ALLIED PEOPLES MOVEMENT

V.

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION

2. ALL PROGRESSIVES CONGRESS

3. TINUBU BOLA AHMED

4. KASHIM SHETTIMA

5. KABIR MASARI

PRESIDENTIAL ELECTION PETITION COURT

HOLDEN ATABUJA

PETITION NO:

CA/PEPC/04/2023

HARUNA SIMON TSAMMANI, J.C.A. (Presided and Read the Leading Judgment)

STEPIHEN JONAH ADAH, J.C.A.

MISITURA OMODERE BOLAJI-YUSUFF, J.C.A.

ABBA BELLO MOHAMMED, J.C.A.oD o olsnoOD3

BOLOUKUROMO MOSES UGO, J.C.A.

WEDNESDAY, 6TH SEPTEMBER 2023

ACTION- Abuse of court process - Meaning and connotation of -

Varieties of.

ACTION - Parties to an action - Parties to election petition -

Necessary respondents to election petition.

ACTION - Parties to an action - Parties to election petition – Who can file election petition- Whether candidate at election

necessary party in election petition instituted by his political party.

CONSTITUTIONAI. LAW - Office of President of Nigeria

Qualification or disqualification of candidate to Contest election therefor - Issue of - Nature of- When and how to

raise.

CONSTTIUTIONAL. LAW- Presidential election - Running mate of

Presidential candidate of political party - Power to nominate - In whom lies - Whether fettered.

CONSTITUTIONAL. LAW - Provisions of the Constitution - Interpretation of- Principles governing.

CONSTITUTIONAI. LAW - Qualification and disqualification at

candidate to contest for elective office - What governs.

COURT - Abuse of court process - Meaning and connotation of.

Varieties of.

COURT - Judgment in personam - Judgment in rem - Meanings of

and distinction between - Effect of each.

COURT- Judgment of court - Concurring or contributory judgment - Status, efficacy and bindingness of.

ELECTION - Nomination of candidate for election by political party - Double nomination - How proved - Effect of.

ELECTION - Nomination of candidate for election by political party - Issue of- Nature of - When and how to raise.

ELECTION - Nomination or substitution of candidate for election by political party - Issue of - Nature of - Who can challenge Same and how.

ELECTION - Office of President of Nigeria - Qualification or

disqualification of candidate to contest election therefor - Issue of- Nature of- When and how to raise.

ELECTION - Presidential election - Nomination of running mate of Presidential candidate of political l party - Power to nominate -In whom lies - Whether fettered.

ELECTION - Qualification and disqualification of candidate to contest for elective office - What governs.

ELECTION- Substitution of candidate for election by political party - Procedure therefor - Whether applies to Vice-Presidential candidate.

ELECTION PETITION - Nomination of candidate for election by political party - Issue of - Nature of- When and how to raise.

ELECTION PETITION - Office of President of Nigeria -

Qualification or disqualification of candidate to contest election therefor - Issue of - Nature of - When and how raise.

ELECTION PETITION - Parties to election petition - Necessary

respondents to election petition.

ELECTION PETITION - Parties to election petition - Who can file election petition - whether candidate at election necessary party in election petition instituted by his political party.

ESTOPPEL - Issue estoppel - Meaning of - Conditions for application of.

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INTERPRETATION OF STATUTES- Provisions of the Constitution - Interpretation of- Principles governing.

JUDGMENT AND ORDER - Concurring or contributory judgment - Status, efficacy and bindingness of.

JUDGMENT AND ORDER - Judgment in person and - Judgment in rem - Meanings of and distinction between - Effect of each.

JUDGMENT AND ORDER Judgment of court- Judgment in

personam - Judgment in rem - Meanings of and distinction between - Effect of each.
JUDGMENT AND ORDER - Judgment of court - Concurring or contributory judgment - Status, efficacy and bindingness of.

POLITICAL PARTY - Nomination of candidate for election by political party - Double nomination – How proved- Effect of.

POLITICAL PARTY - Nomination of running mate of Presidential candidate of political party - Power to nominate - In whom lies - Whether fettered. POLITICAL PARITY - Nomination or substitution of candidate for election by political party - Issue of Nature of - Who can challenge same and how.

POLITICAL PARTY - Substitution of candidate for election by political party - Procedure therefor - Whether applies to Vice-Presidential candidate.

PRACTICE AND PROCEDURE - Abuse of court process – Meaning and connotation of- varieties of.

PRACTICE AND PROCEDURE - Judgment of court – Judgment in personam - Judgment in rem - Meanings of and distinction between - Effect of each.

PRACTICE AND PROCEDURE - Judgment of court – Concurring or contributory judgment - Status, efficacy and bindingness of.

PRACTICE AND PROCEDURE - Parties to an action - Parties to election petition - Necessary respondents to election petition.

PRACTICE AND PROCEDURE - Parties to an action - Parties to election petition - Who can file election petition – Whether candidate at election necessary party in election petition instituted by his political party.

PRINCIPLES OF INTERPRETATION

Interpretation of Constitution - Provisions of Constitution - Interpretation of

- Principles governing. RES JUDICA7A - Estoppel per rem judicatam - Doctrine of -Meaning of- Conditions for application of.

WORDS AND PHRASES - Abuse of court process - Meaning and

connotation of- Varieties of.

WORDS AND PHRASES - Issue estoppel - Meaning of- Conditions for application of.

WORDS AND PHRASES - Judgment in personam - Meaning and effect of.

WORDS AND PHRASES - Judgment in personam - Meanings of and distinction between - Effect of each.

WORDS AND PHRASES - Judgment in rem - Meaning and effect of.

Issues:

1. Whether the 3rd respondent was qualified to contest the Presidential election held on 25th February 2023 and be validly declared as the winner of the said election by the 1st respondent having regard to the provisions of sections 131(c) and 142(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 35 of the Electoral Act, 2022.

2. Whether the petitioner provided its case as to justify the grant of the reliefs sought in this petition.

Whether the decision of the Supreme Court in People's Democratic Party v Independent National Electoral Commission & 3 Ors. with Appeal No. SC/ CV/501/2023 barred and prevented the petitioner from challenging the qualification of the 3rd respondent to contest the Presidential election held on 25th February 2023 on the basis of sections 131(c) and 142 of the Constitution of the Federal Republic of Nigeria, 1999 as (amended).

Facts:

The petitioner herein (ALLIED PEOPLES MOVEMIENT) participated in the Presidential election conducted by the 1st respondent on 25th February 2023 by sponsoring a candidate (Ojei Princess Chichi). The 1st respondent returned the 3rd respondent as the winner of the election. Aggrieved by the declaration and returned at the election, the petitioner filed a petition on 20h March 2023. Its sole ground for the petition was that the 3rd respondent was, at the time of the election not qualified to contest the election. The ground was hinged on the alleged double nomination of the 4h respondent and the alleged unlawful or invalid withdrawal of the 5h respondent as the Vice-Presidential candidate of the 2nd respondent at the said Presidential election.

Two other sets of parties, also dissatisfied with the result declared also filed petitions. The other petitions are:

(i) CA/PEPC/03/2022: Peter. Gregory Obi & Anor v. I.N.E.C & 3 Ors.; and

(ii) CA/PEPC/05/2022: Abubakar Atiku & Anor v. I.NEC & 2 Ors.

During the pre-hearing session, the three petitions were consolidated by the court, even as the identity of each of the petitions were preserved in line with the settled procedure relating to consolidation of actions.

Based on the sole ground of the petition, the petitioner sought the following reliefs in paragraph 31 of the petition:

"31 WHEREOF your petitioner claims and prays as follows:

(i) That it may be determined that:

(a). The 3rd respondent was not qualified to contest as the Presidential candidate of the 2nd respondent as at 25th February, 2023. when the Presidential Election was conducted by the 1st respondent in the Federal Republic of Nigeria, having violated the provisions of section 142(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

(b) A Declaration that the return of the 3rd respondent by the 1st respondent as the President elect of the Federal Republic of Nigeria is null, void and of no legal effect whatsoever, the 3d respondent having violated the provisions of section 142(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended and the 4th respondent having violated the provision of section 35 of the Electoral Act, 2022.

(c) The 4h respondent was not qualified to contest as the Vice-Presidential candidate of the 2nd respondent as at 25lh February. 2023, when the Presidential Election was conducted by the 1" respondent in let the Federal Republic of Nigeria, having violated the provisions of section 35 of the Electoral Act, 2022.

(d) The declaration and return of the 3rd respondent by the 1st respondent on 1st of March. 2023, as the President elect of the Federal Republic of Nigeria is invalid by

reason of non-compliance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999; and the Electoral Act, 2022.

(ii) A Declaration that having regard to the joint - ticket principle enshrined in section 142(1) of the Constitution of the Federal Republic of Nigeria, 1999, the withdrawal of the 5th respondent as the Vice-Presidential candidate of the 2nd respondent, by operation of law amounted to automatic withdrawal and invalidation of the candidature of the 3rd respondent as the Presidential candidate of the 2nd respondent for the Presidential Election conducted by the 1st respondent on the 25th day of February, 2023.

(iii) A Declaration that arising from the invalidity of the 3rd respondent's nomination, the 1st respondent ought not to have included the name, or the abbreviation of the name, or the logo of the 2nd respondent in the ballot papers and other election materials used by the 1st respondent for the conduct of the Presidential Election held on the 25h day of February, 2023.

(iv) The 4th respondent was not qualified to contest as the Vice-Presidential candidate of the 2nd respondent as at 25th February, 2023, when the Presidential Election was conducted by the | respondent in the Federal having violated the provisions of Republic of Nigeria, section 35 of the Electoral Act, 2022.

(v) An Order Nullifying and Voiding all the votes scored by the 3rd respondent in the Presidential Election conducted by the 1 respondent on 25lh February, 2023, in view of his non-qualification as a candidate of the 2nd respondent.

(vi) UPON the grant of prayer (V) above, AN ORDER NULLIIYING AND/OR SETTING ASIDE the return/ declaration of the 3d respondent as the winner of the Election conducted by the 1st respondent for the office of the President of the Federal Republic of Nigeria on the 25th day of February, 2023, same having been made in violation of the provisions of section 142(1) of the Constitution of the Federal Republic of Nigeria, 1999 and section 35 of the Electoral Act, 2022. (vii) UPON the grant of prayers (v) and (vi) above, and in the absence of the 3rd respondent's participation in the Presidential Election held on 25th February, 2023 pursuant to section 136(2) of the Electoral Act,

AN ORDER declaring the candidate with the next highest number of votes as the winner of the election.

On being served with the petition, each of the respondents filed its or his replies to the petition. The respondents also incorporated various preliminary objections in their respective

replies to the petition and also filed motions challenging the competence of the petition on various grounds. The pre-hearing session opened and closed on 21st June 2023, during which the court heard all motions and preliminary objections made by the respondents and deferred rulings on the applications to the stage of final judgment as mandated by section 285(8) of the Constitution of the Federal Republic of Nigeria, 1999.

At the trial, the petitioner called 1 (one) witness and closed its case. None of the respondents called any witness but tendered some documents from the Bar. After the close of evidence, the parties Iiled and exchanged their respective final addresses, including separate addresses in support of their various objections which they raised during trial.

In the determination of the various motions, preliminary objections and the merit of the petition, the Court considered various provisions of the l999 Constitution (as amended) as well as other relevant Legislations as follows: Section 131 of the 1999 Constitution:

131. A person shall be qualified for election to the office of President if-

(a) he is a citizen of Nigeria by birth;

(b) he has attained the age of forty years;

(c) he is a member of a political party and is Sponsored by that political party; and

(d) he has been educated up to at least School Certificate level or its equivalent."

Section 142(1) of the 1999 Constitution: "142(1) In any election to which the foregoing provisions of this part of this chapter relate, a candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same

political party for his running mate for the office of President, who is to occupy the office of Vice-President and that candidate shall be deemed to have been duly elected to the office of Vice-President if the candidate for election to the office of President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid.

Section 33 of the Electoral Act, 2022:

33. A political party shall not be allowed to change or substitute its candidate whose name has been submitted under section 29 of this Act, except in the case of death 9 O or withdrawal by a candidate:

Provided that in the case of such withdrawal or death of a candidate, the political party affected shall, within 14 days of the occurrence of the event, hold a fresh primary election to produce and submit a fresh candidate to the Commission for the election concerned."

Section 35 of the electoral Act, 2022:

35. where a candidate knowingly allows himself to be nominated by more than one political party or in more than one constituency, his nomination shall be void.

Section 84(3) of the Electoral Act, 2022: political party shall not impose nomination "84(3)

qualification or disqualification criteria, measures, or conditions on any aspirant or candidate for any election in its constitution, guidelines, or rules for nomination of candidates for elections, except as prescribed under sections 65, 66, 106, 107, 131, 137, 177 and 187 of the Constitution."

Section 134(1) & (3) of the Electoral Act, 2022:

"134(1) An election may be questioned on any of the following rounds –

(a) the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or

(b) the respondent was not duly elected by majority of lawful votes cast at the election.

(3) With respect to Subsection 1 (a), a person is deemed to be qualified for an elective office and his election shall not be questioned on grounds of qualification if. with respect to the particular election in question, he meets the applicable requirements of sections 65, 106, 131 or 177 of the Constitution and he is not, as may be applicable, in breach of sections 66, 107, 137 or I 82 of. the Constitution."

Held *(Unanimously dismissing the Petition):*

1. *On What governs qualification and disqualification of candidate to contest election to elective office -*

Where the Constitution has stipulated the qualifications to be attained by a person contesting or seeking to contest for any elective office created by the Constitution, the courts cannot create or import into the Constitution any other qualifying or disqualifying factor. Thus, qualification or disqualification of candidates to contest election is exclusively determined within the context or scope of the Constitution, and nothing can be added to it. In other words, the Constitution being the ground norm is superior to any other law, including the Electoral Act. Therefore, where the Constitution has qualified a person or candidate to contest an election, no other Law, except the Constitution itself can disqualify him. (Agi v PDP (2017) 17 NWLR (Pt. 1595) 386; 4.N.PP. v Usman (2008) 12 NWLR (Pt. 1100) 1; PDP v. LN.E.C. (2014) 17 NWL.R (Pt. 1437) 525; Nwaogu v Atuma (2013) 11 NWLR (Pt. 1364) 117; Balewa v. Muazu (1999) 5 NWLR (Pt.604) 638; Faleke v IN.E.C. (2016) 18 NWILR (Pt. 1543) 61; Tarzoor v. Loraer (2016) 3 NWLR (Pt. 1500) 463; Shinkafi v. Yari (2016) 7NWLR (Pt. 1511) 340 referred to.] (Pp. 425-426. paras. 1|-C)

2. *On Nature of issue of nomination of candidate for election by political party and when to raise –*

The issue of nomination or sponsorship of a candidate at an election by a political party comes under pre-election matters and should be challenged and determined before the conduct of the election. Therefore, a ground of election petition questioning the election of a person duly qualified to contest such election as required by the Constitution cannot be sustained where it is predicated on nomination or sponsorship of such candidate. Therefore, a petitioner who relies on non-qualification of his opponent to nullify the election must bring the facts of such non-n Sua qualification within the ambit of sections 131 and 137 of the 1999 Constitution. Section 142(1) of the 1999 Constitution, as amended, does not create additional qualifications or disqualifications for a candidate contesting for the office of President of Nigeria. In the instant case, the issue of nomination or sponsorship of the 4th respondent, being a pre-election matter, ought to have been ventilated by the petitioner before the Federal High Court, as the Presidential Election Petition Court had original jurisdiction to delve into the matter. Even if it did have the jurisdiction, the cause of action being on a pre-election, matter was statute-barred by virtue of section 285(9) of the 1999 Constitution (as amended). |Shinkafi v Yari (2016) 7 **NWLR (PLR o 1511) 340;** Ella v. Agbo (1999) 1DPEIR - 6609 (CA: 0iilA-G., Abia v. A.-G., Fed. (2002) 5 **NWLR (Pt. 763) YE 204;** PDP v I.N.E.C. (2014) 17 **NWLR (PL14371 (525** referred to.] (Pp. 369-3 70, paras. A-D)

3. *On Nature of issue of qualification or disqualification of candidate to contest election for office of President of Nigeria and when to raise –*

The issue of qualification or disqualification of a candidate to contest an election for the office of President of Nigeria is a constitutional one. The qualifications and disqualifications of a candidate as to contest election for the office of President are stipulated in sections 131 and 137 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). While the qualifications are enshrined in section 131, the disqualifications are engrained in section 137(1)(a) – (j) of the 1999 Constitution. It is apparent therefore that the issue of qualification of a

candidate to contest an election could be a ground in an election petition, though it may also ground pre-election matter where such issue of qualification or disqualification of a candidate arises from the primary election of the party by virtue of section 285(14) of the1999 Constitution.

Where the issue of qualification or disqualification arises before the election (pre-election) an action on that issue must be instituted pursuant to section 285(11) and (14) of the Constitution. (P 365, paras. C-I1).

4. *On Nature of issue of qualification or disqualification of candidate to contest election for office of President of Nigeria and when and how to raise –*

The issue of qualification or disqualification can only be ventilated on the grounds enumerated in sections 131 or 137 of the Constitution. That is why section 84(3) of the Electoral Act, 2022 stipulates that: political party shall not impose nomination, qualification. or disqualification criteria, measures, or conditions on any aspirant or candidate for any election in its constitution, guidelines, or rules for nomination of candidates for elections, except as prescribed under sections 65, 66, 106, 107, 131, 137, 177 and 187 of the Constitution." It therefore means that the conditions for qualification or disqualification are those prescribed under sections 131 and 137 in case of persons contesting for the office of President. Thus, where it is alleged in an election petition that a person is or was not qualified to contest election to the office of President of Nigeria, as stipulated in section 134(1)(a) of the Electoral Act, 2022, it is sections 131 and 137 of the Constitution of the Federal Republic of Nigeria that are applicable. Where election has been conducted and result declared, such election cannot be questioned on grounds of qualification save under sections 131 and 137 of This is supported by section 134(3) of the Electoral Act. [P.D.P. v. I.N.E.C. (2014) 17 NWLR (Pt.1437) 525 Kakih v. P.D.P(2014) 15 NWLR (Pt. 1430) 374; Ucha v. Onwe (2011) 4 NWLR (Pt. 1237) 386; Wada v. Bello (2016) 17 NWLR (Pt. 1542) 374; Alhassan v. Ishaku (2016) 10 NWLR (PI. 1520) 230 referred to.

5. *On Nature of issue of nomination or substitution of candidate for election by political party and who can challenge same and how-*

The issue of nomination of candidates by substitution is purely a pre-election matter. The only person with the locus standi to challenge the nomination is an aspirant who participated in the process of such nomination. In other words, apart from an aspirant established. In other words, both the mens rea and actus reus of the act prohibited by section 35 of the Klectoral Act, 2022 were not established. |PDP v. od I.N.E.C. (2023) 13 NWLR (P. 1900) 89 referred to.| (Pp. 836, paras. M-C; 435, para. E)

6. *On Procedure for substitution of candidate for election by political party and whether applies to Vice-Presidential candidate –*

By of section 33 of the Electoral Act, 2022, virtue where a political party has submitted the name of a candidate pursuant to section 29 of the Electoral Act, it cannot be allowed to substitute or change that candidate except in the event of death or withdrawal of such candidate. By the proviso thereto, the political party affected is enjoined to conduct a fresh primary election for the purpose of producing a new or fresh candidate to submit to the Electoral Commission. However, by virtue of section 142(1) of the 1999 Constitution which gives a Presidential candidate the sole discretion, authority or power of nominating his associate who shall run with him in the election as Vice-President, and the choice or nomination of a Vice-Presidential candidate not being the product of any primary election, the requirement to conduct a fresh primary election would not apply to the nomination of a Vice-Presidential candidate. In the circumstance, the grouse of the petitioner that when the 5th respondent withdrew his nomination as Vice-Presidential candidate of the 2nd respondent the 2nd respondent did not conduct another primary election for the purpose of producing a new Vice-Presidential candidate within the 14 days as prescribed by section 33 of the Electoral Act was unfounded. |PD.P. v IN.E.C. (2023) 13 NWLR (Pt. 1900) 89 referred to.| (Pp. 435-436. paras. E-A; paras. D-F)

7. *On Right and power of Presidential candidate of political party to nominate his running mate and bac whether fettered-*

There is nothing in the Constitution which robs a Presidential candidate of I his right to nominate his associate who shall be his running mate for the office of President. There is also nothing that invalidates the nomination of' a new associate by a Presidential candidate as his running mate after the withdrawal of a previous associate, so long as the nomination of the new associate was submitted to 1.N.E.C. 90 days before the election as mandated by section 31 of the Electoral Act, 2022. Thus, the contention of the petitioner, that there was a gap of about 3 weeks between the period the 5th respondent expressed his intention to withdraw and his actual withdrawal or purported nomination, thereby invalidating the nomination of the 3rd respondent because the candidature of the 3rd respondent had lapsed and was no longer in a position constitutionally to nominate a running mate, was untenable. (Pp. 436-437, paras. H-D)

8. *Who can file election petition and whether on candidate at election necessary party in election petition instituted by his political party –*

By the use of the disjunctive word "or" in section 133(1) of the Electoral Act, 2022, it means that an election petition may be filed by the candidate alone, or the political party alone, or both of them. Section 133(1)(b) of the Electoral Act, 2022 entitles a political party, as the petitioner, to institute an election petition. A political party is not mandated to file an election petition only where its candidate has been joined as co-petitioner. Whilst it is proper for the candidate of the party to be so joined, there 3 is no law that compels a political party to Join its candidate in the petition. Afterall, the purpose of such joinder is so that the candidate be bound by any judgment or order of the court or tribunal but any non-joinder will not invalidate the petition. |**Buhari** v. Yusuf (2003) 14 **NWLR (P. 841) 446;** A.PC. v. PD.P. (2015) 15 **NWLR (Pt. 1481) 1** referred to.] (P. 383, paras. B-F)

9. *On Necessary respondents to election petition –*

Section 133 of the Electoral Act defines persons who are necessary parties in an election petition. Generally, necessary respondents in an election petition are the persons whose election or return is complained of, and the electoral body that the election. Those are parties termed conducted statutory respondents. Since election petition generis, its procedure is strictly regulated by statute. Thus, where a person does not fall within the category of statutory respondents, he would not be a necessary party in an election petition. In the instant case, a holistic reading of the facts of the petition did not disclose any complaint against the 5th respondent. The only fact that related to the 5th respondent, relevant to the petition, was the act of withdrawal of his candidacy as the running mate of the 3rd respondent. That was an act that occurred within the pre-election period, and therefore could not amount to any act done by the 5th respondent at the election. It could not therefore ground any complaint by the petitioner against the 5th respondent in an election petition. It may be relevant in a pre-election matter but not in an election petition. There was no claim against the 5th respondent and the reliefs sought in the petition would not in any way affect the 5th respondent as he did not participate in the election, either as a candidate or agent of the 2nd respondent, and no declaration was made in his favour by the 1st respondent. In the circumstances, the objection of the 5th respondent to his joinder in the petition had merit and his name was accordingly struck out the petition. [Agbareh v. Mimra (2008) 2 **NWLR (Pt.1071) 378;** A.PC. v PD.P. (2015) 15 **NWLR (Pt.1481) 1;** Buhari v. Yusuf (2003) 4 **NWLR (PI. 841) 446;** Waziri v. Gaidam (2016) 11 **NWLR (Pt. 1523) 230** referred to and applied.) (Pp. 387-388, paras. B-D; G-B)

10. *On Principles governing interpretation of Constitutional provisions –*

The general principles of interpretation of the Constitution which is t the Supreme Law of t the land is that mere technical rules of interpretation of statutes are, to some extent, to be avoided in a way as not to defeat the principles of government. Thus, where the words used are clear and unambiguous, a literal

interpretation should be applied. In the interpretation therefore, the provisions of the Constitution are to be accorded holistic interpretation so as to avoid ambiguity and arrive at the true intention of the legislature. The court must limit itself to the words used in the Constitution without resort to any external materials. | Sani v. President, F.R.N. (2020) 15 **NWLR (P. 1746) 151:** Amadi v. I.N.E. C. (2013) 4 **NWLR (Pt. 1345) 595;** Agj v.P.D.P (2017) 17 **NWLR (Pt. 1595) 386;** Nyesom v. Peterside (2016) 9 **NWLR (Pt. 1512) 452** referred to.] (P 425, paras. B-E)

11. On Meaning and conditions for application of issue estoppel –

Issue estoppel arises when an issue has been decided upon to finality by a court of competent jurisdiction. In other words, once an issue has been raised and distinctively determined between the parties, neither party can be allowed to fight that issue all over again. The same issue cannot be raised by either party again in the same or subsequent proceedings except in special circumstances.

For issue estoppel to apply, the following conditions must be satisfied:

(a) The same question was decided in both proceedings;

(b) The decision which creates the estoppel must be final; and

(c) The parties to the judicial decision or their privies to the proceedings in which the estoppel is raised must be the same.

The three elements must co-exist, and in order to determine whether they exist, the court will closely examine the reasons for the judgment and other relevant facts that were actually in issue in the proceeding. In the instant case, it was apparent that the parties in the earlier case were not the same as in this petition. Although the issues were the same, they were not resolved to finality in the previous case: Appeal No: CA/ABJ/CS/108/2023 in which the action was struck out on ground of lack of locus standi by the trial court which the Court of Appeal affirmed on appeal. Thus, the

objection of the respondents to the petition on that ground failed. |Oyekola v. Amodu (2017) LPELR - 42391 (CA); 0.S.PM. Ltd. v. Nibel Co. (Nig) Ltd. (2017) 3 NWILR (Pt. 1552) 207; Dasuki y, FRN. (2018) LPELR- 43969 (CA); Adone v Ikebudu (2001) 14 **NWLR (Pt. 733) 385;** Tukur v. Uba (2013) 4 NWLR (Pt. 1343) 90; Selto v. Ekpe (2000) 3 **NWLR (PL. 650) 678;** Oshoboja v. Amida (2009) 18 NWILR (PL. 1172) 188; Oleksandr v. Lonestar Drilling Co. Lid. (2015) 9 NWLR (Pt.1464) 337 referred to and applied.] (Pp. 380-381, paras. F-D; 428-429. paras. G-B)

12. On Meanings of and distinction between judgment in personam and judgment in rem and effect of each –

A judgment in personam is a judgment against a persons who are parties or privies to the particular suit or proceeding alone. It is referred to as judgment inter parties. It is a judgment binding on the parties to the action alone. A judgment in rem, on the other hand, is a judgment that determines the status of a person or thing as distinct from the particular interest of a party to the litigation. It is referred to as a judgment contra-mundum, binding on the whole world. It is therefore binding, not only on the parties to the dispute but even on non-parties. Therefore, once the status of a person or thing has been pronounced upon by a court of competent jurisdiction, no person is permitted to assert the contrary of what the court has determined. A judgment in rem therefore, is an adjudication which pronounced upon the status of a particular subject at on matter, by a court of competent jurisdiction.

In the instant case, it was not in doubt that the subject matter in exhibit XI: P.D.P. v I.N.E.C. (unreported) SC/CV/501/2023 delivered 26h May 2023, reported in (2023) 13 NWLR (Pt. 1900) 89 was in respect of the alleged double nomination of the 4th respondent as the Vice-Presidential candidate of the 2nd respondent in the Presidential election of 25th February, 2023. That was the same issue raised in this petition as grounding the disqualification of the 3rd and

4th respondents. Thus, the issue of double or even multiple nomination of the 4th respondent as the Senatorial candidate and Vice-Presidential candidate of the 2nd respondent in the general election of 25th February 2023 had been settled to finality. It was a judgment in rem, binding on the parties to this petition and, in fact, the entire world. Being the judgment of the Supreme Court, no person is permitted to again raise and litigate on it in any other action or proceeding. Consequently, the petitioner could not question or seek the disqualification of the 3rd and 4th respondents from contesting for and occupying the seat of President and Vice-President of Nigeria, on ground of double or multiple nomination of the 4th respondent. |Gbemisola v. Bolarinwa (2014) 9 **NWLR (Pt. 1411) 1:** Yanaty Petrochemical Ltd v. E.F.C.C. (20 18) 5 **NWLR (P. 1611) 97;** Ladejobi v. Oguntayo (2015) LPELR-41701 referred to and applied.] (Pp. 430, paras. C-G: 433, paras. E-l)

13. On Status and efficacy of concurring or contributory judgment –

A contributory or concurring judgment has equal weight as the leading judgment. It is part of the leading judgment and therefore has the same force and binding effect. The mere fact that a concurring contributory judgment contains what is not in the leading judgment would not whittle down its binding effect. [Olufeagba v Abdul- Raheem (2009) 18 **NWLR (Pt. 1173) 384** referred to.] (P. 429, paras. F-11)

14. On Meaning, connotation and varieties of abuse of court process –

Abuse of court or judicial process simply means the use of a court process mala fide or in bad faith to the annoyance of the opponent. One variety of it is the institution of multifarious actions between the same parties with regard to the same subject matter and same issue, in the same or another court. In this case, the originating summons in suit No. FHC/ABJ/CS/1275/2022 was instituted in the Federal High Court, Abuja on 27" July, 2022. Being a pre-election matter, it ought to have been determined within 180 days as required by section 285(10)

of the ben 1999 Constitution. It therefore lapsed in January 2023, about a month before the election in question herein was conducted. Since the petition was instituted on 20th March 2023 when suit No. FHC/ABJ/CS/1215/2022 was no longer alive, there was no abuse of court process, and the objection to the petition on that ground was dismissed. |Indabawa v.Magashi (2016) LPELR - 41626 (CA); Umeh v. Inu 2008) 8 **NWLR (PL. 1089) 225** referred to.| (P 38O, paras. B-E)

15. *On Sui generis nature of election petition and implication thereof –*

An election petition by nature is sui generis, of its own kind or class. It is not like a claim of debt, in contract or in tort. It has its own character and It is unique by its nature. The slightest non-compliance with a procedural step which otherwise could either be cured or waived in ordinary civil proceedings could result in a fatal consequence to the petition. Election petition as a special proceeding is specifically regulated by the Constitution of the Federal Republic of Nigeria, 1999, the Electoral Act and other Rules of Procedure such as the Federal High Court (Civil Procedure) Rules and Practice Direction of the Honorable President of the Court of Appeal for the hearing of the election petition and the election petition appeals. Buhari v. Yusuf (2003) 14 **NWLR (Pt. 841) 446;** Hassan v. Aliyu (2010) 17 NWLR (Pt. 1223) 547; Lokpobiri v. A.P.C. (202 1) 3 **NWLR (Pt. 1764) 538;** Oke v. Mimiko (No.1) (2014) 1 **NWLR (Pt. 1388) 225;** Eze v. Umahi (2023) 6 **NWLR (Pt. 1880) 383;** Nyesom v. Peterside (2016) 7 NWLR (Pt. 1512) 452 referred to.] (P. 438, paras. B-F)

NOTABLE PRONOUCEMENTS:

On Notion of justice in election petitions **Per ADAH, J.C.A.** at page 439, paras. E-F:

"When a court is called upon to determine an election dispute, he is called upon to do justice. Our notion of doing justice is not that of doing a justice according to the

whims and caprices of the Judges or the parties. It must be justice according to law. Justice according to law is also that which is neither based on technicality nor justice according to the suggestive clout of pressure groups, but such as substantially meets the demands of justice. This with all respect, is what we have done in t the lead judgment."

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delivered on the 24th March, 2023

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Lord Denning: What Nest in the Law, Pp. 5-6

Petition:

This was a petition challenging the return by the 1st respondent of the 2nd, 3rd and 4th respondents as duly elected following the election to the office of President of the Federal Republic of

Nigeria held on 25h February 2023. The Court of Appeal, sitting as the Presidential Election Petition Court, in an unanimous decision, dismissed the petition.

History of the Case:

Court of appeal:

Division of the Court of Appeal to which the appeal was brought: Presidential Election Petition Court, Abuja Names of Justices that sat on the appeal: Haruna Simon Tsammani, J.C.A. (Presided and Read the Leading Judgment); Stephen Jonah Adah, J.C.A.; Misitura Omodelc Bolaji-Yusuff, J.C.A.; Boloukuromo Moses Ugo, J.C.A.; Abba Bello Mohammed, J.C.A.

Petition No.: CAVPEPC/04/2023

Date of Judgment: Wednesday, 6th September 2023

Counsel:

Andrew Nwajim Malgwi, SAN (with him, G.A. ldiagbonya, Esq.; J.O. Olotu, Esq.; Joyce Torkula, Esq; Ndidi Naku, Esq. and I.J. Ashaku, Esq.) - for the Petitioner

Sir Stephen Adehi, SAN; TM. Inuwa, SAN; Alhassan A. Umar, SAN (vith them, Dr. Patricia Obi, Esq.: Wendy Kuku, Esq. and M.A. Attah, Esq) -for the 1st Respondent

Prince L.O. Fagbemi, SAN; Chief Adeniyi Akintola, SAN;

Aliyu O. Saiki, SAN and A.M. Rafindadi, SAN (with them,

Ahmad E-Marzu4, Esq; Omosanya Popoola, Esq and Folake Abiodun, Esq) - for the 2nd Respondent

Chief Wole Olanipekun, SAN; Chief Akin Olujinmi, SAN, Yusuf Ali, SAN; Babatunde Ogala, SAN; Funmilayo Quadri, SAN (with them, A.R. Arobo, Esq: Akintola Makinde, ,Esq and Yinka Ajenifuja, Esq) - for the 3rd & 4th Respondent

Dr. Rowland Otaru, SAN; A.A. Malik, SAN and O.R. Chief Yomi Aliyu, SAN (with them, Chris E. Agbiti, Esq; Gabriel M. Ishom, Esq; G.M. Ishom; Esq, O.R. Iyere; Esq and Edeji

Adaeze; Esq) -for the 5th Respondent

TSAMMANI, J.C.A. (Delivering the Leading Judgment): The petitioner herein (Allied Peoples Movement) participated in the Presidential Election conducted by the 1st respondent ton the 25/2/23 by sponsoring a candidate (Ojei Princess Chichi). Aggrieved by the declaration and return at the election, has vide its petition filed on the 20th day of March, 2023 prayed this court, at paragraph 3| of the petition, to grant it the following reliefs:

31. Whereof your petitioner claims and prays as follows:

(i) That it may be determined that:

(ii) (a) The 3rd respondent was not qualified to contest as the Presidential candidate of the 2nd respondent as at 25th February, 2023, when the Presidential Election was conducted by the 1st respondent in the Federal gravely prejudiced if those infracted paragraphs in the petitioner's reply to the 2nd respondent's reply to the petition are allowed.

The motion is supported by an affidavit of 6 paragraphs deposed to by Emmanuel Okon, a Litigation Secretary in the Law firm of Lateef O. Fagbemi & Co, Principal and lead counsel to the 2nd respondent/applicant. A written address was filed along. with the application. In response, the petitioner/respondent filed a counter affidavit of 7 paragraph along with a written address. A written reply on points of law was also filed by the 2nd respondent/ applicant.

Now, in arguing the motion, learned senior counsel to the 2nd respondent/applicant contended that, this motion is filed because various averments in "Part B" of the petitioner's reply, offend paragraphs 16(1) and 16(1)(a) of the 1st Schedule to the Electoral Act, 2022 as same constitute a rehash of the petition, or are unduly repetitive of the facts already in the petition which was filed on the 20/3/2023 and also raise fresh issues. To that end, two issues were set down for determination by this court:

1. Whether this application can be heard and determined by this honourable court before or outside the prehearing session?

2. Whether the petitioner's reply to the 2nd respondent's reply to the petition filed on 20th April, 2023 and/ together with all the accompanying statements on oath are not incompetent and liable to be struck out in the entire circumstances of this petition?

The first issue raised here is unnecessary as the petitioner has not joined issue with the 2nd respondent on it. That procedure is the right one sanctioned by paragraphs 18(7)(d) and 47(1) of the First Schedule to the Electoral Act, 2022.

On the 2nd issue, learned senior counsel for the 2nd respondent/ applicant submitted that, by the specific provisions of the Electoral Act, 2022, particularly paragraph 16(1)(a) thereof, prohibit

raising of new facts in a petitioner's reply. Therefore, that it is not usually necessary where no new case has been put up, to file a petitioner's II reply. The cases of Adepoju v. Awoduyilemi (1999) 5 **NWLR (PL. 603) 36-4 at 382**; Olubodun v. Lawal (2008) All FWLR (Pt. 434) 1468 at 1501 and P.D.P. v. I.N.E.C. (2022) 18 **NWLR (Pt. 1863) 653** were cited in support. The cases of Ogboru v. Okowa (2016) 11 **NWLR (Pt.1522) 84** and Sylva v. INEC (2018) 18 **NWLR (PL. 1651) 310** were also cited to further submit that, the contested paragraphs of the petition are in violation of paragraphs 16(1) and 16(1)(a) of the 1st Schedule to the Electoral Act, 2022. That, no new facts arose from the 2nd respondent's Reply to the petition as to require the petitioner to plead such contested averments. It is therefore argued that, such averments were attempts by the petitioner to add to the contents of the petition. The cases of Dingvodi v Wamako (2008) 17 **NWI.R (Pt.1116) 385** and Ghefin v. Hassan & ors (2015) LPELR-40453 (CA) were cited.

Learned senior counsel for the 2nd respondent/applicant went on to submit that, a clear interpretation of paragraphs 16(1) and 16(1)(a) of the 1st Schedule to the Electoral Act, 2022 would show that, the petitioners are entitled to file a reply to the respondent's reply only where the 2nd respondent's reply has raised new issues of facts in defence of its case, and the new issues so raised have not been dealt with by the petitioner. That the new issues so raised shall not amount to bringing new facts, grounds or prayers tending to amend or add to the contents of the petition filed.

It is then contended by learned senior counsel for the 2nd respondent/applicant that, the averments in paragraph 23 of the petitioner's reply relates to the issue of time frame within which the 3rd respondent expressed his desire to withdraw and when he withdrew from the Senatorial race, which issue was never raised by either the petition or the 2nd respondent in her reply to the petition. Similarly, that the averments in Part "B", paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17(1), (ii), (iii), (iv) and (v), 18, 19, 20,21, 22 and 24 of the petitioner's reply constitute mere rehash or repetition of the averments in paragraphs of the petition, which are at best additional facts to those contained in the petition or a rehash G of same. That in such circumstances, the 2nd respondent will have no opportunity to controvert same.

Learned senior counsel for the 2nd respondent then submitted that it was in furtherance of those offending paragraphs that depositions in the accompanying Statements on Oath were made.

That the effect is that those witness Statements on Oath filed together with the invalid petitioner's reply are irregular and liable to be struck out. The cases of Obot v. C.B.N. (1993) 8 **NWLR (Pt. 310) 140** and Unity Bank Ple v. Bouari (2008) 7 **NWLR (PL 1086) 372** were cited in support. The cases of Orji v. Ugochukwu (2009) 14 **NWL.R (Pt. 1161) 207** at 296-297 and Ogboru v. Okowa A (2016) 11 NWLR (Pt. 1522) 84 were then cited to submit that if the petitioner's reply is struck out, the sworn statements as well as exhibits intended to prove those averments should also be struck out, since they go to no issue. The cases of Abayomi v. A.-G. Ondo State (2006) 8 **NWLR (Pt. 982) 211,** Bayero v. Mainasara & Sons B lad (2006) 8 NWLR (Pt.982) 391 and Buhari v. I.N.E.O. (2008) 4 **NWLR (Pt. 1078) 546** at 601 were also cited in support.

The learned senior counsel for the petitioner/respondent submitted that laws are meant to be obeyed and when a law or rule stipulates a method of doing something, only that method is to be C followed. The case of Amasike v. The Registrar General, C.A.C. & Anor (2010) LPELR456 (SC), (2010) 13 **NWLR (Pt. 1211) 337** was cited in support. That the only infraction contemplated by paragraph 16(1) of the First Schedule to the Electoral Act, 2022 is where the petitioner introduces or adds new facts, new grounds D or new prayers tending to amend or add to the contents of the petition filed. However, that in the instant case, the averments in the paragraphs of the petitioner's reply which the 2nd respondent complains of, do not in any way amount to repetition or rehash of the petition but clear response to the 2nd respondent's reply. That paragraph 23 of the petitioner's reply is in response to the issue of fact relating to the lapse of the candidacy of the 2nd respondent which was introduced in the 2nd respondent's reply to the petition.

It is then argued that paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17(i), 17(ii), (iii), (iv) and (v), 18, 19, 20, 1 21, 22 and 24 of the petitioner's Reply are not new facts, rehash or repetition of averments in the petition filed. The case of Globe Motors Holdings (Nig.) Ltd. v. Ibraheem (2021) LPELR - 54550 (CA) was cited in support. That the petitioner merely replied to the new issues raised by the 2nd respondent; therefore, the cases cited by G the 2nd respondent/applicant are not applicable in the circumstances of this petition.

In reply on points of law, learned senior counsel for the 2nd respondent/applicant contended that, the arguments presented by the petitioner do not represent the position of the law on the il **[2023]** requirements of pleadings. That where, as in the instant case, the reply of the 2nd respondent merely met the specific allegations of the petitioner without introducing any new issue, the petitioner is not at liberty to respond by filing a reply. That the petitioner had copiously pleaded the exact facts at paragraphs 28(ii) and (iii) of the petition and the reply of the 2nd respondent thereto, meant that issues had been joined by the parties in respect of that issue: therefore, the filing of a reply on it is not permissible in law. We were accordingly urged to discountenance the petitioner's Written Address and to grant this application.

The 3rd and 4th respondents also by a motion on notice filed on the 13/5/2023 sought the following reliefs:

1. An order, striking out the entire reply filed by the petitioner on 20th April, 2023, together with the accompanying witness statements on oath, list of witnesses to be relied on and the list of additional documents.

2. Further or in the alternative to prayer 1 above, an order striking out paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 of the petitioner's reply under the heading: "Petitioner reply to the 3rd and 4th respondents" reply to the petition") filed 20th April, 2023, to the applicant's reply to the petition.

3. And for such further order or orders as this honourable tribunal may deem fit to make in the circumstances. The grounds upon which the application is predicated are as follows:

(i) Petitioner had filed its petition on 20th March, 2023 premising same on I ground as indicated on paragraph 15 of the petition.

(ii) 3rd and 4th respondents (respondents) accordingly filed their reply to the petition, alongside a notice of preliminary objection on the competence of the said petition on several grounds.

(iii) The petitioner in its purported reply to the applicants' reply which they filed on 20th April, 2023 have, vide several paragraphs of the said reply, raised and/or introduced new facts which are overreaching to the applicants who can no longer reply to the purported reply.

(iv) Petitioner's reply aims at substantially altering the grounds and reliefs in the petition as originally filed.

(v) Petitioner is out of time statutorily allowed for A amendment of election petition.

(vi) The reply dated and filed 20th April, 2023, is in breach of paragraph 16(1)(a) of the First Schedule to the Electoral Act, 2023

(vii) Pursuant to (i) (vi), supra, the Tribunal is without jurisdiction to countenance the reply.

The motion is supported by an affidavit of 8 paragraphs together with a written address. In opposition, the petitioner/respondent filed a counter-affidavit of seven (7) paragraphs on the 16/5/2023 together with a Written Address. In arguing the application, learned senior counsel for the 3rd and 4th respondents raised one issue for determination as follows:

> "Having regard to the alien nature of the petitioner's reply filed 2pt April, 2023 purporting to reply to the applicants' reply dated 12th April, 2023, whether this Honourable Tribunal will not grant the applicant's application as prayed.

Learned senior counsel then submitted that a reply to any process is not an avenue or opportunity to explore at large in order to cover new issues or open new frontiers. The case of Ughuterbe E v. Shanono (2004) 16 NWLR (Pt. 889) 300 at 318 was cited in support. That a petitioner's reply is circumscribed by paragraph 16(1)(a) and (b) of the 1 Schedule to the Electoral Act, 2022. That the word used in the said paragraph is "shall", which is a mandatory prescription or compulsion. The cases of Bamaiyi v. A.- F G., Federation (2001) 12 NWLR (Pt. 727) 468 at 497 and Achineku Ishaghe (1988) 4 NWLR (Pt. 89) 411 were cited in support and to further submit that the imperatives of paragraph 16(1)(a) are:

(i) That no new facts shall be brought;

(ii) That no new grounds shall be allowed;

(iii) That no new prayers are permissible; off

(iv) That item (i), (ii) and (iii) supra are prohibited, in so far as they tend to amend or add to the contents of the petition already filed.

That in paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 1 16, 17, 18, 19, 20 and 21 of the petitioner's reply, the petitioner introduced new facts and issues which are overreaching to the respondents in relation to the facts of the respondent/applicant's sponsorship vis-à-vis the 5th respondent, allegations of multiple nomination, the lateness of the petitioner's challenge, wrongful and unlawful return, the virus of a joint ticket, acceptance of nomination. etc, which are not tethered in the original petition. That those facts and issues introduced had the purpose of systematically amending the petition' since the time statutorily allotted for any amendment has long lapsed.

Learned senior counsel for the 3rd and 4th respondents submitted that, the petitioner's reply does not proffer any reply to the respondents' reply but raises completely new issues unconnected with the respondents' reply. The cases of Dingyadi v. Wamako (2008) 17 NWLR (PL 1116) 395 at 443: Adepoju v. Awoduyilemi (1999) 5 NWLR (PL. 603) 364 at 382-383 and Airhiavbere v. Oshiomhole (2013) All FWLR (Pt. 687) 782 at 792 reported as Oshiomhole Airhaivbere (2013) 7 NWLR (Pt. 1353) 376 were then cited to submit that, a petitioner's reply is not a license for the petitioner to rake in new issues tending to amend or add to the contents of the petition.

On the issue of petitioner's witness statement on oath filed in reply to the respondent's reply, the case of Orji v P.D.P. (2009) 14 NWLR (PL. 1161) 310 at 403-404 was cited to submit that, there is no provision for the frontloading of witness depositions through a petitioner's reply. We were then urged to hold that, the witness statement on oath attached to the petitioner's reply cannot be countenanced, and to have same struck out. On that note, we were urged to strike out the entire petitioner's reply to the 3rd and F4 respondent's reply filed on the 20th April, 2023.

The response of the learned senior counsel for the petitioner/respondent is in line with his arguments in response to the motion filed by the 1 and 2nd respondents filed on the 06/5/2023, and 8/5/2023 respectively. Of note here, is the contention of learned G senior counsel to the petitioner/respondent that the petitioner's reply to the 3rd and 4th respondents' reply do not raise or introduce any new facts separate from the ones already established in the petition. That, it is the 3rd and 4th respondents who have raised new issues in their reply to the petition that have necessitated a reply by 11 the petitioner. The case of Sani A. & Anor v. Akwe & Ors (2019) EPELR-48756 (CA) was cited in support.

On the witness statement filed along with the petitioner's reply. learned senior counsel for the petitioner/respondent submitted that the case of Orji v. P.D.P. (supra) cited by the applicants is inapplicable in the instant case. That in Orji v. P.D.P. the petitioner A sought to call a new witness entirely different from the witness mentioned on the list of witness filed with the petition. The case mendedayo v. Christine (2021) 9 NWLR (Pt. 1780) 148 at 180 was then cited to submit that the witness statement attached to the reply of the petitioner to the 3rd and 4th respondents' reply is valid as there is no law that prevents a petitioner from filing a witness statement in support of its reply. We were accordingly urged to dismiss the objection.

Now, it is apparent that the 1" respondent's motion filed on the 06/5/2023, the 2nd respondent's motion filed on the 08/5/2023, and c the 3rd and 4th respondents' motion filed on the 13/5/2023 are all aimed at having certain paragraphs of the petitioner's replies to the respective replies of the respondents' replies to the petition struck out. The common ground in all the applications is that the averments in the petitioner's reply have introduced new issues, facts and/or D grounds to the petition. Furthermore, that some of the averments are rehash or repetition of the averments in the petition filed. That those averments in the petitioner's replies offend paragraph 16(1) (a) and (b) of the First Schedule to the Electoral Act, 2022. The said paragraph to the Electoral Act (supra) stipulates that:

16(1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with the petitioner shall be entitled to

file in the registry, within five days from the receipt of the respondent's reply, a petitioner's reply in answer to the new issues of fact, so that -:

(a) The petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him; and

(b) The petitioner's reply does not run counter to the provisions of paragraph 14(1).

In my view, the provisions of paragraph 16(1) of the First Schedule to the Electoral Act, 2022 are clear, unequivocal and unambiguous. It does not therefore, require any technical rule of II interpretation to be understood. From a holistic reading of that provision, it would be seen that it is meant to explain the purpose of petitioner's reply to the respondent's reply. Its purpose is to raise answers to the defence, or any fact which must be specifically pleaded and which has the effect of destroying the respondent's defence, or make it not maintainable. The bottom line is that, a petitioner is permitted by the First Schedule to the Electoral Act, 2022, to file a reply where the respondent to the petition has in his reply raised new issues of fact in the defence, which fact the petitioner has not dealt with in the petition. However, in doing so, the petitioner's reply shall not introduce new facts, grounds or prayers tending to amend or add to the contents of the petition. See A.P.C. v. P.D.P. (2015) 15 NWLR (Pt. 1481) 1 at 31.

It is therefore clear that paragraph 16(1) of the First Schedule to the Electoral Act does not permit a petitioner in his reply to introduce or bring in any new issue or fact which ought to have been raised in the petition itself. In other words, a petitioner cannot in the guise of a reply to a respondent's reply, introduce a new issue of fact which was never raised in his petition nor raised by the respondent. To do that will amount to amending or adding to the petition, and also taking the respondent by surprise because at that stage, the respondent will not be in a position to react to such new issue or fact. It will therefore breach the respondents fundamental right to fair hearing. Therefore, the petitioner is not permitted to repair or rehash his averments in the petition in such a way that it will amount to an amendment or reconstruction of the petition. See Dingyadi v. Wamako (2008) 17 NWLR (Pt. 1116) 395.

With the state of the law as stated above, at the back of my mind, I have endeavoured to scrutinize the pleadings in the respondents' respective replies to the petition, vis-à-vis the specific paragraphs of the petitioner's replies complained of. I start with the 1" respondent's complaint. The 1" respondent's complaint is against paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the petitioner's reply. I have carefully studied those paragraphs of the petitioner's reply. It is my view that paragraphs 1,6, 7, 8, 12 and 14 of the petitioner's reply to the 1" respondent's reply are competent as they are proper replies to the 1" respondent's reply. However, paragraphs 2, 3, 4, 5, 9, 10, 11, 13 and 15 of the said petitioner's reply are not competent as they are either rehash of facts pleaded in the petition or they introduce and/or add new facts to the petition. Being incompetent, they are hereby struck out.

The complaint of the 2nd respondent is against paragraphs 1.2, 3,4,5,6,7,9, 10, 11, 12, 13, 14, 15, 16, 17(i), (ii), (iii), (iv) and (v), 18, 19, 20, 21, 22, 23 and 24 (Part B) of the petitioners reply to the 2nd respondent's reply to the petition. I have carefully considered pragraphs in the light of paragraph 16(1)(a) and (b) of the First Schedule to the Electoral Act, 2022.

It is settled law that where a respondent raises in his reply to the petition, fresh or new issues, it will be necessary for the petitioner to file a reply to the respondent's reply to the petition. At that stage, the petitioner may also file further written statement is on oath of witnesses he may wish to call in rebuttal of the new issues(s) raised by the respondent. This is because, any failure by the petitioner to reply or answer to those new issues raised by the C respondent will be deemed that the petitioner has conceded to such fresh or new issues. See Idris v. A.N.P.P. (2008) 8 NWLR (Pt. 1088) Land Dingyadi v Mammako (2008) 17 NWLR (PL. 1116) 395 at 442. That being so, the written statements on oath of witnesses, filed along with the petitioner's reply to the respondent's replies, in D proof of the paragraphs struck out are accordingly struck out.

In my view, paragraphs 1. 2, 4, 5, 6, 9, 11, 12, 13, 16, 17(ii), 22, 23 and 24 of the petitioner's reply to the 2th respondent's reply to the petition are either rehash of paragraphs in the petition, or introduced or added new facts to the petition. They are incompetent and accordingly struck out. I am also of the view that, paragraphs 1, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of

the petitioner's reply to the 3rd and 4th respondents' reply to the petition are mere rehash of the averments of the petition. They are in my view, incompetent and accordingly struck out.

This ruling is in respect of a motion on notice filed by the 1 respondent on the 7/5/2023 seeking the following reliefs(s):

1. An order of this honourable tribunal striking out the petition for being incompetent and an abuse of court process.

The grounds upon which this application has been predicated are as follows:

1. The ground/particulars of the petition challenging the election of the 3rd respondent on the validity of their nomination borders on pre-election matters pursuant to the provision of sections 29(5) and 84(14) of the Electoral Act, 2022, as such is statute barred which divest this Honourable Tribunal the requisite jurisdiction to entertain it.

2. Issues relating to qualifications of candidates as the basis of validity of nomination in any election are of pre-election matters instituted at the Federal High Court, before elections are conducted following the publication by the 1 respondent of the list of candidates for elective positions.

3. That the petitioner did not file any action against the nomination and/or qualification of the 3rd respondent at the Federal High Court to ventilate its grievances al within the time allowed by Law.

4. That equally, the petitioner lacks the locus standi to question the validity of the nomination of the 3th and 4th respondents pursuant to section 84(14) of the electoral Act, 2022

5. That by virtue of the decision in A.P.C. v. P.D.P. & Ors. (2019) LPELR-49499 (CA), the petitioner lacks the locus standi to present this petition.

6. In view of the above, this honourable tribunal lacks the requisite jurisdiction to entertain this petition.

The motion is supported by an affidavit of six (6) paragraphs deposed to by one Gift Nwadike, Litigation Secretary in the Law Firm of Dikko and Mahmoud, Solicitors to the 1st respondent/ applicant. It is also accompanied by a Written Address filed in support of the motion. In response, the petitioner/respondent filed a counter affidavit on the 14/5/2023 consisting of seven (7) paragraphs, deposed to by one Kalu Kenneth Okoric, Litigation Secretary in the Law Office of Messrs O.M. Atoyebi, SAN & Partners. A written address was also filed along with the counter-affidavit.

Arguing the application, learned senior counsel for the 1st respondent/applicant contended that the jurisdiction of this court to entertain election petitions is derived from section 239(1)(a) of the 1999 Constitution and 130 and 134. of the Electoral Act, 2022. The cases of Obasanjo & Ors v. Yusuf & Anor (2004) LPELR- 2151 (SC), (2004) 9 NWLR (Pt. 877) 144 and Dankwamba v Abubakar & Ors (2015) LPELR-2571 (SC), (2016) 2 NWLR (Pt. 1495) 157 were also cited in support. That a thorough perusal of this pention will show that the grouse of the petitioner arises from the 5t respondent's withdrawal as the Vice-Presidential candidate of the 2nd respondent and the subsequent nomination of the 4th respondent as the Vice-Presidential candidate of the 2nd respondent. Furthermore, that the petitioner seeks to establish that the 2nd respondent's sponsorship of the 3rd respondent ceased to exist due to issues arising from the withdrawal of the 5th respondent as such Vice-Presidential candidate.

Learned senior counsel then argued that it has been settled in the case of Wada & Ors. v. Bello & Ors (2016) LPELR-47015 (SC), (2016) 17 NWLR (Pt. 1542) 374 that failure to nominate a running mate has no effect on the sponsorship by a political party for its candidate at an election. That such act cannot be linked to or added to the mandatory requirements for qualification for the office c of President as stipulated in section 131 of the Constitution. That in the circumstances, the 3d respondent having met the requirements of section 131 of the Constitution, his sponsorship could not be lost because of issues arising from the nomination of a running mate. Section 134(3)

of the Electoral Act, 2022 was cited in support. That D in the circumstances, this court is bound to dismiss this petition by virtue of section 134(3) of the Electoral Act, 2022.

It is further argued that an election tribunal does not have the jurisdiction to deal with any issue of disqualification or non- qualification arising from the nomination exercise of a political E party. The cases of Ucha v. Onwe (2011) LPELR 8085 (SC), (2011) 4 NWLR (Pt. 1237) 386 and Ukabam & Anor. v. Obi & Ors (2019) LPELR-48838 (CA) were cited in support and to further submit that the issue of nomination of a candidate is a pre-election matter which cannot be entertained by an election Tribunal. That such issue is strictly governed by section 84(14) of the Electoral Act, 2022. That in the circumstances, the petitioner was bound to approach the Federal High Court for redress.

Flowing from the above, learned senior counsel for the 1st respondent/applicant submitted that, the petitioner lacks the locus G standi to question the validity of the nomination of the 3rd and 4th respondents by virtue of section 29(5) of the Electoral Act, 2022. That, the petitioner not being a member of the 2nd respondent, has no locus standi to question the validity of the nomination of the 3rd respondents. In other words, that the petitioner who is not a member of the 2nd respondent nor an aspirant in the process of nomination of the 3rd and 4th respondents, lacks the locus to question the validity or otherwise of such nomination.

Learned senior counsel went on to submit that in the event this court holds that it has the jurisdiction to entertain this petition, the issue is statute barred, being a pre-election matter. Citing section 285(9) of the Constitution, learned senior counsel submitted that the petitioner deposed in paragraphs 21, 22 and 23 of the petition that it was aware that the issues arising from the nomination of the 4 respondent arose since the 14/7/2023. That since no suit was filed within 14 days since the cause of action arose, this petition is statute barred by virtue of section 285(9) of the 1999 Constitution. In other words, the ground of the petition as contained in paragraphs C 15 and 16 of the petition, having been filed in violation of section 285(9) of the Constitution is statute barred and this court has been deprived of jurisdiction to entertain same.

In response, learned senior counsel for the petitioner/respondent argued that this application is incompetent as the issues, grounds and facts in support have not been substantiated

by any relevant facts. The case of Ezeobi v. Daily Times (Nig.) Plc (2013) 17 NWLR (PL. 1382) 200 at 216 was then cited to submit that parties are bound by the reliefs sought on the motion paper and that a court is not entitled to deal with substantive issues at the interlocutory stage. That the issues raised by this motion relate essentially to the substantive matters to be decided in this petition. The case of Adedolapo & Ors v. The Military Administrator of Ondo State & Ors (2005) LPELR-7538 (CA) were cited in support.

It is then submitted by learned senior counsel for the petitioner/respondent that by virtue of section 239(1)(a) of the 1999 Constitution, this court has the jurisdiction to hear and determine whether the 3rd and 4th respondents were validly elected to the office of President and Vice-President respectively. That this court has the jurisdiction to countenance this petition as it relates to the G sponsorship of the 3rd respondent. That the petitioner admitted in paragraph 2.06 of the Written Address that for a person to be qualified for President of Nigeria, he must meet the requirements of section 131 of the Constitution and must not be in breach of section 137 of the Constitution. That in the instant case, the 3rd respondent It did not meet the Constitutional prescription of section 131(c) of the Constitution. The case of Afeez Adelowo Jimoh v. Yinusa Kazeem Ayandoye & Ors (2015) LPELR8006 (CA) was then cited to submit that the issues in this petition touching on qualification is interwoven around nomination and sponsorship. That the case of Wada & Ors. v. Bello & Ors (2016) LPELR-47015 (SC). (2016) 17 NWLR (PL. 1542) 374 cited by the 1st respondent/applicant is not helpful as same was decided under the Electoral Act, 2010 and therefore not relevant under section 134(3) of the electoral Act, 2022

Learned senior counsel for the petitioner/respondent went on to submit that, section 131 of the 1999 Constitution requires that a candidate for an election must be a member of a political party and be sponsored by that party. That in the circumstances, it is the validity of the nomination of a Presidential candidate on the nomination of his Vice-Presidential candidate. The cases of e PDP & Ors x Degi-Eremienyo & Ors (2020) LPELR-49734 (SC), (2021) 9 NWLR (PL. 1781) 274 and Atiku Abubakar v AGE (2007) 3 NWIR (PL. 1022) 601 at 642 were cited in support. That in the circumstances, this petition is not on pre-election matter as erroneously contended by the applicant and therefore not statute D barred. In other words, that the petition is not premised on section 285(14) of the Constitution but section 134(1) of the Electoral Act, 2022. The cases of

Fayemi v. Oni & Ors (2019) LPEL.R-49291 (SC), (2020) 8 NWLR (PL. 1726) 222 and Dangana & Anor v Lisman & ors (2013) 6 NWLR (Pt. 1349) 50 were then cited to E submit that the issue of qualification of a candidate at an election is both pre- and post-election matter which can be challenged in the Federal High Court or Election Tribunal.

Learned counsel for the petitioner/respondent then submitted that in the circumstances of this case, the period of 14 days prescribed by section 285(11) of the Constitution is not applicable to this petition. Rather, that it is the provisions of sections 131(c) and 142 of the Constitution, and sections 35 and 134(1) of the Electoral Act, 2022 that are applicable. The case of P.PA. & Anor v. Saraki (2000) I.PI:LR-8072 (CA) was then cited to submit that sections 31 and 33 G of the Electoral Act are not pre-election matters as argued by the 1 petitioner/applicant. The cases of Abubakar v. Yar 'adua (2008) 19 NWLR (Pt. 1120) | at 70: Oke v. Mimiko & Ors (2013) LPELR 21368 (SC); (No.1) (2014) 1 NWLR (Pt. 1388) 225; Lemachi & Anor v. I.N.E.C. & Ors (2019) LPELR-48928 (CA) and A.N.P.P. & Anar Axivi & Ors (2008) L. PELR-3781 (CA) were also cited in support.

On the issue of locus standi, learned senior counsel for the petitioner/respondent contended that, the applicant is under the misguided belief that the instant petition is a pre-election matter. That by section 133(1) of the Electoral Act, 2022 the petitioner has the locus to present the instant petitioner. That the case of A.P.C. V P.D.P. & Ors (2019) LPELR-49499 (CA) cited by the 1ª respondent/ applicant is not applicable to the facts and circumstances of this petition. That the issue has long been settled in Waziri & Anor v Geidam & Ors (2016) L. PELR-40660 (SC): (2016) 11 NWLR (Pt. 1523) 230 and Obot v. Etim & Ors (2007) LPELR-8071 (CA), (2008) 12 NWLR (Pt.1102) 754. We were accordingly urged to discountenance the application.

The 3rd and 4th respondents filed a similar motion on the 12/5/2023. Therein, the 3rd and 4th respondents prayed for:

1. An order of this honourable court, striking out and/ or dismissing this petition for being incompetent, fundamentally defective and vesting no jurisdiction on this Honourable Court to adjudicate thereon.

2. Further or in the alternative to (1) above, an order of this honourable court, striking out the grounds of the petition.

The grounds upon which the application is predicated are that:

i. The petitioner lacks the locus standi to institute this petition/maintain and claim the reliefs sought in the petition, which are related to the validity or otherwise of the nomination of the 3rd and 4th respondents to contest the election, subject matter of this petition.

ii. The reliefs sought do not confer any benefit on the petitioner.

iii. Further to (ii) supra, the entire petition is academic and frivolous, vesting no jurisdiction on this honourable court to entertain it.

iv. The petition is not properly constituted, as the 5th respondent cannot be made a party to an election petition under and by virtue of section 133(1)(2) and (3) of the Electoral Act, 2022.

v. Arising from (iv) supra, the honourable court is without jurisdiction to grant relief 2 of the petition, and the relief ought to be struck out.

Vi Pursuant to paragraph (v) above, all other reliefs Imola oil contained in the petition become otiose and liable to be struck out

vii. The petition centres on pre-election issues of A nomination and sponsorship of the 4th respondent as an associate/running mate of the 3rd respondent for the February 25, 2023 election to the office of the President of the Federal Republic of Nigeria.

viii. Issues of nomination and sponsorship of 3rd respondent's running mate are pre-election matters by virtue of section 285(14) (c) of the 1999 Constitution (as amended) and are not cognizable before this honourable court sitting as an election tribunal.

ix. This honourable court lacks the jurisdiction to entertain C pre-election related matters by virtue of section 84(14) of Electoral Act, 2022.

X. The time within which to ventilate pre-election issues / challenge the validity of the nomination/sponsorship of the 4th respondent as an associate/running mate of D the 3rd respondent has lapsed. Petitioner's cause of action (if any) by virtue of section 285(9) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is time/statute barred.

xi. The petition lacks necessary facts to support the alleged double nomination of the 4th respondent for election in more than one constituency.

xii. The petitioner, having participated in the Presidential Election, is estopped from challenging the legality of the nomination/sponsorship of the 3rd respondent as the 2nd respondent's candidate in the said election.

xiii. The issue of the locus standi of any other political party to challenge the nomination of the 4th respondent as the Associate or Running Mate of the 3rd respondent raised in the petition has been settled and decided by the Court G of Appeal in appeal No. CA/ABJ/108/2023 Peoples' Democratic Party v. All Progressives Congress & ors.. in the judgment delivered on the 24th day of March. 2023 against the position being adopted in this petition by the petitioner.

xiv. Alleged double nomination of the 4th respondent for election is not a recognized ground under sections 131, 137 and 142 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) for invalidating the election of the 3 and 4* respondent.

xv. Alleged irregularity in the nomination of an associate or running mate, or alleged invalidity of such nomination are not grounds of qualification or disqualification under section 131 and 137 of the 1999 Constitution of the federal Republic of Nigeria (as amended) or at all, and are not matters that are cognizable before an election tribunal.

xvi. The petition does not disclose any reasonable cause of action and liable to be struck out and/or dismissed on the following grounds:

a. The 2nd respondent (APC) did not at any time change or substitute her candidate for the office of the President. The only candidate whose name the 2nd respondent submitted to the 1 respondent pursuant to section 29 of the Electoral Act, 2022 was the 3rd respondent. Reliance of the petitioner on section 33 of the Electoral Act does not therefore disclose a cause of action.

b. The facts pleaded and relied on by the petitioner which centre on wrongful or invalid nomination of an associate or running mate are not cognizable under the Constitution, including section 131(c) of the Constitution. as grounds upon which the qualification of a candidate could be determined.

c. Section 142 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 35 of the Electoral Act, 2022 on which the petitioner has founded the petition are pre- election matters which do not constitute cause of action for an election petition, and are not justiciable before an election tribunal.

d. The facts pleaded and relied on by the petitioner in support of the petition do not disclose any cause of action founded on the provision of the Constitution as it relates to qualification or disqualification to contest for the office of the A President of the Federal republic of Nigeria and take further notice that at the hearing of this application, reliance shall be placed on the documents and processes already forming part of the record of this honourable court.

The application is supported by an affidavit of 5 paragraphs deposed to by one Adoga Moses, Litigation Clerk in the Law Firm dep Messrs Wole Olanipekun & Co and a Written Address. The petitioner/respondent countered by filing a counter affidavit of 5 paragraphs deposed to by Kalu Kenneth Okorie, litigation Secretary c in the Law Office of Messrs O.M. Atoyebi, SAN & Partners together with a written address.

In arguing the Motion, learned senior counsel for the 3rd and 4th respondents distilled one issue for determination as follows:

> "Having regard to the clear provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Electoral Act, 2022 and settled judicial authorities on the subject, whether this honourable court will not accede to the reliefs sought in this application.

Learned senior counsel submitted, first of all, that the petitioner lacks the locus standi to present this petition. That, the gravamen of this petition revolves around the nomination of the 3rd and 4th respondents as candidates for the Presidential election of 25/2/2022 and thus rooted in the combined provisions of section 285(14) of F the 1999 Constitution and section 84(14) of the Electoral Act, 2022. That by those provisions, only an aspirant may institute an action on issues connected to nomination and sponsorship of candidates as same is entirely an intra-party affair. The cases of Maihaja v. Geidam (2017) LPELR - 42474 (SC); (2018) 4 NWLR (Pt. 1610) G 454, Ukachakwu v. P.D.P. (2014) 17 NWLR (Pt. 1435) 134 at 182 and Uwazuruike v. Nwachukwu (2013) 3 NWL.R (Pt. 1342) 503 at 526 were cited in support. Furthermore, that the appropriate court to ventilate such grievance is the Federal High Court.

Learned senior counsel went on to submit that the alleged irregularity in the nomination of an associate or running mate, or alleged invalidity of such nomination are not grounds of qualification or disqualification under sections 131 and 137 of the 1999 Constitution. That in the circumstances, such matters are not cognizable before an election tribunal as eloquently captured in section 134(3) of the Electoral Act, 2022. That the provisions of sections 134(3) of the Electoral Act (supra), and sections 131 and 137 of the Constitution are very clear, unambiguous and unequivocal. That this court is bound to give those provisions their ordinary grammatical meaning. The cases of Abegunde v. O.S.II.A. (2015) 8 NWLR (Pt. 1461) 314 at 357, Marwa v. Nyako (2012) 6 NWLR (PL. 1296) 199 at 278 and Calabar Central Cooperative Study v. Ekpo (2008) 6 NWLR (PL. 1083) 362 at 388 were cited in support.

Learned senior counsel for the 3rd and 4th respondents went on to submit that, in any case, the issue of nomination is a pre- election matter in respect of which this court has no jurisdiction

to determine. That, the jurisdiction of this court on election matters is circumscribed by section 239(1)(a) of the 1999 Constitution (as amended). The cases of Obi v. INEC (2007) 11 NWL.R (Pt. 1046) 436 and Dickson v. Sylva (2017) 10 NWI.R (Pt. 1573) 299 at 333 were cited in support.

It is also argued by learned senior counsel for the applicants that, the petitioner was fully aware of the facts it alleges, nonetheless E proceeded to contest the Presidential election alongside the 3rd and 4th respondents without complaining. The cases of Sylva v. INEC & Ors (2016) 11 SC 52, (2018) 18 NWLR (PL. 1651) 310 and Ude v Nwara & Anor (1993) LPELR-3289, (1993) 2 NWI.R (Pt. 228) 638 were then cited to submit that the petitioner is deemed to have F waived its right to complain.

Learned senior counsel for the 3rd and 4th respondents also contended that, in the entire reliefs sought in the petition, the petitioner has not sought anything for its benefit. That the petitioner having scored inconsequential votes in the Presidential election, if G this court accedes to its prayers, it will not fetch it any benefit in terms of being returned as winner. That in that respect, the court would have ended up sanctioning a petition commissioned as a proxy litigation for the benefit of a third party. In other words, that the petition is of no utilitarian purpose to the petitioner. That Il it means that the petitioner, not having shown sufficient interest. threat or injury it will suffer, has no locus standi to have filed this petition. The case of Bakare v. Ajose-Adeogun (2014) AII FWLR (Pt. 737) 611 at 636; (2014) 6 NWLR (Pt. 1403) 320 was cited in support. On that note, we were urged to grant this application.

In response, learned senior counsel for the petitioner/ A respondent contended that this motion is misconceived and should be dismissed. Learned counsel then submitted that the applicants are under the misguided belief that this action is a pre-election matter. The cases of Waziri & Anor v. Geidam & Ors (supra) and Ohot v. Etim & Ors (2007) LPELR-8071 (CA), (2008) 12 NWLRB (PL. 1102) 754 were then cited to submit that, the petitioner has the locus to institute this petition by virtue of section 133(1) of the Electoral Act, 2023. Therefore, that this court has the requisite jurisdiction to countenance the petition under section 239(1)(a) of the 1999 Constitution.

Learned counsel for the petitioner/respondent also submitted that for a person to be qualified to contest for the office of President of Nigeria, he must satisfy the requirements of section 131 of the Constitution and must not be in breach of section 137 of the Constitution. That by the constitutional provision, where a candidate D is not a member of a political party and is not sponsored by that party, he cannot be qualified for the office at President of Nigeria. The case of Afeez Adelowo Jimoh v. Yinusa Kazeem Ayandoye & Ors (2015) LPELR - 8006 (CA) was then cited to submit that, the issues touching on qualification are interwoven around nomination E and sponsorship. That in that respect, the provision of section 142(1) of the Constitution makes the requirements of nomination and sponsorship inseparable. The cases of Atiku Abubakar v. A.- G.. Fed. (2007) 3 NWLR (Pt. 1022) 601 at 642 and P.D.P. & ors v. Degi-Eremienyo & Ors (2020) LPELR-49734 (SC); (2021) 9 F NWLR (Pt. 1781) 274 were cited in support.

On the issue of waiver, learned senior counsel for the petitioner/ respondent argued that, from the pleadings in the petition and replies of the applicants, it is clear that the petitioner participated in the election under reference, and accordingly has the right to file G the instant petition. Therefore, the cases of Sylva v. INEC (supra) and Ariori & Ors v. Elemo & Ors (supra) are inapplicable to the facts of this petition. That, the petitioner having participated in the election, is entitled to institute this petition. As a corollary to this issue, it was contended that, sections 133 and 134 do not require petitioner to show that the petition will confer benefit on him. That all the law requires is participation in the election.

Now, to determine the two applications filed by the 1 respondent, and 3rd and 4th respondents, it is necessary to refer to the grounds and facts upon which this petition is predicated. To that end, I find paragraph 15 and 17 of the petitions helpful. Therein, the petitioner pleaded that:

16. Your petitioner states that the ground upon which this petition is presented is that the 3rd respondent was at the time of the election not qualified to contest the election.

17. Your petitioner states that the 4th respondent was not qualified to jointly contest with the 3rd respondent for the Presidential Election held on 25th February. 2023, having been purportedly nominated by the 2nd respondent as its candidate for more than one office.

Now it is apparent that the sole ground for this petition is hinged on the qualification of the 2nd respondent. The issue of qualification or disqualification of a candidate to contest an election for the office of President of Nigeria is a constitutional one. That is why it is stipulated in section 134(1)(a) of the Electoral Act, 2022 that:

134(1) An election may be questioned on any of the following grounds -

(a) a person whose election is questioned was, at the time of the election, not qualified to contest the election;

The qualifications and disqualifications of a candidate to contest election for the office of President are stipulated in sections 131 and 137 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). While the qualifications are enshrined in section 131, the disqualifications are engrained in section 137(1)(a) - (j) of the 1999 Constitution (supra). It is apparent therefore, that the issue of qualification of a candidate to contest an election could be a ground in an election petition, though, it may also ground pre- election matter where such issue of qualification or disqualification of a candidate arises from the primary election of the party by virtue of section 285(14) of the 1999 Constitution. Where the issue of qualification or disqualification arises before the election (pre-election) an action on that issue must be instituted pursuant to section 285(11) and (14) of the Constitution.

It should be noted upon a quick and careful perusal of the pleadings in the petition that, the issue of disqualification of the 2 respondent rests solely on the issue of alleged invalid nomination of his running mate, to wit, the 3rd respondent. The issue of invalid nomination is captured by paragraphs 18, 19, 20 and 21 of the petition. For proper understanding it is pleaded by the petitioner as

follows:

18. The 3rd respondent was not qualified to contest for the office of President as he was not validly sponsored by the 2nd respondent as he did not have a validly nominated running mate.

19. The 4th respondent had been nominated (and accepted same) for the office of Senator representing Borno Central Senatorial District in Borno State for the 25% of February, 2023 National Assembly Election.

20. As at the time the 4th respondent was purportedly nominated and when he accepted the nomination as Vice-Presidential Candidate of the 2nd respondent, he was still a validly nominated senatorial candidate of D the 2nd respondent, thus indicating double/multiple nomination.

21. That from the acknowledgment slip dated Friday, July 15th 2022, generated from the online portal of the 1st respondent, it is clear that the 4th respondent before 05:13pm GMT plus 1 on the 15/07/2022 was still a validly nominated Senatorial Candidate of the 2nd respondent for Borno State. The petitioner hereby pleads and shall rely on the said acknowledgment slip. Notice to produce original copy of same is hereby given to the 1st respondent.

The second arm of the issue is captured by paragraphs 22, 23, 24, 25 and 26 of the petition as follows:

22. That from the acknowledgment slip dated Thursday, July 14, 2022 generated from the online portal of the 1st respondent, it confirmed or evidenced that the 4t respondent at 06.33pm GMT plus on the 14/7/2022 replaced the 5th respondent as the Vice-Presidential candidate of the 2nd respondent. The petitioner hereby pleads and shall rely on the said acknowledgment slip. 11 Notice to produce original copy of same is hereby given to the 1st respondent.

23. As at the 14th day of July, 2022, when the 4th respondent accepted the nomination of the 2nd respondent as purportedly replacing the 5th respondent, he was still a senatorial candidate of the 22nd respondent seeking to represent Borno Central

Senatorial District in Borno State. Your Petitioners hereby plead the notices of withdrawal of candidate filed by the 5th respondent and 4th respondent respectively on the 14th deg day of July. 2022 and 15th day of July, 2022 and shall rely on same at the trial of this suit.

24. The acts of the 4th respondent's double or multiple nomination make his nomination for either of the elective offices/constituencies void particularly the latter.

25. Your petitioner shall at the hearing of the petition rely on the provisions of section 131(c) and 142 of the Constitution of the Federal Republic of Nigeria, 1999; sections 31, 33, 35 and 136(2) of the Electoral Act, 2022.

26. Your petitioner further states that the return of the 3rd Respondent by the 1st respondent as the winner of the Presidential Election conducted on 25th February. 2023 was wrongful and unlawful as the 3rd respondent was not qualified to contest the election as he was not validly sponsored by the 2nd respondent.

Considering the facts pleaded above, it is clear that, the claim of disqualification or non-qualification of the 3rd respondent is centred solely on the invalid or double nomination of the 4th respondent. However, it is the settled law that, the issue of nomination of a candidate at an election is a pre-election matter. Therefore, the issue of qualification or disqualification can only be ventilated on the grounds enumerated in sections 131 or 137 of the Constitution.

That is why section 84(3) of the Electoral Act, 2022 stipulates that:

> "A political party shall not impose nomination qualification or disqualification criteria, measures, or conditions on any aspirant or candidate for any election in its constitution, guidelines, or rules for nomination of candidates for elections, except as prescribed under sections 65, 66, 106, 107, 131, 137, 177 and 187 of the Constitution."

It therefore means that, the conditions of qualification or disqualification are those prescribed under sections 131 and 137, in case of persons contesting for Presidential Office. That

means A that, where it is alleged in an election petition, that a person is or was not qualified to contest election to the office of President of Nigeria, as stipulated in section 134(1)(a) of the Electoral Act, 2022, it is sections 131 and 137 of the Constitution of the Federal Republic of Nigeria that are applicable. See P.D.P. v. IN.E.C (2014) 17 NWLR (Pt.1437) 525; Kakih v P.D.P. (2014) 15 NWI.R (PL. 1430) 374. Ucha v. Onwe (2011) 4 NWI.R (Pt. 1237) 386 at 427 and Captain Idris Ichaila Wada & Or v. Yahaya Bello & Ors (2016) LPELR-41263 (CJI), (2016) 17 NWLR (Pt. 1542) 374, Thus, where election has been conducted and result declared, C such election cannot be questioned on grounds of qualification save under sections 131 and 137 of the Constitution, in the case of a Presidential election. This postulation is supported by section 134(3) of the Electoral Act where it is stipulated that:

> "With respect to subsection 1(a), a person is deemed D to be qualified for an elective office and his election shall not be questioned on grounds of qualification if, with respect to the particular election in question, he meets the applicable requirements of sections 65, 106, 131 or 177 of the Constitution and he is not, as may be E applicable, in breach of sections 66, 107, 137 or 182 of the Constitution."

As stated earlier, the applicable provisions are sections 131 and 137 of the Constitution. It is clear from the plenitude of the pleadings in this petition, that the facts grounding the petitioner's F claim of disqualification or non-qualification of the 3rd and 4th respondents is hinged on double and invalid nomination of the 4th respondent. I had pointed out earlier in the course of this ruling that, the issue of qualification or disqualification of a candidate at an election is strictly a requirement of the Constitution. It is held G by the Supreme Court in Alhassan & Anor v. Ishaku & Ors (2016) LPELR-40083 (SC), (2016) 10 NWLR (PL. 1520) 230 that: "... by virtue of the provisions of section 138(1)(a) of the Electoral Act, a Tribunal's power to decide whether a person is qualified to contest an election is restricted 11 to establishing the requirements of section 177 and 182 of the Constitution against the adverse party. An Election Tribunal has no jurisdiction to inquire into the primaries of a political party."

It is apparent therefore that issues of nomination or sponsorship of candidates by political parties come under pre-election matters and should be instituted and determined before the conduct

of the election. See Shinkafi & Anor v. Yari & Ors (2016) L.PELR - 26050 (SC); (2016) 7 NWLR (PL. 1511) 340 and Ella & ors v. Agbo & Anor (1999) LPELR-6609 (CA). That being so, a ground of election petition questioning the election of a person duly qualified to contest such election as required by the Constitution cannot be sustained where it is predicated on nomination or sponsorship of such candidate. Therefore, a petitioner who relies on non- qualification of his opponent to nullify the election must bring the facts of such non-qualification within the ambit of sections 131 and 137 of the 1999 Constitution.

I note that the petitioner/respondent sought to tie his complaint of non-qualification to section 142(1) of the 1999 Constitution. That provision stipulates as follows:

> "142(1) In any election to which the foregoing provisions of this part of this chapter relate, a candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running for the office of President, who is to occupy the office of Vice-President and that candidate shall be deemed to have been duly elected to the office of Vice-President if the candidate for election to the office of President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid."

I am of the view that the above cited provision of the Constitution does not create additional qualifications or disqualifications for a candidate contesting for the office of President of Nigeria. Furthermore, section 142 of the 1999 Constitution read along with section 141 create the offices of President and Vice- President. Section 142(1) is a specific provision donating power to the President to nominate a person as his associate to occupy the office of the President.

That is why subsection 2 of section 142 mandates that the requirements of qualification and disqualification attaching to the occupier of seat of President also applies to the holder of the office of Vice-President. It is therefore my view that section 142(1) of the Constitution does not introduce the issue of A nomination or sponsorship of a Vice-President so as to enlarge the scope of qualifications or disqualifications applicable to the seat disqualifying factor of President. There cannot therefore be a candidate for the office of President outside those specified in a candid 131

and 137 of the Constitution. It can safely be said that those provisions have sufficiently and conclusively covered the field until there is an amendment. See A.-G., Abia State v. A.-G field Federation (2002) 5 NWL.R (Pt. 763) 204 at 391 - 392; P.D.P. I.N.E.C. & Ors (supra).

As a fallout to my findings above, I hold the firm view that the issue of nomination or sponsorship of the 4th respondent being a pre-election matter ought to have been ventilated by the petitioner before the Federal High Court, as this court has no original jurisdiction to delve into the matter. Even if, this court has such jurisdiction, the cause of action being on a pre-election matter is statute barred by virtue of section 285(9) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Having found as above, it is my view that the two motions filed by the 1st respondent, 3rd and 4th respondents on the 07/5/23 and 12/5/2023 respectively, have merit. Accordingly, I find that the E petition is liable to be struck out for being incompetent.

By a motion on notice filed on the 08/5/2023, the 2nd respondent/ applicant sought the following reliefs:

1. An order of this honourable tribunal granting leave to the 2nd respondent/applicant to bring and argue this F application before/outside or during the pre-hearing session.

2. An order of this honourable tribunal striking out grounds (i) and (ii) contained in paragraph 16 of the petition for being incompetent.

3. An order of the honourable tribunal striking out paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the petition which are predicated on the incompetent grounds (i) and (ii) in paragraph 16 of the petition for being an abuse of court process.

4. An order of this honourable tribunal striking out reliefs (i) - (vii) of the petitioner's petition for being incongruous, illogical and ungrantable, and

5. An order of the honourable tribunal dismissing or otherwise striking out the petition for want of jurisdiction and on the ground that the petition does not disclose any reasonable cause of action.

And for such further order or other orders as this Honourable Tribunal may deem fit to make in the circumstances.

The grounds upon which the application is predicated are as follows:

1. Petitioner alone in the absence of its sponsored candidate cannot benefit and did not have any special interest in the election or return of the 3rd respondent as the winner of the election;

2. Failure to make the sponsored candidate of the petitioner a party to this petition is fatal to the competence of the petition, and a fortiori the jurisdiction of the honourable court/tribunal to entertain the petition as constituted;

3. The petition discloses no reasonable cause of action or no cause of action at all as presently constituted;

4. The petition is predicated upon the ground of alleged non-qualification of the 3rd respondent to contest the Presidential election held on the 25th February, 2023:

5. The petitioner's grouse as presented in the sole ground of the petition centres on the alleged non qualification of the 3rd respondent to contest the said election having regard to the purported double nomination of the 4th respondent as 2nd respondent's candidate for Borno Central Senatorial seat which the petitioner alleges was subsisting when the 4th respondent was nominated as the Vice-Presidential candidate of the 3rd respondent;

6. The petitioner in effect challenged the withdrawal of the 5th respondent as the Vice-Presidential candidate of the 3rd respondent after nomination, and the subsequent nomination of the 4th respondent as the replacement of the 5th respondent as the Vice-Presidential candidate of the 2nd respondent;

7. The petitioner is neither a member of the 2nd respondent nor would the sponsorship and nomination of candidates of the 2nd respondent for the Presidential election serve any utilitarian purpose for the petitioner:

8. The petitioner does not fall under the category of persons that can challenge the internal working operation of the 2nd respondent regarding the nomination and sponsorship of the 2nd respondent's candidates for the election:

9. The grounds of the petition are incompetent and invalid, having not complied with section 134(1)(a) and (b) of the Electoral Act, 2022;

10. The petition cannot survive after the striking out of grounds (i) and (ii) and the related paragraphs dealing with non-qualification;

11. The issues/facts contained in the petition are statute barred;

12. The petitioner lacks the locus standi to challenge the 2nd respondent's decision and or nomination of the political party's candidate(s) for election, which is an internal affair of the 2nd respondent which is non justiciable, thus robbing this honourable court of D jurisdiction to entertain this petition:

13. Earlier before the presentation of this petition, the petitioner herein had instituted suit No: FHC/ABJ/ CS/1215/2022 Allied Peoples Movement v. INEC & 12 Ors as a pre-election matter, challenging the E nomination and substitution of running mates of named political parties (including the 2nd respondent herein) for the Presidential election on the same ground in this petition;

14. By the said suit referred to above, this petition F constitute an abuse of judicial process;

15. The ground of the petition and the facts in support as contained in paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28 and 29 of the petition which pertain to the issue already agitated, struck out/decided by G a court of competent jurisdiction in suit No: FHC/ ABJ/CS/1734/2022 per Hon. Justice Ekwo on 13th January, 2023;

and Appeal No. CA/ABJ/CV/108/2023 dismissed by the Court of Appeal subsequently. constitute an abuse of court process and are caught by H issue estoppel and can therefore not be litigated before this honourable court by the petitioner.

16. Paragraph 16(ii) of the petition is incompetent and liable to be struck out as the petitioner has not presented any ground complaining of non-compliance with the provisions of the Electoral Act, 2022 which could have necessitated the petitioner to furnish any fact to support such purported ground of non-compliance; The petitioners complaint of non-compliance with the Electoral Act or any relevant law is not challenging any of the 1st respondent's act/conduct;

17. Paragraphs 25, 28(i), (iii), (v), (vii) and 29 of the petition offend the rule of pleadings which mandates the pleading of facts only and forbids the pleading of law;

19. The outcome of this petition will not confer any appreciable benefit or confer any utilitarian value of benefit on the petitioner.

The motion has in support, an affidavit of 8 paragraphs together with a Written Address filed along with the motion. An originating summons earlier filed by the petitioner before the Federal High Court in suit No. FHC/ABJ/CS/1215/2022: Allied Peoples Movement v. INEC & 12 ors was annexed to the affidavit as exhibit "An. In opposition to the motion, the petitioner filed a counter affidavit of 5 paragraphs deposed to by one Kalu Kenneth Okorie, litigation Secretary in the Law Firm of Messrs O.M.

Atoyebi, SAN & Partners, counsel to the petitioner/respondent.

In arguing the application, the 2nd respondent/applicant nominated two issues for determination as follows:

1. Whether this is not a proper application to be heard and determined before, outside or during the prehearing session?

2. Whether the prayers of the applicant in the present application should not be granted considering the circumstances and contents of the petition vis-à-vis the mandatory provision of the Electoral Act, 2022, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and established judicial decisions of the apex court?

The issue number one is answered in affirmative as the application was heard during the pre-hearing session and reserved for ruling.

On issue 2, learned senior counsel for the 2nd respondent/ applicant contended that grounds I and II of the petition are incompetent being in gross violation of the Electoral Act, 2022 and sections 285(9) and (10) of the Constitution thereby robbing this court of jurisdiction to entertain same, Referring to paragraph 16 of the petition, learned senior counsel submitted that the said grounds run foul of section 134(1) of the Electoral Act, 2022. The cases of Ojukwu v. Yar'adua (2009) 12 8 NWLR (PL. 1154) 50; Mathew Aondohemba Damkor & Anorv Terkaa D. Ucha & Ors (2019) LPELR - 48876; Yusuf v. Obasanjo (2003) 16 NWLR (Pt.847) 554 were cited in support. Furthermore, that there are no facts in support of ground (ii) of the petition, and therefore, incompetent.

Learned senior counsel for the 2nd respondent/applicant contended further, that the petition constitutes an abuse of court process in that the petitioner had earlier filed a pre-election matter similar or on same facts with this petition. That the matter before the Federal High court is still pending, therefore to litigate again on D the same facts constitute an abuse of court process. In other words, it has been demonstrated in the applicant's affidavit, that suit No: FIC/ABJ/CS/1215/2022; between: Allied Peoples Movement (APM) v. INEC & 12 Ors has rendered this petition an abuse of court process. The cases of Lokpobiri v. Ogola (2016) 3 NWLR (PL. E 1499) 328 and Idowu v. FR.N. (2012) 11 NWLR (Pt. 1312) 441 at 454-455 were cited in support.

It is further argued that this petition borders on the same principal claim and facts with suit No: FHC/ABJ/CS/1215/2022 pending before the Federal High Court, Abuja. That the parties in F this petition are also parties in that suit, and that it does not matter whether the parties in one are

more than the other. That, the principle that parties must be the same does not mean that all the parties in the previous suit must be made parties in the later suit, so long as the parties in the previous suit are also parties in the instant suit. The cases of Falaye v. Otapo (1995) 3 NWLLR (Pt. 381) 1; Ministry of Works v. Tomas (Nig.) Ltd. (2002) 2 NWI.R (Pt. 752) 740 and Abubakar v. Bebeji Oil & Allied Products Ltd. (2007) 18 NWLR (11. 1066) 319 were cited in support. That, the proper order to give in the circumstance is to dismiss the process which constitutes the 11 abuse.

Learned senior counsel for the 2nd respondent/applicant also contended that, from the facts of this petition, it is challenging the nomination of the 4th respondent as the validly nominated candidate of the 2nd respondent on the ground that the 3rd respondent lost his candidacy and therefore, no longer qualified to contest the Presidential Election. That, the issues raised by this petition have been resolved by the Court of Appeal in Appeal No. CA/ABJ/ CS/108/2023 and therefore constitute issue estoppel. In other words, that the issue of nomination of the 4 respon respondent have been resolved in Appeal No. CA/ABJ/CS/108/2023. The cases of A.P.C. P.D.P. & Ors (2015) LPELR-24587 (SC) and Oyekola Amodu (2017) LPELR-42391 (CA) were cited to submit that, in the circumstance, the petitioner is precluded from contending Cthe opposite of any specific point which has been put in issue and determined with certainty against him.

Learned senior counsel for the 2nd respondent/applicant went on to contend that, the petition borders on the allegation of non- qualification of the 3rd respondent to contest the election on the ground that the 4th respondent allegedly allowed himself to be nominated as Vice-Presidential candidate without first resigning as the 2nd respondent's Senatorial candidate for Borno Central Senatorial District, which are matters that predated the conduct of the Presidential election held on the 25/2/2023. That the petitioner had the opportunity to take advantage of Section 84(14) of the Electoral Act, 2022 to activate the appropriate proceedings against the respondents. In other words, that facts grounding the petition qualify as pre-election matter by virtue of section 285(14) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). That the action ought to have been initiated within 14 days from the date the cause of action arose. The cases of Salim v. C.P.C. & Ors (2013) 6 NWLR (Pt. 1351) 501; Ibrahim v. INEC (1999) 8 NWLR (Pt. 614) 334 and Alhassan & Anor v. Ishaku & Ors (2016) 10 NWLR (Pt. 1520) 230 were cited in support. It

is then submitted that, the facts in paragraphs 16, 21, 22 and 23 of the petition which allege the disqualification being pre-election matter should also be struck out.

Flowing from the above contention, learned senior counsel for the 2nd respondent went on to submit that, being a pre-election 11 matter, the petitioner lacks the legal capacity to institute the action. That the remedy available to the petitioner is as provided in sections 29(5) and 84(14) of the Electoral Act, 2022, and not section 134(1) of the Electoral Act, 2022. The cases of Angadi v. P.D.P. (2018) 15 NWLR (Pt. 1641) I at 34-36, Tukur v. Uha (2013) 4 NWL.R (Pt. 1343) 90 were cited to submit that, the jurisdiction of the A 376 courts stipulated in section 84(14) of the Electoral Act, 2022 is that activated by an aspirant who has participated in the primaries of a political party, which has given him the necessary locus standi.

Learned senior counsel went on to submit that, election petition matters are sui generis and time bound such that, if it is not properly constituted, it would deprive the court of jurisdiction to hear and determine same. The case of James v. INEC (2015) 12 NWLR (Pt. 1474) 538 at 591 was cited in support. That, it is not in dispute that the petitioner as a political party, sponsored a candidate for the Presidential election, and which candidate, Ojei Princess c Chichi is therefore a necessary party to the petition. That, the said Candidate was not joined as a co-petitioner so as to be bound by the judgment or order against him. The case of Olawoye v. Jomoh (2013) 13 NWLR (Pt. 1371) 362 and Okwu & Anor v. Umeh (2016) 1 SC (PL. 1), (2016) 4 NWLR (Pt. 1501) 120 were cited in support. D We were then urged to hold that, having failed to join Ojei Princess Chichi, the petition is incompetent and improperly constituted.

Conversely, learned senior counsel submitted that, section 133 of the Electoral Act, 2022 provides for persons entitled to present election petitions, and persons entitled to be joined as respondents E in an election petition. That by section 133(2) and (3) of the Electoral Act, 2022, the 4th and 5th respondents cannot be joined as respondent to this petition since they are not the party or the Presidential candidate who won the election. The case of A.P.C. V P.D.P. & Ors (2015) LPELR-24349; (2015) 15 NWLR (Pt. 1481) 1 F was cited in support and to further submit that, there is a misjoinder of the 4th and 5th respondents in this petition. The cases of Azubuike V. P.D.P. (2014) LPELR-22258 (SC), (2014) 7 NWLR (Pt. 1406) 292; Green v. Green (2002) 45

WRN 90, (1987) 3 NWLR (Pt. 61) 480 and Enterprise Bank Nigeria Ltd. v. Aroso (2014) 3 NWLR (Pt. G 1394) 256 were then cited in urging us to strike out the names of the 4th and 5th respondents for misjoinder.

Finally, learned senior counsel for the 2nd respondent contended that, this petition is bereft of any cognizable cause of action, having been shown to be an abuse of court process, caught by estoppel and H failure to comply with mandatory provisions of paragraph 4(1) and (2) of the 1st Schedule to the Electoral Act, 2022; and section 134(1) of the Electoral Act, 2022. That in any case, the determination of and pronouncement on the relief in this petition will amount to academic exercise because, the reliefs sought in the petition will serve no beneficial purpose. The case of Mohammed Usman v. The State (2019) L.PEL.R-47396 (SC), (2019) 15 NWLR (Pt. 696) 411 was cited in support. We were accordingly urged to resolve all the issues in this application in favour of the 2nd respondent/applicant and to strike out or dismiss the petition.

In response to the motion, learned senior counsel to the petitioner/respondent formulated one issue for determination as follows:

"Whether the applicant's application is not unmeritorious and not liable to be dismissed."

Learned senior counsel then contended that, the petitioner only averred facts in relation to the grounds in support of the petition in paragraph 16 of the petition, while the ground was averred in paragraph 15. That in the circumstances, the cases cited by the applicant are irrelevant, and that paragraphs 25, 28(ii), (iii), (v) and (vii) of the petition do not offend the rules of pleadings as they contain pure facts in tandem with the rules of pleadings.

The case of Ogboru & Anor v. Uduaghan & Ors (2013) I. PELR20805 (SC), (2013) 13 NWLR (Pt. 1370) 73 were cited E to submit that, this petition is not an abuse of court process. That the principle of abuse of court process arises where the two matters in issue are still alive but in the instant case, suit No: FHC/ABJ/ CS/1215/2022 has since been abandoned as the time limited for its litigation has since expired being a pre-election matter.

On the doctrine of estoppel, learned senior counsel for the petitioner/respondent cited the case of A.P.C. v. P.D.P. & Ors (2015) LPELR-24587 (SC), (2015) 15 NWLR (Pt. 1481) 1 to

submit that, the instant action has not been decided by any court as to make the principles of estoppel applicable. That suit No: FHC/ G ABJ/1734/2022 was not decided on its merit, therefore, the concept of estoppel cannot apply in the instant petition. The case of Ogbogu & Ors v. Ndiribe & Ors (1992) LPELR-2283 (SC), (1992) 6 NWLR (Pt. 245) 40 was then cited to submit that, a judgment that can be used for the purpose of issue estoppel must be a case decided on its merit. That in this petition, both the trial court and this court did not determine the action on its merit.

Learned counsel for the petitioner/respondent went on to submit that, this petition is not statute barred as it is not brought pursuant to section 285(14)(b) of the Constitution but guided and promised on section 134(1) of the Electoral Act which stipulate the grounds upon which an election petition can be presented, including the fact that the person returned as elected was not qualified to contest the election. The case of Favemi v Oni & Ors (2019) LPELR-49291 (SC), (2020) 8 NWLR (PL. 1726) 222 was cited in support. Furthermore that, it is trite law that issue of qualification of a candidate to contest in an election is both pre and post-election matter that can be challenged in both the Federal High Court or an Election Tribunal. The case of Dangana & Anor v. Usman & Ors (2013) 6 NWLR (PL. 1349) 50 was cited in support. The cases of 2013 & Anor v Saraki (2007) L.PELR-8072 (CA) and Abubakar PPA Adua (2008) 19 NW1.R (Pt. 1120) at 70 were then cited to submit that, sections 31 and 33 of the Electoral Aet do not deal with (Tsammani, LCA pre-election matters.

On the issue of locus standi, learned senior counsel for the petitioner/respondent contended that, the applicant is under the mistaken belief that this action is a pre-election matter. That by section 133(1) of the Electoral Act, 2022, the petitioner being a political party is vested with the locus to present the petition. That the cases of Waziri & Anor v. Geidam & Ors (2016) LPELR-40660 (SC), (2016) 11 NWLR (Pt. 1523) 230 and Obot v. Etim & Ors E (2007) LPELR-8071 (CA), (2008) 12 NWLR (Pt. 1102) 784 were cited to submit that, the applicant has not presented any reasonable argument to negate the right of the petitioner to present the petition. That sections 29(5) and 84(14) of the Electoral Act, 2022 relate to pre-election matters and therefore inapplicable to the instant suit F which is a post-election matter.

Learned senior counsel for the petitioner/respondent contended that this petition is well constituted. That, the drafters of the Electoral Act, 2022 clearly enumerated category of persons who can present an Election Petition as highlighted in section 133 G of the Electoral Act. The case of Accord v. INEC (2015) L. PELR -25674 (CA) was then cited to submit that, the petitioner, being a political party can present an Election Petition. That the non- joinder of the candidate in an Election Petition will not render the petition incompetent; and that in the instant case, the parties sued t are those meant to be sued, therefore, there is no case of misjoinder. That, the 3rd respondent ran on a joint ticket with the 4th respondent. Therefore, the joinder of the 4th respondent is proper as he will also be affected by the outcome of the judgment or order.

Learned senior counsel for the petitioner/respondent went on to submit that, the jurisdiction of this court is statutorily circumscribed by section 239(1)(a) of the 1999 Constitution, and section 134(1) (a) and (3) of the Electoral Act, 2022. That the implication is that, for a person to be qualified to occupy the office of President of Nigeria, he must satisfy the conditions in section 131 of the 1999 Constitution and not be in breach of section 137 of the Constitution. a candidate for an election must be a member of a political party and be sponsored by that party. That in the circumstances, section 142(1) of the Constitution makes the candidacy of a Vice-President applicable to that of a Presidential candidate. The cases of P.D.P. & ors v. Degi-Eremienyo & Ors (2020) LPELR-49734 (SC), (2021) 9 NWLR (Pt. 1781) 274 and Atiku Abubakar v. A.-G., Fed. (2007) 3 NWLR (Pt. 1022) 601 at 642 were cited in support.

On whether the petition discloses any reasonable cause of action, learned senior counsel for the petitioner/respondent contended that, the petition is not an abuse of court process nor is it caught by issue estoppel as contended by the applicant. That the petition is based on disqualification which is cognizable under section 131 and 137 of the 1999 Constitution, and 134(3) of the Electoral Act, 2022.

Now, it would be seen that this application is premised on several grounds. The first is that the grounds of the petition are incompetent. This is premised on the erroneous argument of the 2nd respondent/applicant that the grounds for the petition are as stated in paragraph 16 of the petition.

A careful perusal of the petition would disclose that, there is only one ground for the petition and is stated in paragraph 15 of the petition which stipulates that:

"15. Your petitioner states that the ground upon which this petition is presented is that the 3rd Respondent was at the time of the election not qualified to contest the election."

The averments in paragraph 16, as unequivocally captioned, deal with the facts of the petition. This ground for the objection to the competence of the petition, therefore, lacks substance and is accordingly discountenanced.

The 2nd ground for the objection is that, the petition is an abuse of court process. It is premised on the fact that, the petitioner/ respondent had earlier instituted an action before the Federal High

of qualification of a candidate to contest in an election is both pre and post-election matter that can be challenged in both the Federal High Court or an Election Tribunal. The case of Dangana & Anor v. Usman & Ors (2013) 6 NWLR (PL. 1349) 50 was cited in support. The cases of 2013 & Anor v Saraki (2007) L.PELR-8072 (CA) and Abubakar PPA Adua (2008) 19 NW1.R (Pt. 1120) at 70 were then cited to submit that, sections 31 and 33 of the Electoral Aet do not deal with (Tsammani, LCA pre-election matters.

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present an Election Petition as highlighted in section 133 G of the Electoral Act. The case of Accord v. INEC (2015) L. PELR -25674 (CA) was then cited to submit that, the petitioner, being a political party can present an Election Petition. That the non- joinder of the candidate in an Election Petition will not render the petition incompetent; and that in the instant case, the parties sued t are those meant to be sued, therefore, there is no case of misjoinder. That, the 3rd respondent ran on a joint ticket with the 4th respondent. Therefore, the joinder of the 4th respondent is proper as he will also be affected by the outcome of the judgment or order.

Learned senior counsel for the petitioner/respondent went on to submit that, the jurisdiction of this court is statutorily circumscribed by section 239(1)(a) of the 1999 Constitution, and section 134(1) (a) and (3) of the Electoral Act, 2022. That the implication is that, for a person to be qualified to occupy the office of President of Nigeria, he must satisfy the conditions in section 131 of the 1999 Constitution and not be in breach of section 137 of the Constitution. a candidate for an election must be a member of a political party and be sponsored by that party. That in the circumstances, section 142(1) of the Constitution makes the candidacy of a Vice-President applicable to that of a Presidential candidate. The cases of P.D.P. & ors v. Degi-Eremienyo & Ors (2020) LPELR-49734 (SC), (2021) 9 NWLR (Pt. 1781) 274 and Atiku Abubakar v. A.-G., Fed. (2007) 3 NWLR (Pt. 1022) 601 at 642 were cited in support.

On whether the petition discloses any reasonable cause of action, learned senior counsel for the petitioner/respondent contended that, the petition is not an abuse of court process nor is it caught by issue estoppel as contended by the applicant. That the petition is based on disqualification which is cognizable under section 131 and 137 of the 1999 Constitution, and 134(3) of the Electoral Act, 2022.

Now, it would be seen that this application is premised on several grounds. The first is that the grounds of the petition are incompetent. This is premised on the erroneous argument of the 2nd respondent/applicant that the grounds for the petition are as stated in paragraph 16 of the petition. A careful perusal of the petition would disclose that, there is only one ground for the petition and is stated in paragraph 15 of the petition which stipulates that: "

15. Your petitioner states that the ground upon which this petition is presented is that the 3rd Respondent was at the time of the election not qualified to contest the election."

The averments in paragraph 16, as unequivocally captioned, deal with the facts of the petition. This ground for the objection to the competence of the petition, therefore, lacks substance and is accordingly discountenanced.

The 2nd ground for the objection is that, the petition is an abuse of court process. It is premised on the fact that, the petitioner/ respondent had earlier instituted an action before the Federal High Court in suit No: FHC/ABJ/CS/1215/2022, between: Allied Peoples A Movement (APM) v INEC & 12 Ors on the same subject matter as in this petition against the 1st, 2nd, 3rd, 4th and 5th respondents in this petition and others. It was however deposed in paragraph 3(m) of the counter affidavit filed by the petitioner in opposition to this application that, the matter was not determined on the merit B by the trial court who referred the matter to the Court of Appeal for interpretation. That in any case, the matter had since lapsed in 180 days for its determination by law, being a pre-election matter.

It is trite law that, abuse of court or judicial process simply means, the use of a court process mala fide or in bad faith to the C annoyance of the opponent. One variety of it is the institution of multiferous actions between the same parties with regard to the same subject matter and same issue, in the same or another court. See Abdu Yunusa Indabawa v. Garba Magashi & Anor (2016) LPELR-41626 (CA) and Umeh v. /wu (2008) 8 NWLR (Pt.1089) D 225 at 245. A quick look at the originating summons in suit No: FHC/ABJ/CS/1275/2022 will show that, same was instituted in the Federal High Court, Abuja on the 27th day of July, 2022. Being a pre-election matter, it ought to have been determined within 180 days as required by section 285(10) of the 1999 Constitution. It E therefore means that it lapsed by January, 2023 about a month before the election in question was conducted. This petition having been instituted on the 20/3/2023 when suit No: FHC/ABJ/CS/1215/2022 was no more alive, does not qualify as an abuse of Court process. This ground for this objection is also discountenanced.

On whether this petition is caught by the doctrine of estoppel, it was argued that the issues raised in this petition has been firmly resolved by this Court in Appeal No: CA/ABJ/CS/108/2023.

Issue estoppel arises when the issue has been decided upon to finality by a court of competent jurisdiction. In other words, once an issue G has been raised and distinctively determined between the parties, neither party can be allowed to fight that issue all over again. The same issue cannot be raised by either party again in the same or subsequent proceedings except in special circumstances! See Adone & Ors v. Ikebudu & Ors (2001) LPELR - 191 (SC), (2001) 11 14 NWL.R (Pt. 733) 385 and Tukur v. Uba & Ors (2012) LPELR - 9337 (SC), (2013) 4 NWLR (Pt. 1343) 90.

For issue estoppel to apply, the following conditions must be satisfied:

(a) The same question was decided in both proceedings;

(b) The decision which creates the estoppel must be final, and

(c) The parties to the judicial decision or their privies to the proceedings in which the estoppel is raised.

To determine whether the above three elements exist (they must coexist), the court will closely examine the reasons for the judgment and other relevant facts that were actually in issue in the proceeding. See: Oyekola & Ors v. Amodu (2017) LPELR - 42391 (CA); O.S.P.M. Ltd. v. Nibel Co. (Nig.) Ltd. (2017) 3 NWLR C (PL.1552) 207 at 234 and Dasuki (Rtd) v. F.R.N. (2018) LPELR - 43969 (CA). I have studied the case sought to be relied on as estoppel in this case. It is apparent that the parties in that case are not the same as in the instant petition. The issues though the same, were not resolved to finality in the previous case; Appeal No. CA/ ABJ/CS/108/2023. The action was struck out on ground of lack of locus standi by the lower court which this court affirmed on appeal. Thus, the objection on the ground is also discountenanced.

On whether the petition is statute barred, I had held in the earlier motion filed by the 1st respondent on the 7/5/2023, and 3rd and 4th respondents' motion filed on the 12/5/2023, which were taken together, this petition which is premised on the nomination or sponsorship of the 4th respondent is a pre-election matter. That being a pre-election matter, it ought to have been instituted and ventilated by the petitioner before the Federal High Court within 14 days from the date of occurrence of the event or action complained of. That not having been done, the cause of

action in this petition stands barred by virtue of section 285(9) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

On the issue of locus standi, I had also held in the previous motions filed on the 7/5/23. 12/5/23 that, issues of nomination or sponsorship of candidate by political parties for an election come under pre-election matters. It is settled that, the issue of nomination of candidates by substitution is purely a pre-election matter, the only person with the locus standi to challenge the nomination is an aspirant who participated in the process of such nomination. In other words, apart from an aspirant who took part in the primary election, no other person is authorised to challenge such nomination by a political party for an election. Such process of challenging the nomination is sanctioned by section 84(14) of the Electoral Act, 2022, 285(14) of the Constitution, See also Shinkai & A 382 v. Adulazeez A. Yari & Ors (2016) 7 NWLR (Pt. 1511) 340 ng Alhassan & Anor v. Ishaku & Ors (2016) LPELR-40083 (SC) (2016) 10 NWLR (Pt. 1520) 230.

It therefore follows that, the cause of action in this petit which is rooted in the nomination or sponsorship of the 4th respondent is a pre-election matter. Being a pre-election matter, the petition herein has no locus standi to challenge or question such nomination or sponsorship of the 4th respondent by the 2nd respondent. Thus, Peoples Democratic Party (PDP) v. Independent National Electond delivered on unreported the 26th day of May, 2023 in Jaur SC/CV/501/2023. JSC held at page 31 lines 1-16 thereof as follows:

> "The provision does not make the filing of pre-electing matters by political parties an all - comers affair. It not the purpose of the provision that the floodgate of pre-election litigation be open to political parties who will hide under it to challenge the actions or inactions of rival political parties under the guise of challenging the decision or activities of INEC. The application of section 285(14)(c) of the Constitution does not extend to a political party poking into the affairs of another. The position of the law has always been that no political party can challenge the nomination of the candidate of another political party. No matter how pained or disgruntled a political party is with the way and manner another political party is conducting or has conducted its affairs concerning its nomination of its candidates

for any position, it must keep mum and remain an onlooker, for it lacks the locus standi to challenge such nomination in court."

It is clear therefore, that a political party, such as the petitioner herein, only has the locus standi to file a pre-election matter when the situation affects it or its own candidate by virtue of section 285(14)ge) of the 1999 Constitution. That being so, as in the mount petition where the grounds of the petition is rooted on the nomination or sponsorship of the candidate of another political party, this petitioner will have no locus standi to institute the action, be it in the Federal High Court or an Election Tribunal. For that reason, it is my view that the cause of action in this petition being on the nomination and sponsorship of the 3rd and 4th respondents by the 2nd respondent/applicant, the petition is incompetent for lack of locus standi on the petition to institute same. It is also liable to be struck out for being incompetent.

The 2nd respondent/applicant also contended that the petition is not properly constituted as the candidate sponsored by the petitioner has not been joined as a co-petitioner in the petition. The short answer to that is that, section 133(1)(b) of the Electoral Act. 2022 entitles the petitioner as a political party to institute an election petition. The applicant has not referred us to any provision of the Electoral Act, or any authority that mandates the political party to file an election petition, only where its candidate has been joined as co-petitioner. It is true that, it is proper for the candidate of the party to be so joined but there is no law that compels the political party to join its candidate in the petition. Afterall, the purpose of such joinder is so that the candidate be bound by any judgment or order of the court or tribunal but any non-joinder will not invalidate the petition. This is particularly so when section 133(1) of the Electoral Act (supra) states that:

"An election petition may be presented by one or more of the following persons –

(a) a candidate in an election; or

(b) a political party which participated in the election."

By the use of the disjunctive word "or", it means that an Election petition may be filed by the candidate alone, or the political party alone, or both of them. See: Buhari & Anor v. Yusuf &

Anor (2003) 14 NWLR (Pt. 841) 446 and A.P.C. v. P.D.P. & Ors (2015) L.PELR-24349 (CA). The objection on this ground is therefore discountenanced.

By a motion on notice filed on the 15/5/2023, the 5th respondent (Kabir Masari) prayed this court to grant him the following reliefs:

1. An order of this honourable court dismissing this bad petition in its entirety for want of jurisdiction.

2. An order striking out the name of the 5th respondent / applicant from this petition for nondisclosure of any reasonable cause of action against him.

3. And such further or other orders that this honourable tribunal may deem fit to make in the circumstances of this petition.

The grounds upon which the application has been brought are as follows:

1. That the sole ground of the petition is not supported by facts that can be countenanced in an election petition.

2. That the facts contained in the petitioner's petition are facts which relates to or connected with pre-election matters which are outside the scope, purview of an election petition.

3. That the purported facts being relied upon by the petitioner are predicated on the domestic and internal affairs of a political party which are completely outside the purview of an election petition.

4. The choice of candidates by political parties for elective office(s) being a political issue is governed by the rules, guidelines and the Constitution of the political parties concerned and is not subject to be questioned by this honourable tribunal.

5. That under and by virtue of the provisions of section 285(9) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the issues raised in the petition is/are pre-election matters, and therefore L statute barred.

6. That the 5th respondent (Kabir Masari) was not the winner of the Presidential Election held on the 25th day of February, 2023 and a fortiori, ought not to be joined in this petition as he (5th defendant) is not a party interested in this petition as he did not contest for the Presidential Election held on the 25th day of February, 2023.

7. That the petitioner was never an aspirant in the primaries conducted by the 2nd respondent (All Progressives Congress) prior to the presidential election held on the 25th of February, 2023.

8. That it is only the Federal High Court that is clothed with jurisdiction and power to adjudicate on the issues of nomination raised in the petition and NOT this honourable tribunal.

9. That the 5th respondent was never nominated to contest any election in any constituency or more than one constituency as contemplated under section 35 of the Electoral Act, 2022 nor a candidate of the 2nd respondent in the Election conducted on the 25th of February, 2023, to warrant the 5th respondent being made a party in this petition.

10. That the petitioner's suit as constituted is calculated to irritate and/or annoy the 5th respondent as it is not in any way supported by any law.

11. That based on the facts stated in the petitioner's petition which are facts exclusively connected to pre-election issues, the honourable court has no vires to grant the petitioner's reliefs in the circumstances.

12. That the petitioner's petition is a flagrant abuse of the process of this honourable tribunal.

13. The Presidential candidate of the petitioner being a necessary party is not joined in this petition and as a result, same is not properly constituted.

14. The petition does not disclose any action or reasonable cause of action against the 5th respondent.

The application is supported by an affidavit of 5 paragraphs deposed to by one Rejoice Adore, a Litigation Secretary in the Law Offices of Roland Otaru, SAN & Co, of counsel representing the 5th respondent/applicant. A written address was also filed along with the motion. In opposition to the application, the petitioner/ respondent filed a counter affidavit of 5

paragraphs deposed to by Fone Kalu Kenneth Okorie, Litigation Secretary in the Law Office of Messrs O. M. Atoyebi, SAN & Partners, counsel to the petitioner/ respondent. A written address was filed along with the counter affidavit.

Now, in arguing the application, the 5th respondent/applicant raised three issues for determination as follows:

1. Whether, having regard to the sale ground of non-qualification anchoring the petitioner's petition, read in juxtaposition with particulars of facts as supplied in the petition, the complaint of the Petitioner is not one of pre-election in which this Honourable Tribunal not clothed with vires or jurisdiction to entertain.

2. Whether the 5th respondent/applicant, not being a candidate but a mere aspirant at a time before the voluntary withdrawal of his candidature at a pre-election in the electioneering exercise of the 2nd respondent, qualifies as a necessary or proper party whose joinder is necessary and against whom a cause of action is disclosed in the petition.

3. Whether, by the presentation of this petition, despite the petitioner's knowledge of the factual background of the petition, as arising from the intra party activities of the 2nd respondent, the petition has not thereby degenerated to an abuse of court process and robbing this honourable court, therefore, of the vires to entertain same.

I have studied the three issues raised by the 5th respondent/ applicant. It is clear to me that issues 1 and 3 dealing with whether or not this petition has to do with pre-election matter; and whether the petition is an abuse of court process have been considered and resolved in the motions filed by the 1, 2, and 3rd & 4th respondents respectively. I therefore see no need to waste valuable

time in resolving same issues here again, as we are bound by the determinations in those motions. Issue 2 shall however be resolved as they were never raised by the other respondents.

Now, the argument of the 5th respondent/applicant or issue 2 is that, from the averments in the petition, it is clear that the 5th respondent is neither a necessary nor proper party to the petition. That he was not a candidate in the election held on the 25th February, 2023 nor was he declared a winner of the election. The case of Babayeju v. Ashamu (1998) 9 NWLR (Pt. 567) 546 at 555 was then cited to submit that, in the circumstances, the petition does not disclose any cause of action against the 5th respondent. That the only interest the 5th respondent has in this petition is his membership of the 2nd respondent, and which interest will not in any way be affected by the outcome of this petition. We were accordingly urged to hold that, no cause or reasonable cause of action has been disclosed against the 5th respondent/applicant, and to strike out his name from the petition.

In response, learned counsel for the petitioner/respondent contended that, the 5th respondent/applicant is a necessary party in this petition and was properly joined. The case of Jegede v. INEC (2021) 14 NWLR (Pt. 1797) 409 was then cited to submit that, where a party against whom allegations have been made, such person ought to be joined as a party in order to give him fair hearing. That, it is trite law, that a person who will be affected by the outcome of a case, must be made a party to the suit. That, in that respect, the 5th respondent is a necessary and proper party to this petition. It is thus argued that, the case of Babayeju v. Ashamu (supra) relied on by the applicant is inapplicable to an election petition case which is sui generis.

Now, section 133 of the Electoral Act defines persons who are necessary parties in an election petition. Generally, necessary respondents in an election petition are the persons whose election or return is complained of, and the Electoral body that conducted the election. See section 133(2) and (3) of the Electoral Act. 2022. Those are what are termed statutory respondents. It should be remembered the Election Petitions are sui generis, and its procedure strictly regulated by statute. Thus, where a person does not fall within the category of statutory respondents, they are not necessary parties in an election petition. See: Agharch v. Mimra (2008) All FWLR (P1.409) 559; (2008) 2 NWLR (PL. 1071) 378: A.P.C. v. P.D.P. (2015) LPELR-24587 (SC): (2015) 15

NWLR (Pt. 1481) 1 and Buhari v. Yusuf (2003) 4 NWLR (Pt.841) 446 at 498. Thus, in Waziri v. Gaidam (2016) 11 NWLR (Pt. 1523) 230 at 265 paragraphs F-G; the Supreme Court held that:

> "From the above, I have no difficulty in going along with the submissions of the respective counsel for the respondent that section 137(2) and (3) of the Electoral Act, 2010 has no room for the joinder of the 5th respondent who neither won the election nor performed any role as electoral officer or agent of the third respondent in the election petition challenging the result of such an election and even no relief was claimed against the said 5th respondent and indeed, he had nothing to gain or lose in the petition aforesaid."

Indeed, a holistic reading of the facts of this petition does not disclose any complaint against the 5th respondent. The only fact that relates to the 5th respondent, relevant to the petition, is the act of withdrawal of his candidacy as the running mate of the 3rd respondent. That is an act that occurred within the pre- election period, therefore, cannot amount to any act done by the 5th respondent at the election. It can not therefore ground any complaint by the petitioner against the 5th respondent in an election petition. It may be relevant in a pre-election matter but not in an election petition. It is therefore my finding that, there is no any claim on A the 5threspondent. In other words, the reliefs sought in the petition will not in anyway affect the 5th respondent as he did not participate in the petition either as a candidate or agent of the 2nd respondent, and no declaration was made in his favour by the 1st respondent. in that respect, I hold that the objection of the 5th respondent on this ground has merit. Accordingly, I order that the name of the 5% respondent be struck out of this petition.

The Petition

After the pre-hearing session, hearing on the petition opened and closed on the 21/6/2023. The petitioner called one (1) witness C and closed its case. None of the respondents called any witness but tendered some documents from the Bar, and the petition was adjourned for adoption of written addresses. Parties then filed and served written addresses as directed by this court, and same were adopted on the 14/7/2023. The matter was then adjourned for judgment.

The 1st respondent's written address was filed on the 30/06/2023. Therein, four (4) issues were raised for determination as follows:

1. Whether considering the facts of the petition and evidence led thereon, the petitioner has the locus standi to question the nomination of the 4th respondent as a ground of challenging the qualification and return of the 3rd respondent as the winner of the Presidential election of 25th February, 2023?

2. Whether having regard to the facts pleaded and evidence led thereon vis-à-vis the provision of section 134(3) of the Electoral Act, 2022, can the issue of validity of the nomination of the 4th respondent as the Vice-Presidential candidate of the 2nd respondent be validly raised as a ground before this Honourable Court to question/challenge the qualification and return of the 3rd respondent as the winner of the Presidential election of 25th February, 2023?

3. If the answer to (2) is in the affirmative, whether having regard to the facts pleaded, the nomination of the 4th respondent as the Vice-Presidential candidate of the 2nd respondent is void as to render the 3rd respondent not qualified to contest the Presidential Election of 25th February, 2023?

4. Whether considering that the reliefs sought as per the petition accrues no utilitarian benefit to the petitioner, this petition is not an abuse of court process.

The 2nd respondent's written address was filed on the 30/6/2023 wherein three issues were posited for determination as follows:

1. Whether the Supreme Court judgment in suit No. SC/ CV/501/2023 Peoples Democratic Party v. INEC delivered on 26th May, 2023 (exhibit XI) operates as issue estoppel, hence binding on the instant petition?

2. Whether the 3rd respondent was disqualified to contest the Presidential election held on the 25th day of February, 2023 on account of the issues joined and evidence led on the pre-election process of nomination of 4th respondent as 3rd respondent's Vice-Presidential

candidate at the election, against the backdrop of the cognizable qualifying and disqualifying factors relating to candidates sponsored at the Presidential election as stipulated in the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

3. Whether having regard to the totality of the evidence led by parties and the applicable law, the petitioner is entitled to succeed on any of the reliefs sought in the petition at all, or that the petition ought to be dismissed in favour of the respondents?

The 3rd and 4th respondents' written address was filed on the 27/06/2023. The 3rd and 4th respondents distilled only one (1) issue for determination as follows:

1. Considering the petition as presented, including the evidence of the sole witness called against the clear provisions of the law and settled judicial authorities, including, in particular, the recent decision of the Supreme Court in Appeal No. SC/CV/501/2023 Peoples Democratic Party (PDP) v. Independent National Electoral Commission INEC & 3 Ors: baby delivered on 26th May, 2023 (unreported), whether this petition is not bound to be dismissed without much ado

The 5th respondent also filed a written address on the 28/6/2023. A The 5th respondent also raised one (1) issue for determination; as follows:

"Having regard to the factual circumstances of this case, juxtaposed with the provisions of the 1999 Constitution (as amended) and the Electoral Act, 2022, whether the nomination of the 4th respondent as the 3rd respondent's running mate for the Presidential election of 25th February, 2023 is invalid and thus affected and or invalidated the candidacy of the 3rd respondent in the election."

The petitioner filed written addresses in response to the final addresses of the respondents. The written address in response to the address of the 1st respondent was filed on the 7/7/2023. Three issues were raised therein for determination as follows:

(i) Whether the 3rd respondent was qualified to contest the D Presidential election held on the 25th February, 2023 and be validly declared as the winner of the said election

by the 1 respondent, having regard to the provisions of sections 131(c) and 142(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and E section 35 of the Electoral Act, 2022.

(ii) Whether the petitioner proved its case, as to justify the grant of the reliefs sought in this petition.

(iii) Whether the decision of the Supreme Court in Peoples' Democratic Party v. Independent National F Electoral Commission & 3 Ors with Appeal No: SC/ CV/501/2023, bars and prevents the petitioner from challenging the qualification of the 3rd respondent to contest the Presidential Election held on the 25th February, 2023 on the basis of sections 131(c) and 142 G of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The petitioner's written address in response to the final address of the 2nd respondent, and 3rd and 4th respondents were also filed on the 06/7/2023. The issues raised in the petitioner's address in response to the 1st respondent's address, were repeated in the written addresses in response to the 2nd and 3rd and 4th respondents' addresses. That being so, I need not repeat same here. The same issues were repeated in the petitioner's address in response to the 5th respondent's final address. The 1st, 2nd and 3rd and 4th respondents filed replies on points of law to the petitioner's written addresses. Having reflected on the issues raised by the respective parties, I am of the view that the issues formulated by learned counsel for the petitioner are adequate for the determination of the petition. The three issues shall however be considered together.

Now, learned senior counsel for the 1st respondent began by questioning the locus standi of the petitioner to present this petition. He cited the cases of Daniel v. I.N.E.C. (2015) LPELR - 757/2013 (SC); (2015) 9 NWLR (Pt. 1463) 113; Thomas v. Olufosoye (1986) INWLR (Pt. 18) 669 and Opobiyi & Anor v. Layiwola Muniru (2011) 18 NWLR (Pt. 1278) 387 to define the term locus standi. That to determine whether the petitioner possesses the locus standi to institute the instant action, recourse must be had only to the petition, especially the particulars thereof. The case of MTN (Nig.) Communications Ltd v. Musical Copyright Society of Nig. Ltd/GTE (2017) LPELR-50121 (CA) was cited in support. That, a closer look and perusal of the petition will readily

disclose that, the complaints of the petitioner as constituted, is against the nomination of the 4th respondent as the Vice-Presidential candidate of the 2nd respondent. That, the 4th respondent whilst being the Senatorial candidate of the 2nd respondent for Borno Central Senatorial Election, allowed himself to be nominated as the Vice-Presidential candidate of the 2nd respondent in contravention of section 35 of the Electoral Act, 2022.

Learned senior counsel for the 1st respondent also raised and argued on whether the petitioner can ground its petition based on qualification rooted on the nomination and sponsorship of the 3rd and 4th respondents by the 2nd respondent. I wish to point out that, the issue of locus standi of the Petitioner, and nomination of the 3rd and 4th respondents were considered and determined in the various rulings on the motions and objections raised by the respondents delivered earlier today. It is therefore not necessary and convenient to consider same here. I shall however proceed to consider the substantive issues(s) in the petition which has been argued by the 1st respondent as its issue three (3).

Now arguing on the issue, learned senior counsel for the 1st respondent contended that, as the custodian of the nomination forms and notices of the candidates at the election, had in reaction to the petition narrated with dates, the facts leading to the nomination,

withdrawal and substitution of the 2nd respondent's Vice-Presidential A candidate at the election. That prior to the nomination of the 4th respondent as the Vice-Presidential candidate of the 2nd respondent for Borno Central Senatorial election, and had by a letter dated the 6th July, 2022 (exhibit PA4) communicated his withdrawal as the 2nd respondent's Senatorial candidate to the 2nd respondent, Furthermore, that by a letter dated 6th July, 2022 forwarded the notice of withdrawal of the 4th respondent to the 1st respondent, on the 13th day of July, 2022.

It is then contended that, the 2nd respondent had on the 15th day of July, 2022 completed and submitted Form EC11C for the nomination of the 4th respondent as the new Vice-Presidential candidate of the 2nd respondent following the withdrawal of 5th respondent who had earlier been nominated as the Vice-Presidential candidate. That in the circumstances, the 4th respondent was not a candidate for the Borno Central Senatorial constituency election as D at the 15th of July, 2022 when he became formally nominated the Vice-Presidential candidate of the 2nd respondent.

Learned senior counsel went on to submit that, a candidate for an election can withdraw his candidacy pursuant to section 31 of the Electoral Act, 2022. That the procedure for the withdrawal are that:

(i) the candidate shall deliver personally to his political party that nominated him, his notice of withdrawal in writing;

(ii) the political party shall then deliver to (NEC the notice of withdrawal; and

(iii) the notice of withdrawal shall be given to INEC not later than 90 days to the election.

Therefore, that for a candidate to validly withdraw his candidacy for an election, the requirements of section 31 of the G Electoral Act must be complied with. The cases of Ekpe v. Itanjah & Ors (2019) LPELR-48462 (CA) and Haruna v. P.D.P. & Anor (2022) LPELR-59266 (CA) were cited in support. That in compliance with the provision of section 31 of the Electoral Act (supra), the 4th respondent wrote a letter to his political party (2nd respondent) on the 6th of July, 2022 intimating it of his withdrawal as the candidate for the Borno Central Senatorial election of the 2nd respondent. That on the same day, the 2nd respondent authored a letter to the 1st respondent (INEC) communicating such withdrawal and also attaching the 4th respondent's notice of withdrawal as the Borno Central Senatorial candidate of the 2nd respondent. That the said letter was received by the 1st respondent on the 13th of July. 2022; and that there was nothing else required by Law as regards the withdrawal of the 4th respondent as a Senatorial candidate of the 2nd respondent for the Borno Central Senatorial election. It is therefore submitted that, the 4th respondent's withdrawal as the candidate of the 2nd respondent for Borno Central Senatorial election was done in full compliance with section 31 of the Electoral Act, 2022.

On the issue of double nomination, learned counsel for the 1st respondent referred to section 35 of the Electoral Act, 2022 to contend that, the operative words in that provision is "nomination". "candidate" and "knowingly". It is thus contended that, for a candidate to be caught by that provision, his intent and knowledge of allowing double nomination must be established. The case of Jime v. Hembe & Ors (2023) LPELR 60334 (SC); (2023) 12 NWL.R (Pt. 1899) 463 was cited

in support; and to further submit that, awareness or consciousness or intent to allow the double nomination is a vital ingredient that must be established. That, the onus is on the petitioner to establish both the double nomination and the fact that the 4th respondent knowingly allowed himself to be doubly nominated.

Learned senior counsel for the 1 respondent then submitted that, from the totality of the evidence on record, there is no dint of evidence offered by the petitioner that the 4th respondent knowingly allowed himself to be nominated in more than one constituency. Rather, that the evidence, particular exhibit PA4, that the 4th respondent had withdrawn his candidacy and communicated same to the 2nd respondent. We were accordingly urged to hold that, no case of double nomination was established, nor that the 4th respondent knowingly allowed such double nomination.

Learned counsel for the 1st respondent went on to submit that, the same set of facts on allegation of double nomination against the 4th respondent, were raised and carefully considered by the Supreme Court in Peoples Democratic Party (PDP) v. INEC & Ors unreported in SC/CV/501/2023, Reported in (2023) 13 NWI R (PL. 1900) 89 particularly in the concurring decision of, Okoro, JSC and Agim, JSC. Thus, on the authority of P.D.P. v. INEC & Ors (supra), we were urged to resolve the issue against the petitioner.

Learned senior counsel for the 2nd respondent contended that, the case of the petitioner is that, the 3rd respondent was, at the time of the election conducted on the 25/2/2023, not qualified to contest as the Presidential candidate of the 2nd respondent due to "double nomination" of the 4th respondent by virtue of section 35 of the Electoral Act, 2022. That the issue has been settled by the Supreme Court in exhibit XI - P.D.P. v I.N.E.C. & Ors delivered on the 26/5/2023; (2023) 13 NWLR (Pt. 1900) 89; and that this petition which is predicated on the same ground/issue is caught by the doctrine of issue estoppel. That exhibit XI and this petition are the same in substance and effect. That the basis of the principle of estoppel is that, there must be an end to litigation, so that, issues which have been litigated and conclusively settled must not be relitigated by and between the same parties and their privies. The remark of Lord Denning, M.R in his book titled: What Nest

in the Law at pp.5-6, and the case of A.P.C. v. P.D.P. & (2015) LPELR D - 24587 (SC): (2015) 15 NWLR (Pt. 1481) 1 were referred to.

Learned senior counsel reiterated that, the sole witness for the petitioner (PWI) confirmed under cross-examination that, the sole ground for this petition is that, the 3rd respondent was at the time of the Presidential election not qualified to contest the Election because E the 4th respondent's nomination as Vice-Presidential candidate amounted to double nomination. That, the same witness confirmed under cross examination that, the issue of the double nomination of the 4th respondent was settled in P.D.P. v. I.N.E.C. (supra). It is thus submitted that, the Supreme Court has sufficiently determined F the issue of the alleged double nomination of the 4th respondent to conclusion. The case of Oyetunji v. Awoyemi & Ors (2013) L.PELR - 20226 (CA) was cited in support. That, PWI admitted in cross- examination that she was aware of the Supreme Court decision in P.D.P. v. I.N.E.C. (supra), yet the Petitioner went ahead to file this petition.

Learned senior counsel for the 2nd respondent then cited the dicta of Agim, JSC at pages 2-4 and Okoro, JSC at pages 7-9 of their Lordships' concurring judgments to point out the similarities of the issues in contention in this petition and P.D.P. v. IN.EC.IL (supra)

Learned senior counsel referred to section 84 of the Electoral Act, 2022 to further submit that, the petitioner has not in any way shown how the acts complained of affects it, and has no locus standi to institute this petition, therefore a nosy busybody and meddlesome interloper peeping into the affairs of the 2nd respondent without any backing in Law. In other words, that the petitioner being a distinct and separate political party cannot challenge the nomination of the 4th respondent who is a candidate of the respondent. The cases of Obasanjo v. Yusuf (2004) 9 NWLR (Pt. 877) 144; Adams v. Umar (2009) 5 NWLR (Pt. 1133) 41; and Jegede & Anor v. I.N.E.C. & Ors (2021) 14 NWLR (Pt. 1797) 409 at 560-561 were then cited to submit that, the limited scope of the jurisdiction vested in this court by section 239(1) of the 1999 Constitution cannot extend to the determination of the issue brought up by the petitioner in this petition.

It is thus argued by learned senior counsel for the 2nd respondent that, the issue of nomination of the 4th respondent has been determined by the Supreme Court. The case of Registered Trustees of the N.A.C.H.P.N. v. M.H.W.U.N. & Ors (2022) LPELR 59040 (CA) was

then cited to submit that, where estoppel has been successfully pleaded and proved, that will be the end of the matter. That what remains to be determined is whether the decision of the Supreme Court in P.D.P. v. I.N.E.C. & Ors (supra) is final on the issue of double nomination of the 4th respondent by the 3rd respondent. The case of Onyeabuchi v. INEC (supra) at 438-439 was further cited in support; and also submit that a decision is final when the court that determined it cannot vary re-open or set aside the decision. That, the decision of the Supreme Court in P.D.P. v. I.N.E.C. & 3 Ors on the validity or otherwise of the nomination of the 4th respondent is a final judgment.

Learned counsel for the 1st respondent went on to submit that, the decision in P.D.P. v. I.N.E.C. & Ors (supra) is a judgment in rem having pronounced upon the status of nomination of the 4th G respondent. The cases of Igwemma v. Obidigwe (2019) 16 NWLR (Pt. 1697) 117 at 138; Noekoer v. Executive Governor of Plateau State (2018) 16 NWLR (Pt. 1646) 481 and Dike v. Nzeka (1986) 4 NWLR (Pt. 34) 144 were then cited to submit that, what the petitioner herein is trying to do is to relitigate on the same subject matter despite the subsisting judgment in rem. The cases of Ogwuche v. F.R.N. (2021) 6 NWLR (Pt. 1773) 540 at 555; Corporate Ideal Insurance Ltd v. Ajaokuta Steel Co. Ltd (2014) 7 NWLR (Pt. 1405) 165; Okochi v. Animkwoi (2003) 8 NWLR (Pt. 851) 1; Ayakndue v Augustine (2023) 2 NWLR (Pt. 1867) 189 at 204 and Onwuakpa v Onveama (2022) 17 NWER (P. 1858) 97 at 179 were then cited to A urge us to take judicial notice of the decision of the Supreme Court m PD.P. INEC. & 3 Ors (exhibit XI) and apply same in the circumstances of this case.

Learned senior counsel for the 2nd respondent then contended that the consequence of filing this petition is that, it amounts to abuse of court process. That the category of that result in abuse of court process are not closed, but the common denominator in abuse of court process is the improper use of court process to the irritation and harassment of the opponent, or the improper use of the court process to unduly harass, irritate and c annoy the opponent by relitigating an issue already determined by the court. The cases of Saraki v. Kotoye (1992) 9 NWLR (PL. 264) 156; C.B.N. v. Ahmed (2001) LPELR - 837 (SC); (2001) 11 NWLR (PL. 724) 369 and F.B.N. Plc v. May Medical Clinics & Diagnostic Centres Ltd. (2001) 9 NWLR (P1.717) 28; Opekun Sadiq & Ors (2002) LPELR - 8183 (CA) were cited in support. That by the admission of PWI of the existence of exhibit XI, the petitioner deliberately proceeded with this petition so as to irritate and

annoy the respondents. We were accordingly urged to hold that this petition is frivolous, vexatious and oppressive which is tantamount to abuse of court process.

The cases of Owonikoko & Ors v. Arowosaiye (1997) L.PELR 6266 (CA); (1997) 10 NWLR (Pt. 523) 61; African Reinsurance Corp. v. JDP Construction Nig. Ltd. (2003) L.PELR-215 (SC); (2003) 13 NWLR (Pt. 838) 609 and Dana Airlines Ltd. v. Yusuf & Ors (2017) LPELR-43051 (CA) were then cited to submit that, F where a court comes to the conclusion that its process is abused, the proper order to make is that of dismissal of the entire suit. We were then urged to so find.

Learned counsel for the 2nd respondent also agreed that the issue before this court is whether the petitioner has been able to prove its allegation of disqualification. That it is the Law that he who asserts must prove, therefore, in election petition where the reliefs sought are mainly declaratory in nature, the burden is on the petitioner to establish by evidence the disqualification alleged. That in actions where declaratory reliefs are sought, the person alleging has the burden to succeed on the strength of his case and not on the weakness of the case for the adversary. The cases of Ogboru v. Okowa (2016) 11 NWLR (Pt. 1622) 84 at 147 and Makinde v. Adekola (2022) 9 NWLR (Pt. 1834) 13 at 39 were cited in support.

It is then submitted that, it is for the petitioner to prove that the 3rd and 4th respondents have not satisfied the constitutional requirement regarding qualification of candidates to contest the Presidential election of 25/2/2023. That, the crux of petitioner's case is that, the 3rd respondent was at the time of the election not qualified to contest the position of President of Nigeria as a result of double nomination of the 4th respondent. It is also argued that. the issue of qualification to contest an election is a constitutional matter under the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Therefore, that where the issue of qualification is raised in an election petition, same must relate to qualifying or disqualifying factor by virtue of the Constitution. The cases of Abubakar v. I.N.E.C. (2020) 12 NWLR (Pt. 1737) 37 at 102; Useni V. I.N.E.C. (2022) 10 NWLR (PL. 1839) 413 and Agi v. P.D.P. (2017) 17 NWLR (Pt. 1595) 386 at 455 were cited in support.

Learned senior counsel for the 2nd respondent drew our attention to section 131 of the 1999 Constitution which state the qualifications of a candidate to contest election for the office of

President of the Federal Republic of Nigeria. It is then submitted that the 3rd respondent was eminently qualified to contest the election for the office of President having met all the conditions to be elected to the office. That, the nature of qualification in question is the validity or otherwise of the nomination of the 4th respondent, which is not a condition or qualification requirement under the Constitution. That in the instant case, the petitioner has not made out any case that the nomination of the 4th respondent as Vice- Presidential candidate of the 2nd respondent amounted to double nomination as to disqualify the 3rd respondent from contesting the Presidential Election.

Learned senior counsel for the 2nd respondent set out the disqualifying factors for election to the office of the President of Nigeria under section 137(1)(i) (j) and (2)(a) (d) of the 1999 Constitution, to submit that, the facts pleaded by the petitioner for challenging the qualification of the 3rd and 4th respondents as candidates of the 2nd respondent are not cognizable under section 137 of the 1999 Constitution. Learned counsel then cited sections 134 and 142 of the Constitution and the case of Buhari v. INEC (2008) LPELR-814 (SC); (2008) 4 NWLR (Pt. 1078) 546 and section 35 of the Electoral Act to submit that, neither the 3rd nor the 4th respondent breached those provisions of the Constitution. It is thus submitted that, the 3rd respondent is a member of the 2nd respondent and was validly sponsored by the party in compliance with the provisions of the Constitution.

Learned senior counsel for the 2nd respondent went on to submit that, the responsibility of nominating a Vice-Presidential B candidate is on the Presidential candidate, and that the way and manner in which such nomination is done, is not prescribed by the Constitution nor the Electoral Act but left solely at the discretion of the Presidential candidate. However, that the petitioner contends that the 4th respondent was nominated as a Senatorial candidate of c the 2nd respondent for Borno Central Senatorial District when he was nominated by the 3rd respondent for the office of Vice-President in violation of section 35 of the Electoral Act, 2022.

It is further argued that, the office of Vice-President is not one for which a primary election is conducted but is merely nominated by a Presidential candidate. That the 4th respondent complied with section 31 of the Electoral Act by withdrawing his candidacy for Borno Central Senatorial District to the 2nd respondent vide a letter dated the 6th of July, 2022 (exhibit RI) and the 2nd

respondent conveyed the notice of withdrawal to the 1st respondent on the 15th July, 2022. It is thus submitted that, the 4th respondent was only obligated by section 31 of the Electoral Act to submit a letter of withdrawal to the 2nd respondent, which he did on the 6th of July, 2022. Therefore, that before the 14th July, 2022 when the 4th respondent was nominated as the Vice-Presidential candidate of the 2nd respondent, he was no longer a Senatorial candidate for Borno Central Senatorial election. That, in the circumstances, there was no case of double nomination as alleged by the petitioner.

It was then submitted that, in any case the issue has been given judicial imprimatur by the Supreme Court in the unreported case of SC/CV/501/2023: P.D.P. v. INEC & Ors delivered on the 26/5/2023, Now reported in (2023) 13 NWLR (Pt. 1900) 89. That, the Supreme Court held therein that, there was no positive evidence before the court to show that the 4th respondent knowingly stood as the nominated candidate of the 2nd respondent for the office of Vice President as well as Senator representing Borno Central Senatorial 1 District in the general election of 25/2/2023. That, on the face of the documents admitted as exhibits PA2, PA3 and PA4, it is clear that the substitution and nomination of the 4th respondent is in compliance with the provisions of the Electoral Act, 2022. That in any case. the dates within which the 4th respondent submitted his withdrawal notice to the 2nd respondent as well as the notice of withdrawal of the 4th respondent's senatorial candidacy are undoubtedly within the bounds-of the law. The case of Balami v. Bwala (1993) 1 NWLR (Pt. 267) 51 at 57-58 was cited in support.

Learned senior counsel for the 2nd respondent then cited the cases of Sylva v. I.N.E.C. (2018) 18 NWLR (Pt. 1651) 310 at 368 and Doma v. I.N.E.C. (2012) 13 NWLR (Pt. 1317) 297 to submit that, the evidence of PWI under cross-examination constitute admission against the interest of the petitioner as PWI was not declared a hostile witness. It is therefore contended that, the petitioner has woefully failed to prove its case, therefore is not entitled to any of the reliefs sought; and to dismiss the petition entirely.

Arguing the sole issue formulated by the 3rd and 4th respondents, learned senior counsel referred to the evidence of the petitioner's sole witness, to contend that the evidence led by the petitioner is very bland or light. That the petitioner's case is built on the fact that, as at the time the

4th respondent's name was submitted to INEC as the Vice-Presidential candidate of the 2nd respondent and running mate to the 3rd respondent, he was yet to relinquish his senatorial candidacy for the Borno Central Senatorial election. Learned counsel then highlighted critical dates for the determination of the issue; which are the 6th July, 2022, 14th July, 2022 and 15th July, 2022 respectively. That it was only on the 6th July, 2022 that the 4th respondent communicated his withdrawal from the senatorial contest to the 2nd respondent; which letter is in evidence as exhibit PA4. That by the said letter, the 4th respondent had clearly evinced his intention to withdraw his candidacy from the Senatorial contest.

That on the 14th July, 2022, the name of the 4th respondent and his personal particulars were submitted to INEC as a substitute candidate, upon the withdrawal of the 5th respondent. That there was a gap of 8 days between the 6th day of July, 2022, when the 4th respondent withdrew from the Senatorial race and the 14th July, 2022 when his name was submitted to INEC as the substitute candidate for the 2nd respondent's Vice-Presidential candidate. 11 That, the judgment (exhibit XI) of the Supreme Court which is binding on this court, aptly captures the point being made; in the contributory judgment of Ogunwumiju, JSC. That in any case, all the activities culminating in the nomination of the 4th respondent as the Vice-Presidential candidate of the 2nd respondent are entirely the internal affairs of the 2nd respondent. That in the circumstances, A not only is the subject of the petitioner's complaint non-justiciable, but the petitioner not being a member of the 2nd respondent lacks the locus standi to institute the petition on the subject matter.

On the issue of voluntary withdrawal of candidates for an election, learned senior counsel for the 3rd and 4th respondents contended that by section 31 of the Electoral Act, 2022, the 4% respondent is statutorily empowered to withdraw his candidacy for any office at all, in the manner prescribed by the Electoral Act. That the wordings of section 31 of the Electoral Act, 2022, that a "Candidate may withdraw his or her candidature" are clear and C unambiguous. That the judgment of the Supreme Court in P.D.P. v. I.N.E.C. & Ors (exhibit XI) is the reference point on the issue, and restates the right of choice of the candidate and the political party to withdraw from an election.

Referring again to section 31 of the Electoral Act, 2022, learned D senior counsel contended that, the prescribed mode of withdrawal by a candidate is "by notice in writing signed

by him and delivered personally by the candidate to the political party that nominated him". That exhibit PA4 indicates that the 4th respondent wrote, personally signed and submitted or delivered to the 2nd respondent E a letter conveying his withdrawal from the Senatorial contest and to resile from the earlier nomination. That the decision to withdraw is a personal one, it therefore crystalized on the 6th July, 2022 when the 4th respondent delivered the written notice personally to the 2nd respondent; and that from that day he (4th respondent) ceased to F stand as the 2nd respondent's candidate for Borno Central Senatorial District. The dicta of Okoro, JSC and Agim, JSC in P.D.P. v. I.N.E.C. & Ors (supra) (Exhibit XI), were cited in support.

Flowing from the above, learned senior counsel for the 3rd and 4th respondents submitted that, contrary to the suggestion of G the petitioner, what took place on the 15th July, 2022 as shown on the INEC Form EC11 (exhibit PA3) was a mere conveyance of the development to INEC as required by section 31 of the Electoral Act, 2022. That, section 31 of the Electoral Act, 2022 is bifurcated with one part dealing with the withdrawal by notice of the candidate to 11 his political party, and the other part dealing with the conveyance of such withdrawal by the political party to INEC. Therefore, that if the withdrawal had not crystalized, there would have been nothing for the political party to convey to INEC. The dictum of Agim, JSC in P.D.P. v. LN.E.C. & Ors (supra) at pages 5-6 was then cited to submit that, if the 4th respondent had not successfully withdrawn on the 6th July, 2022, the 2nd respondent would have had no withdrawal to convey to INEC on the 15th July, 2022.

Learned senior counsel for the 3rd and 4th respondents went on to submit that, it is immaterial that the withdrawal was communicated to INEC on 15th July, 2022, insofar as the communication is done not later than 90 days before the election. That, the petitioner's misconception, proceeded from the premise that the withdrawal was incomplete until same is communicated to INEC. We were accordingly urged to hold that the 4th respondent's subsequent nomination as Vice-Presidential candidate by the 3rd respondent on or about the 14th July, 2022 does not suffer from any factual or legal impediment, whatsoever.

Referring to exhibit XI (Judgment of the Supreme Court in PDP v. INEC & Ors), which also challenged the qualification of the 3rd respondent to contest the Presidential election on the

claim of invalid nomination of the 4th respondent, learned senior counsel for the 3rd and 4th respondents recommended the dicta of the Justices of the Supreme Court of Nigeria, to serve as binding precedent for the determination of this petition. That the said judgment of the Supreme Court has covered the field in every area material and significant to the determination of this petition. Learned counsel then contended that, the legal profession in Nigeria, and the entire commonwealth thrives on strict adherence to the doctrine of judicial precedence, or stare decisis. The case of Atolagbe v. Awuni (1997) 9 NWLR (Pt. 522) 536 at 544545, 567 was cited to stress the point. The cases of Dalhatu v. Turaki (2003) 15 NWLR (Pt. 843) 310; Osakue v. Federal College of Education, Asaba (2010) 10 GNWLR (Pt. 1201) 1 at 36; Sule v. Kabir (2011) 2 NWLR (Pt. 1232) 533; Dada v. FRN (2016) 11 NWLR (Pt. 1505) 312 and Ezenwaji v. University of Nigeria & 4 Ors (2017) 5-6 SC (Pt. II) 87; (2017) 18 NWLR (Pt. 1598) 485 were cited in support.

Dr. Roland Otaru, SAN of learned counsel for the 5th respondent contended that, the qualifying criteria for election to the office of President is section 131 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended. That, the entire substratum of this petition is built on the alleged invalid nomination of the 4th respondent as pleaded in paragraph 18, 19, 20, 21, 22, 23, 24, 25, 28 and 29 of the petition; and that those facts pleaded explains A the Petitioner's erroneous contention that the 3rd respondent is not qualified to contest for the office of President of Nigeria following the withdrawal of the 5th respondent and subsequent nomination of the 4th respondent in his stead as the Vice-Presidential candidate of the 2nd respondent pursuant to section 142(1) of the 1999 Constitution.

The cases of P.D.P. v. I.N.E.C. & Ors (2014) LPELR-23808 (SC); (2014) 17 NWLR (Pt. 1437) 525; Onashile v. Idowu (1961) 2 SCNLR 53; Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 365; Adejumo v. Military Governor of Lagos State (1972) 3 SC 45 and C Ojokolobo v. Alamu (1987) 3 NWL.R (Pt. 61) 377 were then cited to submit that, in the interpretation of the Constitution, once the words used are clear and unambiguous, the literal meaning shall be applied. That, section 142(1) of the Constitution only means that, at the time of nomination of a candidate for election to the D office of President, such candidate must nominate an associate from the same political party as a Vice-President under section 141 of the Constitution. That, the 3rd respondent

having nominated the 4th respondent for the office of Vice President, the requirement of section 142(1) of the Constitution has been satisfied.

Learned senior counsel for the 5th respondent then submitted that, the petitioner has anchored his complain on double nomination pursuant to section 35 of the Electoral Act, 2022. That in the instant petition, the 4th respondent had been nominated the Senatorial candidate of Borno Central Senatorial election of the 2nd respondent. F That subsequent to the emergence of the 3rd respondent as the Presidential candidate, he picked the 5th respondent as his running mate for the election. However, the 4th respondent later withdrew as the Borno Central Senatorial candidate of the 2nd respondent. That the facts pleaded in paragraphs 18,19, 20, 21, 22, 23, 24, 25, 28 and 29 of the petition are erroneous as there is no law which require primaries to elect a Vice-Presidential candidate. The case of Nobis-Elendu v. INEC & Ors (2015) LPELR-25127 (SC): (2015) 16 NWLR (Pt. 1485) 197 was cited in support.

It is also contended by learned senior counsel for the 5th respondent that, the whole case of the petitioner boils down to whether the candidacy of the 4th respondent is vitiated by double nomination; and if the court answers or resolves in the negative, then the whole case of the petitioner crumbles like a pack of cards.

That incidentally, the issue was settled by the Supreme Court in People's Democratic Party (PDP) v. Independent National Electoral Commission (INEC) & 3 Ors unreported SC/CV/501/2023 delivered on the 26th May, 2023; now reported in (2023) 13 NWLR (Pt. 1900) 89. That the facts of that case is on all fours as the instant petition; and the Supreme Court was emphatic in holding that the complaint of wrongful nomination of the 3rd and 4th respondents is strictly an internal affair of the 2nd respondent in respect of which the PDP lacked the locus standi to raise and litigate upon.

Learned senior counsel went on to submit that, the Supreme Court in the P.D.P. v. I.N.E.C. case (supra), delved into the issue whether the nomination of the 4th respondent amounted to "double nomination" within the meaning of section 35 of the Electoral Act, came to the conclusion that there was no such double nomination. That the findings of their lordships of the apex court in P.D.P. v. INEC & Ors (supra) are extensive, far-reaching and leave no room for any conjecture,

such that this court will have no choice than to adopt and apply same based on the doctrine of stare decisis. On that note, we were urged to resolve the sale issue in this petition against the petition, and dismiss the appeal.

In response, learned counsel for the petitioner contended that, the 3rd respondent was not qualified to contest the Presidential Election held on the 25/2/2023, therefore, the 1st respondent was wrong when it declared and returned him as duly elected. That, this petition is anchored on the ground that the 3rd respondent was not qualified to contest the Presidential Election afore-stated because he did not have a validly nominated running mate as provided by sections 131 and 142(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The cases of P.D.P. V. I.N.E.C. (2014) 17 NWLR (Pt. 1437) 525 and Balewa v. Muazu (1999) 5 GNWLR (Pt. 604) 636 at 644-645 were then cited to submit that, this court has the jurisdiction to entertain an election petition based on qualification or non-qualification of the person declared elected.

Learned senior counsel for the petitioner referred to section 134(1)(a) of the Electoral Act, 2022 and paragraphs 15 and 16 of II the petition to submit that, it is accepted by all sides in this petition that the 4th respondent was the candidate of the 1 respondent for the Borno Central Senatorial District before the withdrawal of the 5th respondent. That upon the withdrawal of the 5th respondent, the 3rd respondent nominated the 4th respondent as a replacement. It is then contended that, the 4th respondent was therefore nominated A for two offices at two different constituencies for the 2022 general elections. That by section 35 of the Electoral Act, the nomination is void.

The cases of Dankwambo v. Abubakar (2016) 2 NWLR (PL. 1495) 157 at 180; Dickson v. Sylva (2017) 8 NWLR (Pt. 1567) B 167 at 233 and A.-G., Lagos State v. A.-G., Federation (2003) 12 NWLR (Pt. 833) 1 at 159 were then cited to submit that, where the words used in a statute one plain and unambiguous, they must be given their plain or literal meaning unless if to do so will lead to manifest absurdity or be in conflict with the Constitution. It is also C contended that time is irrelevant when construing the provisions of section 35 of the Electoral Act, 2022, and that if the law maker intended that time will be relevant, it would have clearly provided so. It is then

submitted that, the intention of the law maker is that, a candidate cannot aspire to more than one office in one election cycle under the Electoral Act, 2022.

It is further submitted by learned senior counsel for the petitioner that, the consequence of breach of section 35 of the Electoral Act, 2022 is that, the 3rd respondent had no running mate for the Presidential Election held on the 25/2/2022 in violation of E section 142(1) of the 1999 Constitution. That by Section 142(1) of the Constitution, a person cannot be a Presidential candidate without a Vice-Presidential candidate. It follows therefore, that for a person to be qualified to contest a Presidential Election, he must nominate a Vice-Presidential candidate as decided by this court in F Balewa v. Muazu (1999) 5 NWLR (Pt. 604) 636 and Ojoye Diri v. Advanced Nigeria Democratic Party & Ors (2020) LPELR - 50947 (CA). That in effect, a combined reading of sections 131 and 142(1) of the Constitution would reveal that, a Presidential candidate will not qualify to contest an election where the Vice-Presidential G candidate was not sponsored according to Law. The case of Okocha Samuel Osi v. Accord Party (2016) LPELR-41388 (SC) (2017) 3 NWLR (PL. 1553) 387 and Onnoghen v. F.R.N. (2019) LPELR - 47908 (CA); (2020) 12 NWLR (Pt. 1738) 289 was cited in support.

Learned senior counsel for the petitioner went on to submit that section 142(1) of the Constitution renders the qualification of a Vice-Presidential candidate mutatis mutandi with that of the Presidential candidate as stipulated for by section 131 of the Constitution. Furthermore, that section 33 of the Electoral Act, 2022 has constitutional favour. That, the case of the petitioner is that, the 3rd respondent contested Presidential election of 25/2/23 without an associate known to law as the said associate was not sponsored in accordance with the provisions of the Constitution, therefore, the 3rd respondent cannot be said to have been sponsored by the 1st respondent as contemplated by section 131(c) of the Constitution. Learned counsel drew our attention to paragraphs 23, and 28 of the petition and paragraphs 13, 25, 26, 27, 28, 30, 34, 35, 36 and 40 of the written statement on oath of PWI together with exhibit PA2.

Learned counsel for the petitioner then submitted that, the case of the petitioner has always been that, the 2nd respondent sponsored the 3rd and 5th respondents as its Presidential and Vice-Presidential candidates for the 25th February, 2023 election. That on the 24th June, 2022, the 5th

respondent withdrew from the Presidential election and deposed to an affidavit in the High Court of the FCT to that effect. That pursuant to the withdrawal of the 5th respondent, the 2nd and 3rd respondents purportedly sponsored the 4th respondent to replace the 5th respondent on the 14th July, 2022. Citing the cases of B.S.S. Engineering Services Ltd. & Ors v. Fidelity Bank (supra): E Egharevba v. Osagie (2009) 18 NWLR (Pt. 1173) 299 and Olaloye v. Attorney-General of Osun State (2015) All FWLR (Pt. 774) 37 at 6970, learned counsel contended that, the case of the petitioner is supported by documentary evidence evincing the withdrawal of the 5th respondent as well as the purported sponsorship of the 4th respondent by the 2nd respondent to be the associate of the 3rd respondent.

It is then submitted that, it is clear from the testimony of PW1 and exhibit PA2 that, the 5th respondent withdrew from the Presidential election as the associate of the 3rd respondent on the 24th June, 2022. That, the 2nd and 3rd respondents then purportedly sponsored the 4th respondent as replacement of the 5th respondent on the 14th July, 2022. Therefore, that the said sponsorship of the 4th respondent as associate of the 3rd respondent was done within twenty-one days from when the 5th respondent withdrew as the associate of the 3rd respondent. That those facts were not contradicted by the respondents and therefore remain unchallenged and uncontroverted. The cases of Ogunyade v. Osunkoye & Anor (2007) LPELR-2355 (SC); Reported as Ogunyade v. Oshunkeye (2007) 15 NWLR (PL. 1057) 218 and EC.D.A. v. Alhaji Musa Naibi (1990) 5 SCNJ 186 at 195196; (1990) 3 NWLR (Pt. 138) 270 A were then cited to submit that by failing to challenge the evidence of the petitioner on this point, the respondents have conceded to this point of the petition. That facts admitted need no further proof. The case of O.A.N. Overseas Agency Nig. Ltd. v. Bronwen Energy Trading Ltd & Ors (supra) was cited in support, and to further B submit that, the sponsorship at the 3rd respondent as at the 24th June, 2022 was inchoate and could only be validated within 14 days as provided by section 33 of the Electoral Act.

It is then contended by learned counsel for the petitioner that, a political party that wishes to sponsor a candidate to replace a withdrawn candidate has to do so within the window provided for by section 33 of the Electoral Act, 2022. That the times stipulated by the Electoral Act are immutable and sacrosanct, a breach of which renders any action taken on the issue, void. The cases of Ehinlanwo v. Oke & Ors (2008) LPELR- 1054 (SC); (2008) 16 D NWLR (Pt. 1113) 357 and

I.N.E.C. & Ors v. Fazing & Ors (2010) LPELR-5020 (CA) were cited in support. We were then urged to hold, based on the judicial authorities cited, that the 4th respondent was never an associate to the 3rd respondent as his sponsorship on the 14th July, 2022 was invalid, having not been done within 14 days as stipulated by section 33 of the Electoral Act, 2022.

Learned counsel for the petitioner also contended that, the testimony of PWI and exhibit PA2 indicate that, the 5th respondent withdrew from the Presidential election as the associate of the 3rd respondent. That, the combined effect of the withdrawal of the 5th respondent from the Presidential Election as an associate of the 3rd respondent and his consequent non-participation in the election as well as the invalid sponsorship of the 4th respondent by the 2nd respondent as an associate of the 3rd respondent is that, the 3rd respondent was at the time of the Presidential election, not qualified to contest the election. The case of Mr. Peter Okocha & Anor v I.N.E.C. & Ors (2010) LPELR-34345 (CJI); (2009) 7 NWL.R (PL. 1:40) 295 was then cited in urging us to hold that, the 3rd respondent was, at the time of the Presidential Election, not qualified to contest the election, having violated the provisions of sections 131(c) and 142 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

On the unreported case of Peoples Democratic Party (PDP) v. INEC & Ors (supra) (exhibit XI), learned counsel for the Petitioner cited the cases of Ogboru v. Ibori (2005) 13 NWLR (PL. 942) 418; Osunrinde v. Ajamogun (1992) 6 NWLR (Pt. 246) 156 and Oyede v. Olusesi (2005) 16 NWI.R (Pt. 951) 617 to contend that, for a plea of issue estoppel to apply, the following conditions must be satisfied:

(a) The same question must have been decided in both proceedings;

(b) The judicial decision which creates the estoppel must be final; and

(c) The parties to the judicial decision or their privies to the proceedings in which the estoppel is pleaded, must be the same.

It is then argued that, the question decided in P.D.P. v. INEC (supra) is not the same for the determination of the instant petition; the decision sought to be relied on is not final, and the petitioner is not a privy of PDP nor was it a party in the case at the Supreme Court. The case of

Oleksandr v. Lonestar Drilling Co. Ltd (2015) 9 NWIR (Pt.1464) 337 was cited in support. That, the Supreme Court in P.D.P. v. INEC & Ors (supra) was merely decided on the locus standi of PDP to institute the matter at all. Therefore, that the appeal was determined by the Supreme Court on the issue of locus standi contrary to the assertion of the respondents who are urging this court to hold that the substantive issue(s) in that case were completely determined on the merit by the Supreme Court. The dictura of Adamu Jauro, JSC at pages 35-38 of the judgment, and the case of Onyeabuchi v. I.N.E.C. (2002) 8 NWL.R (Pt. 769) 417 at 439 were cited in support, and to urge us to reject the argument of the respondents that the authority of P.D.P. v. L.N.E.C. (supra) constitute res judicata or issue estoppel. We were accordingly urged to hold that the 3rd respondent was not qualified to contest the Presidential Election of 25th February, 2022 and grant the reliefs sought by the petitioner.

I have also studiously considered the petitioner's final written addresses in response to the final addresses of the 2nd, 3rd and 4%, and 5th respondents. Having done that, I find no substantial difference 11 in the response of the appellant to those written addresses, from that of the 1st respondent. Thus, for the sake of brevity and to avoid repetition, I see no need to repeat them here. However, I shall consider briefly, any new point considered by the respondents in their replies on points of law to the petitioner's final written address.

In reply on points of law, learned senior counsel for the 1 A respondent, in answer to the petitioner's contention that, the 1st respondent having not called any witness at the trial is deemed to have abandoned his pleadings, submitted that, refusal to call witness is not the same thing as not leading evidence in support of the defence. That the petitioner failed to appreciate that, the 1st respondent actually led evidence in support of its pleaded facts through the cross-examination of PW1. The cases of P.D.P. v Nwankwo & Ors (2015) LPELR-40668 (CA); Andrew & Añor v. I.N.E.C. & Ors (2017) LPELR-48518 (SC); (2018) 9 NWLR (Pt. 1625) 507 and Abubakar & Anor v. I.N.E.C. & Ors (2019) C LPELR-48488 (CA) were cited in support. Learned senior counsel for the 1st respondent then contended that the evidence elicited though the cross-examination of PW1 are in proof of the pleadings of the 1st respondent. The case of Andrew & Anor v. I.N.E.C. & Ors (2017) LPELR-48518 (SC); (2018) 9 NWLR (Pt. 1625) 507 D was then cited to urge us to discountenance this argument of the petitioner that the 1st respondent abandoned his pleadings.

On the provision of section 35 of the Electoral Act, 2022, learned senior counsel for the 1st respondent submitted that, to void the nomination of a candidate, such candidate must have knowingly E allowed himself to be simultaneously nominated in more than one constituency. That, where the candidate withdrew his nomination from one constituency before taking up the nomination of another constituency, the provision of section 35 of the Act cannot be activated against such candidate.

On the contention of the petitioner that upon the withdrawal of the 5th respondent as the Vice-Presidential candidate of the 2nd respondent, the 2nd respondent ought to conduct fresh primary election within 14 days to replace the 5th respondent, learned counsel for the 1 respondent submit that, a quick glance at section G 33 of the Electoral Act would reveal that the section applies only to nominations submitted pursuant to section 29 of the Act. In other words, that section 33 applies to a candidate whose name has been submitted under section 29 of the Electoral Act or nominations that are birthed by virtue of a valid primary election. That in the H circumstances, to the extent that the 5th Respondent's nomination was not through any primary election, his substitution upon his withdrawal cannot also be through any primary election. It is then contended that the cases of Ehinlanwo v. Oke & Ors (2008) LPELR.-1054 (SC); (2008) 16 NWLR (PL. 1113) 357 and Mr. Peter Okocha 409 & Anor v. INEC & Ors (2010) JELR-34345 (CA); (2009) 7 NWLR (Pt. 1140) 295 are therefore inapplicable.

On the argument of the petitioner that since the petitioner was not a party to the case of Peoples Democratic Party v. INEC & Ors, SC/CV/501/2023; (Reported in (2023) 13 NWLR (Pt. 1900) 89) (exhibit XI), the principle of estoppel does not bar him from relitigating the issue, learned senior counsel for the 1st respondent submitted that, the Supreme Court has fully and exhaustively addressed and established that only a party member who participated in the primary election of its party that has the locus standi to challenge or question the nomination of a candidate. That, in so far as the petitioner is not a member of the 2nd respondent nor was it an aspirant at its primary election, it lacks the locus standi to question the nomination of the 3rd and 4th respondents. The case of Bamgbegbin v. Oriare (2009) 13 NWLR (PL. 1158) 370 was cited in support.

Responding on points of law, learned senior counsel for the 2nd respondent contended that, the petitioner has not challenged or proffered any answer to the salient points raised and argued by the 2nd respondent, such as, the overall legal effect of exhibit XI being a judgment of the Supreme Court and the principles of stare decisis; the incongruity and academic nature of the reliefs sought in the petition; and the petitioner's failure to prove actus reus and mens rea of the allegation on violation of section 35 of the Electoral Act. That in the circumstances, the petitioner is deemed to have conceded those points. The case of Adesanya v. Otuewu (1993) 1 NWLR (Pt. 270) 414 at 456 was cited in support. That in particular, the petitioner failed to address on his objection to the admissibility of exhibit XI, which means that the exhibit was properly admitted. Learned counsel then submitted that, in Law, evidence elicited from a party or his witness under cross-examination which goes to support the case of the party cross-examining constitutes evidence in support of the case or defence as the case may be. The case of Andrew v. INEC (supra) was then cited to submit that, PW1 was cross-examined with respect to exhibit X1 which cleared the question of double nomination of the 4th respondent.

On the issue of lack of cross-examination of the petitioner's witness by the 2nd respondent, examination- in-chief that must be tested by cross-examination. That a worthless A or apparently incredible evidence need not be subjected to any cross-examination. The case of Fasogbon v. Layade (1999) 11 NWLR (Pt. 628) 543 at 553 - 554 was cited in support. That in any case, assuming without conceding that PWI was not cross- examined, the fact that the evidence given by PWI was so watery and worthless, makes cross-examination of such witness, merely academic exercise.

Learned senior counsel for the 2nd respondent contended that, the case of Mr. Peter Okocha v. I.N.E.C. (2009) 7 NWLR (Pt. 1140) 295 cited by the petitioner did not decide the issue of valid C nomination or double nomination, rather what this court decided was on unlawful exclusion. That it is erroneous for the petitioner to contend that exhibit XI; judgment of the Supreme Court in P.D.P. & I.N.E.C. & Ors (supra) does not constitute res judicata. That the concurring decisions of the esteemed Law Lords of the Supreme D Court form part of the judgment as it is meant to complement the lead judgment by way of addition to or even improvement on the issues resolved in the lead judgment. That it is the lead judgment and the concurring judgment that crystalize into

the full judgment of the court. That after resolving the issue of locus standi in the P.D.P. E v. I.N.E.C. (supra) case, the Supreme Court exercised its powers under the Supreme Court Act, to proceed to resolve the substantial issues in the appeal, as a matter of policy of the court. The case of Okorocha v. P.D.P. (2014) 7 NWLR (Pt. 1406) 213 was cited in support. Learned senior counsel then submitted that, the Supreme F Court by the decision in P.D.P. & I.N.E.C. & Ors (supra), intended that the issue of double nomination or validity vel none of the 4th respondent's nomination as the Vice-Presidential candidate of APC should not resurface again for litigation under any guise. The dicta of Augie, JSC, Ogunwumiju, JSC and Agim, JSC are eloquent G evidence of the position of the Supreme Court. Learned counsel then submitted that, contrary to the assertion of the Petitioner, the Supreme Court made crucial findings and pronouncements on the issue of double nomination of the 4th respondent, and that pursuant to section 287 of the 1999 Constitution, that pronouncement is H binding on all courts in Nigeria by dint of stare decisis. The cases of Toyin v. P.D.P. (2019) 9 NWLR (Pt. 1670) 50 at 66; Gwede v. D.S.H.A. (2019) 8 NWLR (Pt. 1673) 30 at 47 and Dingyadi v. I.N.E.C. (No.1) (2010) 18 NWLR (Pt. 1224) 1 were cited in support.

The 3rd and 4th respondents also filed a reply on points of law. Therein, it was argued that, the petitioner has not disputed the fact that every aspect of the decision of the Supreme Court in exhibit XI is, by the doctrine of stare decisis and section 287(1) of the Constitution binding on this court. Furthermore, that the petitioner has not rebutted the fact that the 4th respondent duly submitted his letter of voluntary withdrawal from the senatorial contest on the 6th of July, 2022. Also, that the petitioner has not pointed to any law, whether statutory or judicial, which mandates a primary election for the nomination of a running mate for an election. That while the petitioner does not deny the fact that the 4th respondent did in fact voluntarily withdraw his nomination as a Senatorial Candidate, the date of the said withdrawal seems to matter to the petitioner.

Learned senior counsel also contended that, the petitioner has argued that, the 2nd respondent ought to have conducted a fresh primary election to nominate the 4th respondent, upon the voluntary withdrawal of the 5th respondent. That this explains why the respondents had no obligation to call any witness, particularly when section 33 of the Electoral Act, 2022 stipulates that in the case of withdrawal by a candidate, "the political party affected shall, within 14 days of

the occurrence of the event, hold a fresh primary election to produce and submit a fresh candidate to the Commission for the election concerned".

That the phrase "fresh primary" presupposes the existence of an initial primary. However, that in the case of the 4th respondent, no primary election is required to fill the office of Vice-President, which is a direct answer to section 142(1) of the Constitution which gives the prerogative of nominating an associate to the Presidential candidate, to the 3rd respondent and not the political party. The cases of A.-G., Federation v. Abubakar (2007) 8 NWLR (Pt. 1041) 1 at 81 and P.D.P. v. I.N.E.C. & Ors (supra) per Augie, JSC were cited in support.

Resolution:

Now, it is apparent from the averments in the petition, the oral and documentary evidence and the submissions of counsel that, this petition is grounded on the disqualification of the 3rd respondent to have contested the Presidential election of 25th February, 2023. This is evident in paragraph 15 of the petition wherein the petitioner pleaded thus:

> "15 Your petitioner states that the ground upon which this petition is presented is that, the 3rd respondent was at the time of the election not qualified to context the Election."

This is further explained as emanating from the non-qualification of the 4th respondent to have contested the election a as the Vice-Presidential candidate of the 2nd respondent. It is specifically pleaded in paragraph 17 of the petition as follows:

"17. Your petitioner states that the 4th respondent was not qualified to jointly contest with the 3rd 2nd respondent for the Presidential Election held on 25th February, 2023, having been purportedly nominated by the 2nd respondent as its candidate for more than one office."

The specific reasons for questioning the qualification of the 3rd respondent have been pleaded in paragraph 16(i) and (ii) of the petition as follows:

16 Your petitioner questions the declaration/return of the 3rd respondent (the candidate of the 2nd respondent) by the 1st respondent as the duly elected President on the following grounds:

(i) The 3rd respondent, at the time of the Election E held on 25th February, 2023, was not qualified to contest as the Presidential candidate of the 2nd respondent by virtue of the provisions of section 13(c) and 142 of the Constitution of the Federal Republic of Nigeria, 1999 (as F amended), and section 35 of the Electoral Act, 2022.

(ii) The declaration and return of the 3rd respondent by the 1st respondent as the duly elected President of the Federal Republic of Nigeria, are invalid by reason of non-compliance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and the Electoral Act, 2022.

A combined reading of paragraphs 15, 16 and 17 of the petition coupled with the particulars thereof, show clearly that, the petition is premised on non-qualification of the 3rd and 4th respondents. I find it necessary to state that, the grounds for questioning the return at an election are stipulated in section 135(1) of the Electoral Acti follows:

134(1) An election may be questioned on any of the following rounds –

(a) a person whose election is questioned was, at the time of the election, not qualified to contest the election;

(b) the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or

(c) the respondent was not duly elected by majority of lawful votes cast at the election.

For the purposes of this petition, it is ground 134(1)(a) that is relevant. In other words, the election of the 3rd and 4th respondents as President and Vice-President of Nigeria is questioned on the ground that they are not qualified to have contested the said Presidential election. I consider paragraphs 18, 19, 20, 21, 22, 23. 24, 26 and 28 of the petition as relevant for the determination of this petition. For better appreciation those paragraphs are hereby reproduced as follows:

18. The 3rd respondent was not qualified to contest for the Office of President as he was not validly sponsored by the 2nd respondent as he did not have a validly nominated running mate.

19. The 4th respondent had been nominated (and accepted same) for the Office of Senator, representing Borno Central Senatorial District in Borno State for the 25th of February, 2023, National Assembly Election.

20. As at the time the 4th respondent was purportedly nominated and when he accepted the nomination as Vice Presidential Candidate of the 2nd respondent, he was still a validly nominated Senatorial Candidate of the 2nd respondent, thus indicating double/multiple nomination.

21. That from the acknowledgement slip dated Friday July 15th, 2022, generated from the online portal of the 1st respondent, it is clear that the 4th respondent before 05:13 pm GMT+1 on the 15/07/2022 was still a validly nominated Senatorial Candidate of the 2nd respondent for Borno Central Senatorial District, Borno State

The petitioner hereby pleads and shall rely on the said acknowledgement slip. Notice to produce original copy of same is hereby given to the 1st respondent.

22. That from the acknowledgement slip dated Thursday July 14th, 2022, generated from the online portal of the 1st respondent, it confirmed or evidenced that the 4th respondent at 06:33 pm GMT 1 on the 14/07/2022 replaced the 5th respondent as the Vice-Presidential candidate of the 2nd respondent, the petitioner hereby pleads and shall rely on the said acknowledgment slip. Notice to produce original copy of same is hereby given to the 1st respondent.

23. As at the 14th day of July, 2022, when the 4th respondent accepted nomination of the 2nd respondent as purportedly replacing the 5th respondent, he was still a Senatorial candidate of the 2nd respondent seeking to represent Borno Central Senatorial District in Borno State. Your petitioners hereby plead the notices of withdrawal of candidate filed by the 5th

respondent and 4th respondent respectively on the 14th day of July, 2022 and 15th day of July, 2022 and shall rely on same at the trial of this suit.

24. The acts of 4th respondent double or multiple nomination make his nomination for either of the elective offices/ constituencies void particularly the latter.

25. Your petitioner further states that the return of the 3rd respondent by the 1st respondent as the winner of the Presidential Election conducted on 25th February, 2023, was wrongful and unlawful as the 3rd respondent was not qualified to contest the Election as he was not validly sponsored by the 2nd respondent.

The validity of the 3rd respondent's nomination as the Presidential candidate of the 2nd respondent hinged on the 3rd respondent nominating a running mate or a Vice-Presidential candidate. The 3rd respondent nominated the 5th respondent, and the name of the 5th respondent was submitted to the 1st respondent as the Vice-Presidential candidate of the 2nd respondent, and the 3rd respondent's running mate for the said Presidential Election held on 25th February, 2023. The petitioner shall at the trial of the petition rely on the said nomination form, and same is hereby pleaded. Notice to on the said nomination form, and same is hereby pleaded. Notice to produce original of same is hereby given to the 1st respondent.

i. Subsequently, the 5th respondent withdrew his purported nomination thereby invalidating the nomination of the 3rd respondent as the Presidential Candidate of the 2nd respondent in view of the provisions of section 131(c) and 142 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended). The petitioner shall at the trial of this petition rely on the withdrawal form/letter written to the 1st respondent by the 5th respondent and same is hereby pleaded. Notice to produce original of same is hereby given to the 1st respondent.

ii. There was a gap of about three weeks between the period the 5th respondent expressed intention to withdraw and his actual withdrawal of his purported nomination, and the time the 3rd respondent purportedly replaced the 5th respondent with the 4th respondent as his Vice- Presidential candidate

iii. By the time the 3rd respondent nominated the 4th respondent to replace the 5th respondent, the candidature of the 3rd respondent had lapsed and he was no longer in a position constitutionally to nominate a running mate since he had ceased to be a Presidential candidate of the 2nd respondent having regards to the provisions of section 142 of the 1999 Constitution.

iv. After the primary election conducted by the 2nd respondent to elect its Presidential Candidate. the 3rd respondent (winner of the said Primary Election) was constitutionally required to nominate a person as his running mate and his Vice-Presidential Candidate on a joint ticket for the Presidential Election.

v. The nomination of the 5th respondent by the 3rd respondent activated the joint ticket principle enshrined in section 142 of the 1999 Constitution, and the subsequent withdrawal of the 5th respondent from the joint ticket invalidated the nomination of the 3rd respondent as the two candidates stand or fall together.

vi. The 2nd respondent did not conduct another Primary Election for the purpose of producing another Presidential Candidate within the time frame stipulated by the 1st respondent for nomination of candidates for the 2023 Presidential Elections.

vii. As at the time of the replacement of the 5th respondent with the 4th respondent, the 3rd respondent by virtue of the provisions of section D 142 of the 1999 Constitution no longer had right or power to nominate another running mate having made the first and only nomination allowed by law.

viii. The 2nd respondent failed to conduct any other Primary Election wherein the 3rd respondent was re-nominated as the 2nd respondent's Presidential candidate for the Presidential Election held on the 25th day of February, 2023.

ix. The 2nd respondent having failed to comply with the provision of the Constitution, has lost its right to nominate the 3rd respondent as its Presidential Candidate for the Election held on 25th February, 2023

x. The 2nd respondent is bereft of any power, right or G authority whatsoever to substitute or replace the 5th respondent (its Vice-Presidential candidate) whose name had already been submitted to the 1st respondent unless the procedures laid down in the Constitution and the Electoral Act, 2022, are followed by the 2nd respondent.

xi. The withdrawal of the 5th respondent as the Vice-Presidential candidate of the 2nd respondent invalidated the candidature of the 3rd respondent as the Presidential candidate of the 2nd Respondent for the purpose of the Presidential Election conducted by the 1st respondent on the 25th day of February, 2023.

xii. The 2nd respondent had no valid Presidential and Vice-Presidential candidates for the Presidential Election conducted by the 1st respondent on the 25th day of February, 2023.

In response, the 1st respondent (INEC) filed a reply to the it was the averred in paragraphs 14, 15 and 16 of the 1st respondent's reply to petition as follows:

14. The 1st respondent denies paragraphs 19, 20, 21, 22, 23, 24 and 25 of the petition. The petitioner is thus put to the strictest proof of the averments contained therein and in response, the 1st respondent avers that:

    i. Prior to the nomination of the 4th respondent as the new Vice-Presidential candidate of the 2nd respondent, the 4 deg respondent was the 2nd respondent's candidate for Borno Central Senatorial election.

    ii. Further to the above and prior to the nomination of the 4th respondent as the new Vice-Presidential candidate of the 2nd respondent, the 4th respondent had by a letter dated 6th July, 2022 communicated his withdrawal as the 2nd respondent's candidate for the Borno Central Senatorial election to the 2nd respondent.

iii. The 2nd respondent by its letter dated 6th day July, 2022 forwarded the notice of withdrawal of the 4th respondent referenced in (iii) to the 1st respondent on the 13th day of July, 2022. The 1st respondent pleads and shall rely on the 2nd respondent's letter dated 6th July 2022 and the attached letter of withdrawal of the 4th respondent at the trial.

iv Further to the notice of withdrawal of the 4th respondent as the 2nd respondent's candidate for the Borno Central Senatorial election (i.e. the completion of withdrawal process), the 2nd respondent on the 15th day of July, 2022 completed and submitted Form ECTIC for the A 4th respondent as the Vice-Presidential candidate of the 2nd respondent (i.e. following the voluntary withdrawal of the previously nominated Vice-Presidential candidate) and the affidavit in support of his Personal Particulars (Form EC9) to the respondent. The 1 deg respondent pleads and shalt rely on Form EC1IC and Form EC9 of the 4th respondent.

v. From the records of the 1st respondent, the 2nd respondent had by a letter dated 6th July, 2022 but received by the 1st respondent on the 13th of July, 2022 notified the 1st respondent of the withdrawal of the candidacy of the 4th respondent for the Borno Central Senatorial election.

vi . The fact stated in (v) above was prior to the nomination of the 4th respondent as the new Vice-Presidential candidate of the 2nd respondent (i.e. following the voluntary withdrawal of the previously nominated Vice-Presidential E candidate).

vii. On account of the foregoing, the 4th respondent was NOT a candidate for the Borno Central Senatorial Constituency election as at the 15th of July, 2022 when he became formally nominated as the Vice Presidential Candidate of the 2nd respondent having been withdrawn as a candidate in that regard on 13th day of July, 2022.

15 Further to the foregoing, the 1st respondent avers and shall at trial contend that:

i. The withdrawal of a candidate's nomination for an election is effective from the date the political party that nominated the candidate communicates the candidate's withdrawal from such post to the 1st respondent.

ii. The complaint/allegation of invalid or valid nomination as an act or a process is a pre-election matter and an internal affair of the political party nominating a candidate which is distinct and different from acts of sponsorship.

16. The 1st respondent denies paragraphs 26, 27, 28, 29 and 30 of the petition and puts the petitioner to the strictest proof of the allegations contained therein and in response states as follows:

i. The 3rd respondent was declared the winner of the Presidential Election conducted on the of February, 2023 having been nominated and 25th sponsored by the 2nd respondent in that regard.

ii. The 5th respondent's withdrawal of his candidature was done according to the dictate of the law and did not in any way, invalidate the nomination of the 3rd respondent as the Presidential Candidate of the 2nd respondent.

iii. The period between the withdrawal and substitution of the 5th respondent by the 4th respondent as the Vice-Presidential candidate of the 2nd respondent is in consonance with the time lines provided for by the Electoral Act, 2022.

iv. The 2nd respondent is not required by the Electoral Act, 2022 to conduct another primary election for the purpose of nominating a Vice- Presidential candidate to replace the one that has withdrawn.

v. The 2nd respondent is allowed by law to nominate another running mate after the voluntary withdrawal of the 5th respondent.

vi. The declaration of the 3rd and 4th respondents by the 1st respondent as the winners of the Presidential election of 25th February, 2023 is not affected by the 4th respondent's voluntary withdrawal as a Senatorial Candidate and the withdrawal of the 5th respondent as the Vice-Presidential candidate, the nomination and substitution process having been done in compliance with the Electoral Act, 2022.

The declaration of the 3rd and 4th respondents not in contravention of the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act, 2022. The Electoral Act. 2022 gives room for substitution of candidates following the withdrawal of a prior candidate

The 2nd respondent also filed a 2nd respondent's reply to the petition wherein similar facts averred in the 1st respondent's reply to the petition were pleaded. The 3rd and 4th respondents, whose election is being questioned, filed a Joint reply to the petition wherein they pleaded in paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 29, as follows:

16. Contrary to paragraphs 19,20, 21, 22, 23 and 24 of the petition, the respondents aver as follows:

i. The 4th respondent did not engage in or allow himself to be nominated for two positions concurrently and/or at the same time.

ii. Upon the withdrawal of the 5th respondent as the vice-presidential candidate of the 2nd respondent, a vacancy occurred in that position.

iii. On the part of the 5th respondent, he duly informed the 2nd respondent of his withdrawal in writing as stipulated by law.

iv. As for the 4th respondent, he also, by a notice in writing on 6th July, 2022, duly withdrew his nomination as the candidate of the 2nd respondent for the Borno Central Senatorial District, and the 2nd respondent, upon receipt of the said notice, declared the seat vacant.

18. The withdrawal of the 5th respondent as the Vice- Presidential candidate of the 2nd respondent was done within the purview of the clear provisions of the Electoral Act, 2022,

19. as he gave signed notice in writing and delivered same to the 2nd respondent and the respondent duly conveyed the notice of withdrawal to the 1st respondent, not later than 90 days to the election.

18. Further to the said withdrawal of the 4th respondent from the senatorial contest, a fresh primary election, duly monitored by the 1st respondent, was conducted for the nomination of the 2nd respondent's candidate in the general election into the office of Senator representing Borno Central Senatorial District of Borno State, wherein, Barr. Kaka Shehu Lawan emerged as the 2nd respondent's candidate, respondents shall found and rely on the report of the 1st respondent in respect of the said primary election.

19. By a letter dated 10% July, 2022, written by the 2nd respondent to the 1st respondent, formally notifying the 1 respondent of the outcome of its primary election for the Borno Central Senatorial District, amongst others, the 2nd respondent stated thus:

> "Following our earlier correspondence dated 6th July, 2022 with reference no. APC/NHDQ/ INEC/19/022/83, we write to notify the commission that the herein candidates are forwarded as replacements to the candidates who withdrew voluntarily:

S/N Constituency	**Withdraw**	**Replacement**
1. Borno Central	Candidates	Candidates
	Sen. Kashim	Kaka Shehu
	Shettima	Lawan
2. Cross River North	Hon. Martin Orim	Sen, Prof
		Benedict Ayade
3. Enugu West	Mrs. Oby Nwofor	Prof. Nicolas Eze

4. Bauchi Federal Constituency	Hon. Shehu Aliyu	Abdullahi Musa Sirajo Jibrin
5. Isa/Sabon Birni Fed. Constituency	Idris Mohammed Gobir	Abdulkadir Jelani Danbuga

20. The respondents aver that their nominations as the 2nd respondent's Presidential and Vice-Presidential candidates respectively were accepted by the 1st respondent (INEC) and a fortiori, their names were published in the List of Candidates for National Elections (Presidential, Senatorial and house of Representatives) by the 1st respondent (INEC) on September 19, 2022 pursuant to the provision of section 32(1) of the Electoral Act, 2022 which provided for the publication of the list of the Candidates at least 150 days before the date of the Presidential Election that was held in February, 25th 2023. The respondents will rely on the List of candidates published by INEC for the various elective offices.

21. The respondents saver that their names as the presidential A and vice presidential candidates respectively of the 2nd respondent (APC) were listed as number 12 in the List of Candidates pleaded above.

22. The respondents aver that the substitution of the respondent with the 4th respondent was validly done by the 2nd respondent prior to the 1st respondent's acceptance and publication of the list of candidates 19th September, 2022.

23. The respondents state that the name of the 4th respondent as the candidate of the 2nd respondent for the Borno Senatorial District election was not at any time published, displayed or circulated by the 1st respondent.

24. The respondents plead that the issues raised in the petition as they relate to the right of a political party to challenge the nomination of a candidate by another political party have been decided and settled by the Court of Appeal in Appeal No: CA/ABJ/108/2023 between Peoples 'Democratic Party v. All Progressives Congress & Ors. which judgment was delivered on the 24th March, 2023 to the

effect that no political party is vested with such right. The Court of Appeal affirmed the judgment of the Federal High Court which earlier dismissed the suit instituted against the 3rd and 4th respondents by the Peoples' Democratic Party, describing the PDP as a busy body.

25. Pursuant to paragraph 24 supra, and following the judgments of the Federal High Court and the Court of Appeal afore-mentioned, the respondents state that:

i. The petitioner here is a busybody.

ii. The issues involved in this petition have been G finally resolved/disposed of to the knowledge of the petitioner.

iii. The judgment of the Court of Appeal, which is a judgment in rem, is binding on the petitioner and all persons, authorities and principalities 11 alike.

26. Contrary to paragraph 20 of the petition, the respondents aver that as at the time the 4th respondent accepted the nomination as the Vice-Presidential candidate of the 2nd respondent for the election of 25 February, 2023.

i. His name was not published as a senatorial candidate for Borno Central Senatorial District by the 1st respondent.

ii. The 2nd respondent had already conducted a primary election, monitored by the 1st respondent which produced a candidate on behalf of the 1st respondent for the Borno Central Senatorial District election, which held on 25th February. 2023.

iii. The said candidate, Barr. Kaka Shehu Lawan, contested the senatorial election of 25th February. 2023 on the ticket of the 2nd respondent, won the election and was declared as winner by the 1st respondent, who thereafter, issued him with a certificate of return. The respondents shall found on the said certificate of return.

29. The respondents deny paragraph 28 of the petition, put the petitioner to the strictest proof of same and further state as follows:

i. The withdrawal of the 5th respondent was within his right as a person and had no impact whatsoever on the nomination of the 3rd respondent who subsequently nominated the 4th respondent in the 5th respondent's stead.

ii. There was no such gap of about three weeks as alleged by the petitioner between the voluntary withdrawal of the 5th respondent and the nomination of the 4th respondent.

iii. There was no need for the conduct of a fresh primary election for the nomination of the 4th respondent by the 3rd respondent, as primary elections are never conducted for the nomination of running mates.

iv. The 2nd respondent duly nominated and sponsored the 3rd and 4th respondents as its presidential and Vice-Presidential candidates at the election held on 25th February, 2023 and the said nomination and sponsorship were in full compliance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2022.

v. The 3rd respondent won the presidential election of 25th February, 2023 by majority of lawful votes cast.

vi. The petitioners who performed woefully at the election, scoring 25,961 votes 3rd as against the not by a sponsored petition contending that it won' the role of a the king reliefs in proxy, on behalf of a nonparty c to this petition.

From the totality of the pleadings in the petition, and the replies of the respondents, what appears from the complaint of the petitioner is that, the 4th respondent while still a candidate of the 2nd respondent for Borno Central Senatorial District, was nominated and did accept to be the Vice-presidential candidate of the 2nd respondent. That this act violated the provision of section 35 of the Electoral Act, 2022, as it amounted to his double nomination. That in the circumstances, his nomination as an associate of the 2nd respondent for the Presidential election is void. That, the result is that the 3rd respondent was disqualified from contesting the election because did not have

a validly nominated running-mate at the time of the election. The petitioner relied on section 131 and 142(1) of the 1999 Constitution for this postulation.

Now, sections 131 and 142(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) stipulate as follows: 131. A person shall be qualified for election to the office of President if-

(a) he is a citizen of Nigeria by birth;

(b) he has attained the age of forty years;

(c) he is a member of a political party and is sponsored by that political party; and

(d) he has been educated up to at least School Certificate level or its equivalent.

142(1) In any election to which the foregoing provisions H of this part of this chapter relate, a candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running mate for the office of President, who is to occupy the office of Vice-President and that candidate shall be deemed to have been duly elected to the office of Vice-President if the candidate for election to the office of President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid.

The general principles of interpretation of the Constitution which is the Supreme Law of the land is that, mere technical rules of interpretation of as they are, to some extent, be avoided in a way as not to defeat the principles of government. Thus, where the words used are clear the and unambiguous, a literal interpretation should be applied. In the interpretation therefore, the provisions of the Constitution are to be accorded holistic interpretation so as to avoid ambiguity and arrive at the true intention of the legislature. The court must limit itself to the words used in the Constitution without resort to any external materials. See Sani v. President. Federal Republic of Nigeria & Anor (2020) LPELR - 50990 (SC): (2020) 15 NWLR (Pt. 1746) 151; Amadi v. LN.E.C. (2013) 4 NWLR (Pt. 1345) 595 at 633 and Agi v. P.D.P. & Ors (2016) LPELR-42578 (SC); (2017) 17 NWLR (Pt. 1595) 386. Thus, in Wike Ezenwo Nyesom v. Honourable (Dr.)

Dakuku Adol Peterside & Ors (2015) LPELR-25724 (SC), (2016) 1 NWLR (PL. 1492) 71 the Supreme Court observed that:

> "the principles of construction of Constitutions to the effect that a Constitution is a living document (not just a statute) providing a framework for the governance of a country not only for the present but for generations yet unborn. It was held that in construing the Constitution, undue regard must not be paid to merely technical rules because in doing so the objects of the provisions as well as the intention of the framers of the Constitution would be frustrated. Courts have always been encouraged to adopt a broad and liberal spirit in interpreting the provisions of the Constitution while constantly bearing in mind the object which such provisions were meant to serve."

That being so, where the Constitution has stipulated the qualifications to be attained by a person contesting or seeking to contest for any elective office created by the Constitution, the courts cannot create or import into the Constitution any other qualifying or disqualifying factor. This has been the position of the Supreme Court and dutifully followed by this court. It has therefore been held that qualification or disqualification of candidates to contest election is exclusively determined within the context or scope of the Constitution, and that nothing can be added to it. In other words, B the Constitution being the ground norm is superior to any other law, including the Electoral Act. Therefore, where the Constitution has qualified a person or candidate to contest an election, no other Law except the Constitution itself, can disqualify him. See Agi v. P.D.P & Ors (2016) LPELR-42578 (SC); (2017) 17 NWLR (Pt. 1595) C 386; A.N.PP. v. Usman (2008) 12 NWLR (Pt. 1100) 1: P.D.P. INE.C. (2014) 17 NWLR (PL. 1437) 525 at 559-560 and Nwaogu Atuma (2013) 11 NWLR (Pt. 1364) 117.

The petitioner in this case has premised its complaint of non- qualification/disqualification of the 3rd and 4th respondents as the Presidential and Vice-Presidential candidates of the 2nd respondent, on the issue of invalid nomination of the 4th respondent. That, the 4th respondent while still the Senatorial candidate of the 2nd respondent for the Borno Central Senatorial District, allowed himself to be nominated as the Vice-Presidential candidate of the 2nd respondent E for

the same election. In the rulings earlier delivered on motions and preliminary objections, I had ruled that the petition grounded solely on the issue of invalid nomination or improper nomination is not a cognizable ground of disqualification under the Constitution. In other words, the claim in the petition that the 3rd respondent was not F qualified to contest the Presidential election because he nominated an associate whose nomination was invalid, does not flow from any ground of disqualification of a candidate to the office of President as stipulated in sections 131 and 137 of the 1999 Constitution. See Balewa v. Muazu (1999) 5 NWLR (Pt. 604) 638 at 647; Faleke v. G INEC (supra) and Tarzoor v. Ioraer (2016) 3 NWLR (Pt. 1500) 463. Thus, in Shinkafi v. Yari (2016) 7 NWIR (Pt. 1511) 340, the Supreme Court held that:

> "The Supreme Court has listed in section 182 very exhaustively all issues that can disqualify a person II from contesting for the office of Governor of a State. From the record of this court, the facts have not disclosed any evidence to show that the 1st respondent was not qualified to contest elections into the office of Governor of Zamfara State. It is my view that once a candidate sponsored by his political party has satisfied the provisions set out in section 177 of the Constitution and is not disqualified under section 182(1) thereof, he is qualified to stand election to the office of Governor of a state. No other Law can disqualify him."

> It has not been contended by the petitioner that either the 3rd or 4th respondent is trammeled by the provisions of sections 131 or 137 of the 1999 Constitution. The complaint of the petitioner rooted on nomination and sponsorship of the 3rd and 4th respondent will find accommodation in a pre-election dispute, which the petitioner cannot even pursue, not being a member of the 2nd respondent. Sec sections 84(14) of the Electoral Act, 2022 and 285(14) of the Constitution. While I am tempted to put an end to this petition at this stage, but realising that this court is not the final court on the matter, I am constrained to look at the merit of the petition.

> As pointed out earlier in the course of this judgment, the complaint of the petitioner in this petition is that the 3rd respondent was at the time of the Presidential Election held on 25th February, 2023, not qualified to contest the Election. This is because, according to

the petitioner, the 4th respondent was not qualified to run on a joint ticket with him (3rd respondent), as he (4th respondent's) nomination was invalid for double nomination which violates section 35 of the Electoral Act, 2022. The said section 35 of the Electoral Act (supra) stipulates that:

> "Where a candidate knowingly allows himself to be nominated by more than one political party or in more than one constituency, his nomination shall be void."

As stated earlier, the petitioner contended that the 4th respondent was a candidate of the 2nd respondent for the Borno Central Senatorial District when the 3rd respondent nominated him as his Vice-Presidential candidate on the 14th July, 2022. In other words, that at the time the 4th respondent was nominated, and he accepted the nomination as the Vice-Presidential candidate of the 2nd respondent, he was still a validly nominated Senatorial candidate of the 2nd respondent for Borno Central Senatorial District. The petitioner contended that, the 2nd respondent had earlier submitted the name of the 3rd respondent together with that of the 5th respondent to INEC as its Presidential and Vice-Presidential candidates for the 25th February, 2023 Election. However, that before the date of the election, the 5th respondent withdrew his candidature as the running A mate of the 3rd respondent on the 24th June, 2023 and the name of the 4th respondent was then submitted to INEC (1st respondent) on the 15th July, 2022. That, the 2nd respondent did not conduct any fresh primary election for the purpose of picking another running mate for the 3rd respondent, after the withdrawal of the 5th respondent.

The respondents conceded that, the 4th respondent was ab initio, the Senatorial candidate of the 2nd respondent for Borno Central Senatorial District. However, that on the 6th July, 2022, he (4th respondent) vide a letter dated the same day, notified his political party (2nd respondent) of his withdrawal from the Senatorial c candidature. That upon receipt of the 4th respondent's letter, the 2nd respondent immediately notified INEC (1st respondent), and which notification letter was received on the 13th July, 2022. That the said letter also notified the 1st respondent of its intention to conduct a fresh primary election for the replacement of the 4th respondent following his withdrawal as a Senatorial candidate. That it was until the 14th July, 2022 that the 4th respondent was nominated as the 3rd respondent's associate for the Presidential Election of 25th February, 2023.

The 5th respondent's notice of withdrawal as a candidate is in evidence as exhibit PA2 while the notice of withdrawal and letter of voluntary withdrawal of the 4th respondent are in evidence as exhibits PA3 and PA4 respectively.

It would appear that, the petitioner is of the view that, the 4th respondent was still the Senatorial candidate of the 2nd respondent as at the 14th July, 2022 when he (the 4th respondent) was nominated F as the Vice-Presidential candidate of the 2nd respondent. However, the respondents contended that the issue of the alleged double nomination of the 4th respondent has been determined finally by the Supreme Court in Peoples Democratic Party (PDP) v. INEC & 3 Ors; SC/CV/501/2023 delivered on the 26th of May, 2023; G (2023) 13 NWLR (Pt. 1900) 89. That in the circumstances, the said judgment of the Supreme Court constitute estoppel per rem judicata, and binding on the parties in this petition.

Now, for a judgment to constitute issue estoppel the following conditions must be satisfied:-

1. the same question must be for decision in both proceedings (i.e. the same question for decision in the current suit must have been decided in the previous suit);

2. the decision relied upon to support the plea of issue estoppel must be final;

3. the parties or their privies must be the same.

The three elements must be present and co-exist for a plea of estoppel per rem judicata to apply. See Ito v. Ekpe & Ors (2000) 3 NWLR (PL. 650) 678; Oshoboja v. Amida & Ors (2009) LPFLR- 2803 (SC) (2009) 18 NWLR (Pt. 1172) 188 and Oleksandr & Ors Lonestar Drilling Co. Ltd. & Anor (2015) LPELR-24614 (SC); (2015) 9 NWLR (Pt. 1464) 337.

It is obvious that the judgment sought to be relied on for the plea of estoppel is that of the Supreme Court, the highest and final court in this country. There is no doubt that the decision was final, and the issue that was determined by the Supreme Court is the same as in the present petition, to wit: whether the 4th respondent breached section 35 of the Electoral Act by allowing himself to be nominated in more than one constituency. The petitioner has however argued that, the issue decided by the Supreme Court was merely on the locus standi of the PDP to question the

nomination of the 4th respondent, the candidate of the APC, a different political party. That may well be so, but it is clear from the judgment (exhibit XI), that the Supreme Court pronounced on the substantive issue of double nomination. Though Jauro, JSC who delivered the lead judgment declined to exercise the powers of the Supreme Court under section 22 of the Supreme Court Act to pronounce on the merit of the case, the other Law lords proceeded to do so.

It is settled law that a contributory or concurring judgment has equal weight as the lead judgment. It is part of the lead judgment and therefore has the same force and binding effect. The mere fact that a concurring or contributory judgment contains what is not in the lead judgment will not whittle down its binding effect. Thus in Olufeagba & Ors v. Abdul-Raheem (2009) LPELR-2613(SC), (2009) 18 NWLR (Pt. 1173) 384 my Lord Fabiyi, JSC said:

> "A concurring judgment, has equal weight with or as a lead judgment. A concurring judgment compliments. edifies and adds to the lead judgment, when the justice. add to it certain aspects which the writer of the lead judgment did not remember to deal with. In so far as a concurring judgment performs same or all the above functions, it has equal force with or as the lead Judgment in so far as the principles of stare decisis are concerned."

Now, it is apparent that the parties in exhibit XI; P.D.P. v. I.NE.C & Ors (supra) are not the same as in the present petition. The earlier decision though involved the 1, 2, 3 and 4th respondents, the present petitioner was not a party in that case. That is why it was argued by the petitioner herein, that exhibit XI cannot operate as to estop it from litigating the issue of double nomination of the 4th respondent. The respondents have responded that the judgment in P.D.P. v. LN.E.C. & Ors (exhibit XI), is a judgment in rem as opposed to judgment in personam.

Now, in Law, a judgment in personam is a judgment against persons who are parties or privies to the particular suit or proceeding alone. It is referred to as judgment inter parties. It is a judgment binding on the parties to the action alone. A judgment in rem on the other hand, is a judgment that determines the status of D a person or thing as distinct from the particular interest of a party to the litigation. It is referred to as a judgment contra-mundum, binding on the whole World. It is therefore binding, not only on the parties to the dispute but even on non-parties. Therefore, once the status of a person or thing has been pronounced upon by a court of E competent

jurisdiction, no person is permitted to assert the contrary of what the court has determined. See Black's Law Dictionary (11th Edition) at page 1008; Gbemisola v. Bolarinwa (2014) 9 NWLR (Pt. 1411) 1 at 19; Yanaty Petrochemical Ltd v. E.F.C.C. (2017) LPELR 43473 (SC); (2018) 5 NWLR (Pt. 1611) 97 and Ladejobi & F Ors v. Oguntayo & Ors (2015) LPELR-41701 (CA). A judgment in rem therefore, is an adjudication which pronounced upon the status of a particular subject matter, by a court of competent jurisdiction.

It is not in doubt that, the subject matter in P.D.P. v. INEC & Ors (exhibit XI), was in respect of the alleged double nomination G of the 4th respondent as the Vice-Presidential candidate of the 2nd respondent in the 25th February, 2023 Presidential election. That is the same issue raised in this petition as grounding the disqualification of the 3rd and 4th respondents in this petition. Thus, pronouncing on the issue in his contributory judgment, my noble Lord, Okoro, JSC 11 who presided on the panel said at pages 4 - 5 of his judgment that:

"There is no doubt that the 4th respondent was at a stage nominated as a candidate representing Borno Central Senatorial District but upon being mutted he would pair with the 3rd respondent as Vice-Presidential candidate of the 2nd respondent, All Progressives Congress (APC) in the 25th February, 2023 General Election, he withdrew his candidature for the senate before taking up the position of Vice-Presidential candidate. Documents in the record attest to this fact. these are exhibits APCI and APC2 which were made on the 6th and 10th July, 2022 respectively." After considering those documents, his Lordship concluded at page 7 of the contributory judgment that:

> "It is crystal clear that the two exhibits alluded to above, the 4th respondent did the needful by resigning his position as Senatorial candidate for Borno Central Senatorial District since 6th July, 2022 before being nominated by the 3rd respondent to run alongside him as Vice-Presidential candidate of All Progressives Congress (APC),"

My Lord, Okoro, JSC after citing section 31 of the Electoral Act, 2022 then held at page 8 that:

> "The above provision of the Electoral Act, 2022 was duly complied with by the respondents. It is my well considered opinion that as at the 6th of July, 2022, having withdrawn his nomination and personally served same on the 2nd respondent of the withdrawal of nomination on 6th of July, 2022, the 4th respondent was no longer a candidate for the Borno Central Senatorial District Elections and his subsequent nomination as Vice- Presidential candidate of the 2nd respondent for the Presidential election was not multiple nomination as there was no longer a nomination for the 4th respondent since his withdrawal on the 6th of July, 2022."

My Lord, Agim, JSC was more elaborate in his contribution when he held at pages 5-6 of his contributory judgment as follows:

> "I agree with the views of Learned SAN for the 3rd respondent and learned counsel for the 4th respondent. It is glaring from the provision of section 31 of the Electoral Act, 2022 that the withdrawal takes effect from when the nominated candidate submitted the notice of his or her withdrawal to the political party that nominated him or her. Section 31 prescribes how the withdrawal is done by the nominated candidate It A states thusly - "by notice in writing signed by him and delivered personally by him to the political party that nominated him or her Section 31 prescribes what the political party should do upon receipt of its nominated candidate's withdrawal. It states that it may convey the withdrawal to INEC not later than 90 days to the election.

It is glaring from the express wordings of section 31 of the Electoral Act, 2022 that the legislative intention is that the withdrawal should take effect upon the C nominated candidate personally delivering a written notice of his withdrawal to the political party and not when the political party conveys it to INEC. Section 31 states that what the party conveys to INEC is the withdrawal. The provision gives the party not later than D 90 days to the election to convey the withdrawal of its candidate to INEC. Since the election held on 25-2- 2022, the political party had up to 24-11-22 to convey the 4th respondent's withdrawal to INEC. So, it matters not it was conveyed in 10-7-2022, 15-7-2022 or any E

other date, provided it is conveyed not later than 90 days to the election. The date of the conveyance within the prescribed period has no effect on the withdrawal that had already been done. Therefore, the 4th respondent withdrew as the 2nd respondent's Senatorial candidate F for Borno Central Senatorial District on 6-7-2022 when his written letter of withdrawal dated 6-7-2022 was received by his party on 6-7-2022.

As at 14-7-2022 when the 4th respondent accepted nomination as the 2nd respondent's Vice-Presidential candidate, he was no longer the party's Senatorial candidate for Borno Central Senatorial District, Therefore, his nomination as Vice-Presidential candidate is not multiple nomination."

My Lord then proceeded to hold at pages 6-7 of the said contributory judgment that:

"Assuming, 15-7-2022 when the 2nd respondent filled and submitted the prescribed INEC Form for withdrawal of candidate in exhibit 6, is taken as the effective date of withdrawal, the contention that 433 4 respondent's nomination as Vice-Presidential candidate on 14-7-2022 amount to multiple nomination still remains valid. The facts would still not show multiple nomination of the 4th respondent. What is obvious from the facts is that the 4th respondent who had earlier been nominated by his party as Senatorial candidate was given another option or alternative to be the party's Vice-Presidential candidate. He accepted the second option with a manifest intention and action to relinquish the former nomination as Senatorial candidate. He withdrew the nomination as a Senatorial candidate and was thereafter nominated as Vice Presidential candidate. Upon his withdrawal as senatorial candidate, the party nominated another person to replace him. His prompt and immediate withdrawal as Senatorial candidate demonstrate clearly that he had no intention, design, purpose or plan to hold two nominations and be the party's candidate in two constituencies. Whether he withdrew before or after being nominated as Vice-Presidential candidate is of no moment. Multiple nomination within the terms of Section 35 of the Electoral Act does not occur simply because he accepted a second nomination."

I have endeavoured to quote extensively the dicta of the Law Lords of the Supreme Court in PDP v. INEC & Ors (supra), in order to show that the issue of double or even

multiple nomination of the 4th respondent as the Senatorial candidate and Vice-Presidential candidate of the 2nd respondent in the 25th February, 2023 general clection has been settled to finality. It is a judgment in rem, therefore, Gbinding on the parties to this petition, and in fact, the entire World. Being the judgment of the final court of this land, the Supreme Court, no person is permitted to again raise and litigate on it in any other action or proceeding. It is therefore settled, and remains settled, that this petition which questions the qualification; and seeks to disqualify the 3rd and 4th respondents from contesting for and occupying the seat of President and Vice-President of Nigeria, on ground of double or multiple nomination of the 4th respondent as Vice President Candidate of the 2nd respondent, on ground of double or multiple nomination of the 4th respondent has no substance.

I only wish to add that, section 35 of the Electoral Act is A targeted at the candidate and not the political party. That is why it uses the terms "a candidate" and "knowingly allows himself to be nominated" by more than one political party or more than one constituency. Thus, to prove that a candidate "knowingly" allows himself to be so nominated, both the intent and actual act of nomination, i.e. mens rea and actus reus of the act prohibited must be proved, the stipulation in the section being a penal provision. In the instant case, neither the intent nor the fact of the 4th respondent to allow himself to be so nominated was established. Thus, my Lord, Ogunwumiju, JSC, in his contributory judgment in exhibit C XI, held as follows:

> "By section 31 of the Electoral Act, the 4th respondent, Shettima, was obliged to submit a notice of withdrawal in writing to his party which he did and then his party is to deliver that notice to the commission not later than 90 days to the election.

In view of the above stated position of the Law on this issue and the facts of this case, there exists no "animus" or display of intention by the 4th respondent to stand as the nominated candidate of the 2nd respondent for E the Vice-Presidential position and also the Senator representing Borno Central District in the general election of 25th February, 2023. There cannot be any other

interpretation in the circumstances unless there is clear intention to knowingly stand as a candidate for F two elective posts in the same election cycle."

In the same vein, my Lord, Agim, JSC at page 8 of his contributory judgment held, thus:

> "The manifest intention to relinquish the earlier nomination to pave way for the nomination of another G person to replace him as the party's Senatorial candidate cannot be overlooked or disregarded. To simply isolate the assumed or purported short lived coexistence of the two nominations for treatment as multiple nomination without regard to the obvious intention of the 4th respondent not be the party's candidate in elections in two constituencies is against the legislative intention of section 35 of the Electoral Act, 2022.
>
> The sequence of the occurrence of the events is not 435 what determines the existence of multiple nomination. It is the intention, design or purpose to hold two or more nominations as candidate for election that shows that the person so nominated knowingly did so. The 2nd respondent did not intend that the 4th respondent should be its candidate for Borno Central Senatorial Election and its Vice-Presidential candidate for the Presidential election and the 4th respondent did not understand or know that he was so nominated.

The word "knowingly" in section 35 of the Electoral Act must be interpreted broadly to include all its literal meanings. In Bartons Legal Thesarius 4th Edition by William C. Barton at p.356, it is defined to include "advisedly, deliberately, designedly, intentionally. learnedly, pointedly, purposefully, with knowledge, meltingly."

It is clear to me therefore, that from the oral and documentary evidence adduced by the parties in this petition, the intention and fact of knowingly allowing himself to be nominated in more than one constituency, as alleged by the Petitioner, against the 4th respondent has not been established. In other words, both the mens rea and actus reus of the act prohibited by section 35 of the Electoral Act, 2022 were not established.

One other aspect alleged by the petitioner on its claim of invalid nomination of the 3rd and 4th respondent is that, the 2nd respondent did not comply with section 33 of the Electoral Act in the nomination of the 4th respondent as Vice-Presidential candidate. That, after the withdrawal of the 5th respondent, the 2nd respondent should have conducted a fresh primary election within 14 days for the purpose of nominating a new Vice-Presidential candidate.

Now, section 33 of the Electoral Act, 2022 stipulates that:

> "A political party shall not be allowed to change or substitute its candidate whose name has been submitted under section 29 of this Act, except in the case of death or withdrawal by a candidate: Provided that in the case of such withdrawal or death of a candidate, the political party affected shall, within 14 days of the occurrence of the event, hold a fresh primary election to produce and submit a fresh candidate to the A Commission for the election concerned."

The interpretation of this provision does not, in my view, cause any difficulty as to require the application of any technical rule of construction. Therefore, a literal interpretation will suffice It therefore means that, where a political party has submitted the in name of a candidate pursuant to section 29 of the Electoral Act, (supra), it cannot be allowed to substitute or change that candidate except in the event of death or withdrawal of such candidate. By the proviso thereto, the political party affected, is enjoined to conduct a fresh primary election for the purpose of producing a c new or fresh candidate to submit to the Electoral Commission, The grouse of the petitioner here is that, the 5th respondent withdrew his nomination as Vice-Presidential candidate of 2nd respondent but the 2nd respondent did not conduct another primary election for the purpose of producing a new Vice-Presidential candidate within the 14 days prescribed by section 33 of the Electoral Act. It should be remembered that by section 142(1) of the 1999 Constitution, a Presidential candidate for election to the office of President has the sole discretion, authority or power of nominating his associate who shall run with him in the election as Vice-President. E The choice or nomination of a Vice-Presidential candidate is, not "the product of any primary election. Therefore, in my view, the requirement to conduct a fresh primary election does not apply to the

nomination of a Vice-Presidential candidate. Thus, my Lord Augic, JSC highlighted the point in his contributory judgment in F P.D.P. v. INEC & 3 Ors (exhibit XI) as follows:

> "No; the fourth respondent was not required to buy any nomination Form. He was the second respondent (APC's) candidate at the election into the office of Senator representing Borno Central Senatorial District. G But before the election could hold, he was nominated as the third respondent's associate, who is to occupy the office of Vice-President. The fourth respondent did not buy a nomination Form for the said office, and most importantly, did not contest any primary 11 election in order to emerge as APC's Vice-Presidential candidate."

The petitioner in paragraph 28(2) of its petition had averred and also contended in its final address that there was a gap of about 3 Weeks between the period the 5th respondent expressed his intention thereby invalidating the nomination of the 3rd respondent because the candidature of the 3rd respondent had lapsed and was longer in a position the constitutionally to nominate a fand was no longer contention of the petitioner is however misconceived There is nothing in the Constitution which robs a Presidential candidate of his right to nominate his associate who shall be his running mate for the office of President. There is also nothing that invalidates the nomination of a new associate by a Presidential candidate as his running mate after the withdrawal of a previous associate, so long as the nomination of the new associate was submitted to the 1 respondent 90 days before the election as mandated by section 31 of the Electoral Act, 2022. This contention of the petitioner is therefore discountenanced.

It is therefore my view that, the position of a person as a Vice- Presidential candidate, not being subject of a primary election, the provision of section 33 of the Electoral Act, 2022 would not apply. On that note, I hereby hold that the petitioner failed to prove the lone ground of its petition, to the effect that the 3rd and 4th respondents were not qualified to contest the Presidential Election held on the 25th February, 2023 for the reason of double nomination of the 4th respondent.

Having resolved the sole issue of the petition against the petitioner, this petition is also devoid of any merit.

ADAII, J.C.A.: I am in full agreement with the lead judgment delivered by my learned brother, Haruna Simon Tsammani, JCA in this three consolidated petitions which are petitions No: CA/ PEPC/03/2023; CA/PEPC/04/2023; CA/PEPC/05/2023. These petitions were filed against the election into the office of the President of the Federal Republic of Nigeria, which election was conducted in Nigeria on 25th February, 2023.

I agree also with the consolidated rulings on the various objections and other interlocutory applications relating to the competence of witnesses and the documents tendered in the three petitions.

I also agree with the reasoning and the conclusions arrived at the rulings on the preliminary objections and the substantial issues raised therein.

In any concluded election, there are bound to be a winner and losers. While the winner celebrates victory, an aggrieved loser may come before the court to ventilate his grievances. This is made possible by the Constitution of the Federal Republic of Nigeria 1999 (as amended) which in section 6 empowers courts to determine disputes, including election disputes.

It is well settled that an election petition by nature is sui generis, of its own kind or class. It is not like going to court to make a claim c of debt, contract or tort. It has its own character and it is unique by its nature. The slightest non-compliance with a procedural step which otherwise could either be cured or waived in ordinary civil proceedings could result in a fatal consequence to the petition.

See Buhari v. Yusuf (2003) LPELR-812(SC), (2003) 14 NWLR D (Pt. 841) 446; Hassan v. Aliyu (2010) 17 NWLR (Pt. 1223) 547; Pereworinimi v Lokpobiri & Ors. (2020) LPELR-49505, Reported as Lokpobiri v. A.P.C. (2021) 3 NWLR (Pt. 1764) 538; Oke & Anor. v. Mimiko & Ors. (2013); (2014) 1 NWLR (PL. 1388) 225; Eze v Umahi & Ors. (2022) LPELR-59157 (SC); (2023) 6 NWLR (Pt. E 1880), 383; Nyesom v. Peterside & Ors. (2016) LPELR-40036 (SC); (2016) 7 NWLR (Pt. 1512) 452.

Election petition as a special proceeding is specifically regulated by the Constitution of the Federal Republic of Nigeria 1999, the Electoral Act and other Rules of procedure such as the F

Federal High Court (Civil Procedure) Rules and Practice Direction of the Honourable President of the Court of Appeal for the hearing of the election petition and the election petition appeals.

By section 285(5) of the Constitution, an election petition shall be filed within 21 days after the date of the declaration of result of G the election; and by section 285(6) thereof an Election Tribunal shall deliver its judgment in writing within 180 days. These time lines are sacrosanct and cannot be extended by the court.

It is trite that under the 1 Schedule of the Electoral Act, the election petition to be filed is well regulated. See paragraph 4(5), II (6) of the Electoral Act, 2022 which provides as follows:

> "(5) The election petition shall be accompanied by- (a) a list of the witnesses that the petitioner intends to call in proof of the petition;
>
> (b) written statements on oath of the witnesses; and
>
> (c) copies or list of every document to be relied on at the hearing of the petition.
>
> (6) A petition which fails to comply with subparagraph (5) shall not be accepted for filing by the Secretary.
>
> (7) An election petition, which does not comply with subparagraph (1) or any provision of that subparagraph is defective and may be struck out by the tribunal or court."

The word "shall' used in this Legislation makes it mandatory for a petitioner to comply with that provision of the law, Failure to comply is fatal.

Election petitions are fought on pleadings, competent and credible witnesses. Where a petition is deficient in pleadings and evidence, it is difficult to prove the petition. In the instant petitions, the petitioners' pleadings were deficient. While they complained of non-compliance with the Electoral Act against 1st respondent, their own petitions were massively deficient in compliance with the Act.

The lead judgment has elaborately dealt with these issues. When a court is called upon to determine an election dispute, he is called upon to do justice. Our notion of doing justice is not

that of doing justice according to the whims and caprices of the Judges or the parties. It must be justice according to law. Justice according to law is also that which is neither based on technicality nor justice according to the suggestive clout of pressure groups, but such as substantially meets the demands of justice. This with all respect, is what we have done in the lead judgment.

I therefore concur with the leading judgment that these three consolidated petitions having not been proved are hereby dismissed. I abide by the consequential orders as made in the lead judgment.

BOLAJI-YUSUFF, J.C.A.: I have had a preview, Harue reasons A given in the lead judgment of my learned brother, Haruna Simon Tsammani, JCA. I agree with his reasoning and conclusions. I adopt same as mine. I abide by the others made therein.

UGO, J.C.A.: I had earlier read in draft the rulings and judgments of my learned brother, Haruna Simon Tsammani, JCA in this consolidated petition numbers CA/PEPC/03/2023, CA PEPC/04/2023 and CA/PEPC/05/2023. I am in complete agreement with His Lordship's reasoning and conclusions on all of them.

First, for petition No. CA/PEPC/04/2023, I am of the very fixed view that the issues agitated by the petitioner therein concerning 3nd respondent's alleged disqualification for the 2023 Presidential election by reason of matters connected to and surrounding his running mate's (4th respondent's) nomination and relinquishing of his earlier nomination by his party, the APC, for the Borno Central Senatorial District, having been settled on their merit by the Supreme Court in its judgment in Appeal No. SC/CV/501/2023: Peoples Democratic Party v. INEC & Ors. (2023 13 NWLR (PL. 1900) 89 in 3rd and 4th respondent's favour herein, with the apex E court even holding that the said issues did not disqualify them, that decision constitutes issue estoppel. Being status-defining and so judgment in rem, it binds every person, including non-parties to the suit like the petitioner in Petition No. CA/PEPC/04/2023. See Ikotun v. Oyekanmi (2008) 10 NWLR (Pt.1094) 100 @ 115, 119. F 120 (SC); Sosan & Ors. v. Ademuyiwa & Ors. (1986) 1 NSCC 673 @681, (1986) 3 NWLR (Pt. 27) 241. Furthermore, by the doctrine of stare decisis, it also binds this court. In fact, it will in my humble opinion amount to judicial heresy for this court to involve itself in inquiring, by whatever guise, into that same issue already settled by G the apex court.

Coming to Petition Nos. CA/PEPC/03/2023 of Peter Obi & Anor v. INEC & Others and CA/PEPC/05/2023 of Atiku Abubakar & Anor v. INEC & Others, again I am of the very fixed view that the two sets of petitioners did not by any means discharge the burden on them of proving that the results of the presidential election of 25th February 2023 as declared by 1st respondent (INEC) are incorrect. Incidentally, their burden is even made heavier by the legal presumption that the results of an election declared by the official election organising body (INEC in this case) are correct and it is for the person asserting the contrary to prove it is not: see Buhari v. INEC (2008) 19 NWLR (PL 1120) 246 @354.

Even their resort to 1st respondent's failure to keep to its initial promise to upload polling unit results of that election to its result Viewing portal Irev real time, which failure they alleged evidences election "manipulation' does not help them. And specifically on this allegation of manipulation of election results, the points must be made that, since it is their case in their petitions from the word go that the election results in issue were manipulated by the 1st respondent (INEC) in favour of 2nd respondent, and specifically that the manipulation took the form (i) of programmed failure of the technological device (BVAS machines)" by 1st respondent (INEC) by intercepting the results, quarantining, warehousing and tering such results before releasing them to the IReV portal, (ii) INEC replacing its in-house L. T. expert at the eleventh hour with a rogue staff all in a bid to remotely control, monitor and filter data transmitted from the BVAS devices to the electronic system and the IReV Platform and (iii) that Globacom, the Internet provider for the BVAS and electronic system, was also disconnected by 1st respondent to enable it manipulate the results, with the petitioners in CA/PEPC/05/2023 even going further to undertake to call evidence to prove all those allegations (see paragraphs 33, 36, 42 of Petition No. CA/PEPC/05/2023 and paragraphs 53 and 60 of Petition No. CA/PEPC/03/2023), the burden of proof was on petitioners to prove those assertions and that is regardless of whether they are positive or negative. After all it is they who would have failed in the case if no evidence at all was adduced in their petitions. See on that section 131 of the Evidence Act, 2011 and the cases of Buhari VINEC (2008) LPELR-814 (SC) 80 (Tobi, JSC), (2008) 19 NWLR (Pt. 1120) 246; Aladegbemi v. Fasanmade (1988) 1 NSCC 1087 @ 1105, (1988) 3 NWLR (Pt. 81) 129; Elias v. Disu & Ors. (1961) 1 All NLR 214 @ 218; (1962) 1 SCNLR 361; my judgment in Dashe & Ors. v. Durven & Ors. (2019) LPELR-48887 (CA) 14- 17; Abrath

v. N.E. Railway Co. 11 QBD 440 @ 457. I have taken all this time in making this point because of the argument of both sets of petitioners that they only made negative assertions in their petitions when they alleged there that there was nothing wrong with 1st respondent's e-transmission system and IReV, so they had no burden to prove it; that the burden of proof was on the respondents who they said positively asserted glitch in real-time who the results. Petitioners who directly made manipulation of its e-transmission system by 1st respondent to favour 2nd respondent a pillar of their case cannot be heard to say it is respondents and not them that had the burden of proof in the case.

Incidentally, that assertion of petitioners that INEC simply transmission closed down or blocked its IReV and e-transmission system from the public to enable it manipulate the presidential election results in favour of 2nd respondent also takes me directly to the more important question in the petition, namely, whether that allegation is even worthy of belief given the results declared by INEC for c them and the 2nd respondent in the election. To answer that million. Dollar question, I deem it necessary to resort to the probabilities arising from the facts of the case, otherwise called the 'probability test', which test highly celebrated Judge, Chukwudifu Akunne Oputa, J.SC, always maintained is "the surest road to the shrine of D truth and justice." See Dibiamaka & Ors. v. Osakwe & Ors. (1989) 2 NSCC 253 @ 260 lines 46-50, (1989) 3 expressed, or as to the claims of the author to have special knowledge. If the author is living. there is no reason why he should not be tendered as an expert witness, when this difficulty would varnish.

"Moreover, none of the authors of these books testified in support of the views stated therein and no explanation was given for the omission. For all these reasons, we share the apprehensions of the learned trial Judge about the value or weight of the traditional history as narrated by each of these authors, particularly as the authenticity and impartiality of the sources of their narratives cannot, for obvious reasons, be casily ascertained."

That is the exact same situation we are confronted with here as regards both the European Observer Mission Report and its sister ECOWAS Election Observer Report. For purposes of proving the opinions expressed in them by their makers, neither of them is of any higher value than the mere sheets of paper on which it is recorded.

And for those who like the petitioners are enamoured by the now very familiar patronising judgments passed on our elections by European Election Observer Missions every four years, even as the same Europeans have maintained a deafening silence on the never-ending complaints of former President Donald Trump that the year 2020 Presidential election of the United States of America that saw him out of office was also a fraud, it may interest them to know that Sir (Justice) Lionel Brett, JSC, who made the comments cited approvingly by the Supreme Court in Okumagba 's case was also a European.

I intend to stop here. I think I have said enough.

It is for these few additions but much more for the far more illuminating reasons advanced by my brother Haruna Simon Tsammani, JCA, in his rulings and judgments, which reasons I concur with without reservation, that I also hold all three consolidated petitions not proved and hereby enter an order dismissing all of them and affirm the declaration of the 2nd respondent, Bola Ahmed Tinubu, by 1st respondent as the person duly and properly returned NWLR (Pt. 107) 101 (per Oputa, JSC) and Ojegeze v. The State (1988) 1 NWI.R (PL. 71) 404 @ 420 paragraph G-11. Here, the assertion of petitioners is that 1st respondent, INEC, merely used the excuse of glitch in E its IReV portal to block the public from seeing its polling units results real time so that it could manipulate, and in fact did actually manipulate, the 25th February 2023 presidential election results in favour of 2nd respondent. It is their further contention that the manipulation of IReV by INEC with the said phantom glitch in favour of 2nd respondent was nationwide. The question is, do the results declared nationwide by INEC support that hypothesis? They say the taste of the pudding is in the eating. I shall therefore now try to walk us through some of these election results to see if that assertion of petitioners is supported by the results declared by INEC and so probable and worthy of belief. In doing that, I shall randomly pick on the results of some States of the Federation and the Federal Capital Territory. I shall be relying on the State Summary of Results (Form EC8D) declared by INEC and as also attached to their petition by the petitioners in CA/PEPC/05/2023, which result was also tendered by both sets of petitioners and respondents. So, I take on, first, Abia State. There, 2nd respondent, the alleged favoured candidate of INEC, for which it was said to have shut down its IReV to manipulate results, only garnered a miserly 8,914 votes. That is as against the Labour Party which, by INEC s declaration, polled as many as 327,095

votes. Even the other set of petitioners, the PDP and its candidate, scored more votes in Abia than INEC's purported favoured candidate. They also scored 22.676 votes in Abia State and was so recorded by INEC Those votes alone are close to three times the votes of 2nd respondent for whom INEC was said to have manipulated results by closing down its IReV so that the public would not witness its manipulative in favour of 2nd respondent activities in favour of 2nd respondent.

In Enugu State, the same favoured candidate, 2nd respondent. was again declared/credited by INEC to have polled only 4,772 votes in the entire State. Meanwhile, the Labour Panly 4,772 candidate were again declared by manipulative and unfred INEC to have scored as much as 428,690 votes in than friendly the same Enugu State, PDP and its candidate also was State. fe by INISC to have polled 15,745 votes: a number that is also dandy three times the votes of the so-called favoured 2nd respondent.

In Anambra State, the same purported favoured candidate (2nd respondent) was declared by its alleged friend, INEC, to have scored only 5,111 votes. Meanwhile, the Labour Party, whose candidate, 1 petitioner in CA/PEPC/03/2023, 1 must take judicial notice of vide section 124 of the Evidence Act 2011, is from that State, again was declared to have polled as much as 584, 621 votes. Again, like Enugu State, the PDP and its candidate was declared by INEC to have polled 9,036 votes, a number that is also nearly double the votes of 'INEC favoured' 2nd respondent.

In neighbouring Delta State, the same INEC-favoured candidate, 2nd respondent, was declared by INEC to have scored 90,180. That is as against the Labour Party and its candidate which is credited by the same 'biased' INEC to have scored as much as 179,917 votes. In that same Delta State, the PDP and its candidate scored 161,600 votes, again nearly double the votes of 2nd respondent.

In Adamawa State of the PDP and its candidate, the same 'favoured 2nd respondent was declared by INEC to have scored only 105, 648 votes while the PDP and its candidate were declared by the 'biased' INEC to have scored as much as 214, 012 votes.

In Imo State, the same purported INEC favoured candidate (2nd respondent) was declared by INEC to have scored only 66,406 votes while the Labour Party and its candidate is declared by the same INEC to have polled as much as 360,495.

In Ebonyi State the Labour Party again scored as much as. 259,738 votes. That is as against alleged INEC-favoured 2nd respondent, who, by INEC's declaration, again polled a relatively moserly 42,402 votes. The PDP is said to have scored 13,503 votes there too.

Even in Lagos State where 2nd respondent once held sway as elected Govemer, the Labour Party and its candidate was again declared by "biased" INEC to have beaten 2nd respondent with almost 10,000 votes. Labour Party was declared by INEC to have polled 582, 455 votes, as against 572,606 polled by 2nd respondent and so declared by INEC.

It is a similar story in the Federal Capital Territory of Abuja where INIEC has its headquarters and supposedly carried out/ directed all its manipulative and biased activities in favour of 2nd respondent that petitioners claim it did in the election. Second respondent and his political party still lost there. In fact, by the result 2nd respondent friendly' INEC declared in the Federal Capital Territory of Abuja, 2nd respondent could not even make 25% of the total votes cast there. He was said to have only polled 90,902 votes. E That amounts to just 18.991% of the total votes cast in the F.C.T., yet INEC declared that result. That is as against 281,717 votes, amounting to 58.856% of the total votes, the same INEC declared for Labour Party and its candidate.

There are also other States, including Katsina State of the immediate past President of this country, a member of 2nd respondent who was still in office at the time of the elections, a fact I shall again take judicial notice vide section 124 of the Evidence Act, 2011. There again, 2nd respondent and his Party, the APC, which he shares of the then sitting President, was declared by the same INEC G to have lost to the petitioners in CA/PEPC/05/2023.

If all these results declared by INEC for each of these States for the two sets of petitioners and 2nd respondent is anything to go by, then INEC must be an abysmally poor manipulator, if not even an imbecilic one. Surely, it would not go through all the trouble of closing down its IReV and blocking the public from seeing its manipulative efforts in favour of 2nd respondent, as alleged

by the petitioners, only to still end up favouring the petitioners with jumbo votes and posting miserly figures for its favoured 2nd respondent.

It is said that "All men stamp as probable that which they would 445 have said or done under similar circumstances and as improbable that which they themselves would not have said or done under the same set of similar circumstances. Things inconsistent with human knowledge and experience are properly rated as improbable" See Oputa, J.SC in Onuoha v. The State (1989) 1 NSCC 411@ 418, (1989) 3 NWLR (P1. 107) 101 and Bozin v. The State (1985) LPELR-799 (SC) p. 9: (1985) 2 NWLR (PL. 8) 465.

At any rate, why did any of the two sets of petitioners not tender even a single polling unit result issued by INEC to their polling unit agents to support their claim of manipulation of election results by INEC, even as they all agreed that they had agents in the polling units? I had thought that is the best and most effective way of proving the manipulation of election results alleged by them. After all, the polling unit is the only place where voting takes place and so also constitutes the building block of election results. See paragraph 91 of INEC Regulations and Guidelines for the Conduct of Elections, 2022 and the cases of Nwobodo v. Onoh (1984) 1 SCNLR 1 and Awuse v. Odili (2005) 16 NWLR (PL. 952) 416 @ 448.

In short, the allegation of the petitioners that INEC shut down its IReV to manipulate votes for 2nd respondent just does not add up for me. If anything, the probabilities arising from the results INEC declared nationwide as X-rayed above rather seem to me to eloquently support INEC's position that its inability to upload the polling unit results real-time as earlier promised was not deliberate but caused by technical issues outside its control that afflicted its e-transmission system, which issues it claims made it impossible for its e-transmission system to map the uploaded polling units results for the Presidential election to any specific State. That it claimed, Gis unlike the much smaller National Assembly elections that were conducted simultaneously with the Presidential election. It is that phenomena it describes as glitch that was giving it an 'HTTP 500 Error which resultantly delayed real time public viewing of the said polling unit results.

That conclusion also takes me to another big issue in this case, namely the evidential value of the European Union Election Observer Mission Report on the 2023 Presidential Election over

which quite a mountain has been made of by both sets of petitioners. That report was tendered by the petitioners in Petition A No. CA/PEPC/03/2023 as exhibit X2 and by the petitioners in Petition No: CA/PEPC/05/2023 as exhibit RA27. The impression given by both sets of petitioners is that the said Report, which in any case has even been ruled inadmissible by us in Petition No: CA/PEPC/03/2023, is like gospel truth of what transpired in the election and so it must be accepted by this court and the conduct of the presidential election declared corrupt or at the very least below par, regardless of whether or not its authors presented themselves in court to defend their opinions. That stance, I am afraid, is a complete non sequitur. Without the makers of that report presenting c themselves in court to face cross-examination to authenticate their opinions, that report, and I dare to even add the ECOWAS report of the same elections tendered by 2nd and 3rd respondents in Petition Nos. CA/PEPC/03/2023 and CA/PEPC/05/2023, are completely valueless and inadmissible for the purposes of authenticating the D opinions expressed in them by their makers. See first on that the cases of Nyesom v. Peterside (2016) 7 NWLR (Pt. 1512) 452 @ 526 paragraph E and Sa'eed v. Yakowa (2013) All FWLR (Pt. 692) 1650 @ 1672. It also makes no difference that the said Reports have been put in the form of print. Books, it must be noted, cannot E be cross-examined. On this, I find support in the celebrated case of Idundun & Ors. v. Okumagba & Ors. (1976) NSCC 443 @ 453; (1976) LPELR-1431 (SC) p. 23 and 24, (1976) 9-10 SC 227 where the Supreme Court had this to say:

> "As for the law involved, we would like to point out F that it is now well settled that there are five ways in which ownership of land may be proved
>
> "In our view, not only was the evidence of the witnesses called by the appellants rightly rejected by the learned trial Judge for good and sufficient reasons, we also G think that he was right in not attaching any weight to the views expressed in the book cited in support of such traditional evidence. As Lionel Brett, JSC, (as he then was), rightly in our view, once pointed out in a learned address given by him at the University of H Lagos to the Nigerian Association of Law Teachers:
>
> > 'The courts are not to be hypnotized by the authority of print. The crucial fact is that books cannot be cross-examined, either as to the opinion winner

of the 25th February 2023 Presidential election of this country and duly elected President of the Federal Republic of Nigeria.

I also abide by all the other consequential orders, including that as to costs, contained in the leading judgment.

MOHAMMED, J.C.A.: I have read before now the draft of the lead judgment just delivered by my learned brother, Haruna Simon Tsammani, JCA in the three consolidated Petitions Nos. CA/PEPC/03/2023, CA/PEPC/04/2023 and CA/PEPC/05/2023.1 am in agreement with and I adopt all the reasons and conclusions C stated therein, both in respect of the rulings on the objections and the merits of the three consolidated petitions.

As regards Petition No. CA/PEPC/04/2023, the petitioner has under the guise of challenging the qualification of the 3rd respondent to contest the Presidential Election on the ground that he had D violated the provisions of section 142(1) of the Constitution of the Federal Republic of Nigeria, 1999, basically challenged the validity of the nomination of the 4th respondent by the 3rd respondent as his running mate in the 25th February, 2023 Presidential elections.

In concurring with the lead judgment just delivered, I am also of the considered view that the status of the nomination of the 4th respondent as the running mate of the 3rd respondent and Vice-Presidential Candidate of the 2nd respondent had been finally decided by the Supreme Court in Appeal No. SC/CV/501/2023: P.D.P. v. INEC, delivered on 26th May, 2023, now reported as P.D.P. v. INEC & 3 Ors (2023) LPELR- 60457(SC); now reported in (2023) 13 NWLR (Pt. 1900) 89, the CTC of which was tendered as exhibit X1;.

In the concurring judgments of their Lordships Okoro, Augie, Ogunwumiju and Agim, JJSC, they have all determined as proper the nomination of the 4th respondent as Vice Presidential Candidate of the 2nd respondent. As for the petitioner's argument that the pronouncement of the Supreme Court in those concurring judgments is an obiter dictum, the clear statement of Ogunwumiju, JSC has left no one in doubt that the apex court decided the merit of that case. My Lord Ogunwumiju, JSC clearly stated at page 74, para. C, that:

"It is apt in this type of political case of public interest to look into the merits of this case."

It is settled law that once the issue relating to the status of a person or thing is finally and substantively determined by a competent court such determination constitutes estoppel to any subsequent proceedings on the same issue. See: AP.C. V. P.D.P & Ors. (2015) LPELR-24587(SC) at page 106, paras. AE, 116, paras. 13-D, (2015) 15 NWLR (Pt. 1481) 1; and Inakoju & Ors. v Adeleke & Ors. (2007) LPELR-1510(SC) at pages 120-121, paras. EB: (2007) 4 NWL.R (Pt. 1025) 423.

For this and all the detailed reasons succinctly stated in the lead judgment, I also hold that Petition No. CA/PEPC/04/2023 lacks merit.

Having also found no merit in all three Petitions Nos. CA/ PEPC/03/2023, CA/PEPC/04/2023 and CA/PEPC/05/2023, I join my learned brother, Tsammani, JCA in dismissing all three petitions. I abide by the consequential orders made in the lead judgment.

Petition dismissed.