (i), (ii) and (iii) are argumentative
8. Ground 8
 - i. The ground does not flow from the judgment of the lower tribunal
 - ii. Particular (i) is argumentative
 - iii. Particular (ii) is speculative and argumentative
9. Ground 9
 - i. The ground does not emanate from the judgment appealed against and it is also misleading.
 - ii. Particulars (i), (ii) and (iii) are argumentative.
10. Ground 10
 - i. The ground is unnecessarily length .and prolix.
 - ii. Particular (i) is argumentative and prolix.
 - iii. Particular (ii), (iii) and (iv) are argumentative
11. Ground 11
 - i. The ground is vague
 - ii. Particular (i) and (ii) argumentative.

12. Ground 12
 - i. Particular (ii) is argumentative
13. Ground 13
 - i. This ground does not arise from the decision of the lower tribunal.
 - ii. Particular (i) is argumentative.
14. Ground 14
 - i. The ground does not arise from the judgment of the lower tribunal.
 - ii. Particulars (i) and (ii) are argumentative.
15. Ground 15
 - i. The ground does not arise from the judgment of the lower tribunal.
 - ii. Particular (i) is meaningless and ambiguous
 - iii. Particular (ii) is vague.
 - iv. Particular (iii) is argumentative
16. Ground 16
 - i. The ground is vague.
 - ii. Particular (i) is vague
 - iii. Particular (iv) is argumentative
17. Ground 17
 - i. Particulars (i), (ii) and (iii) are argumentative and prolix.
18. Ground 18
 - i. The ground is prolix and constitutes proliferation of grounds of appeal.
 - ii. Particular (ii) and (iii) argumentative
19. Ground 19
 - i. Particulars (i) and (ii) are argumentative
20. Ground 20
 - i. The ground is misleading, disjointed and does not emanate from the judgment of the lower tribunal.
 - ii. Particular (i) is argumentative.
 - iii. Particulars (ii) and (iv) are argumentative and narrative
21. Ground 21
 - i. The ground doesn't emanate from the decision of the lower tribunal and is argumentative.
 - ii. Particular (i) is repetitive and argumentative.
 - iii. Particulars (ii), (iii) and (iv) are argumentative
22. Ground 22
 - i. The ground does not arise from the holding of the lower tribunal.
 - ii. Particular (i) is argumentative, prolix and narrative.
 - iii. Particular (iii) is abstract, vague and meaningless.
 - iv. Particular (iv) is argumentative
23. Ground 23

- i. This ground does not arise from the holding of the lower tribunal and is vague and ambiguous.
- ii. Particulars (v) and (vi) are argumentative.

24. Ground 24

- i. The ground does not flow from the holding of the court and is errorigous, vague and misleading.
- ii. Particular (i) is vague and ambiguous.
- iii. Particulars (iii), (vi) and (viii) are argumentative

25. Ground 25

- i. The ground is misleading and does not emanate from the judge of the lower tribunal
- ii. Particular (ii), (iii), (iv), (vi), (vii) and (viii) are argumentative

26. Ground 26

- i. The ground is incomprehensible.
- ii. The said ground is also not tied to any specific evidence which was not reviewed or evaluated
- iii. The said ground is at large.

27. Ground 27

- i. The ground is vague and ambiguous.
- ii. Particular (i) is argumentative and narrative.
- iii. Particulars (ii), (iii) and (iv) are argumentative and lengthy.

28. Ground 28

- i. Particulars (i) and (v) are argumentative.

29. Ground 29

- i. The ground does not emanate from the judgment of the lower tribunal.
- ii. Particulars (i), (ii) and (iii) are argumentative

30. Ground 30

- i. Particulars (ii), (iii) and (iv) are argumentative.

31. Ground 31

- i. Particulars (ii), (iii) and (iv) are argumentative.

32. Ground 32

- i. Particulars (iii), (iv) and (v) are argumentative

33. Ground 33

- i. Particular (i) is vague and ambiguous.
- ii. Particular (iii) is vague and meaningless.

34. Ground 34

- i. This ground does not arise from the judgment of the lower tribunal and it is false and misleading.
- ii. Particular (iii) is argumentative.

35. None of the grounds alleging misdirection against the judgment of the lower tribunal made the slightest attempt to quote or pinpoint where the alleged misdirection occurred.
36. Appellants have formulated 20 issues for determination based on the incompetent grounds of appeal: such issues, as well as the entire brief of argument are also liable to be struck out.

The argument on the preliminary objection are contained on pages 2 the 4th respondents brief of argument.

Learned senior counsel for the 4th respondent Chief Wole Olanipekun, SAN urged the court to uphold the preliminary objection and strike out the entire appeal.

The appellants brief of argument prepared by Lateef O. Fagbemi SAN was dated 8 December 2011 and filed on 9 December 2011. The appellant distilled twenty issues for determination from the grounds of appeal contained in the notice of appeal.

The issues are adumbrated as follows:

1. Whether on a proper appraisal of the petition and proper consideration of the evidence led by the appellants, the tribunal was right in its conclusion that all the allegations in the petition were of a criminal nature requiring proof beyond reasonable doubt which proof the petitioners did not establish - Grounds 1, 2 and 4.
2. Whether the petitioners are not entitled to succeed on their complaint of non compliance and irregularities which are basically civil complaints having led credible evidence to justify nullification of votes in the affected, polling units? Ground 3.
3. Whether in arriving at its holdings concerning PW40, the tribunal gave proper consideration to his evidence and all the surrounding circumstances - Ground 5 and 10.
4. Whether the tribunal gave proper consideration to the evidence led by the appellants on multiple voting before arriving at its conclusion that the appellants failed to prove the allegation of multiple voting - Ground 6.
5. Whether the tribunal was right in its views on the law regarding proof of criminal aggregations and its jurisdiction to nullify an election for violations of

- the electoral laws and rules and whether besides the allegation of multiple thumb printing, the petitioners did not lead credible evidence to entitle them to judgment nullifying votes of the disputed polling units? - Ground 7 and 8.
6. Whether the tribunal gave proper treatment and consideration to the evidence of PW45 - Ground 9.
 7. Whether in the light of the evidence led through PW40 which was unchallenged and Forms EC.40A tendered as exhibits by the appellants, the tribunal was right in holding that the appellants had failed to prove the actual number of ballot papers issued to the polling units - Ground 11.
 8. Whether having regard to the evidence led by the appellants on the voters registers, Forms EC8A, and used and unused ballot papers and other documents TENDERED in evidence, the tribunal was right to hold that the appellants merely dumped the documents on the tribunal - Grounds 12.
 9. Whether in the light of the appellants pleadings and the evidence led the tribunal was right in holding that the tables included in the appellant's final address were at variance with the case made in the petition and unreliable and that over-voting was not made an issue on the pleadings? -Ground 13, 14, 32 and 33.
 10. Whether on a proper consideration of the evidence of the appellants witnesses, the holding of the tribunal that there were inconsistencies and contradictions which were not even set out by the tribunal, between the evidence of PW40 and other witnesses on material issues would be justified - Ground 15
 11. Whether having regard to the pleadings of the parties and the evidence on record relating to the disputed units of Laminga ward the tribunal had not wrongly placed the *onus* of proof on the appellants thereby disabling itself from a proper consideration of the case made concerning the results of the units i.e. exhibits 1(1-9) - Grounds 16,23 and 27.
 12. Whether in regards to exhibits 1 (1 -9), 18 and 19 the tribunal was right in its view of the law relating to presumption of regularity and correctness of official acts in section 168 of the Evidence Act - Ground 17 and 19.
 13. Whether on the pleadings and the evidence on record, the tribunal was right in holding that the exclusion or cancellation of results from the eleven (11) disputed polling units was presumed to

- be regular and valid and that the respondents justified the alleged cancellation or exclusion of the results - Grounds 18, 24, 25 and 28.
14. Whether the tribunal was right in its view of the law relating to the presumption of genuineness of certified public documents when it held that it related to only the certification and not the truth of the contents of the document and that the appellants had the **onus** of establishing that elections were properly conducted at the disputed polling units and results duly issued. - Grounds 20 and 22.
 15. Whether in the light of the pleadings of the parties, it can rightly be held as the tribunal did, that there was a dispute as to whether election was held in the disputed eleven polling units and whether there was in the evidence on record any basis for the tribunal holding that the witnesses for the respondents used the word election in its generic A sense - Ground 21.
 16. Whether having regard to the pleadings and the evidence on record, it can be said that the tribunal properly reviewed and evaluated the evidence of the witnesses before arriving at its findings against the petitioners. - Grounds 26 and 35,
 17. Whether the tribunal was right in its holding that results for the disputed nine polling units of Laminga were entered on mere sheets of paper and to have departed from the case made by the 1st to 3rd respondents in their pleadings that the collation officer cancelled the results of the disputed units which allegation was not proved - Ground 29.
 18. Whether the tribunal gave proper consideration to the pleadings and evidence on record in relation to the results for the disputed nine units of Laminga ward exhibits 1(1 -9) before reaching its decision not to validate the results in favour of the appellants. - Ground 30.
 19. Whether in the light of the pleadings and the evidence led by the petitioners in proof of their case, the tribunal was justified in holding that the petitioners failed to establish that the 4th respondent was wrongly returned as Governor of Nasarawa State and that he was not elected by majority of g lawful votes cast in the election and consequently dismissing the petition - Ground 31.
 20. Whether the tribunal was right in holding that the evidence of PW44 and PW45 amounted to inadmissible hearsay notwithstanding, that the evidence of the witnesses was based partly on what the witnesses saw and partly on documents admitted in evidence. - Ground 34.

The 1st, 2nd and 3rd respondents' joint brief of argument prepared by Hassan M. Liman, SAN was dated 14 December 2011, and filed the same date.

Twenty issues for determination were *raised* on behalf of the 1st, 2nd and 3rd respondents. The issues are hereby reproduced thus:

1. Whether on a proper appraisal of the petition and proper consideration of the evidence led by the appellants, the tribunal was right in its conclusion that all the allegations in the petition were of criminal nature requiring proof beyond reasonable doubt which proof the petitioners did not establish. (Grounds 1, 2 and 4).
Whether the petitioners are not entitled to succeed on their Complaint of non compliance and irregularities which are basically civil complaints having led credible evidence to justify nullification of votes in the affected polling units? (Ground 3).
3. Whether in arriving at its holding concerning PW40 the tribunal gave proper consideration to his evidence and all the surrounding circumstances. (Grounds 5 and 10).
4. Whether the tribunal gave proper consideration to the evidence led by the appellants on multiple voting before arriving at its conclusion that the appellants failed to prove the allegation of multiple voting. (Grounds 6).
5. Whether the tribunal was right in its views on the law regarding proof of criminal allegations and its jurisdiction to nullify an election for violations of electoral laws and rules and whether besides the allegation, of multiple thumb printing, the petitioners did not lead credible evidence to entitle them to judgment nullifying votes of the disputed polling units? (Ground 7 and 8).
6. Whether the tribunal gave proper treatment and consideration to the evidence of PW45. (Ground 9).
7. Whether in the light of the evidence led through PW40 which was unchallenged and Forms EC.40A tendered as exhibit by the appellants, the tribunal was right in holding that the appellants had failed to prove the actual number of ballot papers issued to the polling units. (Ground 11).
8. Whether having regards to the evidence led by the appellants on the voters registers, Forms EC8A and used and unused ballot papers and other documents tendered in evidence, the tribunal was right to hold that the appellants merely dumped the documents on the tribunal. (Ground 12).
9. Whether in the light of the appellants pleadings and evidence led, the tribunal was right in holding that the tables included in the appellants' final address were at variance with the case made in the petition and unreliable and that over voting was not made an issue on the pleadings? (Grounds 13, 14, 32 and 33).
10. Whether on proper consideration of evidence of the appellants witnesses, the holding of the tribunal that there were inconsistencies and contradictions, which were not even set out by the tribunal between the evidence of PW40 and other witnesses on material issues be justified. (Ground A 15).
11. Whether having regards to the pleadings of parties and the evidence on records relating to the disputed units in Laminga

ward, the tribunal had not wrongly placed the *onus* of proof on the appellants thereby disabling itself from a proper consideration of the case made concerning the results of the units i.e. exhibits 1(1-9), 18 and 19. (Grounds 16, 23 and 27).

12. Whether in regards to exhibits 1 (1 -9), 18 and 19 the tribunal was right in its view of the law relating to presumption of regularity and correctness of official acts in section 168 of the Evidence Act. (Ground 17 and 19). Whether on the pleadings and the evidence on record, the tribunal was right in holding that the exclusion or cancellation of results from the eleven (11) disputed polling units "was 'presumed to be regular and valid and that the D respondents justified the alleged cancellation or exclusion of the results. (Grounds 18, 24, 25 and 28). Whether the tribunal was right in its view of the law relating to the presumption of genuineness of certified public documents, when it held that it related to only the certification g and not the truth of the contents of the document and that the appellants had the *onus* of conducted at the disputed polling units and results duly issued. (Grounds 20 and 22). Whether in the light of the pleadings of the parties it can rightly be held as the tribunal did, that there was a dispute as to whether election was held in the disputed eleven polling units and whether there was in the evidence on record any basis for the tribunal holding that the witnesses for the respondents used the word election in its generic sense. (Ground 21). Whether having regards to the pleadings and evidence on record, it can be said that the tribunal properly reviewed and evaluated the evidence of the witnesses before arriving at its findings against the petitioners. (Ground 26 and 35). Whether the tribunal was right in its holding that the results for the disputed nine polling units of Laminga were entered on mere sheet of paper and to have departed from the case made by the 1st to 3rd respondents in their pleadings that the collation officer cancelled the results of the disputed units which allegation was not proved.
18. Whether, the tribunal gave proper consideration of the pleadings and evidence on record in relating to the results for the disputed nine polling units of Lamiga ward, exhibits 1(1-9) before reaching its decision not to validate the results in favour of the appellants. (Ground 30).
19. Whether in the light of the pleadings and evidence led by the petitioners in proof of their case, the tribunal was justified in holding that the petitioners failed to establish that the 4th respondent was wrongly returned as Governor of Nasarawa State and that he was not elected by majority of lawful votes cast in the election and consequently dismissing the petition. (Ground 31).
20. Whether the tribunal was right in holding that the evidence of PW14, PW44 and PW45 amounted to inadmissible hearsay notwithstanding that the evidence of the witnesses was based partly on what the witnesses saw and partly on documents admitted in evidence. (Ground 34).

The 4th respondent's brief of argument prepared by Chief Wole Olanipekun, SAN was dated 13 December 2011 and filed on the

same date.

The appellant's reply brief to the 1st - 3rd respondent's brief of argument was dated 19 December 2011 and filed the same date.

The appellant's reply brief to the 4th respondent's brief of argument dated 19 December 2011 and filed the same date, contains the argument in opposition to the preliminary objection on pages 1 - 5.

A cross-appellant's brief of argument was dated 8 December 2011 and filed on the same date by Chief Wole Olanipekun, SAN.

In the said cross-appellants brief on behalf of the 4th respondent three issue were formulated and they read as follows.

- i. Having regard to the petitioner's pleadings, as well as the evidence led, whether or not the lower tribunal has the *vires* to countenance the petition before it and adjudicate on it, in the absence of the Congress for Progressive Change (CPC) and several other persons and institutions against whom diverse allegations were/are made, but who were/are not made parties to the petition - Ground 1.
- ii. Considering the jurisdiction of the lower tribunal as defined and delineated by statutes, the pleadings of the parties, as well as the specific reliefs sought for by the petitioners, whether the lower tribunal was not in grave error to have validated the votes in Oshugu and Anna Town Polling unit in favour of the petitioners/cross-respondents - Grounds 2,3, 8 and 11.
- iii. Having regard to the pleadings of the parties and the evidence led, whether the lower tribunal was not in serious error in its failure to uphold the cross-appellant's objection to the votes of the petitioners/cross-respondents in Doma, Kokona and Obi Local Government Areas. Grounds 4,5,6,7,9,10, 12,13,14, 15 and 16.

The 1st and 2nd cross-respondent's brief of argument was dated 15 December 2011 and Filed on 16 December 2011. Three issues were distilled for determination by the 1st and 2nd cross-respondents. The issues are reproduced as follows.

- i. "Whether the petition was not competent and therefore liable to be struck out." "
- ii. "Whether on the pleadings and evidence led, the tribunal rightly validated the results of the election in Oshugu polling unit and Anna Town polling unit."
- iii. "Whether the cross-appellant made out a case for the nullification of the votes returned by the 1st - 3rd respondents in the cross-appellant's objection to votes in the cross-appellants reply to the petition.

The cross-appellant's reply brief was dated 20 December 2011 and filed on 21 December 2011.

It is of utmost importance to emphasize at this point that the notice of preliminary objection, filed on behalf of the 4th respondent touches on issues bordering on the competence and or jurisdiction of the court to entertain the main appeal and the cross-appeal. It is for this reason that preference must be given to the said notice of preliminary objection and as such it must be dealt with first before proceeding to deal with the matters pertaining to the main appeal and

the cross-appeal.

Learned counsel for the 4th respondent had filed a notice of preliminary objection on the 13 December 2011, attacking virtually all the thirty five grounds of appeal.

We shall take the objection seriatim.

As regards ground 1, we are of the view that this ground arises from the judgment of the lower tribunal as can be gleaned at pages 3490, 3495 - 3501 of volume 9 of the record of appeal. Howbeit, the particulars are argumentative but this does not vitiate the ground of appeal. Although, particular iii is lengthy, it is not prolix.

Ground 2

We find that, as argued by learned silk for the 4th respondent that the numbering of the particulars is not consecutive. Particulars i, ii and iii are not argumentative.

Ground 3

This emanates from the judgment of the lower tribunal. There is no particular iii in this ground.

Ground 4

This ground is vague. Particular iii is argumentative.

Ground 5

This ground flows from the decision of the tribunal and particulars i, ii, and iii are not argumentative.

Ground 6

This ground flows from the judgment of the lower tribunal. Only particular v is argumentative.

Ground 7

Flows from the judgment of the lower tribunal who relied on the case of *Martina v. Modibbo* (2004) All FWLR (Pt. 238) 740, (2004) 16 NWLR (Pt. 900) 487. This ground is not vague, not prolix, not argumentative and not unnecessarily narrative.

Ground 8

This ground has no error of law stated. No *nexus* between particular i and the main ground and particular ii is speculative and argumentative.

Ground 9

Flows from the judgment of the lower tribunal but particulars i, ii, and iii are argumentative.

Ground 10

This ground is unnecessarily long and prolix. Same applies to the particulars which we find argumentative. Ground 11

This ground is not vague and particulars i, and ii are not argumentative.

Ground 12

Particular ii is not argumentative.

Ground 13

Arises from the judgment of the lower tribunal but argumentative.

Ground 14

Arises from the judgment of the lower tribunal but particular ii is argumentative.

Ground 15

This arise from the judgment of the lower tribunal we find that particular i is not meaningless or ambiguous, A particular ii is not vague, particular iii is however argumentative.

Ground 16

This ground is not vague. Particular i is not vague. Particular iii is not argumentative.

Ground 17

We find particulars t, ii and iii argumentative and prolix.

Ground 18

Only particular i is argumentative.

Ground 19

Only particular ii is argumentative.

Ground 20

Particulars i, ii, and iv are argumentative.

Ground 21

This ground emanates from the judgment. However, particulars i, ii, iii and iv are argumentative.

Ground 22

We agree, but particular i is not argumentative. Particular iii is not vague, abstract and meaningless. Particular iv is not argumentative.

Ground 23

Particulars iv, v, and vi are not argumentative.

Ground 24

This ground flows from the judgment. It is not erroneous, vague nor misleading. Particular i is not vague or ambiguous. Particulars iii and vii are not argumentative but we find particular vi argumentative.

Ground 25

This ground emanates from the judgment of the lower tribunal. It is not misleading and particulars ii, iii, iv, vi, vii and viii are argumentative.

Ground 26

While we find this ground comprehensive, it is however at large, as no evidence which was “not reviewed or evaluated” is shown.

Ground 27

This ground is vague and ambiguous. Particular i is argumentative and narrative; particular ii is narrative and iii is lengthy and argumentative.

Ground 28

Particulars i and iv are argumentative.

Ground 29

Particulars i, ii, and iii are argumentative.

Ground 30

particular ii is not argumentative. Particular iii is however argumentative.

Ground 31

Particulars ii, iii and iv are argumentative.

Ground 32

Particulars iii, iv and v are argumentative.
Ground 33

Particulars i and iii are not vague.

Ground 34

Particular iii is not argumentative.

Learned silk Chief Wole Olanipekun, SAN had contended at page 6, paragraph 5 in his notice of preliminary objection, that none of the grounds alleging misdirection against the judgment of the lower tribunal made the slightest attempt to quote or pin point where the alleged misdirection occurred. But we find that the grounds of appeal on record do not complain of any misdirection by the lower tribunal. This contention is therefore misconceived. On 19 December 2011, the appellant filed a reply brief to the 4th respondent brief of argument. At pages 1 - 5 in the said reply brief, the appellant responded to the preliminary objection to the intent that the 4th respondent preliminary objection is unfounded, lacking in merit and a gross resort to technicality at the expense of substantial justice. We are poised to agreeing with this line of argument as we are of the view that even though some of the particulars of the ground are argumentative and prolix in nature, this does not go to the foundation of this case: *Onuoha v. Ndubueze* (2002) 2 NWLR (Pt. 750) 172 at 183. It is imperative, indeed desirable, by the very nature of election petitions that appellate courts are not inundated with spurious applications including preliminary objections that carry the complexion of undue distraction at the expense of hearing the merits of a case. Therefore, the argumentative nature of some of the particulars in the grounds of appeal would not vitiate the grounds of appeal neither would it bar this court from entertaining the merit of this appeal. Apart from ground 8 where we find that no error of law was stated, and no nexus between particular i and the main ground, we find that all other grounds are viable and tenable. Ground 8 in the grounds of appeal lacks competence and same is accordingly hereby struck out. We also find that the argument of the appellant that the preliminary objection is unfounded ought to be countenanced and same is hereby countenanced. The result is that the notice of preliminary objection is overruled and same is hereby dismissed.

Now we shall proceed to the consideration of the main appeal.

We have examined all the grounds of appeal and the various issues formulated there from by all 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 contention of the respondents in the petition who are also respondents to this appeal is that the allegations are criminal in nature and therefore the standard of proof is one beyond reasonable doubt. The petitioners who are the appellants are of the contention that not all the allegations are criminal in nature and therefore, on the doctrine of severance those that are not criminal are to be proved on preponderance of evidence while those that are criminal must be proved beyond reasonable doubt. We have carefully read all the briefs *vis-a-vis* the proceedings of the trial tribunal. PW14 and PW44 were justifiably discredited by the trial tribunal. The PW40, director of operations of INEC, who was brought *onsubpoena duces tecum and*

ad testificandum was no doubt a witness for the appellant. The *subpoena* was issued at the instance of the petitioners/appellant despite protest from the respondents. PW40 testified and gave evidence that contradicted the evidence of witnesses invited by the petitioners/appellants which seriously disproves the appellant's case.

Before this court, the appellants have submitted that PW40 should not be believed as a witness of truth and that the court can choose which aspect of his evidence should be believed and that which the court should not. It is trite law that when witnesses called by a party contradict one another, the court cannot pick and choose which one to believe and which one to disbelieve: *Boy Muka v. The State* (1976) 10 - 11 SC 305; *Alfred Onyemena v. The State* (1974) All NLR 522 at 530.

As it was held in the case of *Waziri Ibrahim v. Shehu Shagari* (1983) NSCC 431, the PW40 called by the appellants helped them to disprove all the allegations they sought to rely upon, to borrow the words of Irikefe JSC at page 434 of the report.

"In other words, the petitioner with his eyes wide open pull down brick by brick the edifice he had erected. The result of the poor strategy was that the Federal High Court had no difficulty in arriving at the conclusion which it did, that this petition has not been proved, and in dismissing it."

In the instant case, the appellants had put forward PVV40 whom they rely heavily on as witness. The appellants are *estopped* from complaining against this witness who is an employee of their adversary, as their ally. The strategy is unphantomable. The reason, why the appellants should call PW40 as their witness is most incomprehensible. In respect of the criminal allegation the Supreme Court had held in the case *Paul Ameh v. The State* (1978) NSCC 368, that where a prosecution puts before the court two versions of an allegation, one disproving the allegation and the other proving same, they cannot be said to have proved the allegation against the accused beyond reasonable doubt. Notwithstanding this failure of strategy by the petitioners, the respondents brought witnesses to the tribunal to show that the election where the 4th respondent won was free and fair and that where the 1st appellant won the election was not free and fair.

We have meticulously considered all the issues raised by the appellant's in this appeal, and in the light of the foregoing; we are of the firm view that the appellants did not prove their case at the tribunal either beyond reasonable doubt or on the preponderance of evidence. All the issues raised by appellant are therefore resolved in favour of the respondents. '

We shall now consider the cross appeal. The 4th appellant cross-appealed *vide* notice of appeal dated 28 November 2011, containing 16 grounds of appeal. The notice of cross-appeal is at page 3687 of volume 9 of the record of appeal. In the cross-appellant brief of argument, three issues were proffered for determination as reflected at page 5 paragraph 3.0 -3.1 of the cross-appellant brief of argument. The said issues had been earlier reproduced in this judgment. We shall now deal with the issues seriatim.

Regarding issue number 1, the allegation of the cross appellant is that some paragraphs in the main petition are fraught with allegations against CPC specifically referring to paragraphs 5, 9, 18,

20, 35 and 53 in the main petition. But with respect to the cross appellant, we find that paragraphs 5 and 9 of the petition are merely introductory and no allegation was made in those paragraphs. In paragraph 18 of the petition G no allegation was made against CPC but just a general statement of fact. In paragraph 20, no reference was made to CPC, but allegation was made against the 4th respondent. Paragraph 35 of the petition contains particulars of corrupt practices, non-compliance alleged in paragraph 34 against INEC in conjunction with 4th respondent's agents and not against CPC.

We note that the petition does not have paragraph 53. The argument by cross-appellant in paragraph 4.1 in his brief of argument that the allegations were concentrated on the CPC and that paragraph 35 in particular which forms the kernel of the petition are allegations on CPC, is misconceived. Accordingly this issue is hereby resolved against the cross-appellant.

On issue number 2, the tribunal having found that the exhibit written to those unit were curious, that is, Oshugu polling unit, they cannot do a summersault and find for the petitioner. The "O" recorded by all other parties were put in quote. The tribunal itself labeled exhibit 51 as a curious suspect document. We have read the evidence of DW3 and DW9 and there are no contradictions, and contrary to the findings of the tribunal that there were contradictions in their evidence, we find no such contradictions. The result in exhibit 19 as admitted by the presiding officer DW9, who saw everything was cancelled by him because of the violence.

The cancellation was done by the presiding officer and not the collation officer. Issue No. 2 therefore succeeds and same is hereby resolved in favour of the cross-appellant.

On issue No. 3 there is nothing to show that the votes were dumped. Allegations by cross-appellant that they were dumped without more is in our view spurious and speculative. How were they dumped? (He who asserts must prove).

In ground 5, the tribunal said it found no evidence on record. The evidence before the tribunal was that there was over voting in Doma, Kokona and Obi Local Government Areas. The registers of voters in respect of these three units were tendered at the tribunal. Used and unused ballot boxes were tendered also at the tribunal. It showed differential between the Forms LC8A 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 government areas. The tribunal would have upheld the objection, but regrettably he did not. Accordingly, this issue is resolved in favour of the cross-appellant.

The cross-appeal succeeds in part, issue 1 is hereby dismissed.

The results of the election at Oshugu and Anna polling units are hereby invalidated.

In conclusion, this appeal, lacking in merit, is hereby dismissed in its entirety. The decision of the trial tribunal is hereby affirmed.

There shall be no order as to costs.