1. ABUBAKAR ATIKU

2. PEOPLES DEMOCRATIC PARTY

V.

1. INDEPENDENT NATIONALELECTORAL COMMISSION

2. TINUBU BOLA AHMED

3. ALL PROGRESSIVES CONGRESS

PETITION NO: CA/PEPC/05/2023

PRESIDENTIAL ELECTION PETITION COURT

HOLDEN AT ABUJA

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

STEPHEN JONAH ADAH, J.C.A.

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

BOLOUKUROMA MOSES UGO, J.C.A.

ABBA BELLO MOHAMMED, J.C.A.

WEDNESDAY, 6TH SEPTEMBER 2023

ACTION - Abuse of court process - Multiplicity of suits on same subject matter and issue - When will constitute abuse of process - When will not.

ACTION – Abuse of court process - Where proceeding amounts to abuse of process - Duty on court.

ACTION - Election petition - Sui generis nature of - Meaning and implication thereof.

ACTION - Parties to election petition - Unsuccessful candidate at election - Whether necessary party to election petition filed by another aggrieved party.

ACTION - Parties to election petition - Non-joinder of party against whom allegation made in election petition - Proper order to make.

ACTION- Parties to election petition - Unnamed persons or thugs - Whether petitioner bound to join as respondents.

ACTION- Parties to election petition- Who should be joined as respondent to election petition.

CONSTITUTIONAL LAW - 'Sentence', 'imprisonment', 'fine' in section 137(d), 1999 Constitution- Connotation of-Whether civil forfeiture amounts to conviction.

CONSTITUTIONAL LAW- Election to office of President-Disqualifying factors - Conviction that can disqualify candidate from contesting-Nature of.

CONSTITUTIONAL LAW - Equality of rights of every Nigerian citizen-Connotation and extent of- Relationship with weight and value of each citizen's vote.

CONSTITUTIONAL LAW- Equality of rights of every Nigerian citizen-Connotation and extent of and weight and value of their votes.

CONSTITUTIONAL LAW- Federal Capital Territory Abuja-Status of-Whether candidate at presidential election requires 25% of votes cast therein to be declared winner.

CONSTITUTIONAL LAW-Qualification for office of President-Disqualifying factors therefor - 'Sentence', 'imprisonment', 'fine' in section 137(d), 1999 Constitution-Connotation of - Whether civil forfeiture amounts to conviction.

CONSTITUTIONAL LAW - Interpretation of Constitutional provisions- Principles governing

COURT- Abuse of court process-Multiplicity of suits on same subject matter and issue - When will constitute abuse of process-When will not.

COURT-Abuse of court process -Where proceeding amounts to abuse of process-Duty on court.

COURT- Court of Appeal - Bindingness thereon of decisions of Supreme Court and its own previous decisions.

COURT- Court of Appeal-Duty thereon to take judicial notice of its proceedings.

COURT- Proof- Duty on court to act only on admissible evidence - Duty on counsel with respect thereto.

CRIME- Proof- Allegation of commission of crime- Standard of proof of.

CRIMINAL LAW AND PROCEDURE- 'Sentence', 'imprisonment',' fine' in section 137(d), 1999 Constitution.

CRIMINAL LAW AND PROCEDURE - Conviction - Civil forfeiture - Whether amounts to conviction.

CRIMINAL LAW AND PROCEDURE – Conviction - Whether civil forfeiture amounts to conviction.

CRIMINAL LAW AND PROCEDURE - Forfeiture of property - Civil forfeiture-Criminal forfeiture - Nature and effect of -Distinction between- Whether civil forfeiture amounts to conviction.

CRIMINAL LAW AND PROCEDURE – Proof – Allegation of commission of crime-Standard and proof of

DOCUMENT - Certification of public document - Need for payment therefor - How to prove payment.

DOCUMENT - Documentary evidence - Document or evidence made during pendency or in anticipation of litigation Admissibility of

DOCUMENT-Documentary evidence-Issue of whether witness maker of document - Nature of- Relevant consideration on weight to attach thereto.

DOCUMENT- Documentary evidence – Party relying on documents in proof of his case - Burden thereon- How discharged.

DOCUMENT- Public document- Certification of- Need for payment therefor - How to prove payment.

ELECTION - 'Election'- Meaning and constituent elements of under Electoral Act.

ELECTION - Collation of election results - Collation system - INEC Result Viewing Portal (IReV) in electoral process - Roles of and distinction between.

ELECTION - Collation of election results - Mode prescribed therefor by Electoral Act - Whether electronic collation of results prescribed.

ELECTION- Collation of election results- Whether Electoral Act 2022 prescribes electronic transfer and collation of election results.

ELECTION - Election to office of President - Disqualifying factors - Conviction that can disqualify candidate from contesting-Nature of.

ELECTION - Equality of rights of every Nigerian citizen Connotation and extent of - Relationship with weight and value of each citizen's vote.

ELECTION - Federal Capital Territory Abuja - Status of Whether candidate at presidential election requires 25% of votes cast therein to be declared winner

ELECTION - Independent National Electoral Commission (INEC) - Establishment, functions, powers and independence of

ELECTION - INEC Regulations and Guidelines for Conduct of Elections- Status of vis-à-vis Electoral Act- Which takes precedence.

ELECTION - Presidential election-Whether candidate requires 25% of votes cast in Federal Capital Territory Abuja to be declared winner:

ELECTION - Process of election - Processes prescribed for valid election.

ELECTION- Processes of election - Polling unit - Importance of as base of electoral pyramid and process of collation of presidential election.

ELECTION- Transmission of election results - Transmission of results to collation system- Whether Electoral Act prescribes electronic transmission of results by BVAS to collation system.

ELECTION PETITION - 'Non-compliance' - Meaning and connotation of

ELECTION PETITION - Allegation of crime in election petition - Standard of proof of - What petitioner must plead and prove to succeed.

ELECTION PETITION- Contents of petition-Statement on oath of subpoenaed witness - Whether needs not accompany election petition.

ELECTION PETITION - Election petition - Notion of justice in election petitions - What it connotes.

ELECTION PETITION - Grounds for challenging election.

ELECTION PETITION- Grounds of petition - Where petitioner alleges non-compliance with Electoral Act-Burden of proof on him-How discharged.

ELECTION PETITION - Nature of election petition - Sui generis nature of election petitions- Meaning and implication thereof.

ELECTION PETITION- Parties to election petition-Non-joinder of party against whom allegation made in election petition - Proper order to make.

ELECTION PETITION - Parties to election petition- Unnamed persons or thugs - Whether petitioner bound to join as respondents.

ELECTION PETITION - Parties to election petition - Unsuccessful candidate at election-Whether necessary party to election petition filed by another aggrieved party.

ELECTION PETITION - Parties to election petition - Who should be joined as respondent to election petition.

ELECTION PETITION - Pleadings - Petitioner's Reply to respondent's Reply to petition - Contents thereof-Rules governing.

ELECTION PETITION – Pleadings - Pleading in election petitions - Rules governing.

ELECTION PETITION-Pleadings - Reply to respondent's reply to petition - When unnecessary - What amounts to new issue to warrant filing same.

ELECTION PETITION – Pleadings - Reply to respondent's reply to petition - Failure of petitioner to file- Whether amounts to admission of averments therein.

ELECTION PETITION - Pleadings - Where petitioner claims highest number of votes- Respective duties on petitioner and respondent.

ELECTION PETITION – Pleadings - Where petitioner's pleading inadequate and devoid of necessary particulars - Whether respondent duty-bound to seek further particulars.

ELECTION PETITION - Presumptions-Result of election declared by INEC - Presumption raised in favour thereof - Nature of-How rebutted.

ELECTION PETITION – Proof - Allegation of corrupt practices - Standard of proof required therefor:

ELECTION PETITION – Proof of election petition - Where petitioner alleges election result Forms not signed by Presiding Officer - Burden on him.

ELECTION PETITION - Proof of petition - Allegation of non-compliance with Electoral Act - Burden on petitioner - Whether section 137 Electoral Act 2022 relieves of burden of calling witnesses.

ELECTION PETITION – Proof of petition - Events at polling unit during election - Who is competent to testify thereon.

ELECTION PETITION – Proof of petition - Reports of Election Observers -Status of - Admissibility and evidential value thereof.

ELECTION PETITION - Proof of petition – Where allegation of crime raised in election petition - Standard of proof of - What petitioner must plead and prove to succeed

ELECTION PETITION- Proof of petition- Where petitioner alleges respondent not elected by majority of lawful votes-Burden thereon-What he must plead and prove to succeed.

ELECTION PETITION - Proof of petition - Where petitioner alleges fraud or forgery or malpractice in election- Burden thereon-What he must prove to succeed.

ELECTION PETITION - Proof of petition - Where petitioner alleges falsification of election result or document-Burden thereon - Need to call witnesses in proof of.

ESTOPPEL - Doctrine of estoppel - Issue estoppel - Connotation and application of.

ESTOPPEL - Issue estoppel - Connotation and application of - When ruling of court constitutes-Implication thereof.

EVIDENCE – Admissibility - Document or evidence made during pendency or in anticipation of litigation-Admissibility of.

EVIDENCE - Certification of public document - Need for payment therefor - How to prove payment.

EVIDENCE - Documentary evidence - Document or evidence made during pendency or in anticipation of litigation - Admissibility of.

EVIDENCE - Documentary evidence - Issue of whether witness maker of document - Nature of- Relevant consideration on weight to attach thereto.

EVIDENCE - Estoppel - Issue estoppel - Connotation and application of - When ruling of court constitutes- Implication thereof.

EVIDENCE - Hearsay evidence - What amounts to - How treated.

EVIDENCE - Judicial notice - Court of Appeal - Duty thereon to take judicial notice of its proceedings.

EVIDENCE - Presumptions - Result of election declared by INEC - Presumption raised in favour thereof- Nature of - How rebutted.

EVIDENCE – Proof - Allegation of commission of crime - Standard of proof of.

EVIDENCE – Proof - Duty on court to act only on admissible evidence adduced before it - Duty on counsel with respect thereto.

EVIDENCE - Proof of crime - Burden on petitioner making criminal allegation in election petition-What he must prove to succeed.

EVIDENCE - Proof of election petition - Allegation of non-compliance with Electoral Act - Burden on petitioner - Whether section 137 Electoral Act, 2022 relieves of burden of calling witnesses.

EVIDENCE - Proof of election petition - Reports of Election Observers - Status of- Admissibility and evidential value thereof.

EVIDENCE - Proof of election petition - Where allegation of crime raised in election petition - Standard of proof of - What petitioner must plead and prove to succeed.

EVIDENCE - Proof of election petition -Where petitioner alleges respondent not elected by majority of lawful votes - Burden thereon - What he must plead and prove to succeed.

EVIDENCE - Proof of election petition - Where petitioner alleges fraud or forgery or malpractice in election-Burden thereon-What he must prove to succeed.

EVIDENCE - Proof of election petition - Where petitioner alleges falsification of election result or document-Burden thereon-Need to call witnesses in proof of.

EVIDENCE - Public document-Certification of - Need for payment therefor - How to prove payment.

EVIDENCE – Trial - Cross-examination - Object and function of.

EVIDENCE - Witnesses - Expert witness - Issue of whether witness can testify as expert-Nature of-Whether dependent on acquisition of certificates in relevant field - Relevant consideration on weight to attach to evidence of.

INDEPENDENT NATIONAL ELECTORAL COMMISSION - Independent National Electoral Commission (INEC) - Establishment, functions, powers and independence of.

INDEPENDENT NATIONAL ELECTORAL COMMISSION- Regulations and Guidelines for Conduct of Elections-Status of vis-à-vis Electoral Act - Which takes precedence.

INTERPRETATION OF STATUTES- Aids to interpretation of statute- Semi-colon- Function of

INTERPRETATION OF STATUTES - Constitutional provisions-Interpretation of - Principles governing.

JUDGMENT AND ORDER – Conviction - Civil forfeiture - Whether amounts to conviction.

JUDGMENT AND ORDER - Forfeiture of property - Civil forfeiture Criminal forfeiture - Nature and effect of - Distinction between - Whether civil forfeiture amounts to conviction.

JUDGMENT AND ORDER - Forfeiture order made by foreign court - Condition precedent to acceptance thereof in Nigeria

JUDGMENT AND ORDER - Judgment in rem - Nature and effect of - On whom binding.

JUDGMENT AND ORDER - Judgment of court-Concurring judgment or opinion - Status, function and efficacy of- Bindingness of.

JUDICIAL NOTICE - Court of Appeal - Duty thereon to take judicial notice of its proceedings.

JUDICIAL PRECEDENT-Court of Appeal-Bindingness thereon of decisions of Supreme Court and its own previous decisions.

JUSTICE - Election petition - Notion of justice in election petitions - What it connotes.

NOTABLE PRONOUCEMENT - On Notion of justice in election petitions.

NOTABLE PRONOUNCEMENT - On Connotation and extent of equality of right of every Nigerian citizen and weight and value of their votes.

NOTABLE PRONOUNCEMENT - On Validity of allegation of deliberate manipulation of IReV and e-transmission by INEC to favour 2nd Respondent.

PRACTICE AND PROCEDURE - Abuse of court process-Multiplicity of suits on same subject matter and issue - When will constitute abuse of process - When will not.

PRACTICE AND PROCEDURE - Abuse of court process - Where proceeding amounts to abuse of process - Duty on court.

PRACTICE AND PROCEDURE-Certification of public document - Need for payment therefor-How to prove payment.

PRACTICE AND PROCEDURE - Declarative relief- Party claiming-Duty thereon to succeed on strength of his case and not on weakness of defence.

PRACTICE AND PROCEDURE - Election petition - Contents of - Statement on oath of subpoenaed witness- Whether needs not accompany election petition.

PRACTICE AND PROCEDURE - Election petition-Sui generis nature of-Meaning and implication thereof.

PRACTICE AND PROCEDURE- Judgment of court-Concurring judgment or opinion - Status, function and efficacy of - Bindingness of.

PRACTICE AND PROCEDURE- Parties to election petition-Non-joinder of party against whom allegation made in election petition- Proper order to make.

PRACTICE AND PROCEDURE- Parties to election petition - Unnamed persons or thugs - Whether petitioner bound to join as respondents.

PRACTICE AND PROCEDURE- Parties to election petition - Unsuccessful candidate at election - Whether necessary party to election petition filed by another aggrieved party.

PRACTICE AND PROCEDURE-Parties to election petition - Who should be joined as respondent to election petition.

PRACTICE AND PROCEDURE-Pleadings-Bindingness of-Role of in determining issue for trial.

PRACTICE AND PROCEDURE – pleadings – need to read as a whole-Essence of.

PRACTICE AND PROCEDURE – Pleadings - Pleading in election petitions - Rules governing.

PRACTICE AND PROCEDURE – Pleadings - Pleading in election petition - Where petitioner claims highest number of votes - Respective duties on petitioner and respondent.

PRACTICE AND PROCEDURE – Pleadings - Pleading in election petition - Where petitioner's pleading inadequate and devoid of necessary particulars - Whether respondent duty - bound to seek further particulars.

PRACTICE AND PROCEDURE- Pleadings - Pleading in election petition - Petitioner's Reply to respondent's Reply to petition - Contents thereof - Rules governing.

PRACTICE AND PROCEDURE - Pleadings - Principle of incorporation by reference in pleading-Scope of.

PRACTICE AND PROCEDURE- Pleadings- Reply to statement of defence or to reply to election petition- Failure to file - Whether amounts to admission of averments therein.

PRACTICE AND PROCEDURE – Pleadings - Reply to statement of defence or to reply to election petition-When unnecessary -What amounts to new issue to warrant filing same.

PRACTICE AND PROCEDURE - Reliefs- Declarative relief - Party claiming - Duty thereon to succeed on strength of his case and not on weakness of defence.

PRINCIPLES OF INTERPRATION- Aids to interpretation of statute - Semi-colon - Function of.

PRINCIPLES OF INTERPRETATION- Constitutional provisions- Interpretation of- Principles governing.

PRINCIPLES OF INTERPRETATION-Interpretation of statutes-Principles governing.

STARE DECISIS- Court of Appeal - Bindingness thereon of decisions of Supreme Court and its own previous decisions.

STATUTE- Constitutional provisions- Interpretation of- Principles governing.

STATUTE- Interpretation of statute- Aids thereto- Semi-colon- Function of.

STATUTE- Interpretation of statutes- Principles governing.

STATUTE- Regulations and Guidelines for Conduct of Elections -Status of vis-à-vis Electoral Act-Which takes precedence.

WORDS AND PHRASES - 'Election' - Meaning and constituent elements of under Electoral Act.

WORDS AND PHRASES - 'Non-compliance'- Meaning and connotation of.

WORDS AND PHRASES - 'Sentence', 'imprisonment', 'fine' in section 137(d), 1999 Constitution- Connotation of-Whether civil forfeiture amounts to conviction.

WORDS AND PHRASES- Hearsay evidence- What amounts to - How treated.

Issues:

1. Whether the return of the 2nd respondent in the election to the office of the President of the Federal Republic of Nigeria held on 25th day of February 2023 was invalid by reason of substantial non-compliance with the provisions of the Electoral Act, 2022.

2. Whether the 2nd respondent was lawfully declared and returned as the winner of the Presidential election held on 25th day of February 2023, having not secured one-quarter of the valid votes cast in the Federal Capital Territory, Abuja.

3. Whether the 2nd respondent was not disqualified under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to contest the Presidential election held on 25th day of February 2023, having regard to the alleged order of forfeiture arising from drug-related offence, his acquisition of the citizenship of a country other than Nigeria, and presenting a forged certificate to the 1st respondent?

4. Whether 2nd respondent was duly elected by majority of the lawful votes cast in the election and 1st respondent was right in returning him as duly elected.

Facts:

The 1st petitioner, Abubakar Atiku, was a candidate at the Presidential election held in Nigeria on 25th February 2023. He was sponsored by the 2nd petitioner, People's Democratic Party (PDP), a registered political party in Nigeria. The 1st respondent, the Independent National Electoral Commission (INEC), was established as one of the executive bodies created in section 153(1)(f) of the Constitution of the Federal Republic of Nigeria, 1999 with power to, among others, organise, undertake and supervise all elections to the offices of the President and Vice President and others.

On Saturday, 25th February 2023, the 1st respondent conducted election into the offices of the President and the Vice President of the Federal Republic of Nigeria and the National Assembly. The Petitioners and the 2nd and 3rd respondents along with sixteen others participated in the election. At the conclusion of the election, the 1st respondent declared the 2nd respondent as the duly elected President of the Federal Republic of Nigeria with 8,794,726 votes. The Petitioner who was sponsored by the 2nd Petitioner came second with 6,984,520 votes. The petitioners were aggrieved by

the outcome of the election so they filed a joint petition challenging the election.

The grounds for the petition were four, stated as follows:

"(a) The election of the 2nd respondent is invalid by reason of non-compliance with the provisions of the Electoral Act, 2022.

(b) The election of the 2nd respondent is invalid by reason of corrupt practices.

(c) The 2nd respondent was not duly elected by majority of lawful votes cast at the election.

(d) The 2nd respondent was at the time of the election not qualified to contest the election."

The petitioners then sought the following reliefs:

"(a) That it may be determined that the 2nd respondent was not duly elected by a majority of lawful votes cast in the Election and therefore the declaration and return of the 2nd respondent by the 1st respondent as the winner of the Presidential Election conducted on the 25th day of February, 2023 is unlawful, wrongful, unconstitutional, undue, null and void and of no effect whatsoever.

(b) That it may be determined that the return of the 2nd respondent by the 1st respondent was wrongful, unlawful, undue, null and void having not satisfied the requirements of the Electoral Act, 2022 and the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which mandatorily requires the 2nd respondent to score not less than one-quarter (25%) of the lawful votes cast at the Election in each of at least two-thirds of all the States in the Federation AND the Federal Capital Territory, Abuja.

(c) That it may be determined that the 2nd respondent was at the time of the election not qualified to contest the said election.

(d) That it may be determined that the 1st petitioner having scored the majority of lawful votes cast at the presidential election of Saturday, 25th February 2023, be returned as the winner of the said election and be

Sworn in as the duly elected president of the Federal Republic of Nigeria.

IN THE ALTERNATIVE

(e) An order directing the 1st respondent to conduct a second election (run-off) between the 1" petitioner and 2nd respondent.

IN THE FURTHER ALTERNATIVE:

(f) That the election to the office of the President of Nigeria held on 25th February 2023 be nullified and a fresh election (re-run) ordered.

(g) Any such further relief(s) as the Honourable Court may deem fit to make in the interest of justice."

Upon being served with the petition, the respondents joined issues with it by filing their respective replies incorporating preliminary objections and made other applications. Some of the applications filed by the parties were heard and rulings delivered at the pre-hearing stage while some were heard and rulings on them reserved till the time of the judgment of the court. Seven applications/preliminary objections were filed and argued by the respondents during the prehearing session of the petition; two each of the said seven applications were filed by the 1st and 3rd respondents while three were filed by 2nd respondent.

At the hearing, the petitioners called a total of 27 witnesses and tendered several documents from the Bar and through some of their witnesses, and closed their case on 24 June 2023. The respondents opened their respective defences starting from 3 July 2023.The 1st respondent called one witness, one of its staff as RW1 and closed its case. The 2nd respondent also tendered documents and called one witness, RW2. The 3rd respondent did not call any witness but tendered documentary evidence. At the close of the case of the parties, the court ordered written addresses. The addresses were all filed on schedule.

In the determination of the various motions, preliminary objections and the merit of the petition, the Court considered various provisions of the 1999 Constitution (as amended), the Electoral Act, 2022 and other relevant Legislations as follows:-Preamble to 1999 Constitution:

"WE the people of the Federal Republic of Nigeria; Having firmly and solemnly resolved;

……..……..

AND TO PROVIDE a constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom, EQUALITY and Justice, and for the purpose of consolidating the Unity of our people:

DO HEREBY MAKE AND GIVE TO OURSELVES the following Constitution:"

Section 17 of the 1999 Constitution (as amended):

"17(1) The State Social order is founded on ideals of freedom, equality and justice.

(2) In furtherance of the social order-

(a) Every citizen shall have equality of rights, obligations and opportunities before the law"

Section 134(2) & (4) of the 1999 Constitution (as amended):

"134(2) A candidate for an election to the office of the President shall be deemed to have been duly elected where there being more than two candidates for the election-

(a) he has the highest number of votes cast at the election; and

(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

…….

(4) For the purposes of an election to the office of President, the whole of the Federation shall be regarded as one constituency."

Section 137(1) (d) of the 1999 Constitution (as amended):

"137(1) A person shall not be qualified for election to the office of President if-

(d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria of a sentence of imprisonment or fine for any offence involving dishonesty or fraud by whatever name called or for any other offence imposed on him by any court tribunal

or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal."

Section 299 of the 1999 Constitution (as amended):

"299. The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation; and accordingly-

(a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja;

(b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution.

(c) the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be necessary to bring them into conformity with the provisions of this section."

Section 25 of the Electoral Act, 2022:

“25(1) The results of all the elections shall be announced by the-

(a) Presiding officer at the polling unit;

(b) Ward Collation Officer at the registration area or Ward Collation Centre;

(c) Local Government or Area Council Collation Officer at the Local Government or Area Council Collation Centre; and

(d) State Collation Officer at the State Collation Centre.

(2) The returning officer shall announce the result and declare the winner of the election at-

(g) State Collation Centre in the case of a Presidential election; and

(h) National Collation Centre in the case of election of the President.

(3) The Chief Electoral Commissioner shall be the returning officer at the Presidential election."

Section 47 of the Electoral Act, 2022:

"47(1) A person intending to vote in an election shall present himself with his voter's card to a Presiding officer for accreditation at the polling unit in the constituency in which his name is registered.

(2) To vote, the presiding officer shall use a smart card reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters, to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission.

(3) Where a smart card reader or any other technological device deployed for accreditation of voters fails to function in any unit and a fresh card reader or technological device is not deployed, the election in that unit shall be cancelled and another election shall be scheduled within 24 hours if the Commission is satisfied that the result of the election in that polling unit will substantially affect the final result of the whole election and declaration of a winner in the constituency concerned."

Section 60 of the Electoral Act, 2022:

"60(1) The presiding officer shall, after counting the votes at the polling unit, enter the votes scored by each candidate in a form to be prescribed by the commission as the case maybe.

(2) The form shall be signed and stamped by the presiding officer and counter signed by the candidates or their polling agents where available at the polling unit.

(3) The presiding officer shall give to the polling agents and the police officer where available a copy each of the completed forms after it has been duly signed as provided under subsection (2).

(4) The presiding officer shall count and announce the result at the polling unit.

(5) The presiding officer shall transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission.

Section 62 of the Electoral Act, 2022:

"62(1) After the recording and announcement of the result, the presiding officer shall deliver same along with election materials under security and accompanied by the candidates or their polling agents, where available, to such person as may be prescribed by the commission.

(2) The commission shall compile, maintain and update, on a continuous basis, a register of election results to be known as the National Electronic Register of Election Results which shall be a distinct database or repository of polling unit by polling unit results" including collated election results, of each election conducted by the commission in the Federation, and the Register of Election Results shall be kept in electronic format by the Commission at its national headquarters.

(3) Any person or political party may obtain from the Commission, on payment of such fees as may be determined by the Commission, a certified true copy of any election result kept in the National Electronic Register of Election Results for a State, Local Government, Area Council, registration area or electoral ward or polling unit, as the case may be, and the may be in printed or electronic format."

Section 66 of the Electoral Act, 2022:

"66. In an election to the office of the President or Governor whether or not contested and in any contested election to any other elective office, the result shall be ascertained by counting the votes cast for each candidate and subjected to the provisions of sections 133, 134 and 179 of the Constitution, the candidate that receives the highest number of votes shall be declared elected by the appropriate returning officer."

Section 68 of the Electoral Act, 2022:

> "68. The Commission shall cause to be posted on its notice board and website, a notice showing the candidates at the election and their scores, and the person declared as elected or returned at the election."

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

> "134(1) an election may be questioned on any of the following grounds-
>
> (b) the election was invalid by reason of corrupt practices or non- compliance with the provisions of this Act;"

Section 135(1) of the Electoral Act, 2022:

> "135(1) An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election."

Section 137 of the Electoral Act, 2022:

> "137. It shall not be necessary for a party who alleges noncompliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged."

Paragraph 4(1) of the 1st Schedule to the Electoral Act 2022:

> "4(1) An election petition under the Act shall:
>
> (d) state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioners."

Paragraph 4(5) (b) of the 1st Schedule to the Electoral Act 2022:

> "4(5) The election petition shall be accompanied by-
>
> (b) Written statements on oath of the witnesses"

Paragraph 16(1) (a) of the 1st Schedule to the Electoral Act 2022:

> "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;"

Paragraph 41(3) of the 1st Schedule to the Electoral Act, 2022:

"41(3) There shall be no oral examination of a witness during his evidence-in-chief except to lead the witness to adopt his written deposition and tender in evidence all disputed documents or other exhibits referred to in the deposition"

Paragraph 54 of the 1st Schedule to the Electoral Act, 2022:

"54. Subject to the express provisions of this Act, the practice and procedure of the tribunal or the court in relation to an election petition shall be as nearly as possible, similar to the practice and procedure of the Federal High Court in the exercise of its civil jurisdiction, and the civil procedure rules shall apply with such modifications as may be necessary to render them applicable having regard to the provisions of this Act, as if the petitioner and the respondent were respectively the plaintiff and the defendant in an ordinary civil action."

Paragraph 38(i) and (ii), 48(a), (b) and (c), 50(v), (vii) and (xx), 51(ii), 54(xii), 55(xii) and 93 of the Regulations and Guidelines for the Conduct of Elections, 2022:

"38. On completion of all the polling units voting and results procedures, the Presiding Officer shall:

(i) Electronically transmit or transfer the result of the polling unit, direct to the collation system as prescribed by the Commission.

(ii) Use the BVAS to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), as prescribed by the Commission.

(iii) Take the BVAS and the original copy of each of the Forms in tamper evident envelope to the Registration Area/Ward Collation Officer, in the company of Security Agents. The Polling

Agents may accompany the Presiding Officer to the RA/Ward Collation Centre."

"48(a) An election result shall only be collated if the Collation Officer ascertains that the number of accredited voters agrees with the number recorded in the BVAS and votes scored by Political Parties on the result sheet is correct and agrees with the result electronically transmitted or transferred directly from the Polling Unit as prescribed in these Regulations.

(b) If a collation or returning officer determines that a result from a lower level of collation is not correct, he/she shall use the result electronically transmitted or transferred directly from that lower level to collate and announce the result.

(c) If no such result has been directly transmitted electronically for a polling unit or any level of collation, the provision of Clause 93 of these Regulations shall be applied."

"50. The Registration Area/Ward Collation Officer shall:

(v) Compare the number of voters verified by the BVAS with the number of accredited voters and total votes cast for the Polling Unit as contained in Form EC8A series for each Polling Unit.

(vii) Validate the scanned copy of Form EC8A and upload same to the IReV Portal with the assistance of the Registration Area Technical Support Staff (RATECHs);

(xx) Electronically transmit or transfer the result directly to the next level of collation as prescribed by the Commission.

51. Where there is any discrepancy in a result submitted by a Presiding Officer to the RA/Ward Collation Officer as verified from result transmitted or transferred directly from the Polling Unit, the RA/Ward Collation Officer shall:

(i) Request explanation from the Presiding Officer(s) concerned about the circumstances of the discrepancy;

(ii) Locate the point of discrepancy, resolve the discrepancy using the electronic result and request the Presiding Officer to endorse the resolution; and

(iii) Make a report of the discrepancy to the next level of collation."

"93. Where the INEC hardcopy of collated results from the immediate lower level of collation does not exist, the Collation Officer shall use electronically transmitted results or results from the IReV portal to continue collation. Where none of these exist, the Collation Officer shall ask for duplicate hardcopies issued by the Commission to the following bodies in the order below:

(i) The Nigeria Police Force; and
(ii) Agents of Political Parties."

Section 104, Evidence Act, 2011:

"104(1) Every public officer having custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees prescribed in that respect, together with a certificate written at the foot of such copy that it is a certified true copy of such document or part of it as the case may be.

(2) he certificate mentioned in subsection (1) of this section shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies shall be called certified true copies."

Held (*Unanimously dismissing the Petition*):

1. On Establishment, functions, powers and independence of Independent National Electoral Commission (INEC)

-

The Independent National Electoral Commission (INEC), the 1st respondent herein, is established

by section 153(1)(f) of the Constitution of the Federal Republic of Nigeria, 1999, and part of its functions as stated in Paragraph 15, Item F, Part I of the Third Schedule to the said Constitution is to organize, undertake and supervise elections, including election to the offices of the President and Vice President, among other political offices listed. Being a creation of the Constitution, INEC is empowered by section 160(1) of the Constitution to make its own rules or otherwise regulate its own procedure; and in so doing it shall not be under the control of the President. Indeed, by section 158(1) of the Constitution, INEC shall not be subject to direction or control of any authority or person. (*Pp. 650-651, paras.H-C***)**

2. *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 Honourable 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.* **(2021)3 NWLR (Pt. 1764) 538;** Oke v. *Mimiko* **(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.] (*Pp. 696-697paras. G-B***)**

3. *On Grounds for challenging election -*

By virtue of section 134(1) (b) of the Electoral Act, non-compliance with the Act is a ground for questioning or challenging an election. (*P. 658, para. H***)**

4. *On Presumption in favour of result of election declared by INEC and how rebutted-*

Primarily, the law is well settled that the results declared by the Independent National Electoral Commission (INEC - 1st respondent) in an election enjoy a presumption of regularity. In other words, they are *prima facie* **correct. This is by virtue of section 168(1) of the Evidence Act 2011. However, it is a rebuttable presumption, which implies that any person who questions the validity of an act in favour of which there is a presumption of regularity, has a duty to rebut the presumption with cogent and credible evidence. A flimsy or half-hearted rebuttal will not suffice. [***Atuma v. A.P.C.* **(2023) 16 NWLR (Pt. 1910) 371;** *P.D.P. v. I.N.E.C.* **(2022) 18 NWLR (Pt.1863) 653;** *Udom v. Umana* **(No. 1) (2016) 12 NWLR (Pt. 1526) 179 referred to.] (***Pp. 628-629, paras. G-D***)**

5. *On Rules of pleading in election petitions-*

Paragraph 4(1) of the 1st Schedule to the Electoral Act, 2022 simply restates in mandatory terms the first rule of pleading, that a claimant, in this case a petitioner, shall state 'clearly' the facts of the election petition and the ground or grounds on which the petition, or claim, is brought. This requirement/duty to plead one's complaints and facts clearly in the statement of claim/petition (not Reply) is a basic rule of pleading even in ordinary civil proceedings.

Thus, the main purpose of pleadings as further fortified by Paragraph 4(1) (b) of the 1st Schedule to the Electoral Act, 2022 is to properly and clearly inform the adverse party of the case he is coming to meet, so that he can respond appropriately to it. That is fair hearing. That requirement of the law does not permit parties to keep their cards face-down as petitioners did in several paragraphs of their petition.

In the instant case:

(a) the averments in paragraph 23 of the Petition where the petitioners complained that(a)the result of the election as announced by INEC did not represent the lawful votes cast;(b)that votes were 'wrongly allocated to 2nd respondent', and (c) that lawful votes cast for them (petitioners) were 'massively deducted' from their scores by INEC to facilitate the return of the 2nd respondent, ought to contain the lawful votes of the petitioners that were alleged massively deducted', as well as those alleged to have been allocated to 2nd respondent by 1st respondent to return him elected, and thus fell far short of the requirements of paragraphs 4(1)(d)and 15 of the 1st Schedule to the Electoral Act, 2022.

(b) paragraphs 82-86 of the petition where the petitioners complained that Permanent Voters Card (PVCs) collected in the polling units where elections were cancelled or did not hold across the country was above 1,810,206, which was the margin of lead between 1st petitioner and 2nd respondent, and that consequently the return of the 2nd respondent was hasty, premature and wrongful, ought to contain the precise number of PVCs allegedly collected in the polling units' which by petitioners'

Contention would have closed the margin of lead between 1st petitioner and 2nd respondent to make the latter's return unlawful. Without that information, the complaint was vague, imprecise and lacking in particulars as it was difficult to understand and respond properly to let alone resolve;

(c) paragraphs 87 - 91 where the petitioners complained of corrupt practices in the conduct of the election by INEC, which practices they complained took the form, among others, of manipulation by 1st respondent through deliberate suppression and discounting of their lawful votes while inflating the votes of scores of 2nd respondent, was vague in so far as the polling stations where the said corrupt practices took place were not stated.

(d) Paragraph 92 of the petition, where the petitioners alleged wrongful cancellation of polling unit results "in various Local Governments of Sokoto State", was lacking in particulars of the particular polling units affected;

(e) paragraph 95 of the petition where the petitioners alleged that results in unspecified polling units in some Local Government Areas of Kogi State were "manipulated through and by the inflation of the 2nd respondent's votes and depletion of the petitioner's votes" was bad for vagueness not only as to the polling units where the alleged manipulation occurred but also as to the actual lawful votes of petitioners and 2nd respondent allegedly depleted and inflated respectively;

(f) Paragraph 98 of the petition where petitioners alleged that "elections in 10

polling units were disrupted and there were no results from the said 10 polling units" was bad for vagueness and specificity in so far as it did not specify the affected 10 polling units;

(g) paragraph 102 of petition where the petitioners simply alleged that "infractions occurred in polling units in various Local Governments" of Kogi State and "these failures enabled the results of polling units in the said LGAs to be manipulated through and by the inflation of the 2nd respondent's votes and the depletion of the petitioners' votes," was bad and vague as to the particulars of the specific polling units and votes of petitioners and respondents affected by the said manipulation of inflation and deflation. It failed to meet both the requirements of clear pleading of facts of the petition under paragraphs 4(1) (d) and 15 of the 1st Schedule to the Electoral Act, 2022;

(h) paragraph 103 of the petition where the petitioners simply averred generally that "1st respondent wrongly entered incorrect results for the Petitioners in Borno State" is bad in so far as the polling units in Borno State affected by the 'incorrect results' were not stated;

(i) paragraph 114 of the petition where the petitioners simply alleged generally that "purported results from polling units across 36 States and Federal Capital Territory contain various forms of infractions";

(j) paragraph 115 of the petition where the petitioners alleged that "a total number of 4,307 Polling Units are without stamp on the

Respective Form EC8A therefrom. Details of the States and number of polling units in each State affected are shown in in the Statistician's Report herein pleaded... ";

(k) Paragraph 116 of the petition where the petitioners complained that "results from 1,300 polling units do not have signatures of the Presiding Officers on the respective Forms EC8A. Details of the States and number of polling units in each State affected are shown in in the Statistician's Report herein pleaded" ;

(l) Paragraph 117 of the petition where the petitioners said "purported results from 6,418 polling units have and indicate zero accreditation. The polling units affected are as shown in the Statistician's Report herein pleaded";

(m) Paragraph 118 of the petition where the petitioners averred that "critically 9,463 polling units across 30 States have shown that the votes returned are in excess of accredited voters";

(n) paragraph 119 of the petition where the petitioners contended that "given the number of registered voters in polling units where elections did not take place, in addition to those polling units where elections were cancelled, (the details of which are set out in the statistician's report pleaded by the Petitioners), the return of the 2nd respondent as the winner of the election in the circumstances was hasty and undue as the margin of lead is less than the number of disenfranchised voters; were all bad for lack of particulars and necessary facts;

(o) Paragraphs 121, 126, 129, 133, 143, 144 and 146 were vague, imprecise and

lacked particulars and so fell short of the requirements of Paragraph 4(1)(b) of the First Schedule of the Electoral Act 2022, and were all struck out;

(p) paragraphs 129 and 133 of the petition were bad for non-joinder of necessary parties, to wit Messrs. Adejoh and Governor Yahaya Bello of Kogi State accused in the petition of committing electoral malpractices, and were struck out;

(q) paragraph 135, where petitioners complained of manipulation of the election in Lagos State by 1st respondent resulting in 'depletion' of their votes and 'inflation' of 2nd respondent's votes, was vague in the absence of pleading of the number of votes so depleted and inflated;

(r) paragraph 136 of the petition, in which petitioners complained that the votes returned by 1st respondent for Obio-Akpor and Port Harcourt Local Government Areas of Rivers State did not reflect the actual votes scored in the said Local Government Areas or even those uploaded to IReV by INEC and so liable to be voided, without the 'correct' figures of the actual votes cast or as reflected in the IReV, was bad for vagueness and imprecision and was struck out;

(s) paragraph 143 of the petition where the petitioners simply complained that "1st respondent deliberately entered wrong scores/results" for 22 States named therein was bad for vagueness and was struck out;

(t) paragraph 144 of the petition which alleged that "there were discrepancies on very large scales at the various levels of recording and collation of results, particularly between the Polling Units and the Ward Collation

Centres," without specifying the said polling units and Ward Collation Centres where the said large scale discrepancies' took place was bad for vagueness and was struck out;

(u) paragraph 145 where petitioners gave notice that they would rely on their flawed statistician's report among other expert documents which they did not frontload was bad and struck out for vagueness;

(v) paragraph 146 of the petition where petitioners simply stated as ground four of the petition that ".... the 2nd respondent was at the time of the election not qualified to contest the election, not having the constitutional threshold" was also imprecise and vague as it gave no particulars of any of the several qualifying and disqualifying factors set out in sections 131 and 137 of the Constitution.

[*Atanda v. Ajani* **(1989) 3 NWLR (Pt. 111) 511 referred to and applied.] (***Pp. 548, paras. D-F; 549, paras. A-G; 551-552, paras. B-G; 552-553, paras. H-C; 546, paras. B-D; 562-563, paras. C-H; 554, paras. D-H; 555-556, paras. G-F***)**

6. *On Rules of pleading in election petitions-*

Under section 131 of the 1999 Constitution (as amended), there are four different qualifications a person must possess before he can contest presidential election and different grounds that can disqualify such a candidate who has all the four qualifications. Therefore, an assertion that merely says that a person is not qualified to contest election by reason of non-qualification would leave not just the person so assailed but every other person involved, including the court, at a loss as to what the pleader has in mind. In fact, to allow such pleading will amount to upsetting the very essence of filing

pleadings in a case, which is to give the adversary and the court a clear notice of the pleader's case - a point further fortified in paragraph 16(1)(a) of the 1st Schedule to the Electoral Act, 2022.(*P. 577, paras. C-E***)**

7. *On Rules governing contents of petitioner's Reply to respondent's Reply to petition in election petitions-*

By the employment of the word "shall", the provision of paragraph 16 of the 1st Schedule to the Electoral Act, 2022, subtitled 'petitioner's reply', forbids the petitioner to add 'new facts' or fresh issues, which ought to be in the original petition, to his Reply especially if such new facts may have the effect of tending to amend or even just adding to the contents of his petition. This is because a claimant's claims or grievances are made in his statement of claim or petition, as the case may be, and not in his reply to the statement of defence or reply, as the case may be, to that claim or petition.[*A.P.C. v. P.D.P.*** **(2015) 15 NWLR (Pt. 1481) 1;** *Ogboru v. Okowa* **(2016) 11 NWLR (Pt. 1522) 84;** *Oshiomhole v. Airhiavbere* **(2013) 5 NWLR (Pt.1538)265; Orji v. P.D.P. (2019) 14 NWLR (Pt.1161)310;** *Adepoju v. Awoduyilemi* **(2019) 14 NWLR (Pt.1161)364;** *Olubodun v. Lawal* **(2008) 17 NWLR (Pt.1115)1 referred to.] (***Pp. 574, paras. C-E; 574-575, paras.H-B***)**

8. *On When unnecessary to file reply to statement of defence or reply to reply to election petition-Except in some well-*

defined situations, a reply to a statement of defence is not permitted where no counter-claim is served. This is so because there is an implied joinder of issues on any fact raised in the statement of defence, and any averment contained therein is deemed denied. [*Bakare v. Ibrahim* **(1973)6 SC 205;** *Akeredolu v. Akinremi* **(1989)3 NWLR (Pt.**

108)164; *Egesimnba v: Onuzuruike* **(2002) 15 NWLR (Pt.791)466;** *Spasco Vehicle Plant Hire Co. v. Alraine* **(1995) 8 NWLR (Pt. 416) 655;** *Ishola v. S.G.B.N. Ltd.* **(1997) 2 NWLR (Pt. 488) 405;** *Obot v. C.B.N.* **(1993) 8 NWLR (Pt. 310) 140 referred to.] (***P. 575, paras. C-F***)**

9. *On What amounts to new issue to warrant filing reply to statement of defence or reply to reply to election petition-*

In order to warrant filing a Reply, a 'new issue', both in its content and materiality, must be further and additional to the statement of claim. The mere fact that a defendant states his own side of the case does not necessarily make it new, particularly when the plaintiff has told a contrary story in his statement of claim. In that case, the case stated by the defendant amounts to joining issues with the plaintiff and that does not wear the name of a new issue in the trial. The general principle of procedural law is that there is an implied joinder of issues on a defence which is unaccompanied by a counter-claim if no reply is served. Thus, parties are brought to an issue where the last pleading is the statement of defence to which a counter-claim had not been appended.

In the instant case, the new facts of:

(a) conviction/fine, forgery, and dual citizenship of 2nd respondent introduced by the petitioners into their reply; and

(b) the additional averments of how results could not have been uploaded to INEC's IReV portal after 25th February 2023; and

(c) whether it was done at all and the relevant officials of INEC could not have been involved in it

did not pass as reply filed pursuant to Paragraph 16(1) (a) of the 1st Schedule to the Electoral Act,2022.

[*Egesimba v Onuzuruike* **(2002) 15 NWLR (Pt.791)466;** *Akeredolu v Akinremi* **(1989) 3 NWLR (Pt.108)164;** *Spasco Vehicle Plant Hire Co. v. Alraine* **(1995) 8NWLR (Pt. 416) 655;** *Ishola v. S.G.B.N. Ltd***. (1997) 2NWLR (Pt.488) 405;** *Obot v. C.B.N.*(**1993)8 NWLR (Pt.310) 140 referred to and applied.] (***Pp. 575-576, paras. F-C; D-G***)**

10. *On Whether failure to file reply to statement of defence amounts to admission of averments therein-*

Failure to deny averments contained in a statement of defence does not imply admission like it does with failure to deny averments in a statement of claim. Thus, the contention of the petitioners, that failure to reply to facts averred by 3rd respondent in his Reply to the petition amounted to an admission of those facts, was erroneous. [*Egesimba v. Onuzuruike* **(2002) 15 NWLR (Pt. 791) 466 referred to.](***P.581, paras. D-F***)**

11. *On Scope of principle of incorporation by reference in pleading-*

The principle of incorporation by reference is part of Nigerian adjectival law but it cannot by any means override the fair hearing, fair trial provisions of section 36 of the 1999 Constitution which also underpins the rationale for exchange of pleadings by parties that requires every fact upon which a party intends to rely at the hearing to be pleaded and which goes to the fundamentals of justice. In this case, the Statistician's Report relied on by the petitioners was only filed in the middle of hearing of the petition, long after the time for exchange of pleadings had closed and even after the petitioners had called as many as sixteen witnesses in proof of their case, and it could not server the purpose of *audi alteram partem* **-let the other party be heard too. The tactics employed by the petitioners as regards their**

pleading and the statistician's report referenced in it was most unfair and negated the current practice regime that emphasizes frontloading of processes. The said Statistician's Reports, which were admitted as exhibits PAH1, PAH2, PAH3 and PAH4 were therefore discountenanced. [*M.M.A. Inc. v. N.M.A.* **(2012) 18 NWLR (Pt. 1333) 506;** *Ekpemupolo v. Edremoda* **(2009) 8 NWLR (Pt. 1142)166;** *J.E.S. Invest. Ltd. v. Brawal Line Ltd.* **(2010) 18NWLR (Pt. 1225) 495;** *Eloho v. Idahosa* **(1992) 2NWLR (Pt. 223) 323;** *Abod Brothers Ltd. v. Niger Insurance Co. Ltd.* **(1974) 4 ECSLR 525 referred to and applied.] (***Pp. 547, paras. C-G; 548, para. A***)**

12. *On Whether respondent duty-bound to seek further particulars where petitioner's pleading inadequate and devoid of necessary particulars-*

An application for particulars is only one of several options open to a respondent where the pleading of the petitioner is grossly inadequate, insufficient or devoid of necessary particulars. He is not under any obligation to help the petitioner make out his case against him by asking for particulars of his generic and nebulous complaints. It is not the duty of a respondent to groom a petitioner on how to draft his petition. [*P.D.P. v. I.N.E.C.* **(2012) 7 NWLR (Pt.1300) 538;** *Olawepo v. Saraki* **(2009) All FWLR (Pt.498) 256;** *Nwankwo v. Yar'adua* **(2010) 12 NWLR (Pt. 1209) 518 referred to and applied.] (***Pp. 564, paras. B-D***)**

13. *On Bindingness of pleadings and role of in determining issue for trial-*

Issues for trial by the court are joined in the pleadings and that parties and indeed the court are bound by the pleadings of the parties. The claimant's case stands to collapse if no evidence is called on the issue. [*Oruwari v. Osler* **(2013) 5 NWLR (Pt. 1348)**

535; *Kubor v. Dickson* **(2013) 4 NWLR (534 referred to.] (***P. 647, paras. C-D***)**

14. *On Need to read pleadings in whole-*

Pleadings must be read holistically to get at the complaint in issue, and not in an isolated manner. (*P.602, paras. A-B***)**

15. *On Whether statement on oath of subpoenaed witness need not accompany election petition*

Where the words of a statute or instrument are clear, as those in paragraph 4(5) (b) of the 1st schedule to the Electoral Act 2022 are, particularly the unqualified 'witnesses' employed there, the court has no other duty than to give them their literal meaning. Paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022 which states that "the election petition shall be accompanied by written statements on oath of the witnesses", particularly the word 'witnesses', whose written statements on oath the lawmakers require 'shall' accompany the election petition, must be given its literal interpretation. Thus, there is no dichotomy between the witnesses mentioned in paragraph 4(5) of 1st schedule to the Electoral Act in respect the witness statement on oath of witnesses and witness statement on oath of a subpoenaed witness. In essence, paragraph 4(5) of 1st Schedule to the Electoral Act covers witness statements on Oath of all categories of witnesses the petitioner intends to call at the trial of his or her petition. In this case, the witness statements of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27 which did not accompany the petition as required by paragraph 4(5)(b) of the 1st Schedule to the Electoral Act were incompetent and were struck out and expunged from the records. Consequently, given the provision of paragraph

41(3) of the same 1st Schedule to the Electoral Act, 2022, all the evidence, including evidence in cross-examination and all documents coming from and tendered by the said petitioners' witnesses were incompetent and hereby expunged from the records.[*Ogba v. Vincent* **(2015) LPELR-40719;** *Ararume v. I.N.E.C.* **(2019) LPELR-48397;** *A.N.D.P. v. I.N.E.C.* **(Unreported) Appeal No. CA/A/EPT/406/2020 of 17/7/2020;** *P.D.P. v. Okogbuo* **(2019) LPELR-489989 referred to and followed;** *Omidiran v. Etteh* **(2011)2NWLR (Pt. 1232) 471;** *Lasun v. Awoyemi* **(2009) 16 NWLR (Pt. 1168) 513 departed from.] (*Pp. 584-585, paras. F-C; 586, paras. A-C*)**

16. *On Whether statement on oath of subpoenaed witness need not accompany election petition*

The provision of paragraph 54 of the 1st Schedule to the Electoral Act, 2022 clearly makes the application of the Federal High Court (Civil Procedure) Rules in election petitions "subject to the express provisions of the Electoral Act." It is not the other way round of modifying provisions of the Act to agree with the rules of the Federal High Court. Paragraph 54 further clarifies by stating that even where the Federal High Court Rules are considered applicable, they "shall [only] apply with such modifications as may be necessary to render them applicable having regard to the provisions of this Act." Thus, where there is an express provision in the Electoral Act on a particular situation, as it clearly is in paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022 that says the election petition shall be accompanied by "written statements on oath of the witnesses," the provisions of the Federal High Court (Civil Procedure) Rules would not apply. In the circumstance, having expressly stated in paragraph 4(5) (b) of the First Schedule to the Electoral Act, 2022 that petitioners shall frontload

witness statements of their witnesses, without dichotomy, along with their petitions, it is not within the province of the court to give that provision a different interpretation. It is also of no moment that in the court's opinion the said literal meaning of paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022 seems harsh and may not meet the justice of the case as erroneously contended by the petitioners that subpoena is only issued to an unwilling witness and so it is not contemplated by paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022 that a witness on subpoena should also depose to a witness statement before the subpoena to compel his attendance is served on him by the court. The duty of the court is not to deal with the law as it ought to be but as it is. [*Nwankwo v. Yar 'adua*** **(2010) 12 NWLR (Pt. 1209) 518 referred to.](*Pp. 589-591, paras. F-B; 592, para. A*)**

Per TSAMMANI, J.C.A. at page 592, paras. B-F:

> **"Paragraph 4(5) (b) of the First Schedule to the Electoral Act, 2022, I will even venture to say further, appears to have been inserted by parliament in further realisation of the** sui *generis*/**time-bound nature of election proceedings, a point further driven home by the Constitution of the Federal Republic of Nigeria (Second Alteration Act) 2010 which introduced among others a new section 285(6) into the 1999 Constitution. That provision states that an election tribunal or court shall deliver its judgment in writing within 180days from the date of filing of the petition. This time limit for disposal of proceedings, it must be noted, is peculiar to election petition proceedings in our body of laws. It is not found in any other proceeding in the entire body of laws of this country. It thus imposes on the election court or tribunal a duty to properly utilise its case**

Management/pre - hearing session as effectively as possible to carefully plan the future course and particularly its plenary hearing of every petition, so as not to fall foul of the maximum 180-days limit. That necessarily includes trimming the number of witnesses, where necessary, once pleadings are closed in the petition."

17. *On Who should be joined as respondents to election petition-*

Section 133 of the Electoral Act 2022 only deals with the issue of which contestant of an election ought to be joined in an election petition by a co-contestant. It has nothing to do with the issue of joining of third parties against whom allegations of electoral infractions are made by petitioners as in this case. Such persons must be joined to the petition if the court is not to be exposed to the risk of infringing their fundamental rights to fair hearing guaranteed by the Constitution. It is of no moment that no relief was claimed against such persons in the petition; what is important is that allegations of electoral malpractices, which will require the court to make findings, including condemnation of their alleged conduct where necessary, are made in the petition. [*Nwankwo v. Yar'adua*** **(2010) 12 NWLR (Pt. 1209)518;** ***Jegede v. I.N.E.C.*** **(2021) 14 NWLR (Pt. 1797)409 referred to.](***P.553, paras. E-H***)**

18. *On Whether unsuccessful candidate necessary party to election petition filed by another aggrieved party-*

By virtue of section 133 of the Electoral Act, 2022 the only other candidate in the election a petitioner can properly join to his petition is the person returned as the winner of the election. Thus, an unsuccessful candidate in an election cannot be made a party to

an election petition against his will. This is because in a presidential election, percentages of votes polled by presidential candidates in any of the 36 States of the Federation or even the Federal Capital Territory only become of consequence when the issue verges on whether the candidate returned also satisfied the provision of section 134 (1) (b) and (2) of the 1999 Constitution (as amended) requiring him to poll 25% of votes cast in at least one two-thirds of the 36 States and the Federal Capital Territory. Outside of that, how many votes a presidential candidate polled in any of the States is of little significance in an election petition challenging return in a multi-party presidential election. It certainly has no bearing on the question of who an aggrieved candidate challenging a presidential election return should join to his petition among the candidates that contested the election with him.[*Buhari v. Yusuf*** **(2003) 14 NWLR (Pt.841)446;** ***Yusuf v. Obasanjo*** **(2003) 16 NWLR (Pt.847) 554;** ***Obasanjo v. Yusuf*** **(2004) 9 NWLR (Pt. 877) 144 referred to.](***P.555, paras. B-G***)**

19. *On Whether petitioner bound to join unnamed persons or thugs as parties in election petition-*

Unnamed persons cannot be joined to an election petition like it is sometimes done in trespass cases. Thus, where allegations are made in an election petition against unnamed thugs, unknown touts, police, army and hordes of others, they cannot be joined and the failure to join such unnamed persons will not vitiate or affect the validity of the petition or the paragraphs of the petition containing such allegations. [*Obasanjo v. Yusuf*** **(2004) 9 NWLR (Pt.877) 144 referred to.] (***P. 570, paras. A-D***)**

20. *On Proper order on non-joinder of party against whom allegation made in election petition*

The non-joinder of a party against whom allegations

of electoral malpractices are made in an election petition would not result in the dismissal of the entire petition. In such circumstances the court, as was done in the instant case, would simply strike out the paragraphs of the petition where those allegations were made. In the instant case, the Court struck out the paragraphs that contained allegations of electoral malpractices made in the petition against Friday Adejoh and Yahaya Bello, the Governor of Kogi State who were not joined as parties in the petition. [*Nwankwo v. Yar'Adua*** (2010) 12 NWLR (Pt. 1209) 518 referred to.] (Pp. 569-570, paras. H-A)**

21. *On Respective duties on petitioner and respondent where petitioner claims highest number of votes-*

By virtue of paragraph 15 of the 1st Schedule to the Electoral Act, 2022, when a petitioner claims the seat alleging that he had the highest number of valid votes cast at the election, the party defending the election or return shall set out clearly in his reply particulars of the votes, if any, which he objects to and the reasons for his objection against such votes, showing how he intends to prove at the hearing that the petitioner is not entitled to succeed. In the instant case, the 2nd and 3rd respondents could only properly exercise their right under that provision requiring them to 'give particulars of the votes' claimed by the petitioners that they object to and the reasons for their objection against "such votes' after the petitioners have set out clearly the lawful votes 'depleted' by the manipulation alleged by them. [*Belgore v. Ahmed*** (2013) 8 NWLR (Pt. 1355) 60; *P.D.P. v. I.N.E.C.* (2012) 7 NWLR (Pt. 1300) 538 referred to.] (*Pp. 548-549, paras. F-A*)**

22. *On Burden of proof on petitioner alleging non-compliance with Electoral Act and how discharged-* **Generally, it is the law that he who alleges must**

offer the requisite proof. In an election petition, the petitioners had the burden of proof and they must succeed on the strength of their case as per their pleadings. The level of proof required of the petitioner is two-fold, viz:-

(a) The petitioner must prove that there is non-compliance; and

(b) The petitioner must prove that the non-compliance substantially affected the result of the election.

In the instant case, from the pleadings, the petition was based on an allegation of non-compliance. Under sections 134(1) and 135 of the Electoral Act, the level of proof required for the success of the petition was doubled. There must be proof of non-compliance and the further proof that the non-compliance affected substantially the result of the election before the burden can shift to the respondents to establish that there was no substantial non-compliance with the Electoral Act in the conduct of the election. In the face of such an allegation of non-compliance, the court is enjoined by the law not to invalidate an election if it appears that the election was conducted substantially in accordance with the principles of the Electoral Act. The petitioners pleaded they had "agents in all the polling units, ward collation centres, Local Government collation centres and State collation centres in all the states of the Federation and the Federal Capital Territory as well as the National Collation Centre", but of all those they did not call any of their agents at the polling unit, who were the ones were meant to sign and collect duplicate results in Form EC8A. The few agents called were State and National collation agents, and their testimonies were largely hearsay. [*Dashe v. Durven*** **(2019) LPELR-48887;** ***Folarin v. Agusto*** **(2023) 11 NWLR (Pt. 1896) 559;** ***Bassey v. Young*** **(1963) 1 SCNLR 61;**

Buhari v. Obasanjo **(2005) 13 NWLR (Pt. 941) 1;** *C.P.C. v I.N.E.C.* **(2011) 18 NWLR (Pt. 1279) 493referred to.] (***Pp. 630, paras. A-B: 632, paras. D-G 635-636, paras. H-B***)**

23. *On Burden on petitioner alleging non-compliance with Electoral Act and whether section 137 Electoral Act,2022 relieves of burden of calling witnesses -*

The employment of the adverb 'manifestly' by the draftsman in section 137 of the Electoral Act, 2022 suggests that the non-compliance complained of must be apparent on the face of the electoral document. "Manifestly" has been defined to mean "in a way that can be readily seen by the eye or the understanding; plainly or obviously; evidently." This means that for the petitioner to state that he did need to call oral evidence in proving non-compliance, by him the certified copies of documents presented must be manifestly or readily seen to convey the fact of non-compliance. It must not be something that can be explained away by oral evidence. Thus, where the documents tendered and relied upon by the petitioner do not manifestly disclose the non-compliance alleged, the petitioner would still need to call witnesses who witnessed the alleged acts of non-compliance to testify.

In the instant case, the petitioners tendered loads of certified copies of documents from the Bar.The documents were dumped on the court without any witness linking them up with the specific complaints of non-compliance. [*Oyetola v. I.N.E.C.* **(2023) 11NWLR (Pt. 1894) 125;** *Tumbido v. I.N.E.C.* **(2023) 15 NWLR (Pt. 1907) 301 referred to.] (***Pp. 689, paras. B-C; 689-690, paras. G-A; 690-691, paras. H-B***)**

24. *On Meaning and connotation of 'non-compliance' –*

Non-compliance, in ordinary parlance, means failure or refusal to do something that you are

officially or statutorily supposed to do. [*Shuluwa v. Aye* **(2015) LPELR- 40476;** *Ojukwu v. Yar adua* **(2009) 12 NWLR (Pt. 1154) 50 referred to.] (***P. 633, paras. C-D***)**

25. *On Burden on petitioner alleging that election result Forms not signed by Presiding Officer-*

The law particularly requires that the presiding officers must sign the results. Signing Form EC8A is subscribing to the authenticity of the results. Where there is an allegation that the Forms were not signed, it must be clearly proved by the petitioner. The result Forms must be presented in Court for the Court to verify lack of signature/stamp and any alteration on them. In the instant case, since PW21 who authored exhibits PAH3 and PAH4 did not place in his report, and the petitioners did not call any of the polling unit agents to testify and place the Forms before the court to give vent to the allegation of alteration and non-signing of the Forms EC8As for the 5,270 polling units listed in exhibit PAH2 and the Forms EC8As not signed and stamped for the 15,002 Polling Units in exhibit PAH3, that allegation was unfounded and not proved as required by the law. (*Pp. 650, paras. D-F***)**

26. *On Burden on petitioner alleging respondent not elected by majority of lawful votes and what he must plead and prove to succeed-*

Success or failure in an election depends on figures, which is in turn dependent on votes garnered by each candidate. So, where the complaint in an election petition is that the candidate returned did not poll majority or highest lawful votes in the election to be returned, as contended by the petitioners in this case, not only must the figures disputed be pleaded, the figures or votes the petitioner perceives as the correct figures of the election ought to and must

also be pleaded. In the instant case, the table pleaded by the petitioners was the table of results declared by the 1st respondent. The petitioners did not place any other set of results before the court to form the basis of its finding of fact as to whether the declared result was wrong or not. Their averments in paragraph 107 of the petition only showed the votes declared by INEC, which the petitioners were disputing as manipulated. Nowhere in the petition did the petitioners plead what they considered the authentic votes of the election to guide the court in the inquiry suggested by them in their allegation that the 2nd respondent did not poll majority of lawful votes in the election. Their petition therefore did not meet the legal threshold to ignite a proper inquiry by the court, and so lame even on the pleadings. [*Nadabo v. Dabai*** **(2011) 7 NWLR (Pt.1254) 155;** ***Ojo v. Esohe*** **(1999) 5 NWLR (Pt.603) 444 referred to and applied.]** *(Pp. 685, paras. C-E; 621-622, paras. G-A*)

27. *On Burden on petitioner alleging falsification of election result or document and need to call witnesses in proof of-*

Notwithstanding the provision of section 137 of the Electoral Act, 2022 which states that "it shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged", oral evidence is necessary to explain discrepancies in the original or certified true copies of election documents where the complaint verges on whether an alteration or amendment in an original or of a polling unit result was made with intent to falsify it or whether it was simply made to correct an apparent human error in the course of making entries in the result. Such a situation would

surely need a witness to explain or speak to the documents in order to prove falsification of election documents when it is so alleged. |*Belgore v. Ahmed* **(2013)8 NWLR (Pt. 1355) 60;** *Ibrahim v. Shagari* **(1983) 2 SCNLR 176;** *Buhari v. Obasanjo* **(2005) 13NWLR (Pt. 941) 1 referred to.] (***P.688, paras. A-D***)**

28. *On Burden on petitioner alleging fraud or forgery or malpractice in election-*

Where a petitioner alleges fraud or forgery or any form of malpractice in the election as alleged in this petition, the petitioner must not only pleaded the facts, he must also provide the particulars in the pleadings. In this case, it was clear from the averments in the petition that neither the particulars of the polling units in issue nor those involved in the irregularities were given by the petitioners. [*Eya v. Olopade* **(2011) 11 NWLR (Pt. 1259) 505 referred to.](***P.686, paras. E-F***)**

29. *On Standard of proof of allegation of commission of crime-*

The pleading and the claim of the claimant determines the burden and the standard of proof that is required. By virtue of section 135(1) of the Evidence Act, 2011, if the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. [*P.D.P. v. I.N.E.C.* **(2014)17 NWLR (Pt. 1437) 525;** *Agi v. P.D.P.* **(2017) 17NWLR (Pt. 1595) 386;** *A.P.C. v. Obaseki* **(2022) 2NWLR (Pt. 1814) 273;** *Sulaiman v. A.P.C.* **(2023) 5NWLR (Pt. 1877) 211 referred to.] (***P. 658, paras. E-G***)**

30. *On Nature of allegation of corrupt practices in election petition and standard of proof required thereof-*

If the ground pursued in any petition is simply non-compliance with the Act and there is no tincture of allegation of crime, the proof required would be on

the balance of probabilities. But the standard of proof in any ground that is primarily on corrupt practices would require proof beyond reasonable doubt, that allegation being criminal in nature. (*Pp.658-659, paras. H-A***)**

31. *On Standard of proof of allegation of crime in election petition and what petitioner must plead and prove to succeed-*

Where an allegation of crime is made in an election petition, the standard of proof is beyond reasonable doubt and not on the balance of probabilities. A complaint of massive suppression, deduction and allocation of votes connotes forgery or fraud, particulars of which must be pleaded and proved beyond reasonable doubt. In the instant case, the petitioners in the pleadings from paragraphs 128 to 142 averred to issues of violence and disruptive activities, which are criminal in nature but they did not prove them as required by law. [*Udom v. Umana* **(2016) 12 NWLR (Pt. 1526) 179;** *Kakih v. P.D.P.* **(2014) 15 NWLR (Pt. 1430) 374;** *Nwobodo v. Onoh* **(1984) 1 SCNLR 1;** *Belgore v. Ahmed* **(2013)8 NWLR (Pt. 1355) 60 referred to.] (***Pp. 686-687, paras. G-A***)**

32. *On Burden on petitioner making criminal allegation in election petition and what he must prove to succeed-*

Criminal allegations are usually and directly made personal. For an allegation of crime to be proved against respondent in an election petition, the petitioner must prove that respondent committed the corrupt act or aided, abetted, consented to, or procured its commission. Furthermore, the petitioner must prove that the corrupt practices substantially affected the outcome of the election. [*Omisore v. Aregbesola* **(2015) 15 NWLR (Pt. 1482) 205 referred to.] (***P.694, paras. G-H***)**

33. *On Who can testify about event at polling unit during election-*

It is only at polling unit agent or a person who was present at a polling unit during polls that can give admissible evidence of what transpired during the poll in that unit. In the instant case, PW1 was not a polling agent. He was a collation agent. When cross-examined, he testified that he was not present when all the ballot papers and boxes were manipulated; that he visited only 20 polling units out of the over 3,000 polling units in Kogi State. He admitted that his party had polling unit agents in all the polling units and that they were still alive. [*P.D.P. v. I.N.E.C.*** **(2019) LPELR-48101;** *Goyol v L.N.E.C.* **(2012) 11 NWLR (Pt.1311) 207;** *Buhari v. L.N.E.C.* **(2008) 19 NWLR (Pt. 1120) 246;** *Buhari v. Obasanjo* **(2005) 13 NWLR(Pt. 941) 1;** *Oke v. Mimiko* **(2014) 1 NWLR (Pt. 1388) 225;** *Andrew v P.D.P.* **(2018) 9 NWLR (Pt.1625) 507 referred to.】 (***P.636,paras.D-G***)**

Per TSAMMANI, J.C.A. at page 637, paras. B-G:

> **"Under our law, specifically in Section 43of the Electoral Act, 2022, polling agents are permitted to be appointed by political parties for each polling unit and collation centre. The wisdom in this is for each of the political parties involved in an election to be represented by its own agents. The duties of an agent are to represent the interest of his/her principal, Having regard to the fact that no mortal man can be in all the places at the same time, the law allows political parties to have their agents at all polling units and collation centres. It is therefore not anticipated by the law for any political party to appoint an octopus agent with his tentacles in all the polling units and collation centres. This is humanly not practicable. When, therefore,**

evidence is required to prove what happened in any polling unit or a collation centre, it is only the agent who witnessed the anomaly or the malfeasance that can legally and credibly testify....

It follows, therefore, that PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11, PW19, PW20, PW22, who were State and National Collation agents of the petitioners can only testify of the events in their units or collation centres where they voted or acted as agents and not all over the states of the Federation. The polling agents as presented in this petition, it must be noted, are not shown to be experts. The issue of their analysing results of the election at the Ward, Local Government, State and National Level without calling Polling Unit agents who witnessed the real casting of votes and events at the voting units cannot therefore arise. They cannot validly testify of non-compliance at the Polling Unit level. Their evidence can only count as to what they saw, not what they were told by their field agents. What they were told is hearsay evidence."

34. *On Admissibility and evidential value of Reports of Election Observers-*

Without the makers of reports of election observers presenting themselves in court to face cross-examination to authenticate their opinions, such reports are completely valueless and inadmissible for the purpose of authenticating the opinions expressed in them by their makers. In the instant case, the European Union Election Observer Mission Report on the 2023 Presidential Election tendered by the petitioners and admitted as exhibit RA27 as well as the ECOWAS Election Observer

Report, without the authors presenting themselves in court to defend their opinions, were worthless for purposes of proving the opinions expressed in them by their makers, and it made no difference that the Reports had been put in the form of print because books cannot be cross-examined. [*Nyesom v. Peterside* **(2016) 7 NWLR (Pt. 1512) 452;** *Sa'eed v. Yakowa* **(2013) All FWLR (Pt. 692) 1650;** *Idundun v. Okumagba* **(1976) 9-10 SC 227 referred to and applied.] (***Pp. 705-706, paras. D-B***)**

Per UGO, J.C.A. at page 707, paras. A-C:

> **"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, J.S.C., who made the comments cited approvingly by the Supreme Court in** *Okumagba's* **case was also a European."**

35. *On Meaning and constituent elements of election under Electoral Act-*

Election is the act of choosing or selecting one or more from a greater number of persons, things, courses or rights. The Oxford Advanced Learner's Dictionary defines it as "the action or an instance of choosing by vote one or more of the candidates for a position especially a political office." Under the Electoral Act, 2022 election is not just a process, it is a well-regulated process, spanning a period of time and comprises a series of actions from registration of

voters to polling. The process of election commences with the nomination of candidates through political party primaries. Then it moves into the election proper which entails the voting, the collation and announcement of results. To make these processes tidy, clearer and credible, the Electoral Act devotes time into making provisions for specific actions and steps at each stage. The bottom line of every election exercise is to choose one out of many or to show affirmation of the approval of a candidate who wins the election to lead the country in the instant case as the President of the country. To achieve this goal, election must be result oriented and successful. A successful election must produce a winner who is expected to emerge by popular vote and as specified in Section 134 of the 1999 Constitution. It is in this respect that all votes cast at an election must be duly secured, collated and counted. [*Oke v. Mimiko*** **(2014) 1 NWLR (Pt.1388) 225;** ***Abubakar v. Yar'Adua*** **(2008) 19 NWLR (Pt. 1120) 1;** ***Bille v. State*** **(2Q16) 15 NWLR (Pt. 1536) 363 referred to.] (***Pp.640-641, paras. G-C***)**

36. *On Processes prescribed for valid election-*

In the conduct of an election, certain processes must be observed in order to conclude and confirm that the election was conclusive. The steps outlined by the law must not be broken. These steps are:

(a) Accreditation

(b) Conduct of polls

(c) Counting of votes

(d) Collation and announcement of results

(e) Signing of result forms

(f) Publication of results.

(P.658, paras. B-C)

37. *On Importance of polling units as base of electoral pyramid and processes of collation of presidential election-*

The provision of section 25 of the Electoral Act makes it clear and straight-forward that voting for all elections takes place at the polling units and that is where election is won or lost. The law requires that since the presidential election, unlike others, is not done in one location but throughout the country, collation of votes commences at the Registration Area/Ward level after voting, then it moves to the Local Government Level, and then to the State Collation Centre and finally to the National Collation centre. It is after this that the winner of the election shall be announced. (*P. 643, paras. A-C***)**

38. *On Mode of collation of results prescribed by Electoral Act-*

The law as prescribed in sections 60 and 62 of the Electoral Act 2022 does not in any form or sense make any provision or pretension as to any form of counting and collation of election results other than manual collation. [*Oyetola v. INEC* **(2023) 11 NWLR (Pt.1894) 125 referred to.] (***P. 644, paras. F-G***)**

39. *On Roles of and distinction between collation system and INEC Result Viewing Portal (IReV) in electoral process-*

As their names depict, the Collation System and the INEC Result Viewing Portal, IReV, are part of the election process and play particular roles in that process. The Collation System is made up of the centres where results are collated at various stages of the election. So the polling units results transmitted to the collation system provides the relevant collation officer the means to verify polling units results as the need arises for the purpose of

collation. The results transmitted to the INEC Result Viewing Portal is to give the public at large the opportunity to view the polling units results on the Election Day. It is clear from the provisions of Regulation 38 (i) and (ii) that the Collation System and Result Viewing Portal are different from the National Electronic Register of Election Results. The Collation System and Result Viewing Portal are operational during the election as part of the process, the National Electronic Register of Election Results is a post-election record and is not part of the election process. [*Oyetola v. INEC* **(2023)11 NWLR (Pt. 1894) 125 referred to.] (***P. 656, paras. B-E***)**

40. *On Whether Electoral Act 2022 prescribes electronic transmission of results-*

The Electoral Act has used the words "deliver" in section 62(1), "transfer" in section 60(5) and "transmitted directly" in sections 50(2), 64(4), (5) and (6) of the Electoral Act, 2022 in stating how results of elections should be handled under those provisions. The Blacks' Law Dictionary, sixth edition defines the word "transfer" as "to convey or remove from one place, person, etc., to another;" or to "pass or hand over from one to another" ;or "specifically to change over the possession or control." The same Law Dictionary defines the word "transmit" to mean "to send or transfer from one person or place to another or to communicate. "The Electoral Act, 2022 has used the words "deliver", "transfer" and "transmitted directly" interchangeably to describe how the results of the election shall be moved from one stage to another until the results are finally collated and declared. In all these, the Act has not specifically provided that the results of the election shall be electronically transmitted. (Pp. 652-653, paras. H-D)

41. *On Whether Electoral Act prescribes electronic transmission of results by BVAS to collation system-*

It should be noted that INEC Results Viewing Portal (IReV) is not a collation system. Although the Electoral Act has provided in section 62(1)for the delivery by the Presiding Officer of the result along with other election materials under security and accompanied by candidates or their polling agents, where available, to such person as may be prescribed by the 1st respondent, the 1st respondent has by paragraph 38 of the Regulations and Guidelines introduced electronic transmission to a collation system in addition to the physical transfer of the election results to the Registration Area/Ward Collation Officer. The technological device prescribed by INEC in the conduct of the 2023 election is the Bimodal Voter Accreditation System (BVAS). The function of the BVAS is to verify and accredit the voter to vote at the election and store the data and number of such accredited voters. The BVAS is also to be used by the Presiding Officer to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), after which the Presiding Officer shall take the BVAS and the original copy of each of the forms to the Registration Area/Ward Collation Officer. Thus, aside from using the BVAS to scan the physical copy of the polling unit result and upload same to the Result Viewing Portal (IReV), there is nothing in the Regulations to show that the BVAS was meant to be used to electronically transmit or transfer the results of the Polling Unit directly to the collation system. |*Oyetola v. INEC*** **(2023) 11 NWLR (Pt.1894) 125 referred to.] (***Pp. 655-656, paras. D-B; 656, paras. F-G***)**

42. *On Connotation and extent of equality of right of every Nigerian citizen and weight and value of their votes-*

Equality of rights in every citizen as stated in

section 17 of the 1999 Constitution, as amended, cannot by any means be read to exclude equality of the weight and value of their votes. It includes it. Even more so, when the issue, as in this case, is the right of every such citizen to elect with their votes their President whose policies are supposed to and will affect all of them equally regardless of which part of the country they reside or live.(*P.680, paras. B-C***)**

Per BOLAJI-YUSUFF, J.C.A. at pages 698-699, paras.H-E:

> **"Our Constitution is based on the principles of freedom, equality and justice in all ramifications, and is for the purpose of consolidating the unity of our people. Section 14 (1) and (2) states that the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice. The participation by the people in their government shall be ensured in accordance with the provisions of the Constitution. The right to vote is at the foundation of our democracy. It is the most potent and priceless opportunity a citizen has to have a say in who governs. Every citizen who is qualified to vote must be afforded equal opportunity to cast his or her vote to elect leaders who governs. Our constitutional principles of freedom, equality and justice, democracy and social justice means that the vote of each citizen shall count. Each and every vote should count equally. No vote should weigh more than the other. The principles of equality of votes must protected by the court.**
>
> **The interpretation of section 134(2) (b) of the Constitution being urged on us by the petitioners is an unjust manipulation of the**

Constitution to create inequality of votes. It negates the principles of equality and justice, democracy and social justice and participation of the people in their government enshrined in our Constitution. It strikes at the very foundation of our Constitution. It is capable of further dividing the citizens of this country. The politicians are good at using all sorts of means and sentiments to divide the citizens of this country. The interpretation being urged on us is their latest invention in that regard and unfortunately, they found a ready alliance in those who should know better. The interpretation being urged on us is squarely against the letters and sprit of Our Constitution and it is hereby rejected."

43. *On Whether candidate requires 25% of votes cast in Federal Capital Territory Abuja to be declared winner of Presidential election-*

In section 134(2) (b) of the 1999 Constitution the use of the word 'and' between the words "of the States in the Federation" and "the Federal Capital Territory, Abuja" indicates nothing more than the framers' understandable desire for consistency in referring to the Federal Capital Territory by that name, as it is done all through the Constitution whenever reference is made to the Federal Capital Territory. If the framers had wanted to make scoring one-quarter of votes cast in the Federal Capital Territory, Abuja, a specific requirement for the return of a Presidential candidate, they would have made that intention plain by using words that clearly separate the scoring of one-quarter of votes in the Federal Capital Territory as a distinct requirement. (*Pp. 680, paras. F-H; 681, paras. E-G***)**

44. *On Status of FCT. Abuja and whether candidate requires 25% of votes cast therein to be declared winner of Presidential election*

By virtue of the express provision of section 299 of the 1999 Constitution, the entire provisions of the Constitution applies to the Federal Capital Territory as if it were one of the States of the Federation. This means that section 134(2)(b) of the 1999 Constitution, requiring a presidential candidate to poll at least one quarter of the votes cast in two-thirds of the States of the Federation in order to be returned elected means nothing more than that the Federal Capital Territory shall be taken into account in calculating the said two-thirds of the States of the Federation. In other words, the FCT is no more than one of the States of the Federation for the purpose of that calculation. Nothing more than that is can be implied or inferable from section 134(2) (b) of the Constitution. Thus, for the purposes of fulfilling the requirements of section 134(2)(b) of the Constitution for the return of a Presidential candidate as duly elected, the Federal Capital Territory, Abuja, is to be treated as one of the States in the calculation of two-thirds of the States of the Federation, such that if the candidate polls 25% or one-quarter of the votes in two-thirds of 37 States of the Federation (FCT Abuja inclusive), the Presidential candidate shall be deemed to have been duly elected, even if he fails to secure 25% of the votes cast in the Federal Capital Territory, Abuja, as the 2nd respondent did. [*Bakari v. Ogundipe*** **(2021) 5 NWLR (Pt. 1768) 1;** ***Ibori v. Ogboru*** **(2009) 6 NWLR (Pt. 920) 102 referred to.](***Pp. 681-682, paras. H-B; 682-683, paras. G-A***)**

45. *On Duty on party claiming declaratory relief to succeed on strength of his case and not on weakness of defence-*

Where a party seeks declaratory reliefs, as the

petitioners did in this case, the burden is on him to establish his claim. His success is on the strength of his own case, and not on the weakness of the defence of the defendant [*Omisore v. Aregbesola* **(2015) 15 NWLR (Pt. 1482) 205;** *Ogah v. Ikpeazu* **(2017) 17 NWLR (Pt.1594) 299 referred to.] (***P.658, paras. D-E***)**

46. *On Duty on court to act only on admissible evidence and duty on counsel with respect thereto -*

Every court is bound to act on only admissible evidence. So, if a document or piece of evidence is inadmissible in evidence, the court must expunge it, and it must do so even if that would require it to overrule its own interlocutory decision admitting that evidence. In the same vein, counsel, as ministers in the temple of justice, are within their right, and in fact duty bound, to draw the court's attention to that fact, regardless of whatever agreement they may have had with petitioners at the pre-hearing session. In any event, the court is only bound to honour lawful agreements, not unlawful ones to admit evidence that may well be inadmissible. [*Shanu v. Afribank (Nig.) Plc* **(2002) 17 NWLR (Pt.795) 185 referred to.] (***P.595, paras. B-D***)**

47. *On Admissibility of document or evidence made during pendency or in anticipation of litigation -*

A document made in anticipation of litigation or during its pendency by persons interested is rendered inadmissible by section 83(3) of the Evidence Act, 2011. [*Anagbado v Faruk* **(2019) 1 NWLR (Pt. 1653) 292;** *C.P.C. v Ombugadu* **(2013) 18 NWLR (Pt. 1385) 66;** *Ladoja v. Ajimobi* **(2016) 10 NWLR (Pt. 1519) 87;** *Oyetola v INEC* **(2023) 11 NWLR (Pt. 1894) 125 referred to.] (***P. 605, paras. G-H***)**

48. *On Admissibility of document or evidence made during pendency or in anticipation of litigation*

An order by an election petition Tribunal pursuant to section 146(1) of the Electoral Act, 2022 for an order for inspection of a polling document or any other document or packet in the custody of INEC does not in any way give a Petitioner the leeway to adduce evidence in a breach of section 83(3) of the Evidence Act, 2011. The whole idea behind section 83(3) of the Evidence Act, 2011 is to eliminate the danger inherent in allowing a party to manufacture and bring in evidence specifically tailored in anticipation of a case or worse still produce such fresh evidence after the case had begun and parties had fully joined issues in it. That is what the petitioners sought to do with exhibits PAH 1-4 and PAR A-F prepared and filed by their experts long after pleadings in the petition had closed, when respondents would no longer have the opportunity of retaining their own experts to respond to the evidence presented against them in the said Reports. The said Reports, which were admitted in evidence as exhibits PAH1, PAH2, PAH3 and PAH4 and PAR1A, PAR1B, PAR1C, PAR1D, PAR1E and PAR1F were incompetent and rendered inadmissible in evidence by virtue of section 83(3) of the Evidence Act 2011 for being made during the pendency, or in anticipation, of the petition. (*Pp 599-600, paras. C-A***)**

49. *On Need for payment for certification of public document and how to prove such payment*

Payment of fees for certification of a public document is only a condition-precedent to the certification, so it could be stated in any other place, including another document. There is nothing in section 104 of the Evidence Act, 2011, particularly subsection

(2) thereof dealing with what should appear on a certified public document, that suggests that the fees paid for certification of a public document should also appear on the face of the document like the date, name and official title of the public officer issuing that document, as required by subsection (2). In this case, not only was there evidence of certification fee payment by the petitioners in the form of receipt, there was also a INEC Receipt on INEC's own letter-head evidencing further payment of certification sum. That was sufficient evidence of certification fee payment, even more so when the receipt indicates that the said payment also covered 'other documents' outside those specifically mentioned therein. The burden thus shifted to the 1st respondent to show that the monies it received from the petitioners for certification fee payment did not cover the documents they referred to, which documents the 1st respondent also certified. The 1st respondent never discharged that burden. [*Daggash v. Bulama*** **(2004) 14 NWLR (Pt. 892) 144;** ***Uzoma v. Asodike*** **(2010) All FWLR (Pt. 548) 853;** ***A.N.P.P. v. P.D.P.*** **(2006) 17 NWLR (Pt. 1009) 467 referred to.](***Pp. 597, paras. A-F; 597-598, H-B***)**

50. *On Need for payment for certification of public document and how to prove such payment*

By virtue of section 104(1) of the Evidence Act an applicant for certification of public document is only obliged to pay what is assessed by the public officer. And the mere fact that a public document is certified by a public officer would sufficiently trigger the provision of section 168(1) of the Evidence Act 2011 that says "when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with." (*P. 598, paras. B-D***)**

51. *On Burden on party relying on documents in proof of his case-*

When a party decides to rely on documents to prove his case, there must be a link between the documents and the specific areas of the case or petition. The party must relate each document to the specific areas of his case for which the documents were tendered. Failure to link the documents would be fatal and catastrophic to his case. Despite the tendering of exhibits in proof of a petition/case, the onus of proving the case pleaded, and for which the documents were tendered in evidence, lies on the claimant/petitioner, and that cannot be done by just dumping the documents on the court without speaking to them. [*Tumbido v. INEC* **(2023)15 NWLR (Pt. 1907) 301;** *Buhari v. INEC* **(2008) 18NWLR (Pt. 1120) 246 referred to.] (***Pp. 692-693, paras. G-A***)**

52. *On Nature of issue of whether witness can testify as expert or whether witness maker of document-*

The question of whether a person is an expert to give testimony in a court does not necessarily depend on acquisition of certificates in the field concerned. That only goes to the weight to be attached to that witness's evidence and not one that affects admissibility. The same principle applies to the question of whether a witness is the maker of a document. [*Aigbadion v. State* **(1999) 1 NWLR (Pt.586) 284;** *Omega Bank (Nig.) Plc v. O.B.C. Ltd.* **(2005)8 NWLR (Pt. 928) 547;** *G. Chitex Ind. Ltd v. O.B.I. (Nig.) Ltd.* **(2005) 14 NWLR (Pt. 945) 392 referred to.] (***P.605, paras. B-C***)**

53. *On What amounts to hearsay evidence and how treated*

Section 38 of the Evidence Act, 2011 specifically

states that hearsay evidence is not admissible except as provided for in the law. Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and admissible when it is proposed to establish by evidence not the truth of the statement but the fact that it was made. Hearsay evidence is not admissible to prove a fact of non-compliance with the Electoral Act. In the instant case, the evidence of the collation agents -PW1, PW2, PW3, PW5, and PW7 relating to suppression of votes, multiple thumb-printing of ballot papers, entering of wrong scores/results, disruption of voting - were inadmissible hearsay and were discountenanced. [*J.A.M.B. v. Orji*** **(2008)2 NWLR (Pt. 1072) 552;** ***Utteh v. State*** **(1992) 2 NWLR (Pt.223) 257;** ***Ukut v. State*** **(1995) 9 NWLR (Pt. 420) 392;** ***Kaza v. State*** **(2008) 7 NWLR (Pt.1085) 125;** ***Buhari v. Obasanjo*** **(2005) 13 NWLR (Pt.941) 1 referred to.] (***Pp. 637-638, paras. G-D***)**

54. *On Object and function of cross-examination -*

Cross-examination is a formidable tool for the demolition of the case of the opponent. The purpose of cross-examination is to discredit the witness called by the adversary. The primary object of cross-examination is to contradict the evidence of the opponent's witness in order to weaken his case. It is best resorted to in order to test the veracity of the witness. [*P.D.P. v. Muhammad* **(2023) 16 NWLR (Pt.1910) 283 referred to.] (***Pp. 649-650, paras. H1-A***)**

55. *On Object and function of cross-examination-*

While cross-examination has the capacity to tarnish the credibility of a witness, it also has the

corresponding capacity of strengthening the case of the opponent. In the instant case, the evidence elicited from PW19, PW20 and PW22 under cross-examination fortified the case of the respondents that there was nothing wrong with the results of the 2023 Presidential election and that there was substantial compliance with the Electoral Act, 2022. (*Pp. 663-664, paras. H-B***)**

56. *On Connotation and application of doctrine of issue estoppel-*

The doctrine of issue estoppel is that once an issue has been finally decided by a competent court, the issue will not be allowed to be relitigated by the same or even by different parties. In the instant case, the decisions of the Federal High Court in exhibits X1 and X2 tendered in Petitions Nos. PEPC/03/2023and PEPC/05/2023, respectively, as well as the decision of the Court of Appeal in CA/LAG/CV /332/2023: *A.P.C. v. Labour Party* **had finally decided the issue that by the provisions of the Electoral Act, 2022 and the Regulations and Guidelines for Conduct of Elections, 2022 the 1st respondent was not mandatorily required to electronically transmit election results to the collation system and the INEC Result Viewing Portal (IReV). [***Ikotun v. Oyekanmi* **(2009) 10 NWLR (Pt.1094) 100;** *A.P.C. v. P.D.P.* **(2015) 15 NWLR (Pt. 1481) 1;** *Ezewani v. Onwordi* **(1986) 4 NWLR (Pt.33) 27;** *Inakoju v. Adeleke* **(2007) 4 NWLR (Pt. 1025) 423 referred to.] (***P. 710, paras. A-F***)**

57. On When ruling of court constitutes issue estoppel and implication thereof-

Interlocutory rulings of court constitute issue estoppel binding not only on the parties but on the court, and the court cannot depart from them. [*Shanu v. Afribank (Nig.) Plc* **(2002) 17 NWLR (Pt.**

795) 185; *Lawal v Dawodu* **(1972) 1 All NLR (Pt.2) 270;** *Cardoso v Daniel* **(1986) 2 NWLR (Pt.20) 1;** *Uwemedimo v Mobil Producing (Nig.) Unltd***. (2022)2 NWLR (Pt. 1813) 53;** *Fadiora v. Ghadebo* **(1978) 3SC 219;** *Ladega v Durosinmi* **(1978)3 SC 82 referred to.](***P.683, paras. F-G***)**

58. *On Principles governing interpretation of statutes-*

Where words used in a statute are clear and unambiguous, the courts are enjoined to interpret the words in their ordinary and natural meanings. Words used are to be interpreted in a way that will not clash with and defeat the manifest intention of the legislation. Every legislation is scripted by the law makers with a purpose. The Court must be careful not to interpret the law so as to create absurdity or make nonsense of the law. [*Umeano v. Anaekwe* **(2022) 6 NWLR (Pt. 1827) 509;** *Jegede v. I.N.E.C.* **(2021) 14 NWLR (Pt. 1797) 409;** *Aguma v. A.P.C.* **(2021) 14 NWLR (Pt. 1796) 351;** *Lado v. Masari* **(2021) 13 NWLR (Pt. 1793) 334 referred to.](***P.644, paras. D-F***)**

59. *On Principles governing interpretation of Constitutional provisions-*

It is pertinent to state that unlike interpretation of statutes, the interpretation of Constitution has its own guiding principles, which are:

(a) In interpreting the Constitution, which is the supreme law of the land, mere technical rules of interpretation of statutes should be avoided, so as not to defeat the principles of government enshrined therein. Hence a broader interpretation should be preferred, unless there is something in the text or in the rest of the Constitution to indicate that a

narrower interpretation will best carry out the objects and purpose of the Constitution;

(b) All sections of the Constitution are to be construed together and not in isolation;

(c) Where the words are clear and unambiguous, a literal interpretation would be applied, thus according the words their plain and grammatical meanings;

(d) Where there is ambiguity in any section, a holistic interpretation would be resorted to in order to arrive at the intention of its framers;

(e) Since the draftsperson is not known to be extravagant with words or provisions, every section should be construed in such a manner as not to render other sections redundant or superfluous;

(f) If the words are ambiguous, the lawmaker's intention must be sought; first in the Constitution itself, then in other legislation and contemporary circumstances and by resort to the mischief rule;

(g) The proper approach to the construction of the Constitution should be one of liberalism and it is improper to construe any of the provisions of the Constitution as to defeat the obvious ends which the Constitution was designed to achieve;

(h) in the interpretation of the Constitution, the principles upon which the Constitution was established rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions.

[*F.R.N. v. Nganjiwa* **(2022) 17 NWLR (Pt. 1860) 407;** *Rabiu v. State* **(1981) 2 NCLR 293;** *A.-G., Bendel State v. A.-G., Fed.* **(1982) 3 NCLR 1;** *Buhari v. Obasanjo*

(2005) 13 NWLR (Pt. 941) 1; *Savannah Bank Ltd. v. Ajilo* **(1989) 1 NWLR (Pt. 97)305;** *A.-G., Abia State v A.-G., Fed.* **(2005) 6 NWLR (Pt. 940) 452;** *Global Excellence Communications Ltd. v. Duke* **(2007) 6 NWLR (Pt.1059) 22;** *Saraki v. F.R.N.* **(2016) 3 NWLR (Pt. 1500) 531;** *Skye Bank Plc v. Iwu* **(2017)16 NWLR (Pt. 1590) 24;** *Shelim v. Gobang* **(2009) 12 NWLR (Pt. 1156) 435;** *Bronik Motors Ltd v. Wema Bank Ltd.* **(1983) 1 SCNLR 296;** *F.R.N. v Dingyadi* **(2018) LPELR-4606 referred to.] (***Pp. 674-675, paras. H-H***)**

60. *On Function of semi-colon as aid to interpretation of statute-*

The function of a semi-colon is to separate independent clauses of a compound sentence. It is a punctuation mark used chiefly in a coordinating function between major sentence elements; to link two independent clauses that are closely related in thought, such as when restating the preceding idea with a different expression. Its use in section 299 of the 1999 Constitution after the part of the provision ending "Federation" is deliberately to separate the independent clauses. (*P.681, paras. E-G***)**

61. *On Duty on Court of Court of Appeal to take judicial notice of its proceedings-*

The Court of Appeal is obligated by section 122(1)(m) of the Evidence Act, 2011 to take judicial notice of its proceedings.(*P.569, para.G***)**

62. *On Bindingness on Court of Appeal of decisions of Supreme Court and its own previous decisions-*

By the rules of stare decisis, the Court of Appeal is bound not only by decisions of the Supreme Court but also by its own previous decisions. [*Rossek v A.C.B. Ltd.* **(1993)8 NWLR (Pt.312)382;** *T.P.P. Ltd v.*

U.B.N. Ltd. **(2006) 12 NWLR (Pt. 995) 483 referred to.](***P. 593, paras. G-H***)**

63. *On When multiplicity of suits on same subject matter and issue will constitute abuse of process and when will not-*

A multiplicity of actions on the same subject matter and issue will only constitute abuse of judicial process if the parties in both actions are the same or privies to one another. It necessarily has to be so because, except where a person is shown to be privy of another as recognised by law, no man can be punished for the actions or sins of another. In the instant case, the petitioners could not be properly described as privies of the Governments of Adamawa, Akwa Ibom, Bayelsa, Delta, Edo and Sokoto States that instituted Suit No SC/CV/354/2023 against the Attorney-General of the Federation before the Supreme Court of Nigeria because the Government of a State, regardless of the political party platform on which its Executive Governor was elected, represents all shades of opinion in the State, including even those who may not belong to any political party at all. In fact, a State Government is not even bound nor obliged to take instructions from the political party of the Governor. Thus, the petition was not an abuse of judicial process on account of Suit No. SC/CV/354/2023 which was a litigation commenced by some State Governments against the Attorney-General of the Federation. (*Pp. 568-569, paras. F-C***)**

64. *On Duty on court where proceeding before it amounts to abuse of process-*

Once a court is satisfied that a proceeding before it amounts to abuse of process, it has the right and indeed duty to invoke its coercive powers to punish

the party in abuse. Quite often, that power is exercised by dismissal of the action that constitutes the abuse. [*Arubo v. Aiyeleru* **(1993) 3 NWLR (Pt.280) 126;** *Dingyadi v. I.N.E.C.* **(No.2) (2010) 18 NWLR (Pt. 1224) 154;** *Ladoja v. Ajimobi* **(2016) 10 NWLR (Pt. 1519) 87;** *Oyeyemi v. Owoeye* **(2017) 12NWLR (Pt. 1580) 364;** *Otoko v. Aderia* **(2018) Al FWLR (Pt. 937) 1662 referred to.] (***P. 568, paras. D-F***)**

65. **NOTABLE PRONOUCEMENT:**

On Notion of justice in election petitions-

Per ADAH, J.C.A. at page 698, paras. A-B:

> **"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."**

66. NOTABLE PRONOUNCEMENT:

On Connotation and extent of equality of right of every Nigerian citizen and weight and value of their votes-

Per BOLAJI-YUSUFF, J.C.A at pages 698-699, paras. H-E:

> **"Our Constitution is based on the principles of freedom, equality and justice in all ramifications, and is for the purpose of consolidating the unity of our people. Section 14(1) and (2) states that the Federal Republic of Nigeria shall be a State based on the**

principles of democracy and social justice. The participation by the people in their government shall be ensured in accordance with the provisions of the Constitution. The right to vote is at the foundation of our democracy. It is the most potent and priceless opportunity a citizen has to have a say in who governs. Every citizen who is qualified to vote must be afforded equal opportunity to cast his or her vote to elect leaders who governs. Our constitutional principles of freedom, equality and justice, democracy and social justice means that the vote of each citizen shall count. Each and every vote should count equally. No vote should weigh more than the other. The principles of equality of votes must protected by the court.

The interpretation of section 134(2)(b) of the Constitution being urged on us by the petitioners is an unjust manipulation of the Constitution to create inequality of votes. It negates the principles of equality and justice, democracy and social justice and participation of the people in their government enshrined in our Constitution. It strikes at the very foundation of our Constitution. It is capable of further dividing the citizens of this country. The politicians are good at using all sorts of means and sentiments to divide the citizens of this country. The interpretation being urged on us is their latest invention in that regard and unfortunately, they found a ready alliance in those who should know better. The interpretation being urged on us is squarely against the letters and sprit of Our Constitution and it is hereby rejected."

67. NOTABLE PRONOUNCEMENT:

On Validity of allegation of deliberate manipulation of IReV and e-transmission by INEC to favour 2nd Respondent in the election-

Per UGO, J.C.A at pages 701-705, paras. G-D:

"Incidentally, that assertion of petitioners - that INEC simply 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 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 truth and justice." See *Dibiamaka & Ors. v. Osakwe & Ors.* **(1989) 3 NWLR (Pt.107)101; (1989) 2 NSCC 253 @ 260 lines 46-50 (per Oputa, JSC) and** *Ojegele v. The State* **(1988) 1 NWLR (Pt. 71) 404 @420 paragraph G-H. Here, the assertion of petitioners is that 1st respondent, INEC, merely used the excuse of glitch in 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 2ad respondent for whom INEC was said to have manipulated results by closing down its IReV so that the public would not witness its manipulative 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 Party and its candidate were again declared by 'manipulative and unfriendly' INEC to have scored as much as 428,690 votes in that State. In the same Enugu State, PDP and its candidate also was declared by INEC to have polled 15,745 votes: a number that is also nearly 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, 1st petitioner in CA/PEPC/03/2023, I 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 miserly 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 Governor, 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 INEC 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. 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, 2ndrespondent and his Party, the

A.P.C., which he shares of the then sitting President, was declared by the same INEC 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 2ndrespondent, as alleged by the petitioners, only to still end up favouring the petitioners withjumbo votes and posting miserly figures for its favoured 2nd respondent. It is said that "All men stamp as probable that which they would 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 (Pt. 107) 101 and** *Bozin v. The State* **(1985) LPELR-799 (SC) p.9; (1985) 2 NWLR (Pt. 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 (Pt. 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, is 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."

68. *On Admissibility and evidential value of Reports of Election Observers-*

Without the makers of reports of election observers presenting themselves in court to face cross-examination to authenticate their opinions, such reports are completely valueless and inadmissible for the purpose of authenticating the opinions expressed in them by their makers. In the instant case, the European Union Election Observer Mission Report on the 2023 Presidential Election tendered by the petitioners and admitted as exhibit RA27 as well as the ECOWAS Election Observer Report, without the authors presenting themselves in court to defend their opinions, were worthless for purposes of proving the opinions expressed in them by their makers, and it made no difference that the Reports had been put in the form of print because books cannot be cross-examined. [*Nyesom v. Peterside*** **(2016) 7 NWLR (Pt. 1512) 452;** ***Sa'eed v. Yakowa*** **(2013) All FWLR (Pt. 692) 1650;** ***Idundun v. Okumagba*** **(1976) NSCC 443 referred to and applied.] (***Pp. 705-706, paras. D-H***)**

Per UGO, J.C.A at page 707, paras. A-C:

> "**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, J.S.C., who made the comments cited approvingly by the Supreme Court in** *Okumagba 's* **case was also a European."**

Nigerian Cases Referred to in the Judgment:

A.-G., Abia State v. Fed. (2002)6 NWLR (Pt. 763) 264
A.-G., Abia State vA.-G Fed. (2006) 16 NWLR (Pt. 1005) 265
A.-G., Bendel State v. A.-G., Fed. (1982) 3 NCLR 1
A.D.H. Ltd. v. A.T. Ltd. (2006) 10 NWLR (Pt.989)635
A.N.D.P. v. I.N.E.C. (Unreported) appeal No. CA/A/EPT/406/2020 of 17/7/2020
A.N.P.P. v. P.D.P. (2006) 17 NWLR (Pt. 1009)467
A.P.C. v. A.S.I.E.C. (2022) 12 NWLR (Pt. 1845) 411
A.P.C. v. Labour Party (Unreported) appeal No. CA/LAG/ CV/332/2023 delivered on the 19th of June, 2023
A.P.C. v. Obaseki (2022) 2 NWLR (Pt. 1814)273
A.P.C. v. P.D.P. (2015) 15 NWLR (Pt. 1481) 1
A.P.C.v. P.D.P. (2021) LPELR-52975
Abalaka v. Akinsete (2023) 13 NWLR (Pt.1901)343
Abba v. Abba Aji (2022) 11 NWLR (Pt. 1842) 535
Abod Brothers Ltd. v. Niger Insurance Co. Ltd. (1974) 4 ECSLR 525
Abubakar v. Nasamu (No.2) (2012) 17 NWLR (Pt. 1330) 523
Abubakar v. Yar'adua (2008) 19 NWLR (Pt. 1120)1
Adegoke v. Adibi (1992) 5 NWLR (Pt.242) 410
Adepoju v. Awoduyilemi (2019) 14 NWLR (Pt. 1161) 364
Adesanya v. President, F.R.N. (1981) 2 NCLR 358
Agagu v. Mimiko (2009) 7 NWLR (Pt. 1140)342
Agi v. P.D.P. (2017)17 NWLR (Pt.1595)386
Aguma v. A.P.C. (2021) 14 NWLR (Pt. 1796) 351
Aigbadion v. State (1999) 1 NWLR (Pt. 586) 284
Airhiavbere v. Oshiomhole (2013) All FWLR (Pt. 687) 782
Akeredolu v. Akinremi (1989) 3 NWLR (Pt.108)164
Akeredolu v. Mimiko (2013) LPELR-20889
Akeredolu v. Mimiko (2014)1 NWLR (Pt. 1388)402
Akinlade v. I.N.E.C. (2020)17 NWLR (Pt.1754)439
Aladegbemi v. Fasanmade (1988)3 NWLR (Pt.81)129
Amakiri v. I.N.E.C. (2019) LPELR-48677

Amale v. Mustapha (2022) LPELR-56897

Anagbado v. Faruk (2019)1 NWLR (Pt. 1653) 292

Andrew v. I.N.E.C. (2018)9 NWLR (Pt. 1625)507

Anyafulu v. Meka (2014) 7 NWLR (Pt. 1406)396

Ararume v. I.N.E.C. (2019) LPELR-48397

Aregbesola v. Oyinlola (2009) 14 NWLR (Pt. 1162) 457

Aromolaran v. Agoro (2014) 18 NWLR (Pt. 1435) 153

Arubo v. Aiyeleru (1993) 3 NWLR (Pt.280) 126

Atanda v. Ajani (1989) 3 NWLR (Pt.111)511

Atiku v. I.N.E.C. (2020) 12 NWLR (Pt. 1737) 37

Atuma v. A.P.C. (2023) 16 NWLR (Pt. 1910)371

Audu v. I.N.E.C. (No.2) (2010) 13 NWLR (Pt.1212) 456

Awolaja v. Seatrade G.B.V. (2002) 4 NWLR (Pt. 758) 520

Awolowo v. Shagari (1979) 6-9 SC 51

Awuse v. Odili (2005)16 NWLR (Pt.952)416

Babatola v. Aladejana (2001) 12 NWLR (Pt. 728) 597

Bakare v. Ibrahim (1973) 6 SC 205

Bakari v. Ogundipe (2021) 5 NWLR (Pt. 1768) 1

Bambe v. Adetunji (1977) 1 SC 1

Bashir v. Kurdula (2019) LPELR-48473

Bassey v. Young (1963) 1 SCNLR 61

Belgore v. Ahmed (2013) 8 NWLR (Pt. 1355) 60

Bille v. State (2016) 15 NWLR (Pt. 1536)363

Bozin v. State (1985) 2 NWLR (Pt.8)465

Bronik Motors Ltd v. Wema Bank Ltd. (1983) 1 SCNLR 296

Buhari v. I.N.E.C. (2008) 19 NWLR (Pt. 1120)246

Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1

Buhari v. Obasanjo (2005) 2 NWLR (Pt. 910) 241

Buhari v. Yusuf (2003) 14 NWLR(Pt.841)446

Buremoh v. Akande (2017) 7 NWLR (Pt. 1563) 74

C.P.C. v. I.N.E.C. (2011) 18 NWLR (Pt. 1279) 493

C.P.C. v. Ombugadu (2013) 18 NWLR (Pt. 1385) 66

Cardoso v. Daniel (1986) 2 NWLR (Pt.20)1

Coca-Cola (Nig.) Ltd. v Akinsanya (2017) 17 NWLR (Pt.1593)74

Daggash v. Bulama (2004) 14 NWLR (Pt. 892) 144

Dashe v. Durven (2019) LPELR-48887

Dibiamaka v. Osakwe (1989) 3 NWLR (Pt.107)101

Dingyadi v. I.N.E.C. (No.1) (2010) 18 NWLR (Pt. 1224) 154

Doma v. I.N.E.C. (2012) 13 NWLR (Pt. 1317)297

East Horizon Gas Ltd. v. Ejiok (2010) LPELR-4066

Edoho v A.-G., Akwa Ibom State (1996) 1 NWLR (Pt. 425)488

Egesimba v Onuzuruike (2002) 15 NWLR (Pt. 791) 466

Ekpemupolo v: Edremoda (2009) 8 NWLR (Pt. 1142) 166

Elelu-Habeeb v. A.-G., Fed. (2012) 12 NWLR (Pt. 1318)423

Elias v. Disu (1961) 1 All NLR 214

Eloho v. Idahosa (1992) 2 NWLR (Pt.223) 323

Emeka v. Chuba-Ikpeazu (2019) 5 NWLR (Pt. 1664) 45

Eya v. Olopade (2011) 11 NWLR (Pt. 1259) 505

Eze v. Umahi(2023) 6 NWLR (Pt.1880)383

Ezewani v. Onwordi (1986) 4 NWLR (Pt.33) 27

F.R.N. v. Dingyadi(2018)LPELR-4606

F.R.N. v. Nganjiwa (2022) 17 NWLR (Pt. 1860)407

Fadiora v. Gbadebo (1978) 3 SC 219

Folarin v. Agusto (2023) 11 NWLR (Pt. 1896)559

G. Chitex Ind. Ltd. v. O.B.I. (Nig.) Ltd. (2005) 14 NWLR (Pt.945)392

Global Excellence Communications Ltd. v. Duke (2007) 16 NWLR (Pt. 1059)22

Goyol v. I.N.E.C. (2012) 11 NWLR (Pt.1311)207

Gundiri v. Nyako (2014) 2 NWLR (Pt.1391)211

Hassan v. Aliyu (2010) 17 NWLR (Pt.1223)547

I.N.E.C. v. Jime (2019) LPELR-48305

Ibori v. Ogboru (2005) 6 NWLR (Pt. 920)102

Ibrahim v.Shagari (1983) 2 SCNLR 176

Idundun v. Okumagba (1976) 9-10 SC 227

Ifeanyichukwu Osondu Co. Ltd. v. Akhigbe (1999) 11 NWLR (Pt.625)1

Ikotun v. Oyekanmi (2008) 10 NWLR (Pt.1094) 100

Ikpeazu v. Otti (2016) 8 NWLR (Pt. 1513) 38

Ipigansi v. IN.E.C. (2019) LPELR-48907

Ishola v. S.G.B.N. Ltd. (1997)2 NWLR (Pt.488) 405

J.A.M.B. v. Orji (2008) 2 NWLR (Pt.1072) 552

JES Invest. Ltd. v. Brawal Line Ltd. (2010) 18 NWLR (Pt.1225)495

Jegede v L.N.E.C. (2021) 14 NWLR (Pt. 1797) 409

Jimoh v Min. FCT (2019) 5 NWLR (Pt. 1664)45

Kakih v. P.D.P. (2014) 15 NWLR (Pt. 1430) 374

Kaza v. State (2008) 7 NWLR (Pt. 1085) 125

Kente v. Ishaku (2017) 15 NWLR (Pt. 1587) 94

Kubor v. Dickson (2013) 4 NWLR (Pt. 1345) 534

Kyari v. Alkali (2001) 11 NWLR (Pt. 724) 412

Ladega v. Durosinmi (1978) 3 SC 91

Lado v. Masari (2021) 13 NWLR (Pt. 1793)334

Ladoja v. Ajimobi (2016) 10 NWLR (Pt. 1519) 87

Lasun v.Awoyemi (2009) 16 NWLR (Pt. 1168) 513

Lawal v. Dawodu (1972) 1 All NLR (Pt.2)270

Lokpobiri v. A.P.C. (2021) 3 NWLR (Pt. 1764) 538

M.M.A. Inc. v. N.M.A. (2012) 18 NWLR (Pt. 1333)506

Marwa v. Nyako (2012) 6 NWLR (Pt. 1296)199

MIA & Sons v. F.H.A. (1991) 8 NWLR (Pt.209) 295

N.U.P. v. INEC (2021) 17 NWLR (Pt. 1805) 305

Nadabo v. Dabai (2011) 7 NWLR (Pt. 1254) 155

Ndakene v. Adamu (2023) 9 NWLR (Pt. 1889) 389

Ndoma-Egba v. Chukwuogor (2004) 6 NWLR (Pt.869)382

Ngige v. I.N.E.C. (2015) 1 NWLR (Pt. 1440) 281

Njiokwuemeni v. Ochei (2004) 15 NWLR (Pt.895) 196

Nwankwo v. Yar 'adua (2010) 12 NWLR (Pt. 1209) 518

Nwobodo v. Onoh (1984) 1 SCNLR 1

Nyesom v. Peterside (2016) 7 NWLR (Pt.1512)452

Obasanjo v. Yusuf (2004) 9 NLWR (Pt. 877) 144

Obot v. C.B.N. (1993) 8 NWLR (Pt.310)140

Ogah v. Ikpeazu (2017) 17 NWLR (Pt. 1594) 299

Ogba v. Vincent (2015) LPELR-40719

Ogboru v. Okowa (2016)11 NWLR (Pt. 1522) 84

Ogidi v. State (2005) 5 NWLR (Pt. 918) 286

Ojegeze v. State (1988)1 NWLR (Pt.71)404

Ojo v. Esohe (1999) 5 NWLR (Pt. 603) 444

Ojo v. A.-G., Oyo State (2008) 15 NWLR (Pt. 1110)309

Ojokolobo v Alamu (1987) 3 NWLR (Pt.61) 377

Ojukwu v Yar 'Adua (2008) 4 NWLR (Pt. 1078) 435

Ojukwu v. Yar 'adua (2009) 12 NWLR (Pt. 1154)50

Okafor v A.-G., Anambra State (1991) 6 NWLR (Pt. 200)659

Oke v: Mimiko (2014) 1 NWLR (Pt. 1388) 225

Oke v Mimiko (No. 2) (2014) 1 NWLR (Pt. 1388)332

Okoye v: I.N.E.C. (2009) LPELR-4727

Olaniyan v. Oyewole (2008) 5 NWLR (Pt.1079)114

Olawore v. Olanrewaju (1998) 1 NWLR (Pt.534)436

Oloriode v. Oyebi (1984) 5 SC 1

Olubodun v. Lawal (2008) 17 NWLR (Pt. 1115)1

Oluedun v. Ajayi (2014) LPELR-24409

Omega Bank (Nig.) Plc v. O.B.C. Ltd. (2005) 8 NWLR(Pt.928)547

Omidiran v. Etteh (2011) 2 NWLR (Pt. 1232)471

Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482)205

Onochie v. Odogwu (2006) 6 NWLR (Pt. 975) 65

Onuoha v. State (1989) 3 NWLR (Pt. 107) 101

Orji v. P.D.P. (2019) 14 NWLR (Pt. 1161) 310

Oruwari v. Osler (2013) 5 NWLR (Pt. 1348) 535

Oshiomhole v. Airhiavbere (2013) 5 NWLR (Pt.1538)265

Otoko v. Aderia (2018) All FWLR (Pt. 937) 1662

Oyetola v. I.N.E.C. (2023) 11 NWLR (Pt. 1894) 125

Oyeyemi v. Owoeye (2017) 12 NWLR (Pt.1580)364

P.D.P. v. I.N.E.C. (2012) 7 NWLR (Pt. 1300) 538

P.D.P. v. I.N.E.C. (2014) 17 NWLR (Pt. 1437) 525

P.D.P. v. I.N.E.C. (2022) 18 NWLR (Pt. 1863) 653

P.D.P. v. I.N.E.C. (2023) 13 NWLR (Pt. 1900) 89

P.D.P.v. INEC (2019) LPELR-48101

P.D.P. v. Muhammad (2023) 16 NWLR (Pt. 1910)283

P.D.P. v. Okogbuo (2019) LPELR-489989

Rabiu v. State (1981) 2 NCLR 293

Rossek v. A.C.B. Ltd. (1993) 8 NWLR (Pt. 312) 382

S.P.D.C. v. Adamkwe (2003) 11 NWLR (Pt. 832) 532

S.P.D.C. v. Farah (1995) 3 NWLR (Pt. 382) 148

Sa'eed v. Yakowa (2013) All FWLR (Pt. 692) 1650

Sani v. President, ER.N. (2010) 9 NWLR (Pt. 1198) 153

Saraki v. F.R.N. (2016) 3 NWLR (Pt. 1500) 531

Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156

Savannah Bank Ltd. v. Ajilo (1989) 1 NWLR (Pt. 97) 305

Shanu v. Afribank (Nig.) Plc (2002) 17 NWLR (Pt. 795) 185

Shelim v Gobang (2009) 12 NWLR (Pt. 1156)435

Shuluwa v. Aye (2015) LPELR-40476

Skye Bank Plc v. Iwu (2017) 16 NWLR (Pt. 1590) 24

Sosan v. Ademuyiwa (1986) 3 NWLR (Pt.27)241

Spasco Vehicle Plant Hire Co. v. Alraine (1995) 8 NWLR (Pt.416)655

Sterling Bank Plc v. Falola (2014) LPELR-22529

Sulaiman v. A.P.C. (2023) 5 NWLR (Pt. 1877)211

Sule v. Ologunebi (2015) LPELR-24746

T.P.P. Ltd. v. U.B.N. Ltd. (2006) 12 NWLR (Pt. 995) 483

Tabik Investment Ltd v. GTB (2011) 17 NWLR (Pt.1276) 240

Torti v. Ukpabi (1984) 1 SCNLR 214

Tumbido v. I.N.E.C. (2023) 15 NWLR (Pt. 1907) 301

U.T.B. v. Awanzigana Ent. Ltd. (1994) 6 NWLR (Pt. 348) 56

Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330

Udom v. Umana (No.1) (2016) 12 NWLR (Pt. 1526) 179

Uduma v. Arunsi (2012) 7 NWLR (Pt. 1298) 55

Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 365

Ukpo v. Imoke (2009) 1 NWLR (Pt. 1121)90

Ukut v. State (1995) 9 NWLR (Pt.420)392

Umeano v. Anaekwe (2022) 6 NWLR (Pt. 1827) 509

Utteh v. State (1992) 2 NWLR (Pt. 223) 257

Uwemedimo v. Mobil Prod. (Nig.) Unltd. (2022) 2 NWLR (Pt.1813)53

Uzodinma v. Udenwa (2004) 1 NWLR (Pt. 854) 303

Uzoma v. Asodike (2010) All FWLR (Pt.548)853

Wellington v. P.D.P. (2023) 10 NWLR (Pt. 1893)455

Yusuf v. George (2019) LPELR-48661

Yusuf v. Obasanjo (2003) 16 NWLR (Pt.847) 554

Foreign Cases Referred to in the Judgment:

Abrath v N.E. Railway Co. 11 QBD 440

Duport Steels Ltd. v Sirs (1980) 1 All E.R. 529

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999 (as amended), Ss. 2(2), 4, 6, 131, 133, 134(1)(b), (2)(a)(b), 134,134(2)(b), 135(1), 137, 153(1)(f); 158(1), 160(1), 179(2)(b), 239, 299; Para.15, Item F, Part I of the Third Schedule

Electoral Act, 2022, Ss.25, 47(2)&(3), 50(2), 60(1), (2)&(5), 62, 64(4)(5)(6)(7)&(8), and(5), 66, 68, 71, 133, 134(1), 135(1), 146(1), 149; Paras.4(1), (5)(b), (6)(7), 15, 16, 41(3), 54, of the First Schedule

Electoral Act, 1962, S.93

Electoral Act, 1982, S.123

Electoral Act, 2001, S.121

Electoral Act, 2002, S.135

Electoral Act, 2006, S.146

Electoral Act, 2010, S.139; Para. 12(5) of the 1st Schedule

Presidential Election (Basic Constitutional and Transitional Provisions) Decree, 1999, S.52

Evidence Act, 2011, Ss. 83(3), 122(1) (m), 124, 131, 135, 136(1), 104, 168(1), 169

Election Tribunal Practice Directions, para 1(1)(b)

Regulations and Guidelines for the Conduct of Elections, 2022, Para.14 (a),18(a)

Nigerian Rules of Court Referred to in the Judgment:

Federal High Court (Civil Procedure) Rules, 2019, O.3 rr. T.2 and 3 and O. 20 rr. 15 and 16

Books Referred to in the Judgment:

Black's Law Dictionary, 11t Ed., p. 1729

Blacks' Law Dictionary, 6th Ed., p. 1497

INEC Regulations and Guidelines for the Conduct of Election,

2022, Paras. 38(i) and (ii), 48(a), (b) and (c), 50(v), (vii) and (xx), 51(ii), 54(xii), 55(xii) and 93

INEC Regulations and Guidelines for the Conduct of Elections, 2022, para. 91

Meriam Webster's Online Dictionary

Modern Nigerian Election Petitions and Appeals Law, published in November 2017

New Lexicon Webster's Dictionary of the English Language, 1988 Ed., p. 987

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 25th 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 Omodele Bolaji-Yusuff, J.C.A.; Boloukuromo Moses Ugo, J.C.A.; Abba Bello Mohammed, J.C.A.

Petition No.: CA/PEPC/05/2023

Date of Judgment: Wednesday, 6th September 2023

Counsel:

Chief Chris Uche, SAN; Eyitayo Jegede, SAN; Prof. Mike Ozekhome, SAN; Nella Andem-Ewa Rabana, SAN; Dr. Garba Tetengi, SAN; Mahmoud Magaji, SAN; Joe Abraham, SAN; Chukwuma-Machukwu Ume, SAN; Emeka Etiaba, SAN; Prof. Maxwel M. Gidado, SAN; Gordy Uche, SAN; Edward Ashiekaa, SAN; A.K. Ajibade, SAN; Abdul A. Ibrahim, SAN; Paul Harris Ogbole, SAN; Kemasuode Wodu, SAN; Andrew M. Malgwi, SAN(with them, Prof. Yusuf Dankofa, Esq; M.S. Atolagbe, Esq and Olabode Makinde, Esq)-for the Petitioners. A.B. Mahmoud, SAN; Miannaya Essien, SAN; Abdullahi Alhassan A. Umar, SAN;Abdulaziz Sani, SAN and S.O. Ibrahim, SAN (with them, Nasara H. Auta, Esq, Aminu Sadauki, Esq and Dr. Patricia Obi, Esq) - for the 1st Respondent

Chief Wole Olanipekun, SAN; Chief Akin Olujinmi, SAN; Yusuf Ali, SAN; Emmanuel Ukala, SAN; Prof. Taiwo Osipitan, SAN; Adebayo Adelodun, SAN; Oladele Adesina, SAN; Dr. Hassan Liman, SAN; Olatunde Busari, SAN; Kehinde Ogunwumiju, SAN; Bode Olanipekun, SAN; Mrs. Funmilayo Quadri, SAN; Babatunde Ogala, SAN; Dr. Remi Olatubora, SAN; M.O. Adebayo, SAN and A.A. Malik, SAN (with him, Yinka Ajenifuja; Esq, Akintola Makinde, Esq and Julius Ishola, Esq)- for the 2nd Respondent

Prince L.O.Fagbemi,SAN; Dr. Charles U. Edosomwan, SAN; Chief Adeniyi Akintola, SAN; Chief A. Fashanu, SAN; Chief A. Fashanu, SAN; Chukwuma Ekoneani, SAN; Abiodun, J. Owonikoko, SAN; Sam T. Ologunorisha, SAN; Solomon Umoh, SAN; Hakeem O. Afolabi, SAN; Olusola Oke, SAN; Aliyu O. Saiki, SAN; Y.H.A. Ruba, SAN; Chief Anthony Adeniyi,SAN; Mumuni Hanafi,

SAN (with them, Ahmad El-Marzuq, Esq; Seun Ajayi, Esq and Omosanya Popoola, Esq)- for the 3rd Respondent

TSAMMANI, J.C.A. (Delivering the Leading Judgment): This is an election petition by the two petitioners against the 1st, 2nd and 3rd respondents. The 1st petitioner, Abubakar Atiku, was a candidate at the Presidential Election held in Nigeria on 25th February 2023.He was sponsored by the 2nd petitioner, Peoples Democratic Party (PDP), a registered political party in Nigeria.

The 1st respondent, Independent National Electoral Commission (INEC), was established as one of the executive bodies created in section 153(1)(f) of the Constitution of the Federal Republic of Nigeria (1999) with power to, among others, organise, undertake and supervise all elections to the offices of the President and Vice-President and others.

On Saturday the 25th of February 2023, the 1st respondent conducted election into the offices of the President and the Vice President of the Federal Republic of Nigeria and the National Assembly. The Petitioners and the 2nd, 3rd respondents along with sixteen others participated in the Election. At the conclusion of the Election, the 1st respondent declared the 2nd respondent as the duly elected President of the Federal Republic of Nigeria with 8,794,726votes. The 1st petitioner who was sponsored by the 2nd Petitioner came second with 6,984,520 votes.

The petitioners were aggrieved by the outcome of the election so they filed jointly this petition to challenge the Election.

The grounds for the petition were four, and these were stated as follows:

(a) The election of the 2nd respondent is invalid by reason of noncompliance with the provisions of the Electoral Act, 2022.

(b) The election of the 2nd respondent is invalid by reason of corrupt practices.

(c) The 2nd respondent was not duly elected by majority of lawful votes cast at the election.

(d) The 2nd respondent was at the time of the election not qualified to contest the election.

The petitioners are seeking the following reliefs:

a. That it may be determined that the 2nd respondent was not duly elected by a majority of lawful votes cast in the election and therefore the declaration and return of the 2nd respondent by the 1st respondent as the winner of the Presidential Election conducted on

the 25th day of February, 2023 is unlawful, wrongful, unconstitutional, undue, null and void and of no effect whatsoever.

b. That it may be determined that the return of the 2nd respondent by the 1st respondent was wrongful, unlawful, undue, null and void having not satisfied the requirements of the Electoral Act, 2022 and the Constitution of the Federal Republic of Nigeria,1999 (as amended) which mandatorily requires the 2nd respondent to score not less than one quarter (25%) of the lawful votes cast at the Election in each of at least two-thirds of all the States in the Federation AND the Federal Capital Territory, Abuja.

c. That it may be determined that the 2nd respondent was at the time of the election not qualified to contest the said election.

d. That it may be determined that the 1st petitioner having scored the majority of lawful votes cast at the presidential election of Saturday, 25th February 2023, be returned as the winner of the said election and be sworn in as the duly elected president of the Federal Republic of Nigeria.

In the Alternative:

e. An order directing the 1st respondent to conduct a second election (run-off) between the 1st petitioner and 2nd respondent.

In the Further Alternative:

f. That the election to the office of the President of Nigeria held on 25th February 2023 be nullified and a fresh election (re-run) ordered.

g. Any such further relief(s) as the honourable court may deem fit to make in the interest of justice.

Upon being served with the petition, the respondents joined issues with it by filing their respective replies incorporating preliminary objections and made other applications. Some of the applications filed by the parties were heard and rulings delivered at the pre-hearing stage while some were heard and rulings on them reserved till the time of the judgment of the court. we now proceed to consider them.

Preliminary Objections

Seven application/preliminary objections were filed and argued by the respondents during the prehearing session of this petition. Two each of the said seven applications were filed by the 1st and 3rd respondents while three were filed by 2nd respondent.

First respondent's two applications were filed on 19/4/2023and 9/5/2023 respectively. In the first of its two applications dated and filed on 19/4/2023, which also largely reflect the position of 2nd respondent in his first two applications and 3rd respondent in its first application, 1st respondent sought:

1. An order striking out paragraphs 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107, 114, 115, 116,118,121,126,129,130,131,132,133,137,140,142.143, 144 and 146 of the petition on grounds of their vagueness, being generic, imprecise and lacking in specificity to elicit a reply from the it.

2. An order striking out paragraphs 129 and 133 of the petition for failure to join necessary parties, among other grounds.

3. An order striking out the ground of the petition that 2nd respondent did not score majority of the lawful votes as contained in paragraph 16(c) of the petition, for incompetence and lacking in specificity and materials in the pleading for its sustenance.

4. Consequent upon 1-3 above, an order striking out prayers (a), (b) and (d) as sought in paragraph 150 of the petition.

5. An order striking out the ground of the petition that the election is invalid by reason of non-compliance with the provisions of the Electoral Act, 2022 as contained in paragraph 16(a) of the petition, for being defective and lacking in specificity and material facts in the pleading for its sustenance.

6. Consequent upon 5 above, an order striking out the ground of the petition alleging that the election of the 2nd respondent is invalid by reason of corrupt practices as contained in paragraphs 16(b) of the petition, for lacking in specificity and material facts in the pleading for its sustenance.

7. An order striking out the ground of the petition that the 2nd respondent was at the time of the election not qualified to contest the election as contained in paragraph 16(a) of the petition, for lacking in specificity and material facts in the pleading for its sustenance.

8. An order striking out the ground of the petition that the 2nd respondent was at the time of the election not qualified to contest the election as contained in paragraph 16(d) of the petition, for lacking material facts in the pleading for its sustenance.

9. Consequent upon 1-8 above, an order striking out and or dismissing the petition for being incompetent, frivolous, vexatious, abusive, fundamentally defective and vesting no jurisdiction in the tribunal to adjudicate on it.

In the alternative to the above:

10. An order striking out prayers (a), (b), (c) and (d) of the petition as sought in paragraph 150 for being incongruous, contradictory and self-defeatist.

Its grounds for this application are that:

1. Grounds 1 and 2 of the petition in paragraph 16(a) and 16(b) alleges that the election of the 2nd respondent is invalid by reason of noncompliance with the Electoral Act and invalid by reasons of corrupt practices, but there is no pleading of the particulars in the entire petition of how the alleged noncompliance with the provisions of the Electoral Act, 2022 and corrupt practices substantially affected the result of the election.

2. Ground 3 of the petition alleges that the 2nd respondent was not duly elected by majority of lawful votes cast, when the Constitution did not require a candidate in an election consisting of more than two candidates to score a majority of lawful votes cast at the election.

3. Further, the petitioners did not supply the particulars of lawful votes cast and/or unlawful votes to be deducted from the 2nd respondent's scores in their pleadings.

4. Ground 4 of the petition in paragraph 16(d) alleges that 2nd respondent was at the time of the election not qualified to contest the election, but no particulars of the alleged disqualification of the 2nd respondent was provided.

5. No reasonable cause of action has been disclosed in the pleadings in respect of the entire grounds of the petition to warrant any further adjudication of the petition.

6. Relief (b) in paragraph 150 of the petition is predicated on the allegation in the petition that the 2nd respondent did not score 25% of the votes cast in the Federal Capital Territory, Abuja, yet by the admission of the petitioners in column 14 of the table as drawn by them in paragraph 111 of the petition, 1st petitioner did not also score 25% of the votes cast in the Federal Capital Territory, Abuja; relief (b) and (d) in paragraph 150 of the petition is un-grantable.

7. By paragraph 6 above, relief (b) and (d) in paragraph 150 of the petition are contradictory and un-grantable.

8. Contrary to the requirement of paragraph 4(1) of the First Schedule of the Electoral Act 2022, paragraphs 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107, 114, 115, 116, 118, 121, 126, 129, 130, 131, 132, 133, 137, 140, 142, 143, 144 and 146 of the petition bordering on substantial noncompliance with the Electoral Act 2022 and on corrupt practices are vague, generic, imprecise and lacking in specificity to elicit a Reply from the 1st respondent.

9. In paragraphs 129 and 133 of the petition made criminal allegations against Governor Yahaya Bello of Kogi State, the Chairman of Olamaboro Local Government of Kogi State, Hon. Friday Adejoh who are not parties and ought to have joined to defend the complaints/ allegations against them.

Second respondent also had a similar application/preliminary objection filed on 13/05/2023 (all his three applications were actually filed on the same 13/05/2023) seeking striking out of the petition or portions of it. His single prayer in the application is:

> "An order of the court striking out jointly and/or severally paragraphs 14 and 15, 19 - 81, 87 - 104, 108- 128 and 133 to 150 of the petition for being fundamentally defective."

The 3rd respondent, on its part, in its first application on the same issue filed on 8/5/2023 (its two applications were also filed on the same 8/5/2013) sought similar prayers like 1st and 2nd respondents.

All three respondents also had issues with the replies petitioners served on them in response to their own replies. Their main complaint this time is that the said replies went beyond the ambit of replies and raised new issues and facts like particulars of the non-qualification of 2nd respondent for the election and/or his dual citizenship of Republic of Guinea, all of which, according to the reply of the petitioners, impacts on his qualification as a candidate for the election. Those new facts, they complained, tended to amend or

reconstruct the petition and so overreached them, even as they do not have any further opportunity to join issues with petitioners on them.

Other paragraphs of the replies, they said, did not raise new issues but merely repeated averments already contained in the petition and so have no place in a reply. For these same reasons, they sought striking out of the additional witness statement on oath and list of documents that accompanied the said replies.

Besides, the above applications, 2nd respondent had a third application that was peculiar to it. In the said application, which was also filed on 13/5/2023, 2nd respondent again sought the striking out of the entire petition, this time on the following four grounds:

1. That the entire petition constitutes a gross abuse of the process of court by reason of an originating summons in suit No. SC/CV/354/2023 dated 28th February 2023,filed by the Attorneys General of Adamawa, Akwa Ibom, Delta, Edo and Sokoto States (all of them controlled by the 2nd petitioner - as 2nd respondent put it) at the Supreme Court of Nigeria, against the Attorney General of the Federation, where the said plaintiffs raised against the Attorney General of the Federation the same issue here of pt. respondent's failure to transfer or transmit Polling Unit Results from its BVAS to its Result Viewing Portal (IReV) in the 25th February 2023 general elections.

   The plaintiffs therein, first respondent mentioned, sought in their suit declarations that the 2023 Presidential election was fundamentally flawed and so invalid, null and void and of no effect, which is what petitioners also seek here, so this petition constitutes gross abuse of process.

There were other grounds for that application as I shall show later when considering it.

All seven applications were supported with affidavits and written submissions of applicants, which were in turn countered by the petitioners with counter-affidavits and written submissions of their own. I shall now proceed to consider the merits of the applications. For ease of reference, I shall group the three sets of applications into Groups A, B, and C.

I start with the first three applications of respondents that attacked the validity of the petition and/or its paragraphs, reliefs claimed and grounds on which it was brought.

First Respondent's 1st Application filed on 9th April, 2023

First respondent set out the following issues for determination in its 9th April 2023 application:

1. Whether in view of the mandatory provisions of paragraph 4(1) of the First Schedule of the Electoral Act, 2022, the vague and imprecise averments in the petition as sought are not liable to be struck out.

2. Whether having regard to the mandatory provisions of paragraph 4(1) of the First Schedule of the Electoral Act, 2022, a reasonable cause of action has been disclosed in respect of the grounds of the petition contained in paragraph 16(a), (b), (c) and (d) of the petition to warrant further or any adjudication on same.

3. Whether having regard to the averments in support of the grounds of the petition and the prayers in Prayers 1(iii), 2, 3, 4 (i) - 4(iv) - 4(iv) and 5(i) in paragraphs 102 of the petition predicated on same issue, the instant petition is not rendered academic and liable to be dismissed.

4. Whether the entire petition is not defective and liable to be struck out in the light of the pleaded facts in the petition.

It argued its issues 1 and 2 above separately and took issues 3 and 4 together.

In seeking the striking out of paragraphs 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107, 114, 115, 116, 118, 121, 126, 129, 130, 131, 132, 133, 137, 140, 142, 143, 144 and 146 of the petition on grounds of their vagueness, imprecision and lack of specificity to elicit a reply from it, first respondent (INEC) relied principally on Paragraph 4(1) of the 1s Schedule to the Electoral Act, 2022 which states as follow:

"4(1) An election petition under the Act shall:

(d) state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioners.

Relying on *Ugwu v. Ararume* (2007) 12 NWLR (Pt. 1048)367 and *Ogidi v State* (2003) 5 NWLR (Pt. 918) 286,*Uzodinma v. Udenwa* (2004) 1 NWLR (Pt. 854) 303, *Ojukwu v. Yar'adua* (2009) 12 NWLR (Pt 1154) 50 @ 148-149 and *Abubakar v Yar'adua* (2008) 19 NWLR(Pt.1154) 50 @ 148-149, counsel on 1st respondent's behalf argued that paragraph 4(1) of the 1st Schedule of the Electoral Act, 2022 implies compulsion and makes it mandatory for petitioners to plead the facts of their petition. They submitted that an election petition that is vague, imprecise, omnibus, nebulous or generic is contrary to the provisions of Paragraph 4(1) (d) of the 1st Schedule of the Electoral Act, 2022 and so liable to be struck out. Learned

counsel then carefully took on each and every one of paragraphs 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107, 114, 115, 116, 118, 121, 126, 129, 130, 131, 132, 133, 137, 140, 142, 143,144 and 146 of the petition and advanced reasons why they are vague, generic, imprecise and lacking in specificity and deserving to be struck out.

Counsel also argued that the petitioners in paragraphs 129 and 133 of their Petition made allegations of unlawful acts allegedly carried out by one Hon. Friday Adejoh, Governor Yahaya Bello of Kogi State and some unnamed persons in the course of the Presidential election yet those persons were not joined to the petition so those two paragraphs are also liable to be struck out. Counsel cited Bambe v. Adetunji (1997) 1 S.C. 1 @ 88; *Oloriode v. Oyebi* (1984)5 SC 1@5, *Babatola v. Aladejana* (2001) LPELR-696 (SC) p.19; (2001) 12 NWLR (Pt. 728) 597 to say the court lacks jurisdiction to enter judgment or make orders against persons that are not before it.

Responding to the first limb of 1st respondent's contention that paragraphs 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107, 114, 115, 116, 118, 121, 126, 129, 130, 131, 132, 133, 137, 140, 142, 143, 144 and 146 of the petition are imprecise vague and without necessary particulars of the allegations, learned senior counsel to the petitioners argued that the said paragraphs were pleaded in support of the second ground of the petition alleging that the Presidential Election was be devilled by corrupt practices. Prime among those corrupt practices, they said, are suppression of votes, manipulation of BVAS machines and destruction of electoral materials and ballot boxes. Specific instances of these corrupt practices that took place in various States, Local Governments and polling units of the federation, they argued, were 'laid bare' in the petition, with particulars of the allegation. They argued that 1st respondent, instead of considering the paragraphs of the petition holistically, seems to have considered them in isolation and haphazardly hence its wrong conclusion that the petition was vague, imprecise and without necessary particulars. While admitting that the names of polling units were not specifically stated in the petition, petitioners' counsel submitted that petitioners stated in different paragraphs of the petition that the polling units affected were to be contained in a Statistician's Report to be relied upon at the hearing of the petition. They cited the cases of *Oluedun v. Ajayi* (2014) LPELR-24409 (CA); *Awolaja & Ors v. Seatrade Groningen B.V.*(2002) LPELR-651 (SC);(2002)4 NWLR(Pt.758) 520; *East Horizon Gas Ltd v. Ejiok & Ors* (2010) LPELR-4066 (CA) p.10,to submit that petitioners have by that pleading incorporated by reference the said statistician's report.

On the argument of 1st respondent that the petition did not disclose any reasonable cause of action and so constituted abuse of judicial process, petitioners' counsel argued that 1st respondent was by that

argument trivialising matters of high constitutional importance raised by petitioners in the petition. They submitted that a petition that touches on correct interpretation of section 134(2)(b) of the Constitution of this country vis-à-vis the return of 2nd respondent and the qualification or disqualification of 2nd respondent regulated solely by sections 131 and 137 of the Constitution cannot by any means be said to disclose no reasonable cause of action.

On first respondent's contention that petitioners' failure to join Hon. Friday Adejoh, Governor Yahaya Bello of Kogi State and unnamed thugs against, whom they made allegations of criminal misconduct in paragraphs 129 and 133 of their petition, made those paragraphs of the petition incompetent and liable to be struck out, counsel to petitioners submitted that section 133 of the Electoral Act, 2022 has specified the persons who may be joined as Petitioners or Respondents in an election petition; that Hon. Friday Adejoh and Governor Yahaya Bello having not participated in the election nor returned, petitioners are not in violation of the Electoral Act or any rule of law in not joining them. Besides, they also argued, no relief was claimed against the said two men so they cannot be said to be affected in any way by the eventual outcome of the petition.

Resolution of Issue l

Now, paragraph 4(1) of the First Schedule of the Electoral Act, 2022 (as amended) states that:

"4(1) An election petition under the Act shall:

(d) state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioners."

This provision is clear and direct that it does not require any aid in its interpretation. It simply restates in mandatory terms the first rule of pleading, that claimants, in this case a petitioner, shall state 'clearly' the facts of the election petition and the ground or grounds on which the petition, or claim, is brought. This requirement/duty to plead one's complaints and facts clearly in the statement of claim/petition (not reply) is a basic rule of pleading even in ordinary civil proceedings. Nnaemeka-Agu, JSC, in Atanda v. Ajani (1989) 3NWLR (Pt. 111) 511 @ 546 put that point across most forcefully when he said that:

> "It appears to me that the rule which required every fact upon which a party intends to rely at the hearing to be pleaded goes to the fundamentals of justice. For no one can defend the unknown. If one has to defend or counter a fact made by his adversary, the one must have due notice of that fact to enable him prepare for his defence. That is the very essence of pleading. As it goes to the very root of the rule of *audi alteram partem* - one of the twin

> pillars of justice - it would be a misconception to describe it as mere technicality or irregularity. It is a matter which cannot, therefore, be waived. Indeed, by a long line of decided cases, it has been long settled that any evidence on a fact that ought to have been pleaded, but is not, goes to no issue at all at the trial and ought to be disregarded."
>
> (Italics ours)

The complaint of 1st respondent is that the petitioners in their petition did not state their case as 'clearly' as required by paragraph 4(1)(d)of the Electoral Act, 2022 to enable it respond properly to it. It complains that petitioners' complaints were vague, imprecise and lacking in particulars. It does not appear to me that this complaint can by any means be waived away as idle. If anything, even the petitioners seem to have admitted that they did not plead those necessary facts; for their response to that contention, as shown earlier, is rather that they pleaded a Statistician's Report which contains the required details of the polling units where the 'corrupt practices' they alleged took place. Incidentally, the said report a very voluminous four-part document they later tendered through its maker Mr. Samuel Oduntan, PW21, during the trial, shows on its face that it did not even exist at the time they filed their petition and so was not served on respondents along with the petition to enable them exercise their constitutionally guaranteed right of responding fairly to the 'corrupt practices' alleged particularised in it, and if necessary, also engage their own expert to reply to it. Yes, the principle of incorporation by reference relied on by them, petitioners, is part of our adjectival law and is supported by a fairly long line of cases including *M.M.A. Inc. v. N.M.A.* (2012)18 NWLR (Pt.1333) 506 @ 533- 546, 531, 553 (SC), *Ekpemupolo & Ors v. Edremoda & Ors* (2009) LPELR-1089 (SC) p. 24-25; (2009)8NWLR(Pt.1142)166*; J.E.S Investment Limited v. Brawal Line Ltd & Anor* (2010) 18 NWLR (Pt. 1225) 495@ 540, *Eloho v. Idahosa* (1992) 2 NWLR (Pt. 223) 323 @3350, *Abod Brothers Limited v. Niger Insurance Co. Ltd & Anor* (1974) 4 ECSLR 525 @ 536, but that principle cannot by any means override the fair hearing/trial provisions of section 36 of the 1999 Constitution of this country which also underpins the rationale for exchange of pleadings by parties. See once again the dictum of Nnaemeka-Agu, JSC, in *Atanda v. Ajani* supra that-

> "the rule which required every fact upon which a party intends to rely at the hearing to be pleaded goes to the fundamentals of justice. For no one can defend the unknown. If one has to defend or counter a fact made by his adversary, the one must have due notice of that fact to enable him prepare for his defence."

A Statistician's Report that is supposed to contain missing particulars in a petition but which was only filed in the middle of hearing of the same petition, long after the time for exchange of pleadings had

closed and even after petitioners had called as many as sixteen witnesses in proof of their case, as happened in this case, cannot serve that purpose of *audi alteram partem*-let the other party be heard too. In short, the tactics employed by the petitioners in this case as regards their pleading and the statistician's report referenced in it is to say the least most unfair and definitely negates the current practice regime that emphasizes frontloading of processes. Such dishonourable practice can only be likened to the unlawful boxing tactic of hitting one's opponent below the belt or from behind, which in the sport of boxing, is penalised promptly with deduction of points. It cannot be different here. The said Statistician's Reports, which is exhibits PAH1, PAH2, PAH3 and PAH4 in this proceeding, must be and is hereby discountenanced.

That conclusion should make the resolution of this issue on imprecision of the petition fairly easy.I nevertheless want to exercise caution and still consider the paragraphs of the petition attacked by ls respondent, but it shall be only as they stand in the petition.

In that regard, I am satisfied that paragraph 92 of the petition, where the petitioners alleged wrongful cancellation of polling unit results in various Local Governments of Sokoto State, is lacking in particulars of the particular polling units affected and so liable to be struck out.

Paragraphs 93 and 94 of the petition where petitioners alleged that 1st respondent's officials failed to properly fill election forms in Kano State, I think, sufficiently meets the requirements of paragraph 4(1)(d) of the 1st Schedule to the Electoral Act, 2022.

Paragraph 95 of the petition where the petitioners alleged that results in unspecified polling units in some Local Government Areas of Kogi State were "manipulated through and by the inflation of the 2nd respondent's votes and depletion of the petitioner's votes" is in my opinion bad for vagueness not only as to the polling units where the alleged manipulation occurred but also as to the actual lawful votes of petitioners and 2nd respondent allegedly depleted and inflated respectively. The need to plead exact figures of votes affected by the alleged manipulation becomes even more crucial in my opinion when account is taken of paragraph 15 of the First Schedule of the Electoral Act, 2022 stating that:

> 1. When a petitioner claims the seat alleging that he had the highest number of valid votes cast at the election, the party defending the election or return *shall set out clearly in his reply particulars of the votes*, if any, which he objects to and the reasons for his objection against such votes, showing how he intends to prove at the hearing that the petitioner is not entitled to succeed. (Italics mine)

Second and 3rd respondents can only properly exercise their right under this provision requiring them to give particulars of the votes claimed by the petitioners that they object to and the reasons for their objection against "such votes,' after petitioners have set out clearly the lawful votes 'depleted' by the manipulation alleged by them.

Paragraph 97 of the petition, in my opinion, are matters for proof at the hearing, even more so as the petitioners have stated in those two paragraphs that the disruption of elections in Adavi and Okehi Local Government Areas of Kogi State by agents of 2nd and 3rd respondents alleged therein was captured in video recording which they, petitioners, would lead evidence in proof.

Paragraph 98 of the petition where petitioners alleged that "elections in 10 polling units were disrupted and there were no results from the said 10 polling units" is bad for vagueness and specificity in so far as it does not specify the affected 10 polling units. It is therefore also liable to be struck out.

I am also of the opinion that paragraphs 99 and 100, of the Petition also attacked by 1st respondent has to do more with proof, which is a matter for the substantive hearing, especially as the infractions complained of in them were again according to petitioners captured in a video recording which they promised to rely on at the trial.

Paragraph 101 of the petition where the petitioners simply complained of failure of 1st respondent's officials to properly fill election documents seems to me sufficient pleading.

Paragraph 102 of petition where the petitioners simply alleged that "infractions occurred in polling units (unidentified)" in various Local Governments of Kogi State and "these failures enabled the results of polling units in the said LGAs to be manipulated through and by the inflation of the 2nd respondent's votes and the depletion of the petitioners' votes," is bad and vague as to the particulars of the specific polling units and votes of petitioners and respondents affected by the said manipulation of inflation and deflation. It fails to meet both the requirements of clear pleading of facts of the petition under paragraph 4(1) (d) of the First Schedule of the Electoral Act, 2022 and Paragraph 15 of the same First Schedule earlier cited. The following dictum of the lead judgment of Tabai, JSC, in *Belgore v. Ahmed* (2013) 8 NWLR (Pt. 1355) 60 at 95 (concurred in by his brethren Adekeye, Galadima, Ngwuta, and Ariwoola, J.S.C, as their Lordships all then all were) also gives an insight on the need for specificity in pleadings generally and more specifically in an election petition:

> "Although only material facts are required to be pleaded and in a summary form, they must nevertheless be sufficiently specific and comprehensive to elicit the necessary answers

> from the opponent. See *Ashiru Noibi v. Fikolati & Others* (1987) 3 SC 105 @ 119, *Omorhirhi v Enatevwere* (1988) 1NWLR (Pt. 73)746. They must contain such details as to eliminate any element of surprise to the opposing party. In this case where the pleadings in the petition which alleged electoral malpractices, noncompliance and/or offences in some polling units", many polling units", "most polling units" or "several polling units," cannot be said to have met the requirements of pleadings as stipulated in paragraph 4(1)(d) of the First Schedule of the Electoral Act and/or Order 13 rules 4(1),5 and 6(1)of the Federal High Court (Civil Procedure) Rules,2009. The result is that this issue is resolved against the appellants."

Ngwuta, JSC, also had this to say on the subject at pages 124-128: "The following phrases are employed in the pleadings in matters which are crucial to the petitioners/appellants' case at the tribunal:

> "In many polling units.....in most polling units.....in some polling units .... in some of the polling units....."
>
> "My lords, the appellants complained that the election in the Local Government Areas and some Wards in seven other Local Government (sic) vitiated by substantial noncompliance with the provisions of the relevant statutes. The phrases reproduced above are too general and imprecise to found a challenge to the validity of the election results.
>
> "The object of pleadings is to alert the other side of the case it would meet at the trial. See *George v. USA Ltd*. (1972) 8-9 SC 264. It can hardly be said that pleading built on the said phrases contains pungent and direct statements of material facts on which the rights and obligations of the parties can be determined Appellants' pleading contravened Order 13 rules 4(1), 5 and 6(1) of the Federal High Court (Civil Procedure) Rules, 2009."

See also *P.D.P. v. I.N.E.C.* (2012) 7 NWLR (Pt. 1300) 538 @560, paragraphs E-H (Muntaka-Coomassie, JSC).

For the same reasons, I am of the opinion that paragraph 103 of the petition where the petitioners simply averred generally that 1st respondent wrongly entered incorrect results for the petitioners in Borno State, is bad in so far as the polling units in Borno State affected by the 'incorrect results' are not stated.

I am, however, are of the view that paragraphs 104, 105 and 106 of the petition sufficiently pleaded necessary facts to elicit appropriate response from respondents, even more so as paragraph 104 merely alleged bypass by 1st respondent of the use of BVAS machines in the presidential election in Borno State

while paragraphs 105 and 106 simply stated the petitioners' ground that 2nd respondent was not elected by majority of law votes cast in the election.

In respect of paragraph 107 of the petition, first respondent complains that the petitioners there contended that the entire results of the Presidential Election were wrong yet they did not plead the results they perceive to be correct so it is also vague pleading. I am of the view that complaint is better considered while considering the merits of the petition. That is even more so as it appears to us that paragraph 107 seems averred to by petitioners to meet the provisions of paragraph 4(1)(c) of the First Schedule to the Act, 2022 that requires them to state in their petition among others the scores of the candidates in the election. To that extent, paragraph 107 cannot be faulted by application at this stage let alone sought to be struck out *in limine.*

Paragraphs 108, 109, 110, 111, 112 and 113 of the petition merely pleaded facts as to whether 2nd respondent, who by 1st respondent's own showing did not poll up to 25% of the total votes of the Federal Capital Territory, was properly returned by 1st respondent having regards to the provisions of section 134 (2)(b) of the 1999 Constitution of the Federal Republic of Nigeria and other relevant statutes. It is therefore in order.

I am afraid:

Paragraph 114 of the petition where the petitioners simply alleged generally that purported results from polling units across 36 State and Federal Capital Territory contain various forms of infractions;

Paragraph 115 where they alleged that "a total number of 4,307 polling units are without stamp on the respective Form EC8A therefrom. Details of the States and number of polling units in each State affected are shown in in the Statistician's Report herein pleaded...;"

Paragraph 116 where they complained that “results from 1,300 polling units do not have signatures of the Presiding Officers on the respective Forms EC8A. Details of the States and number of polling units in each State affected are shown in in the Statistician's Report herein pleaded;"

Paragraph 117 where they said "purported results from 6,418 polling units have and indicate zero accreditation. The polling units affected are as shown in the Statistician's Report herein pleaded;”

Paragraph 118 where they averred that “critically 9,463 polling units across 30 States have shown that the votes returned are in excess of accredited voters;”

> And, finally, paragraph 119 where they contended that "given the number of registered voters in polling units where elections did not take place, in addition to those polling units where elections were cancelled, (the details of which are set out in the statistician's report pleaded by the petitioners), the return of the 2nd respondent as the winner of the election in the circumstances was hasty and undue as the margin of lead is less than the number of disenfranchised voters,"

are all bad for lack of particulars and necessary facts. As for the Statistician's Report referenced by them for the said particulars, I hereby reconfirm my earlier finding and conclusion on it.

Paragraph 120 of the petition is not challenged by 1st respondent so I shall overlook it, at least for now.

The petitioners in paragraph 121 of the petition alleged that 1st respondent's presiding officers of polling units failed to properly fill and countersign alterations in election forms, including Forms EC8A,EC8B,EC8C and EC8D,but they did not mention the polling Units, Wards, Local Governments and States the said infractions took place. They simply referenced the same Statistician's Report. This paragraph is bad for imprecision and so also liable to be struck out.

Paragraphs 122 to 125 of the petition are not challenged by 1st respondent so I shall skip them.

In paragraph 126 of the petition, the petitioners complained that:

> "...*all over Nigeria* there were manifest cases of over-voting. The total of the affected polling units in the various States are set out in the Statistician's Report pleaded and relied upon by the petitioners."

This pleading is also bad for vagueness. My earlier position on the Statistician's Report referenced by the petitioners is also reaffirmed.

Paragraphs 127 and 128 of the petition are not challenged by 1st respondent so they are also skipped.

I do not share the view of 1st respondent that paragraphs 129, 130, 131 and 132 of the petition are bad for lack of imprecision. Petitioners in those paragraphs carefully pleaded the specific polling units and number of votes therein that they claim were affected by cancellation of elections complained of by them.

I am however of the opinion that the second complaint of 1st respondent against paragraph 129 of the petition, that it also deserves to be struck out for petitioners' failure to join Hon. Adejoh, Chairman of Olamaboro L.G.A. of Kogi State accused by them of having led thugs at gun point to force Electoral officers in named polling units in Olamaboro L.G.A. of Kogi State to declare concluded elections in the said units

cancelled, is well made. The petitioners' response that not only was no relief claimed by them against Hon. Adejoh, he did not even 'participate' in the election neither was he returned so he is not a person contemplated by section 133 of the Electoral Act, 2022 to be joined to an election petition, is not a valid response. Section of 133 of the Electoral Act, 2022 only deals with the issue of which contestant of an election ought to be joined in an election petition by a co-contestant. It has nothing to do with the issue of joining of third parties against whom allegations of electoral infraction are made by petitioners as in this case. Such persons must be joined to the petition if the court is not to be exposed to the risk of infringing their fundamental right to fair hearing guaranteed by the Constitution. It is also of no moment that no relief was claimed against such persons in the petition; what is important is that allegations of electoral malpractice, which will require the court to make findings, including condemnation of their alleged conduct where necessary, are made in the petition. Support for that position can be found in *Nwankwo v. Yar 'adua* (2010) 12NWLR(Pt. 1209) 518 at 583 where Muntaka-Coomassie, J.S.C., after reproducing the provisions of the then newly enacted section 144(2) of the Electoral Act, 2006 (*in pari materia* with section 133(2) of the Electoral Act, 2022) and confirming that that provision had done away with the old regime of the Electoral Act,2002 that required petitioners to join all relevant Electoral Officers of INEC that conducted an impugned election, in addition to INEC itself, spoke thus at page 583:

> "*Unless the conduct of a party who is not an agent of the Commission is in question, it will then be necessary to join such party as a necessary party to the petition in order to afford such party a fair hearing*." (Italics mine)

As regards the consequence of failure to join such necessary parties on the petition itself, His Lordship again said as follows:

> "However, where such a party is not made a party, it will not result into the whole petition being struck out, but the particular allegation against such party is liable to be struck out."

That is the fate of paragraph 129 of the petition where allegations of electoral malpractice were made by the Petitioners against Hon. Adejoh yet he was not cited in the petition. Incidentally, this is also one of the main reasons the Supreme Court gave in dismissing the appeal of the petitioners in the Ondo State Governorship case of *Eyitayo Jegede & Another v. I.N.E.C.& Ors* (2021) LPELR-55481 (SC); (2021) 14 NWLR (Pt. 1797) 409 where allegations were made by the Petitioners in that case against the then National Caretaker Committee Chairman of the present 3rd Respondent, APC, Governor Mai Mala Buni of Yobe State, yet he was not joined to the petition by the petitioners. Paragraph 129 of the petition must therefore suffer striking out.

For the same reason, paragraph 133 of the petition, where similar allegations of an alleged gun totting Governor Yahaya Bello of Kogi leading thugs to compel cancellation of concluded elections in polling stations were made yet he was not joined to the petition, must also be struck out.

Paragraphs 135 and 136 of the petition were not challenged by 1st respondent so they are hereby skipped.

I consider this a convenient point to paragraphs 137 and 142of the petition which learned Senior Counsel to INEC further complained was also bad for non-joinder. Counsel's argument, this time, was that the petitioners were also seeking in those two paragraphs to void the entire results of the Presidential election in Lagos and Kano States as declared by INEC, where Messrs Peter Obi of the Labour Party and Rabiu Musa Kwankwaso of the New Nigeria Peoples party scored the majority of lawful votes. yet Peter Obi of the Labour Party and Rabiu Musa Kwankwaso of the New Nigeria Peoples party were not joined to the petition so those paragraphs were also bad and liable to be struck out. I consider this argument misconceived. In fact, it seems to overlook section 132(4) of the 1999 Constitution stating expressly that:

> For the purposes of an election to the office of President, the whole of the Federation shall be regarded as one constituency.

That is the position as it relates to a presidential election. Percentages of votes polled by presidential candidates in any of the 36 States of the Federation or even the Federal Capital Territory only become of consequence when the issue verges on whether the candidate returned also satisfied the provisions of section 134 (1)(b) and (2) of the 1999 Constitution of this country (as amended)requiring him/her to poll 25% of votes cast in at least one two-thirds of the 36 States and the Federal Capital Territory. Outside of that, how many votes a presidential candidate polled in any of the States of this country is of little significance in an election petition challenging return in a multi-party presidential election. It certainly has no bearing on the question of who an aggrieved candidate challenging a Presidential Election return should join to his petition among the candidates that contested the election with him. By section 133 of the Electoral Act, 2022 the only other candidate in the election a petitioner can properly join to his petition is the person returned as the winner of the election. See further on this the cases of *Buhari & Anor v. Yusuf* (2003) 14 NWLR (Pt. 841) 446; (2003) LPELR-812 (SC); *Yusuf v. Obasanjo & 50 others* (2003)9-10 SC 53 @ 91; (2003) 16 NWLR (Pt.847) 554; Obasanjo v.Yusuf & Anor (2004) LPELR-2151 (SC) p. 64; (2004) 9 NWLR (Pt. 877) 144. See particularly *Buhari & Anor v. Yusuf* (2003)14NWLR (Pt. 841) 446 @ 520 where it was said that

> "an unsuccessful candidate in an election cannot be made a party to an election petition against his will."

I also do not agree with 1st respondent that paragraphs 140, 141 and 142 of the petition are vague or imprecise. I am rather of the view that facts necessary to elicit an appropriate response from the respondents of the electoral infractions complained of by the petitioners have been pleaded in those paragraphs.

I however agree with 1st respondent (INEC) that paragraph 143 of the petition where the petitioners simply complained that "1st respondent deliberately entered wrong scores/results" for 22 States named therein; Paragraph 144, where they averred that "there were discrepancies on very large scales at the various levels of recording and collation of results, particularly between the polling units and the Ward Collation Centres," without specifying the said polling units and Ward Collation Centres where these said large scale discrepancies' took place; and paragraph 145 where petitioners gave notice that they would rely on their same flawed statistician's report among other expert documents they did not frontload, are bad and liable to be struck out for vagueness.

Paragraph 146 of the petition where petitioners simply stated as ground four of the petition that:

> "The petitioners aver that the 2nd respondent was at the time of the election not qualified to contest the election, not having the constitutional threshold,"

is also imprecise and vague as it gives no particulars of any of the several qualifying and disqualifying factors set out in sections 131 and 137 of the Constitution. The main purpose of pleadings as further fortified by Paragraph 4(1)(b) of the first Schedule of the Electoral Act, 2022, I repeat, is to properly and clearly inform the adverse party of the case he is coming to meet, so that he can respond appropriately to it. That is fair hearing. That requirement of the law does not permit parties to keep their cards face-down as petitioners did in paragraph 146 of their petition when they simply averred, generally, that 2nd respondent was not qualified to contest the 25th February 2023 Presidential election, without revealing in what form he was not qualified or disqualified for the election. That paragraph of the petition falls fall far short of the requirements of paragraph 4(1) (b) of the First Schedule of the Electoral Act, 2022 and so liable to be struck out and must be struck out.

Conclusion on issue One of 1st Respondent

The sum total of all the foregoing is that, while paragraphs 129 and 133 of the petition are liable to be struck out for non-joinder of necessary parties, to wit Messrs Adejoh and Governor Yahaya Bello of Kogi State accused in the petition of committing electoral malpractices, paragraphs 92, 95, 98, 121, 126,

129, 133, 143, 144 and 146 are vague, imprecise and lack particulars and so fall short of the requirements of Paragraph 4(1)(b) of the First Schedule of the Electoral Act, 2022. They are therefore all ordered struck out.

Paragraphs 93, 94, 96, 97, 99, 100, 101, 102, 104, 105, 108, 109, 100, 111, 112, 113, 114, 115, 116, 118, 119, 120, 122, 125, 130, 134, 138, 139, 140, 141, 142, 145 on the other hand are in order and properly pleaded.

Issue 2 of first respondent in this same application reads:

Whether having regard to the mandatory provisions of paragraph 4(1)(b) of the First Schedule of the Electoral Act 2022, a reasonable cause of action has been disclosed in respect of the grounds of the petition contained in paragraph 16(a), (b), (e) and (d) of the petition to warrant further or any adjudication on same.

Counsel on behalf of 1st respondent this time anchored their arguments principally on the grounds on which the petitioners founded their petition. Counsel reproduced paragraphs 16(a), (b) and (c) of the petition where the petitioners alleged that:

(a) The election of 2nd respondent was invalid by reason of non-compliance with the provisions of the Electoral Act, 2022;

(b) The election of 2nd respondent was invalid by reason of corrupt practices;

(c) The 2nd respondent was not duly elected by majority of lawful votes cast at the election.

They next referenced section 134 of the Electoral Act, 2022 stating that “an election may be questioned on, among others, that the election was invalid by reason of corrupt practices and non-compliance with the provisions of this Act" and argued that this provision (S. 134) has a proviso in section 135(1) to the effect that an election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the election tribunal or court that the election was conducted substantially in compliance with the principles of this Act and the non-compliance did not substantially affect the result of the election. Relying on the cases of *Ojukwu v. Yar'Adua* (2008) 4 NWLR (Pt. 1078) 435 @458-459 and *Yusuf v. George* (2019) LPELR-48661 (CA), learned counsel submitted that for petitioners to sustain their ground of corrupt practices and non-compliance of the election with the provisions of the Act, they are required to not only plead the fact of non-compliance but further assert positively in the

petition and prove that the non-compliance and corrupt practices complained of substantially affected the result of the election. To properly do that, they argued, petitioners must plead and show how many votes were affected by the irregularities and that the deduction of such votes would void the return of the 2nd respondent as the winner of the election. They said not only did the petitioners not assert in their petition that the non-compliance complained of substantially affected the election, they did not also plead the votes or polling units affected by the non-compliance to enable this court form an opinion on whether the non-compliances and corrupt practices complained of substantially affected the election or that 2nd respondent polled majority of lawful votes in the election and so ought to be returned or the election voided on grounds of noncompliance and corrupt practices. Without those facts-in the petition, the petitioners, counsel submitted, have simply blown 'muted trumpet' and their petition lifeless and failed to disclose a reasonable cause of action, so it is liable to be dismissed.

Resolution of issue 2

This issue does not deserve any serious consideration, the reason being that petitioners expressly stated in paragraph 17 of their petition that:

> "The petitioners aver that the election was not conducted in accordance with the provisions of the Electoral Act, 2022 and other extant laws and *that the non-compliance substantially affected the result of the election*, in that the 2nd respondent ought not to have been declared and returned as the winner of the election."

That sufficiently answers the complaint of 1st respondent.

Issues 3 and 4 of 1st respondent's first application: Counsel to 1st respondent in their issues 3 and 4, which they also argued together, basically relied on their contentions in issue 2 of the 'lifelessness' of the petition to submit that the petition has by reason of the alleged omission in the petition identified above, had become academic and constitutes abuse of process of court so this court is robbed of jurisdiction to entertain it.

Resolution

This combined issue is founded on issue 2, and since issue 2 has been determined against 1st respondent, issues 3 and 4 perish with it and so are hereby resolved against 1st respondent.

Second respondent's similar application filed on 13/05/2023 seeking dismissal of paragraphs 14 and 15, 19-81, 87-104, 108-128 and 133 to 150 of the petition for being fundamentally defective.

For this application, learned counsel to second respondent simply set out a sale issue for determination thus:

> In view of the provision of paragraphs 4(1)(d) of the First Schedule to the Electoral Act, 2022 and relevant judicial decisions, whether paragraphs 14 and 15. 19-81, 87-104, 108-128 and 133 to 150 of the petition are not liable to be struck out.

Anchoring their argument on paragraph 4(1)(d) of the First Schedule to the Electoral Act 2022 and *dicta* in *Ojukwu v. Yar'Adua* (supra) to the effect that a petitioner is required under Paragraph 4(1)(d) of the First Schedule to the Electoral Act, 2022 to state in clear terms the facts giving rise to the ground or grounds on which he based his petition and anything short of that renders the ground or grounds ambiguous, vague and incomprehensible and the court is bound to strike out such ground or grounds, counsel submitted that the paragraphs of the petition challenged by them suffer different defects both in law and in fact. To start with, they argued, paragraphs 19-71 of the petition which touch on the failure of the respondent to electronically transmit election results are incompetent, disclose no cause of action and are outside the jurisdiction of this court. They founded that argument on section 134(2) of the Electoral Act stating that "an act or omission which may be contrary to the instruction or directive of the commission or of an officer appointed for the purpose of the election shall not of itself be a ground for questioning the election." Learned counsel argued that, having claimed that the whole idea of the electronic transmission derives its root from the directives of the Commission, the averments in those paragraphs cannot serve as valid grounds for challenging the applicant's election and we should so hold. It was further submitted by counsel that in so far as paragraphs 82-86 of the petition touch on the margin of lead principle, they are unsupported by any relief in the petition.

Respondent on a second limb argued that paragraphs 72-81 of the petition are incompetent and disclose no cause of action and are unsupported by any of the relief embodied in the petition.

It was also argued by counsel that paragraphs 92-104 of the petition do not relate to or support the ground in respect of which they are pleaded so they should be struck out in their entirety. Paragraphs 108-113, counsel contended, were a mere rehash and repetition of paragraphs 72-81 of the same petition and so also liable to be struck out.

Learned counsel rounded up by contending that paragraphs 91, 92, 115-119, 121, 123 and 124 of the petition which relied. referenced or attempted to incorporate a non-existent report of statisticians without serving such report on the respondents or making it available at the time of the preparation of the respondent's reply is also incompetent and in breach of 2nd respondent's right to fair hearing and so liable

to be struck out. They said 2nd respondent ought to be provided with all the particulars of the case against him to enable him prepare his defence effectively.

The petitioners, in response, argued that this application is premature as the court can only come to its determination after full trial. They submitted, in the alternative, that in any case, even the grounds supporting applicant's motion all confirm that the petition; that the grounds supporting the petition are actually fully supported by facts and these facts are even acknowledged by the 2nd respondent/applicant.

On 2nd respondent's complaint of vagueness, imprecision and ambiguity of the paragraphs of the petition including the failure to attach the Statistician's Report, learned counsel cited the decision of this court in *Chris Ngige & Anor v. INEC & Ors.* (2014) LPELR-25413 (SC); (2015) 1 NWLR (Pt. 1440) 281 to say that that argument goes nowhere; that by the provisions of the First Schedule to the Electoral Act, 2022 and the Federal High Court (Civil Procedure) Rules that complement it, 2nd respondent rather ought to ask them for further particulars of the allegations made in those paragraphs instead of seeking striking out of the petition. In any event, they further argued, petitioners fully met all the requirements of pleadings as far as the 1st Schedule of the Electoral Act, 2022, the practice and procedure and the rules of evidence applicable to election petitions are concerned. They said that 2nd respondent/applicant who filed the most voluminous reply to the petition cannot turn around to claim that the facts of the petition which he copiously reacted to are imprecise, unclear, nebulous and vague. They said 2nd respondent by this application is simply attempting to invite this court to embark on a summary trial of their petition, a practice they said is alien to law generally and election petitions in particular. They cited, among others, the cases of *Abubakar v. Nasamu* (2012) 17 NWLR (Pt. 1330) 523 @ 593, *Wellington v. P.D.P. & Ors* (2023) LPELR-60003 (SC), (2023) 10 NWLR (Pt. 1893) 455; *Buremoh v. Akande* (2017) 7 NWLR (Pt. 1563) 74 @ 98, *Obasanjo v. Yusuf* (2004)9 NWLR (Pt.877) 144 @ 218 in support of this argument. They rounded up by submitting that 2nd respondent has chosen to interpret their petition as bordering on mere complaint against non-adherence with the 1st respondent's instructions and directives when in fact it raises much weightier issues than that and challenges by virtue of section 149of the Electoral Act, 2022 and section 239 of the Constitution of the Federal Republic of Nigeria, 1999 all unlawful conducts of the 1st respondent in the election.

Resolution

In the course of determining 1st respondent's application on the same issue of vagueness and imprecision of the complaints in the petition, I dwelt extensively on the rationale for exchange of pleadings generally and particularly in election petitions as further set out by the lawmaker in paragraph 4(1)(d) of the First Schedule of the Electoral Act, 2022.I hereby adopt all those pronouncements.

In the same exercise, I also considered and pronounced on the same complaint of vagueness/lack of particulars, genericness and imprecision of the complaints of the petitioners in paragraphs 92-146 of the petition also made by 2nd respondent here. I there determined that:

(1) Paragraphs 92, 95, 98, 107, 121, 124, 126, 129, 133, 143, 144 and 146 are vague, imprecise and lack particulars, and so fall short of the requirements of paragraph 4(1)(b) of the First Schedule of the Electoral Act, 2022 and therefore also liable to be struck out, while

(2) Paragraphs 93, 94, 96, 97, 99, 100, 101, 102, 104, 105, 108, 109, 100, 111, 112, 113, 114, 115, 116, 118, 119, 120, 122, 125, 130, 134, 138, 139, 140, 141, 142, 145 are in order and properly pleaded.

I abide by those findings. I shall therefore here simply focus on paragraphs 14-91, 147-150 and the few paragraphs between paragraphs 92-146 of the petition omitted by the 1st respondent in its application, in determining the complaints of 2nd respondent of whether petitioners' complaints in those paragraphs were really vague, imprecise and generic. I now start that exercise.

Without prejudice to what I had earlier said and which I hereby reconfirm on the invalidity of the statistician's report relied on by the petitioners for particulars of their averments in the petition, I am of the opinion that paragraphs 14-15 of the petition where the petitioners specifically complained only about correctness of the contents of INEC Forms ECDA(A) (being the summary of final collation of results; and Form EC8E-being the final declaration of results), are clear as to the issue raised therein and so not vague.

Paragraphs 16-18 of the petition are not attacked by 2nd respondent and so are hereby skipped.

I also do not find vague paragraphs 20-22 of their petition where the petitioners complained that 1st respondent did not keep to its earlier promise of electronic transmission of election results to its IReV portal in real time when it returned 2nd respondent as duly elected.

I however find vague, imprecise and falling far short of the requirements of paragraphs 4(1)(d) and 15 of the 1st Schedule of the Electoral Act, 2022 the averments in paragraph 23 of the petition where the petitioners complained that

(a) the result of the election as announced by INEC does not represent the lawful votes cast;

(b) that votes were 'wrongly allocated to 2nd respondent', and

(c) that lawful votes cast for them (petitioners) were 'massively deducted' from their scores by INEC to facilitate the return of lawful valid votes cast for them.

These paragraphs ought to contain the lawful votes of the petitioners that were alleged massively deducted, as well as those alleged to have been allocated to 2nd respondent by INEC (1st respondent) to return him elected.

We find properly and sufficiently pleaded paragraphs 24 down to 72 of the petition where the petitioners again simply complained that INEC did not keep to its promise of real-time electronic transmission of election results to its IReV portal.

We however find vague, imprecise and lacking in particulars paragraphs 82-86 of the petition where the petitioners complained that Permanent Voters Card (PVCs) collected in the polling units where elections were cancelled or did not hold across the country is above 1,810,206, which is the margin of lead between 1st petitioner and 2nd respondent, consequently, the return of the 2nd respondent was hasty, premature and wrongful. This pleading ought to contain the precise number of 'Permanent Voters Card (PVCs) alleged collected in the polling units' which by petitioners' contention would have closed the margin of lead between 1st petitioner and 2nd respondent to make the latter's return unlawful. Without that information, the complaint is difficult to understand and respond properly to let alone resolve.

Paragraphs 87-91 where the petitioners complained of corrupt practices in the conduct of the election by INEC, which practices they complained took the form, among others, of manipulation by 1st respondent through deliberate suppression and discounting of their lawful votes while inflating the votes of scores of 2nd respondent, is vague in so far as the polling stations where the said corrupt practices took place are not stated.

Paragraphs 92 to 147 of the petition, less paragraphs 135 and 136 of the petition, also complained of by 2nd respondent as vague, imprecise and generic have been dealt with by us while considering 1st respondent's application on the same issue. We hereby adopt our findings in that application in resolving the complaints of 2nd respondent in this application.

As for paragraphs 135 and 136 of the petition, we are of the view that paragraph 135, where petitioners complained of manipulation of the election in Lagos State by 1st respondent resulting in 'depletion' of their votes and 'inflation' of 2nd respondent's votes, is vague in the absence of pleading of the number of votes so depleted and inflated.

In respect of paragraph 136 of the petition, even the petitioners again complained that the votes returned by 1st respondent for Obio-Akpor and Port Harcourt Local Government Areas of Rivers State did

not reflect the actual votes scored in the said Local Government Areas or even those uploaded to IReV by INEC and so liable to be voided, no 'correct' figures of the actual votes cast or as reflected in the IReV as alleged were pleaded, so it is also bad for vagueness and imprecision and therefore liable to be struck out.

The sum total of the foregoing is that the complaints of vagueness, imprecision and genericness of averments hurled by 2nd respondent against the petition are only made out as regards Paragraphs 23, 82-86, 88-91, 92, 95, 98, 121, 124, 126, 129, 133, 135, 136, 143, 144 and 146 of the petition. Accordingly, those paragraphs are hereby struck out, while the remaining paragraphs of the petition are deemed in order and pass the vagueness test of paragraph 4(1)(d) of the 1st Schedule of the Electoral Act, 2022.

In pronouncing the said paragraphs of the petition bad for vagueness and liable to be struck out. I am not unmindful of the argument of the petitioners that 2nd respondent's remedy lies in an application for further particulars and not striking out. I am however of the opinion that application for particulars is only one of several options open to 2nd respondent, who in any case is not under any obligation to help petitioners make out their case against him by asking for particulars of their generic and nebulous complaints. That is also the point that was made by Fabiyi, JSC, in *P.D.P. v I.N.E.C. (*2012) 7 NWLR (Pt. 1300) 538 when His Lordship said (at p.564) that:

> "The application for an order for further particulars or the like is merely a shield in the hand of a party who so desires, and not a sword to be used by a party whose pleading is grossly inadequate, insufficient or devoid of necessary particulars herein. The decision in *Olawepo v. Saraki* (2009) All FWLR (Pt. 498) 256 cited by learned counsel on both sides is in point. It is not the duty of a respondent to groom a petitioner on how to draft its petition. ”

It is also quite revealing, in fact even reassuring, I must say, that this argument of petitioners on the duty on 2nd respondent to ask for further particulars of the allegations in their petition rather than asking for striking out the petition or its vague paragraphs, was also rejected by Muntaka-Coomassie, JSC while delivering lead judgment in *P.D.P. v. I.N.E.C.* (2012) 7 NWLR (Pt.1300) 538,even as the same argument had found favour with His Lordship (Muntaka-Coomassie, J.S.C.) two years earlier in his contribution in *Nwankwo v. Yar'adua* (2010) 12 NWLR (Pt. 1209) 518 at 560. His Lordship in the latter case of P.*D.P. v. I.N.E.C.* (supra) endorsed the stand of trial tribunal that Paragraph 12(5) of the 1s Schedule of the Electoral Act, 2022 (same as Paragraph 12(5) of the 1s Schedule of the Electoral Act, 2010) permitting respondents to apply to strike out a petition did not exist in the 2006 Electoral Act in force at the time *Nwankwo v. Yar'Adua* (supra) was decided and that made all the difference.

Regarding the further argument of 2nd respondent that, petitioners' complaint that 1st respondent did not observe its own promises to transmit election results to its IReV portal in real time was caught and made comatose by section 134(2) of the Electoral Act stating that (an act or omission which may be contrary to the instruction or directive of the commission or of an officer appointed for the purpose of the election shall not of itself be a ground for questioning the election, I think it is neater, and even safer, to defer it to the main judgment for determination on its merits, especially since that contention is also one of the main complaints of the petitioners in the petition itself. That is what case law advises. See again *Nwankwo v. Yar'Adua* (2010) 12 NWLR (Pt. 1209) 518@584-585 (SC).

Third respondent's Application on the same Issue of Vagueness of Paragraphs of the Petition.

In its own application of 8th May 2023, 3rd respondent, like 1st and 2nd respondents, also prayed us to strike out all of paragraphs 17-146 of the petition on the same grounds of vagueness, imprecision, nebulousness and petitioners' failure to join Mr. Adejoh and Governor Yahaya Bello of Kogi State against whom allegations of electoral infraction were made. Additionally, it also complained that petitioners' averments in paragraphs 19, 20, 21, 35, 41, 42 and 45 of the petition are all pre-election matters which occurred before the election and outside the jurisdiction of this court sitting as an election petition court.

Again, the petitioners argued, in response, that their complaints were properly pleaded in the petition and so not imprecise nor pre-election matters as alleged by 3rd respondent.

Resolution:

Since the application of 3rd respondent relates to the same paragraphs of the petition objected to by 1st and 3rd respondents, over which we have already made findings, we abide by and adopt those findings in determining the application of 3 respondent.

We further hold that petitioners' averments in paragraphs 19, 20, 21, 35, 41, 42 and 45 of the petition are not pre-election matters. In fact, whereas the issues of the assurances given by INEC of real-time transmission of election results to IReV raised by petitioners in paragraphs 19 and 20 of the Petition, how the elections were generously funded by the Federal Government of Nigeria on account of those assurances as averred in paragraph 21 of the petition, and how 1st respondent transferred its in-house I.C.T. Expert from one department to another before the election as alleged in paragraph 35 of the petition, cannot by any means give rise to a cause of action let alone a reasonable cause of action in petitioners, the averments in paragraphs 41, 42 and 45 of the petition are simply notices by the petitioners to subpoena witnesses to testify about 1st respondents omissions and commissions in the conduct of the actual election of 25th

February 2023 and so cannot by any means be described as causes of action let alone pre-election matters for which they could have commenced action as alleged.

In conclusion, the applications of 1st, 2nd and 3rd respondents succeed only partly and the following orders are made on them:

(1) Paragraphs 23, 82-86, 88-91, 92, 95, 98, 121, 124, 126, 129, 133, 135, 136, 143, 144 and 146 and are hereby struck out as prayed.

(3) The remaining paragraphs of the petition attacked pass the vagueness test and Paragraph 4(1)(d) of the 1st schedule of the Electoral Act, 2022 and are hereby upheld.

That leaves us with the stand-alone application of 3rd respondent also filed on 8/5/2023, as well as the three applications of the respondents all objecting to the petitioners replies to their replies.

Second Respondent's stand-alone application seeking striking out of the petition for abuse of judicial process, etc.

Third respondent in his stand-alone application complained, amongst others, that this petition constitutes a gross abuse of judicial process by reason of an originating summons in suit No.SC/CV/354/2023 filed on 28th February 2023 by the Attorneys-General of Adamawa, Akwa Ibom, Bayelsa, Delta, Edo and Sokoto States against the Attorney General of the Federation at the Supreme Court of Nigeria. The principal argument of counsel to 2nd respondent on this issue is that the said plaintiffs' States of the Federation, whom he described as 'all controlled by the 2nd petitioner, in their originating summons in the apex court raised against the Attorney General of the Federation the same issue here of 1st respondent's failure to transfer or transmit polling unit results from its BVAS to its Result Viewing Portal (IReV) in the 25th February 2023 general elections and even sought against the Attorney General of the Federation declarations that the said election was fundamentally flawed and so invalid, null and void and of no effect so this petition constitutes gross abuse of process. Senior counsel on 2nd respondent's behalf submitted that while 1s petitioner is a stakeholder in the governance and politics of the 1st plaintiff (Adamawa State) in suit No.SC/CV/354/2023, his running mate in the presidential election (Senator Okowa) was the incumbent Executive Governor of the 4" plaintiff, Delta State, in that suit, so there was without doubt 'visible affinity' between the petitioners herein and the plaintiffs in the Supreme Court case, which affinity, counsel further submitted, (translates to privity).Counsel referenced the decision of this court in *Sani v. President, Federal Republic of Nigeria* (2010) 9 NWLR(Pt.1198) 153 @ 177, where this court relying on Black's Law Dictionary, 8th Edition at p.1239, defined privy in relation to litigation to (include someone who controls a

law suit though not a party to it, someone whose interests are represented by a party to the lawsuit, and a successor in interest to anyone having a derivative claim". Counsel submitted that the instant petition, being the last in the series, presents 'a classical case' of abuse of judicial process. They argued that had the Supreme Court determined Suit No SC/CV/354/2023 before it, there would not have been need for filing of the instant action. Contrariwise, they submitted, if this court determines this petition, it will automatically render suit no SC/CV/354/2023 nugatory. They submitted that the incongruity the whole circumstances painted by them portends can be best imagined if this court determines the issues in this petition one way or the other and the Supreme Court takes a different position. Counsel said it is an abuse of process where a party proceeds in the ventilation of his supposed grievance in such a way that two courts are set on a collision course with the likelihood of delivering contradictory decisions. The cases of *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264) 156 @ 188 (SC);*Ojo v. Olawore* (2008) 6-7 SC (Pt. II) 54 @ 70, reported as *Ojo v. A.-G., Oyo State* (2008) 15 NWLR (Pt. 1110) 309; *Dingyadi v. INEC* (No.2) (2010) 18 NWLR (Pt. 1224) 154@221 (SC)were cited by learned senior counsel to support the contention that instituting multiplicity of actions on the same subject against the same opponent; instituting different actions between the same parties simultaneously in the different courts; where two similar processes are used in respect of the exercise of the same right; where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness, all constitute abuse of judicial process. They rounded off by citing *Arubo v Aiyeleru* (1993) 3 NWLR (Pt. 280) 126 @146 to say abuse of process is a serious wrong in judicial proceeding and attracts the ultimate penalty of dismissal of the abusive process.

The thrust of the response of the petitioners' counsel is that suit No. SC/CV/354/2023 was not filed by the petitioners so this petition cannot be properly labelled an abuse of process. In any event, they further argued, Suit No SC/CV/354/2023 has been long withdrawn by its plaintiffs even before it was mentioned and that fact is not only well known to 2nd respondent, it was even stated in petitioners' reply to the petition. Counsel submitted that even counsel to 2nd respondent know that abuse of judicial process cannot be established where parties are different hence their foray into the meaning of (mere affinity' and how parties in suit no SC/CV/354/2023 and this petition are related in affinity.

In his reply on points of law, 2nd respondent through his counsel submitted that not only have the petitioners failed to present to this Court any order of the Supreme Court striking out or dismissing suit No. SC/CV/354/2023, even assuming that they did, it would not have addressed their contention that the instant petition constitutes abuse of process, as the law, according to counsel, forbids withdrawal of a suit for the purpose merely of filing a fresh one. Such conduct itself, it was submitted, is also a specie of abuse of

judicial process. The case of *Olawore v. Olanrewaju* (1998) 1NWLR (Pt.534) 436 @ 455 was cited in support of that argument.

Now, it is settled position of the law that once a court is satisfied that a proceeding before it amounts to abuse of process, it has the right and indeed duty to invoke its coercive powers to punish the party in abuse. Quite often that power is exercised by dismissal of the action that constitutes the abuse. See: *Arubo v. Aiyeleru* (1993)3 NWLR (Pt. 280) 126 @ 146 (SC); *Dingyadi v. INEC* (No.2)(2010)18 NWLR (Pt. 1224) 154 @ 221 (SC); *Ladoja v. Ajimobi* (2016)10NWLR(Pt.1519)87 (SC); *Oyeyemi v. Owoeye* (2017)12NWLR (Pt. 1580)364 (SC); *Otoko v. Aderia* (2018) All FWLR(Pt.937) 1662 @ 1673. But multiplicity of actions on the same subject matter and issue will only constitute abuse of judicial process if the parties in both actions are the same or privies to one another. See Okafor v. Attorney General of Anambra State (1991) 2 NSCC 407@ 419-420; (1991) 6 NWLR (Pt. 200) 659. It necessarily has to be so because, except where a person is shown to be privy of another as recognised by law, no man can be punished for the actions or sins of another. That is the crux of the issue here. It is whether the Petitioners, Alhaji Abubakar Atiku and his political party, the Peoples' Democratic Party, can be properly described as privies of the Governments of Adamawa, Akwa Ibom, Bayelsa, Delta, Edo and Sokoto States who undisputedly instituted Suit No SC/CV/354/2023 against the Attorney General of the Federation before the Supreme Court of Nigeria. That question can only get a negative response, for the Government of a State, regardless of the political party platform on which its Executive Governor is or was elected, represents all shades of opinion in the State, including even those who may not belong to any political party at all. In fact, a State Government is not even bound nor obliged to take instructions from the political party of the Governor. Interestingly, our Law Reports are also replete with cases where State Governments elected on the same political party platform with the Federal Government have repeatedly sued the Federal Government at the Supreme Court. A good example is the recent New Currency Change case that was instituted by the Attorneys General of Kogi, Kaduna and Zamfara States against the Federal Government, even as both parties were APC Governments. In that situation, one wonders where counsel would place this proposition of privity by affinity.

Again, in *Attorney General of Abia State & 35 Others v. The Attorney General of the Federation* (2002) LPELR-611(SC); (2002) 6 NWLR (Pt. 763) 264, all the Attorneys General of the 36 States of the Federation, including those elected on the same platform with the then Chief Olusegun Obasanjo and PDP Government of the Federation, sued the Attorney General of the Federation over the constitutionality of some provisions of the 2001 Electoral Act that elongated the tenure of elected Local Government Councils. Again, in that litigation, where would we locate the (privity) so called of the Peoples' Democratic Party (PDP)?

In short, we reject this argument of 2nd respondent of abuse of judicial process on account of litigation commenced by State Governments against the Attorney General of the Federation. That is as we also take note of the notice of discontinuance of suit No.SC/CV/354/2023 filed by the plaintiffs in that case since 3/3/2023, which Notice was tendered by the petitioners in this court as exhibit PV in the course of the hearing of the main petition on 6/6/2023. This court is obligated by section 122(1)(m) of the Evidence Act, 2011 to take judicial notice of its proceedings.

The other argument of note of 2nd respondent in this application is the one of failure of petitioners to join Friday Adejoh and Governor Yahaya Bello of Kogi State and its effect on the petition. We have already struck out the relevant paragraphs of the petition where allegations of malpractice were made against the two men.

We abide by that decision. We shall simply add that we do not agree with 2nd respondent's argument that the entire petition merits dismissal for non-joinder of those two men. The proper sanction, in the circumstances of this case as we have already pointed out citing *Nwankwo v Yar'Adua* (2010) 12 NWLR (Pt. 1209) 518 @583 paras. G-H (SC), is to strike out the paragraphs of the petition where those allegations were made. That order, we also further add, and contrary to the argument of 2nd respondent, will not affect the paragraphs where allegations were made against unnamed thugs. Unnamed persons cannot be joined to an election petition like it is sometimes done in trespass cases. See Obasanjo v. Yusuf (2004)LPELR-2151 (SC) p.18-19; (2004) 9 NLWR (Pt. 877)144 where a similar argument was rejected out of hand by Kutigi and Pats-Acholonu, JJSC, thus:

> "It is impossible to drag unknown touts, police, army and hordes of others to court and join them. That would be bizarre."

(*The Challenges to Replies Filed by the Petitioners*)

All three respondents also challenged the validity of the replies and their accompanying witness statements on Oath and List of documents petitioners served on them in response to their replies to the petition.

Their common complaint in those applications is that the said Replies or paragraphs thereof offend Paragraph 16 of the First Schedule of the Electoral Act, 2022 governing filing of replies by a petitioner and so liable to be struck out.

Since the said three replies of petitioners are slightly different in paragraphing, we deem it more appropriate to consider them separately despite the commonality of the complaints in them. We proceed to do that now by starting with 1st respondent's application.

First Respondent's Application: First respondent's objection/application, filed on 9th May 2023, was against the reply of the petitioners that was served on it on 20/4/23. First respondent there sought orders:

(1) Striking out paragraphs 1.2 (i), (ii), (iii), (v) and 2.1 (b), (c), and (d) of the petitioner's reply.

(2) Striking out the further witness statement on oath of the DM (who later revealed himself in the proceeding as Senator Dino Daniel Melaye) and PDP both deposed on 20th April 2023.

(3) Striking out the petitioners' list of additional documents dated the day of 20th of April 2023 which accompanied it.

The thrust of its argument, which its counsel founded principally on Paragraph 16 of the First Schedule of the Electoral Act,2022,is that petitioners in paragraphs 1.2 (i), (ii), (iii), (v) of their reply to its reply introduced new facts relating to 2nd respondent's non-qualification to contest the Presidential election of 25th February 2023. These new facts are

(1) an alleged forfeiture by 2nd respondent of the sum of $460,000 to a United States District Court in Illinois Eastern Division as purported compromise agreement touching on proceeds of crime,

(2) forgery of academic certificates and,

(3) 2nd Respondent's citizenship of the Republic of Guinea.

These new facts, learned counsel to 1st respondent complained, were not mentioned in their petition and so amount to introducing new facts and issues in a reply, a practice expressly prohibited by Paragraph 16 of the First Schedule of the Electoral Act, 2022 and therefore liable to be struck out. Counsel pointed out that even though petitioners in their reply to their reply claimed that these new facts were made in response to averments in their Reply to the petition, they were actually never raised there. They said all 1st respondent said in its reply, in response to the allegation of non-qualification of 2nd respondent raised by petitioners in paragraph 146 of the petition, was that, as regards that allegation, the petitioners did not state anything beyond their bare assertion in paragraph 146 that 2nd respondent was not qualified. Rather than demonstrate to the court that there are more averments in the petition than that assertion, counsel submitted, the

petitioners, brought in, in their reply, new facts of purported crimes committed by 2nd respondent in a foreign country, for which he was alleged convicted, and an allegation of his having dual citizenship. These new facts/issues, counsel argued, citing Paragraph 16 of the First Schedule of the Electoral Act,2022,A.P.C. v. P.D.P. (2015) 15 NWLR (Pt. 1481) 1@ 81 and *Ogboru & Anor v. Okowa & Ors*. (2016)LPELR-48350 (SC); (2016) 11 NWLR (Pt. 1522) 84, can only be raised in the original petition or by its amendment and not through petitioners' reply, even more so as the respondents would have no further opportunity to respond to them.

Counsel further argued that paragraph 21(c) of the petitioners' reply, where petitioners alleged that the officials that uploaded the polling unit results in Forms EC8A after the election of 25/2/2023 were not 1st respondent's presiding officers, and that the said officials could not have uploaded results between 26/2/2023 till 26/4/2023 and up till date, were also new facts which 1st respondent would not have any opportunity to controvert, and so ought not to be allowed.

Learned counsel further argued, too, that paragraph 2.1 (d) of petitioners' reply is not a response to any new issue raised by 1st respondent but just repetition of petitioners' earlier averment in paragraph 19 of their petition that 1st respondent's Chairman had earlier publicly stated that the prescribed mode of collation of results would be electronic.

As regards the additional witness statements and list of documents accompanying the impugned reply of the petitioners, counsel submitted that they also contained the same offensive new facts contained in the reply, and so equally afflicted and ought to be struck out along with the reply.

The petitioners' counsel's first line of response to these arguments was that, in so far as the issues raised by petitioners in the said reply regarding the non-qualification of 2nd respondent do not relate to the election conducted by 1st respondent, it ought to remain neutral and non-committal. In support of that argument, they cited the cases of *Okoye v. INEC* (2009) LPELR-4727(CA), *Agagu v. Mimiko* (2009) 7 NWLR (Pt. 1140) 342 @ 441 and *I.N.E.C. v. Jime & Ors.* (2019) LPELR-48305 (CA).

In any event, they submitted, petitioners have not brought in any new facts or issues in their reply; that 1st respondent having claimed in paragraphs 16 and 15.3 of its reply to the petition that 2nd respondent met all the constitutional threshold and requirements, it cannot be heard to say at this stage that the details of the same lack of qualification supplied in the reply, which do not fall outside those requirements, raised fresh issues or will amount to an amendment of the petition.

Counsel said the petitioners having founded their petition on four distinct grounds in paragraph 16 of their petition, the fourth being 16(d) in which they stated that 2nd respondent was at the time of the election not qualified, they were not under any duty to respondents at that stage of the pleading to supply the details of 'the evidence' they intended adducing to prove that complaint. They said with 1st respondent's rebuttal of their averment in paragraphs 16(d) and 146 of the petition, they saw it necessary to furnish the court with the nature and character (of the evidence' to be adduced at the trial of the petition through their list of witnesses hence the inclusion of the paragraphs in issue. They argued that the documents they intend to rely on are even deemed to be in the possession of 1st respondent and so cannot be said to be new to it. They rounded off by labelling the arguments of 1st respondent mere 'fishing for technicalities' which the courts have long departed from. In their reply on points of law, counsel to 1st respondent submitted that petitioners' contention that their allegations of 2nd respondent's non-qualification by reason of his purported conviction by way of forfeiture and dual citizenship are matters personal to only 2nd respondent and so he alone should respond to, begs the question. Learned counsel said it is immaterial that the said new facts were directed at 2nd respondent, what the court should be concerned with is whether those facts could be put in at all by petitioners through a reply; that once this court finds that petitioners cannot, the fact that the issue of qualification relates to 2nd respondent alone becomes of no moment.

Resolution

To start with, I am not persuaded by the petitioners' argument that the new facts or issues raised by them in their impugned reply relate to non-qualification of 2nd respondent and not the conduct of the election by 1st respondent so 1st respondent who is supposed to be neutral in the matter cannot be heard to be objecting to them. The issue raised by 1st respondent actually relates to the competence of a major process before the court, to wit the reply filed by petitioners. It is an issue which counsel to 1st respondent as ministers in the temple of justice, and even 1st respondent itself as a party to the petition, have a duty to bring to the attention of the court. That obligation even becomes more pronounced when it is realised that a substantial number of 1st respondent's counsel are members of the inner bar who even have greater responsibilities to the court by virtue of their ranking. This preliminary-objection like the argument of petitioners is therefore rejected.

Coming now to the merits of the application/objection, it is common ground that the provisions of the Electoral Act most relevant to its resolution is paragraph 16 of the First Schedule of the Electoral Act, 2022 subtitled (petitioner's reply that paragraphs states thus:

"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) ..... (*Italics mine for emphasis*)

The provision, with the employment of the word "shall", forbids the addition of 'new facts' by a petitioner to his reply, especially if such new facts may have the effect of tending to amend or even just adding to the contents of his petition. This court in *A.P.C. v. P.D.P.* (2015) 15 NWLR (Pt.1481) 1 @ 81(cited with approval by the Supreme Court in *Ogboru & Anor v. Okowa & Ors*. (2016) LPELR-48350 (SC); (2016) 11 NWLR (Pt. 1522) 84 put this position perfectly when it said that:

"…. election petitions are *sui generis*. They are in a class of their own. That are made to fast-track the hearing of petitions. They are, however, not designed to spring surprises on parties ... By paragraph 13 of its reply the appellant then brought in the fresh issue

..... same was not proper. The appellant did not have a leeway to aver to new facts which ought to be in the original petition filed. The court below was right when it found as follows:

"it is trite that the petitioner cannot introduce new facts not contained in the petition in his reply as in the instant case because as at the time of filing his petition, that fact is within his knowledge and if he did not adequately include it in his petition, the proper thing to do will be to amend his petition."

Incidentally, this interpretation of Paragraph 16(1)(b)of the 1st Schedule of the Electoral Act, 2022, also reflected in the cases of *Arhiavbere v. Oshiomhole* (2013) All FWLR (Pt. 687) 782 at 792, *Orji v P.D.P.* (2019) 14 NWLR (Pt. 1161), 310 @ 403-404 and *Adepoju v. Awoduyilemi* (2019) 14 NWLR (Pt. 1161) 364@ 382, only restates the well-settled position of our adjectival law that a claimant's claims or grievances are made in his statement of claim or petition as the case may be, and not in his reply to the statement of defence to that claim. That position also finds expression in *Olubodun v. Lawal* (2008) All FWLR (Pt. 434) 1468 @ 1501 at paragraph E; (2008) 17 NWLR (Pt. 1115) 1, where it was said (Aderemi, JSC) that:

> A plaintiff must not in his reply make any allegation of fact or raise any new ground of claim different from what is contained in his statement of claim. If a plaintiff does, such a plea is irretrievably bad in law and no evidence will be admissible in its proof.

In fact, the settled position of the law is that except in some well-defined situations, a reply to statement of defence is not even permitted where no counter-claim is served. This is so because there is in law an implied joinder of issues on any fact raised in the statement of defence and any averment contained therein is deemed denied. See: *Bakare & Anor v. Ibrahim* (1973) 6 SC 205, *Akeredolu v. Akinremi* (1989) 3 NWLR (Pt. 108) 164@ 172; *Egesimba v. Onuzuruike* (2002) FWLR (Pt. 128)@ 1407;(2002) 15 NWLR (Pt. 791) 466; *Spasco Vehicle Plant Hire Co. v. Alraine* (1995) 9 SCNJ 288@ 301; (1995) 8 NWLR (Pt.416) 655, *Ishola v. S.G.B.N. Ltd*. (1997) 2 NWLR (Pt.488) 405; *Obot v. C.B.N.* (1993)8 NWLR (Pt. 310) 140 @ 159-160.

As to what will amount to 'new issue' in a defence to warrant filing a reply, see *Egesimba v. Onuzuruike* (supra) (2002) FWLR (Pt. 128) @ 1407-1408 (SC), (2002) LPELR-1043 (SC); (2002) 15 NWLR (Pt. 791) 466 Ogundare, JSC, had this to say (at p.45,LPELR):

> "The new issue, both in its content and materiality, must be further and additional to the statement of claim. The mere fact that a defendant states his own side of the case does not necessarily make it new, particularly when the plaintiff has told a contrary story in his statement of claim. In that case, the case stated by the defendant amounts to joining issues with the plaintiff and that does not wear the name of a new issue in the trial."
>
> (Italics mine)

Ayoola, JSC, giving lead judgment in Egesimba elaborated more on the issue when His Lordship said (at pages 14 to 15 of LPELR) that:

> "That there is an implied joinder of issues on a defence which is unaccompanied by a counter claim if no reply is served appears to me a general principle of our procedural law which, for avoidance of doubt, is often incorporated in rules of civil procedure in many jurisdictions. Parties are brought to an issue where the last pleading is the statement of defence to which a counter claim had not been appended. In such a case it is assumed that the plaintiff does not intend to rely on any excuse or justification in answer to any allegation in the statement of defence or raise any fresh facts not already contained in the pleadings

filed, but is content to traverse the allegations in the statement of defence and, thereby, challenge the defendant to prove the truth of those allegations."

Guided by all these and Paragraph 16(1)(a) of the First Schedule of the Electoral Act, 2022, it does not by any means appear to me that the new facts of

(a) conviction/fine, forgery, and dual citizenship of 2nd respondent introduced by Petitioners into their reply,

(b) the additional averments of how results could not have been uploaded to INEC's IREV after the 25th day of February 2023, and

(c) whether it was done at all and the relevant officials of INEC could not have been involved in it, not to even talk of the repetitions in the reply of averments already made by petitioners in their petition, can pass as reply filed pursuant to Paragraph 16(1)(a) of the First Schedule of the Electoral Act, 2022.

Particularly as it relates to the 'further details', as petitioners labelled them in their reply, of non-qualification of 2nd respondent, contained in paragraph 2.1(b) of their reply, it bears reiterating that all that the petitioners averred to on it in paragraph 146 of their petition is the bare statement that "the petitioners aver that the 2nd respondent was at the time of the election, not qualified to contest the election, not having the constitutional threshold. No details whatsoever was given by them of what they meant by 2nd respondent's non-qualification, so 1st respondent, who was obviously satisfied that 2nd respondent was qualified to contest the election by the documents he presented to it, also simply joined issues with them in a similar general manner. It is now through their reply that petitioners, who themselves seemed to have had no clear idea of what they meant by 2nd respondent's non-qualification for the election or simply deliberately kept it back when filing their petition, want to now introduce through their reply at a time when respondents have no further right of responding to them. Such unfair tactics cannot, and is not, allowed by our law.

It must be noted, too, that under section 131 of the 1999 Constitution of this country, there are as many as four different qualifications a person must possess before he can contest presidential election and another different grounds that can disqualify such a candidate who has all the four qualifications of section 131.Therefore, an assertion that merely says that a person is not qualified to contest election by reason of non-qualification, will leave not just the person so assailed but every other person involved, including the court, at a loss as to what the pleader has in mind. In fact, to allow such pleading will amount to upsetting the very essence of filing pleadings in a case, which is to give the adversary and the court a clear notice of

the pleader's case-a point further fortified in paragraph 16(1)(a) of the First Schedule to the Electoral Act, 2022.

Still on this issue, I must also not fail to point out that the petitioners were only being clever by half when they claimed in paragraph 2.1(b) of their reply that they were simply giving, as they put it, further details' of the non-qualification of 2nd respondent by averring to the conviction, fine, certificate forgery and dual citizenship of 2nd respondent that they raised in their replies. They had never given any details of 2nd respondent's non-qualification and so cannot talk about (further details let alone hide under such 'further' details to smuggle in the new facts they averred in paragraph 1.2(i) (ii), (iii), (iv) (v) and 2.1(b) of their reply.

These new allegations of petitioners are not also mere (evidence in support of their ground of his non-qualification as their counsel also tried to make them out. They are facts which can only be contained in the petition itself, and not in a petitioner's reply to respondent's defence to the petition. Paragraphs 2.1(b), (c) and (d) of the reply where petitioners averred to no-uploading of polling station results by 1st respondent's presiding officers at the election, I also agree with 1st respondent, are new issues or at best mere further denials by the petitioners to 1st respondent's denials of the averments in the petition. Such is also not permitted in a reply: see again Bakare & Anor v. Ibrahim (supra); *Akeredolu v. Akinremi* (supra); *Egesimba v. Onuzuruike* (supra); *Spasco v Alraine* (supra), *Ishola v. S.G.B.N. Ltd*. (supra); *Obot v. C.B.N.* (supra) earlier cited.

In the light of all the foregoing, the two witness statements as well as the list of documents accompanying that reply, all of which were based on the new facts contained in the impugned paragraphs of the reply in issue, are also incompetent and liable to be struck out.

In summary, 1st respondent's application of 9th May 2023 succeeds in its entirety. Accordingly, paragraphs 1.2(i) (ii), (iii), (iv) (v) and 2.1(b), (c) and (d) of the petitioners' reply filed on 20th April 2023 in response to the reply of 1st respondent, together with the two witness statements on oath and the list of documents which accompanied that reply, are all hereby struck out.

Second respondent's application of 13/05/2022 seeking striking out of the entire 26 paragraph reply of petitioners filed on 23rd April 2023.

Learned senior counsel on 2nd respondent's behalf complained in their written address that petitioners in paragraph 2, 4, 7, 8, 9, 10, 11, 12, 15, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of Part B of the said petitioners' reply (they left out paragraphs 5, 6 and 18 of the said reply)

introduced new facts and issues which are overreaching, particularly in relation to various contrived facts relating to 2nd respondent/applicant's age, educational qualification, state of origin, circumstances of birth, amongst others, which were not in the petition. Not done, counsel complained, the petitioners also introduced brand new witness statements on oath to support and hold up the new facts introduced in the reply. These facts, counsel submitted, are clearly indicative of the fact that the petitioners are out on a hide and seek game against the applicant, a practice they said judicial authorities have firmly condemned. They also referenced the same cases of *Airhiavbere v. Oshiomhole* (2013) All FWLR (Pt. 687) 782 at 792, *Orji v. P.D.P.* (2019) 14 NWLR (Pt. 1161) 310@ 403-404 for their argument that a reply is not a license for a petitioner to rake in new issues tending to amend or add to the contents of his petition.

Regarding the witness statement filed along with the impugned Reply by petitioners, Counsel again cited *Orji v P.D.P.* (2019) 14NWLR(Pt.1161)310@403-404 to submit that there is no provision in the relevant practice directions that permits frontloading of a witness statement filed along with a reply, so it is incompetent and should be struck out.

Counsel rounded up their written address by calling on us to strike out the entire 26-paragraph reply served on 2nd Respondent by the petitioners. That is even as their application completely left out paragraphs 5 and 6, 20, 21, 22, 23 and 26 of the same reply.

In their response of 18/5/2023, counsel to the petitioners submitted that petitioners simply responded to new issues raised by 2nd respondent in his reply to the petition so the reply is in order and permitted by paragraph 16(1)(a) of the First Schedule to the Electoral Act, 2022.

Resolution

I am not even in the least persuaded by the argument of the petitioners that they simply replied to 'new issues' raised by 2nd respondent in its reply to their petition. The petitioners, like they did in their reply to the reply of 1st respondent, introduced fresh facts and issues of the non-qualification of 2nd respondent on grounds of his alleged criminal conviction/fine, forgery of documents and dual citizenship. That is foul play which paragraph 16(1)(a) to the First Schedule of the Electoral Act,2022 expressly prohibits.

Consequently:

1. Paragraphs 1(vii)(a)(b), (c) and (viii) of part one as well as paragraphs 2, 3(i), (ii), (iii) of part two of the reply of petitioners to 2nd respondent, wherein petitioners averred to the new facts of purported criminal conviction of/forfeiture proceedings against 2nd

respondent and avers to his purported dual citizenship as grounds of his non-qualification, are all hereby struck out.

2. Paragraphs 8, 11(i), 24 and 25 of the petition, we hold on the state of the authorities earlier considered, are also new facts or at best mere denials and so liable to be struck out, too, as they do not qualify as replies.

Barring the above, all other paragraphs of the petitioners' reply filed on 23rd of April 2023 stand either not objected to or the complaints against them are not made out.

In other words, the application of 2nd respondent only succeeds partly as stated above.

Third respondent's application as it relates to the reply of petitioners filed on 23rd April 2023 to its reply.

The argument of 3rd respondent was also on the same grounds with that of 1st and 2nd respondents. Like 1st and 2nd respondent, 3rd respondent also relied principally on Paragraph 16(1) (a) of the First Schedule of the Electoral Act, 2022. Learned senior counsel on its behalf complained in its written address that:

(1) Petitioners in paragraph 1,3,4,7, 8,9,10,11,12,13,14,15,16,17,19,24,and 25 (they left out paragraphs 5,6 and 18 of the said reply) of the said reply introduced new facts into the petition.

(2) That the averments in Part (B), paragraphs 2, 4, 7, 8, 9, 11 , 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30,and 31 of the petitioner's reply constitute mere repetitions, rehash of facts already in the petition, as they do not react to any fresh issue raised in the reply of 3rd respondent but merely restated what the petitioners have previously stated, contrary to paragraph 16(1)(a)of the First Schedule of the Electoral Act,2022.

(3) That the averments in paragraphs 8, 10, 32, 33 and 34 of petitioner's reply to the petition are fresh or new issues of fact which tend to add to the contents of the petition or otherwise amend it, contrary to the provisions of paragraph 16(1) (a) of the First Schedule of the Electoral Act,2022.

For these reasons, counsel to 3rd respondents urged us to also grant the application and strike out the paragraphs challenged.

On their part, counsel to the petitioners again argued that the petitioners simply responded to new issues raised by 3rd respondent in its reply, which they had a duty to respond to or else they would be deemed to have admitted them.

Resolution

I find it necessary to first observe that, like all the other replies of petitioners, the impugned reply of petitioners of 20/4/2023 that was served on 3rd respondent is in Parts A and B. Part A is devoted solely to the preliminary objection raised by 3rd respondent in its reply to the petition (that Part is understandably not challenged by 3rd respondent so it shall remain as it is). It is only part B of that reply that is challenged by 3rd respondent and it is also this Part that contains in its paragraphs 32 and 33 the fresh facts of 2nd respondent's alleged status as ex-convict and having dual citizenship. All of which they now insist disqualified him as a candidate for the election. These facts, I have already determined, can only be raised in the petition and not in their reply to the respondent's reply to their petition. They therefore offend paragraph 16(1)(a) of the First Schedule of the Electoral Act, 2022 and are liable to be struck out.

Besides, these two paragraphs, every other averment in Part B of the reply, bar last paragraph 35, are, as 3rd respondent's counsel rightly pointed out, either mere denials of 3rd respondent's reply to the petition or repetitions of petitioners' averments in their petition and so not permissible in a reply as per paragraph 16(1) (a) of the First Schedule of the Electoral Act, 2022. See again the cases of *Bakare & Anor v. Ibrahim* (supra), *Akeredolu v. Akinremi*, *Egesimba v. Onuzuruike* (supra), *Spasco v. Alraine*, *Ishola v. S.G.B.N.* (supra) and *Obot v. C.B.N* (supra), It is also not the law, as erroneously argued by petitioner's counsel, that failure to reply to facts averred by 3rd respondent in his reply to the petition would mean admission of those facts. Failure to deny averments contained in a statement of defence does not imply admission like it does with failure to deny averments in a statement of claim: See *Egesimba's* case (Ayoola, JSC) at pages 14 to 15 of LPELR).

In summary, 3rd respondent's application succeeds in its entirety; consequently, barring paragraph 35, the entire Part B of the reply of petitioners to the reply of 3rd respondent is incompetent and is hereby struck out. That concludes and settles all seven applications/preliminary objections of respondents.

Next is the objection that were raised by the respondents in the course of the hearing of the petition against the admissibility of documents that were tendered by the petitioners in proof of their petition.

Respondents' objections to documents tendered by petitioners at the trial.

In the course of the hearing of this petition, objections were raised by the three respondents, first to the validity of the witness statements on oath deposed to some by the witnesses of the petitioners, specifically PW12 (petitioner's 12th Witness Egwuma Friday). PW13 (Grace Timothy), PW14 (Grace Ajagbona), PW15(Abidemi Joseph), PW16 (Miss Edosa Obosa), PW17 (Miss Alheri Avuba), PW15 (Miss Sadiya Mohammed Haruna), PW21 (Mr. Samuel Oduntan - a Statistician); PW23 (Janet Nuhu Turaki), PW24 (Christopher Bulus Ardo), PW25 (Victoria Sani), PW26 (Hitler Ewunonu Nwala - a forensic Expert) and PW27 (Mr. Mike Enahoro-Ebah, a legal practitioner) whose witness statements were filed/deposed to long after the petition was filed and so did not accompany the petition as required by paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022, stating that the election petition shall be accompanied by a list of the witnesses that the petitioner intends to call in proof of the petition. This objection was argued comprehensively by counsel to parties and the ruling on it deferred by the court to final judgment.

Objections were also raised by respondents to virtually all the documents tendered by the petitioners in proof of their petition, but unlike the earlier objection on witness statements, counsel only gave notice that they would give reasons for those objections in their final addresses. They have since fulfilled their promise by filing separate addresses on those objections.

The petitioners on their part also objected to some of the documents tendered by the respondents in the course of their defence and gave notice that they would also give reasons for their objection in an address to be filed at the close of evidence. They, however, seem to have had a change of mind and have not filed any written submissions as promised. I am therefore left with only the objections of the respondents.

I now proceed consider the said objections of respondents.

The validity of the witness statements on oath of PW's (petitioner's witnesses) 12, 13, 14, 15, 16, 17, 18, 21, 23, 24, 25, 26 and 27 that did not accompany the petition as required by paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022.

This objection was taken and comprehensively argued by 1st respondent's counsel, first on 08/6/2023 when PW12, Mr. Egwuma Omachonu Friday, a presiding officer in the disputed 25/2/2023 presidential election, tried to adopt his witness statement on oath which he deposed only on the 6th of June 2023, long after the petition was filed on 2pt march 2023. Subsequently, when the petitioners called their witnesses numbers 13-18, 21, and 23-27, who also only deposed to their witness statements in the same June 2023, long after the filing of the petition and even after hearing of the petition had commenced, respondents' counsel again raised and adopted the same objections against those witness and their witness

statements. As explained earlier, the thrust of their objection which was championed by Chief Wole Olanipekun, SAN, for 2nd respondent, was anchored on Paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022 requiring that the election petition shall be accompanied by among others, witness statements on oath of the witnesses the petitioner intends to call in proof of the petition. Learned counsel argued that in so far as the witness statements on oath of the said witnesses of petitioners did not accompany the petition of petitioners as required by Paragraph 4(5)(b) and (6)and (7) of the 1st Schedule to the Electoral Act, 2022, they were incompetent and cannot be relied on by petitioners or the witnesses concerned. It is irrelevant, counsel argued, that the said witnesses came to testify on subpoenas issued to them by this court, as Paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022 makes no distinction between ordinary witnesses and those on testifying on subpoena. Learned senior counsel in further support of that argument cited to us the fairly recent decisions of this court in Senator *Ifeanyi Ararumne v. INEC & Ors*. (2019) LPELR-48397(CA); the unreported decision of this court of 17/7/2020 in *Advance Nigeria Democratic Party (ANDP) v. INEC & 2 Ors.* (2020) in appeal no. CA/A/EPT/406/2020, and *Peoples Democratic Party v. Okogbuo* (2019) LPELR-489989 (CA) p.22-23; *Amakiri v. INEC & Ors.* (2019) LPELR-48677 (CA) and *Bashir & Anor v. Kurdula & Ors.* (2019) LPELR-48473 (CA).

First and second respondents' counsel also made arguments to the same effect.

Opposing that argument, Chief Chris Uche, SAN, lead counsel for petitioners, first referred us to paragraph 54 of the 1st Schedule to the Electoral Act, 2022, which provision learned senior counsel submitted made the Federal High Court (Civil Procedure) Rules applicable to this proceeding. In that respect, counsel submitted, Order 3 rules 2 and 3 and Order 20 rules 15 and 16 of the Federal High Court (Civil Procedure) Rules, 2019 are relevant. Counsel submitted that by Order 3 rules 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019, a subpoenaed witness shall be first served a subpoena before he can depose to a witness statement, so the witness statements on oath of PWs'12, 13, 14, 15, 16, 17, 18, 21, 23, 24. 25. 26 and 27 are in order in so far as all of them came to testify on subpoenas served on them by the court. In support of his position, learned senior counsel cited the cases of *Omidiran v Potricia Enteh & Anor* (2010) LPELR-9160 (CA); (2011)2 NWLR (Pt. 1232) 471*; Lasun v Awoyemi* (2019) LPELR-11912 (CA), *Edoho v A-G. Akwa Ibom State* (1999) 1 NWLR (Pt. 425) 488@ 494; *Sule v: Ologunebi* (2015) LPELR-24746 (CA); *Olaniyan v Oyewole* (2008) 5 NWLR (Pt. 1079) 114.

Resolution

Now, this contention of respondents has far-reaching consequences, as its resolution in favour of respondents will result in the court discountenancing the evidence of all the Presiding Officers, namely

PWs'12, 13, 14, 15, 16, 17, 18, 23, 24 and 25 who were in the polling units in the election and so were eyewitnesses to the alleged failure by INEC to transmit and upload the election results to IReV (a major pillar of the petition). It will also result in discountenancing the evidence, oral and documentary, presented of petitioners' two expert witnesses, PW21 (Samuel Oduntan) and PW26 (Hitler Ewunonu Nwala), but also their last witness Mike Enahoro-Ebah (PW27) who alone testified on the non-qualification of 2nd respondent for the election and tendered documents in that direction. That is even as we must not fail to remind us that the relevant facts in the Petition and Replies of the petitioners that would have supported the evidence of PWs' 21, 26 and 27 Messrs Samuel Oduntan, Hitler Ewunonu Nwala and Mike Enahoro-Ebah have already been found incompetent and struck out by this court while ruling on the applications/preliminary objections of respondents.

Coming back to the objection of respondents that Paragraph 4(5) (b) of the 1st Schedule to the Electoral Act, 2022 does not make any dichotomy between 'ordinary' witnesses and those testifying only on subpoena as regards the duty to frontload witness depositions along the petition, so the evidence of PW12, 13, 14, 15, 16, 17, 18, 21, 23, 24 and 25, 26 and 27 whose witness statements on Oath were not frontloaded with the petition are incompetent, Paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022 reads thus:

"4(5) The election petition shall be accompanied by-

(b)Written statements on oath of the witnesses; and

Clearly, this provision, particularly the word 'witnesses', whose written statements on oath the lawmakers require that 'shall' accompany the election petition, must be given its literal interpretation: see the recent decisions of this courtin *Ogba v.Vincent* (2015) LPELR-40719 (CA); Senator *Ifeanyi Ararume v INEC & Ors*. (2019) LPELR-48397 (CA); unreported decision of this court of 17/7/2020 in *Advance Nigeria Democratic Party (ANDP) v. INEC & 2 Ors.* (2020) in Appeal No. CA/A/EPT/406/2020, and *Peoples Democratic Party v. Okogbuo* (2019) LPELR-489989 (CCA) p.22-23 on the issue. Where the words of a statute or instrument are clear like paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022 is, particularly the unqualified 'witnesses' employed there, the court has no duty than to give it its literal meaning.

Now, in *Advance Nigeria Democratic Party (ANDP) v. INEC & 2 Ors.* (2020) in Appeal No. CA/A/EPT/406/2020 this court-Ige, Nimpar (JJCA) and Agim, JCA, as he then was - was unanimous in its decision on the point in issue. Ige, JCA, pronouncing the leading judgment of the court at p.39 of this court, had this to say:

> "....I am of firm view that if section 145 of the Electoral Act, 2010 and paragraphs 3, 4, 54 of the First Schedule to the Electoral Act, 2010 are juxtaposed with Order 3 rules 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019, it is eminently clear that Order 3 Rules 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019 is out rightly inapplicable to the situation the appellant finds itself in this case. Paragraph 3 and 4 of the First Schedule to the Electoral Act, 2010 contain express and adequate provisions as to what the contents of a petition should be and the documents that must be frontloaded and accompany an election petition, including a list of the witnesses that the petitioner intends to call in proof of the petition and more importantly written statements on oath of the witnesses. Copies or list of every document to be relied on or at the hearing of the petition must also accompany the petition. All of these items as stipulated or laid out in paragraph 4(5) must be filed simultaneous with and along with the petition."

With His Lordship adding further at p.43:

> "There is no dichotomy between the witnesses mentioned in paragraph 4(5) of 1st Schedule to the Electoral Act in respect the witness statement on oath of witnesses and witness statement on oath of a subpoenaed witness. There is no distinction between ordinary witness and subpoenaed witnesses under paragraph 4(5) of 1st Schedule to the Electoral Act. In essence, paragraph 4(5) of 1st Schedule to the Electoral Act covers witness statements oath of all categories of witnesses the petitioner intends to call at the trial of his or her petition."

In Senator *Ifeanyi Ararume v. INEC & Ors.* (2019) LPELR-48397 (CA), Tsammani, JCA (with the concurrence of his brothers Owoade, Akinbami, Bolaji-Yusuff and Bayero, JJCA) again confirmed this position, when it said at page 34-35 that:

> "Learned counsel for the appellants has argued that the P.W.2 was before the court on a subpoena therefore the tribunal could not turn around to prevent him from testifying. It is not disputed that the said witness was before the Court on a *subpoena ad testificandum*, bout it must be realized that the witness was summoned on the application of the appellants. He was not summoned by the tribunal in the exercise of their powers pursuant to paragraph 41(5) and (6) of First Schedule to the Electoral Act. He was therefore, for all intents and purposes, witness for the appellants. In that respect, his written statement on Oath was subject to the requirements of the law as stipulated by Paragraph 4(5) of the First Schedule

> to the Electoral Act (supra) strict compliance with paragraph 4(5) of the first schedule to the Electoral Act is mandatory. It is of such a nature that there is sanction in subparagraph (6) of paragraph 4."

Also see the decisions of this court in *Peoples' Democratic Party v. Okogbuo & Ors.* (2019) LPELR-489989 (CA) where we followed the same position taken by us in 2015 in the case of *Ogba v. Vincent* (2015) LPELR-40719 (CA) with Agim, JCA (as he then was) giving leading judgment as we shall soon show.

It is of interest that in all these cases, the earlier decisions of this court in *Omidiran v Patricia Etteh & Anor* (2010)LPELR-9160(CA); and *Lasun v Awovemi* (2019) LPELR-11912(CA) relied on strongly by Mr. Chris Uche, SAN, for the petitioners were cited and considered but departed from by this court.

Quite remarkably, too, in his book Modern Nigerian Election Petitions and Appeals Law, published in November 2017,which book Chief Chris Uche (SAN), the lead counsel for petitioners herein wrote a glowing foreword to, the learned author, Mr. Kelechi Peter lkorogha, Esq., had this to say (at pages 138-140) while commenting on this same issue and the erstwhile position of this court in Omidiran v. Etteh (2011) 2 NWLR (Pt.1232)471@489 and *Lasun v. Awoyemi* (2009) 16 NWLR (Pt. 1168) 513 relied on by Chief Uche (SAN):

> "Just like a petitioner in an election has 21 days from the date of the result of the petition to file his petition otherwise such a petition becomes statute barred, there is also a time limit to the period within which a petitioner is to file a deposition or other document not filed along with the Petition. Thus, all evidence required in proof of a case must as a pre-condition to exercise jurisdiction, be brought within the stipulated time frame, that is to say twenty-one days after the declaration of the result. The Supreme Court has consistently in a long line of cases insisted on this strict and inelastic approach in enforcing the electoral laws. Thus the efficacy of the decision in *Omidiran v. Etteh* (2011)2 NWLR (Pt.1232)471@489[see also *Lasun v. Awoyemi* (2009) 16 NWLR (Pt.1168)513@ 548-549], where in the Court of Appeal held that it would be appropriate to meet the justice of the case for a tribunal to order the filing of witness depositions by subpoenaed witnesses outside the stipulated time frame, has been watered down, in that all evidence required in poof of the case mustbe brought within the stipulated time frame. See the case of *Ogba v Vincent & Ors.* (2015) LPELR-40719 (CA) where the Court of Appeal [Agim, J.C.A., as he then was, in lead judgment],held thus:

"I think that this court in *Omidiran v. Etteh* and the Supreme Court in *Oke v Mimiko* adopted different approaches in addressing the issue of whether a tribunal or court can allow a witness deposition or other document not filed along with the petition or not filed within the time allowed for filing election petition to be filed and used in an election proceeding. *Omidiran's* case did not strictly enforce the time limits prescribed in section 141 of the Electoral Act 2006, the provisions in the first schedule thereto in prohibiting the introduction of additional facts in the proceedings after the period allowed for filing the petition and closure of pleadings and paragraph 1(1) of the election Tribunal and Court Practice Directions, 2006 and the content and form of the petition. It held that the purpose of the practice direction is to guide and regulate compliance with and observance of the provisions of the First Schedule to the Act and the Federal High Court Rules, where applicable. This elastic approach of the electoral laws by this court in that case is not in line with the current judicial approach of strict enforcement of Electoral laws and the current approach of applying the election tribunal and court practice directions as overriding the rules of court in election cases. In *Oke v. Mimiko* the Supreme Court approached the issue in keeping with the current judicial trend of strictly applying electoral laws and procedural rules and giving them supremacy over rules of court in lection cases.....The law as laid out *strictisma juris* in *Oke v. Mimiko* is that a witness deposition that is not filed along with the petition within the 21 days allowed for filing the petition cannot be filed in the proceedings. It held thus:

.... If there was an (sic) evidence which was fundamental to the determination of the petition, that evidence ought to have been placed willy-nilly before the tribunal within the time specified by the Electoral Act or any other Act. That

evidence ought to be regarded as the spinal cord of the petition. *Even if it was being withheld by any person, there are several ways to go about placing same before the tribunal.* The evidence Act is very clear on this. The petitioner ought to have resorted to that procedure...."

(italics supplied for emphasis)

As said earlier, Chief Chris Uche, SAN, in his foreword to that book glowingly endorsed this author's position and even recommended it to judges like us in these words:

> "The author has ably and remarkably sought to examine the legal framework of Electoral legislation within the landscape of judicial decisions emanating from disputes arising from elections in the context of election litigation from the preparation of the petition itself through pre-trial proceedings, the actual trial, the judgment and trial proceedings ..... This book truly stands out in the midst of several other books in this field.
>
> "As an avid participant in electoral litigation, I wholeheartedly recommend this book to all, particularly to lawyers, Judges, students of electoral laws, litigants and as well as all stakeholders in the development of our constitutional democracy."

I shall hold counsel to his words, not just because they are coming from him but also because they are correct.

Permit me to still say a word or two of my own on petitioners' contention that Order 3 rules 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019 permitting parties to file witness deposition of a subpoenaed witness even after commencement of their action applies automatically to election petitions by virtue of paragraph 54 of the First Schedule to the Electoral Act, 2022,so the Witnesses statement of their witnesses filed by them after hearing of the petition had long commenced were in order. In the first place, Paragraph 54 of the First Schedule to the Electoral Act, 2022 simply states as follows:

> Subject to the express provisions of this Act, the practice and procedure of the tribunal or the court in relation to an election petition shall be as nearly as possible, similar to the practice and procedure of the Federal High Court in the exercise of its civil jurisdiction, and the civil procedure rules shall apply with such modifications as may be necessary to render them applicable having regard to the provisions of this Act, as if the petitioner and the respondent were respectively the plaintiff and the defendant in an ordinary civil action.

This provision clearly makes application of the Civil Procedure Rules of the Federal High Court in election petitions (subject to the express provisions of the Electoral Act. It is not the other way round of modifying provisions of the Act to agree with the rules of the Federal High Court as suggested by petitioners' counsel. That much, paragraph 54 further clarifies by stating that even where the Federal High Court Rules are considered applicable, they “shall [only] apply with such modifications as may be necessary to render them applicable having regard to the provisions of this Act."

What all that means is that, where there is express provision in the Act on a particular situation, as it clearly is in paragraph 4(5) (b) of the First Schedule to the Electoral Act, 2022 that says the election

petition shall be accompanied by (Written statements on oath of the witnesses," the provisions of the Federal High Court (Civil Procedure) Rules will not apply. Fortunately, there is again high authority in support of this position in the dictum of Muntaka-Coommassie, JSC, in *Nwankwo v. Yar'adua* (2010) 12 NWLR (Pt.1209) 518 (S.C). There, His Lordship, after reproducing paragraph 50 of the 1st Schedule to the Electoral Act, 2006 (now Paragraph 54of the 1st Schedule to the Electoral Act, 2022), had this to say @ p.581 paragraph F-G:

> "From the above, it is crystal clear that the provisions of the Federal High Court Rules are subject to the provisions of the First Schedule of the Electoral Act, 2006, and if there is any conflict between them the provisions of the Rules under the Electoral Act will prevail. It is where there is a lacuna in the provision of the Rules provided in the Electoral Act 2006 that the provisions of the Federal High Court Rules will apply."

I shall also add that parliament having expressly stated without dichotomy in paragraph 4(5)(b) of the First Schedule to the Electoral Act, 2022 that petitioners shall frontload witness statements of their witnesses along with their petitions, it is not within the province of the court to give that provision a different interpretation. It is also of no moment that in the court's opinion the said literal meaning of Paragraph 4(5)(b) of the First Schedule to the Electoral Act, 2022 seems harsh and may not meet the justice of the case, as is being suggested by the petitioners that subpoena is only issued to an unwilling witness so it is not contemplated by Paragraph 4(5)(b) of the First Schedule to the Electoral Act, 2022 that a witness on subpoena should also depose to a witness statement before the subpoena to compel his attendance is served on him by the court. If anything, that argument rather brings to mind the very strong admonition by the British House of Lords of Lord Denning, M.R., in *Duport Steels Ltd. v. Sirs* (1980) 1 All ER 529, where it was said by Lord Scarman in his speech at p.551 (on an appeal from Lord Denning's lead judgment in that case) that:

> "But in the field of statute law the Judge must be obedient to the will of parliament as expressed in its enactments. In this field parliament makes and unmakes the law, the Judge's duty is to interpret and to apply the law, not to change it to meet the Judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions is possible. But our law requires that the Judge choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result is unjust but inevitable, the Judge may say so and invite parliament to reconsider the provision. But he must not deny the statute. Unpalatable statute may not be disregarded

> or rejected, merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purpose of the statute may the Judge select the construction which best suits his idea of what justice requires."

That is the settled position of the law even in this country: See *Ndoma-Egba v. Chukwuogor* (2004) 2 SC (Pt.I) 107 @ 114-115; (2004)6 NWLR (Pt.869) 382 (Uwaifo, JSC); *Aromolaran v. Agoro* (2015) All FWLR (Pt.766) 574 @ 613; (2014) 18 NWLR (Pt.1435)153 (Kekere-Ekun, JSC); *Coca-Cola (Nig.) Ltd. v. Akinsanya* (2017) 17 NWLR (Pt. 1593) 74@ 127-128 (Eko, JSC).That much Onnoghen, JSC, later CJN, in *Global Excellence Communications Ltd. & Ors. v. Donald Duke* (2007) LPELR-1323 (SC) at p.19-20(2007) 16 NWLR (Pt. 1059) 22, summarized aptly when he said that:

> "The duty of the court is not to deal with the law as it ought to be but as it is."

Paragraph 4(5) (b) of the First Schedule to the Electoral Act, 2022. I will even venture to say further, appears to have been inserted by parliament in further realisation of the sui generis/time-bound nature of election proceedings, a point further driven home by the Constitution of the Federal Republic of Nigeria (Second Alteration Act) 2010 which introduced among others a new section 285(6) into the 1999 Constitution. That provision states that an election tribunal or court shall deliver its judgment in writing within 180 days from the date of filing of the petition. This time limit for disposal of proceedings, it must be noted, is peculiar to election petition proceedings in our body of laws. It is not found in any other proceeding in the entire body of laws of this country.

It thus imposes on the election court or tribunal a duty to properly utilise its case management/pre-hearing session as effectively as possible to carefully plan the future course and particularly its plenary hearing of every petition, so as not to fall foul of the maximum 180-days limit. That necessarily includes trimming the number of witnesses, where necessary, once pleadings are closed in the petition. That is also the point echoed by this court in *Peoples' Democratic Party v. Chibuzor Okogbuo & Ors.* (2019) LPELR-489989 (CA) at p.24-25, when it said (per Orji-Abadua, JCA) that:

> "What is deducible is that witness deposition filed by a witness not listed in the petition cannot be countenanced by the court or tribunal after the expiration of the time prescribed for the filing of the petition. It was stressed by this court therein that to allow a petitioner to file an additional witness statement at any stage of the Election proceedings would destroy the regulated environment that must exist to ensure that both parties to the petition are expeditiously heard and the petition determined within 180 days from the date of the

> Petition. *This court observed that such an indulgence would remove the control of the pace of the proceedings from the control of the Constitution, the Electoral Act and the First Schedule to the Electoral Act and leave it at the whim of the parties and open the floodgate for all kinds of abuses of the judicial process*."

I think the same point is also deducible from the following dictum of Tobi, JSC, in his lead judgment in *Buhari v. INEC.* (2008) LPELR-814 (SC) p.97 paragraphs A-B; (2008) 19 NWLR (Pt.1120) 246:

> "The whole concept of Election Petition being *sui generis*, in my view, is to project the peculiarity of the reliefs sought, the time element and peculiar procedure adopted for the hearing of the petition and all that."

It is quite interesting that what follows immediately after the above dictum, is another statement by His Lordship Tobi, JSC, emphasizing the need for witness statements to accompany an election petition as directed by Paragraph 1(1)(b) of the then Election Tribunal Practice Directions (now Paragraph 4(5)(b)of the First Schedule to the Electoral Act, 2022. In pronouncing similar depositions in *Buhari v. INEC* (supra) incompetent for non-compliance with that provision, Tobi, JSC, again had this to say at pp. 97-98:

> "These depositions by paragraph 1(1) (b) of the Practice Directions are joined to the petition and they will go a long way to prove the petition. This is clear from the language of the sub-paragraph which is as follows:
>
> 1(1) all petitions to be presented before the tribunal or court shall be accompanied by...
>
> (b) *written statements on oaths of the witnesses*..."
>
> The operative word is 'accompanied', which means coexist, or join."
>
> (*Italics mine for emphasis*)

See also the judgment of the apex court's in *Oke v. Mimiko* (2013) LPELR-20645 (SC) relied on by this court in *Ogba v. Vincent* (supra).

By rules of stare decisis, this court is bound not only by decisions of the apex court but also by its own previous decisions: See *Victor J. Rossek & Ors. v. African Continental Bank Ltd & Ors*. (1993) LPELR-2955 (SC) p.80; (1993) 8 NWLR (Pt. 312) 382; *T.P.P. Ltd. v. U.B.N. Ltd.* (2006) 12 NWLR (Pt. 995) 483@ 504 paragraph A-C (Ogbuagu, JSC).

The long and short of all the foregoing is that the objection of the respondents to the witness statements of PW12 (Egwuma Friday), PW13 (Grace Timothy), PW14 (Grace Ajagbona), PW15(Abidemi Joseph), PW16 (Miss Edosa Obosa), PW17 (Miss Alheri Ayuba), PW18 (Miss Sadiya Mohammed Haruna), PW21 (Mr. Samuel Oduntan - the Statistician); PW23 (Janet Nuhu Turaki), PW24 (Christopher Bulus Ardo), PW25 (Victoria Sani), PW26 (Hitler Ewunonu Nwala - Forensic Expert), and PW27 (Mr. Mike Enahoro-Ebah, Legal Practitioner) which did not accompany the petition as required by Paragraph 4(5)(b) of the First Schedule to the Electoral Act, is hereby sustained and the said witness statements, being incompetent, are hereby struck out and expunged from the records of this court.

The further consequence of that decision is that, given the provisions of Paragraph 41(3) of the same First Schedule to the Electoral Act, 2022 stating that:

> "There shall be no oral examination of a witness during his evidence-in-chief except to lead the witness to adopt his written deposition and I tender in evidence all disputed documents or *other exhibits referred to in the deposition*;"

it follows that all the evidence, including evidence in cross-examination and all documents (reports included, namely PAH1,PAH2, PAH3 and PAH4 and PAR1A, PAR1B, PAR1C, PAR1D,PAR1E and PAR1F, and PBD, PBD1A, PBD1B, PBD1C, PBD1D, PBD1A, PBD2A, PBD3, PBD4, PBE1, PBE2, PBE3, PBE4, PBE5, PBE6, PBF1, PBF2, PBF3 and PBF4) coming from and tendered by the said petitioners' witnesses, namely PWs'12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 26 and 27 aforementioned, are incompetent and hereby also expunged from the records.

Other Objections of the Respondents

That takes me to the other objections raised by the respondents to the admission of documents tendered by petitioners at the hearing, which objections they only gave notice that they would give reasons at final address stage. All three respondents filed their submissions on the objections and adopted them on 1/8/2023. Petitioners on the same 1/8/2023 also adopted their responses to those objections.

Before going into the objections, I deem it necessary to first dispose of the preliminary argument of counsel to petitioners that some of the documents objected to by respondents are electoral materials certified by first respondent (INEC) which documents parties had agreed at the pre-hearing session that they would not object to, so respondents cannot resile from that agreement and raise objection as they are doing. They even cited section 169 of the Evidence Act, 2011 to say respondents are estopped from resiling from that agreement.

The simple answer to that argument is that, this court and indeed every court is bound to act on only admissible evidence, so if a document or piece of evidence is inadmissible in evidence, the court must expunge it, and it must do so even if that will require it to overrule its own interlocutory decision admitting that evidence. See on that *Francis Shanu & Anor v. Afribank Nigeria Plc* (2002) 17 NWLR (Pt.795) 185; (2002) LPELR-3036 (SC), p.28 paragraph A-B (Uwaifo, JSC). Counsel, as ministers in the temple of justice, are therefore within their right, and in fact duty bound, to draw the court's attention to that fact, regardless of whatever agreement they may have had with petitioners at the pre-hearing session. In any event, the court is only bound to honour lawful agreements, not unlawful ones to admit evidence that may well be inadmissible.

With that said, I now proceed to the objections as contained in the addresses filed by respondents. Here, I shall take them together as I would have done if the reasons now advanced for them were canvassed earlier.

First is respondents' allegation of Improper or non-Certification of INEC documents: Counsel to 1st respondent in paragraphs 1.34 to 1.36 of 1st respondent's written address 14/7/23, 2nd respondent at Paragraph 3.13 of his 20/7/23 address, and 3rd respondent in paragraph 1.14 of its written address on objections filed on 14/7/23, all argued that payment for certification is one condition precedent under section 104 of the Evidence Act, 2011 for certification of public document. They said petitioners did not pay for certification of some INEC documents, specifically exhibits PAJ1 - PAJ37, PAJ38, PAJ39A-F, PAJ40, PAJ41 -PAJ47, PAK1-PAK13, PAL1, PAL2, PAQ - PAQ14, exhibits PAS1 - PAS20, PAT1 - PAT17,PAU1 - PAU27, PAV - PAV20, PAW1 - PAW25, PAX1-PAX13, PAY1-PAY18, PAZ1 - PAZ17, PBA17 - PBA27, PBB1-PBB21, and did not provide any evidence of payment of certification fees.Learned counsel all citing the cases of *Tabik Investment Ltd v. G.T.B.* (2011) 17 NWLR (Pt. 1275) 240, *Jimoh v. Hon. Minister of Federal Capital Territory* (2019)5 NWLR(Pt.1664) 45@64 and 596 *Emeka v Chuba-Ikpeazu & Ors.* (2019) 5 NWLR (Pt. 1664) 45@64, argued that certification fees for the said documents having not being paid for by petitioners, the documents remain inadmissible and liable to be expunged from the records.

Petitioners in response argued (in paragraph 4.1 and 6.0 to 6.2, paragraph 2.13 of their response to 2nd respondent, and 2.6-2.7 of their response to 3rd respondent) that they actually paid certification fees to 1st respondent for the said documents and they were issued receipts by 1st respondent. Some of those receipts, they said, were attached to the documents themselves while others were separately receipted for, including in one instance payment of N6,669,301.25 and another for N150,967.50. They argued that it was

therefore unconscionable of 1st respondent who collected such huge sums of money from them to turn around and plead non-payment of certification fees. Learned senior counsel on petitioners' behalf also pleaded the Evidence Act's presumption of regularity of official acts and submitted that it is was strange that a public institution like 1st respondent would come before a court of law to disown documents officially issued by it.

In specific response to 3rd respondent's argument, counsel to petitioners argued that section 104(1) and (2) of the Evidence Act, 2011 does not prescribe that the amount paid for certification must be reflected on the certified true copy of the document as part of the certification, so the argument of 3rd respondent's counsel that because the certification of the said exhibits did not carry the amount paid for certification, certification fees was not paid for is clearly erroneous.

Now, section 104 of the Evidence Act, 2011 simply states that:

> "Every public officer having custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees prescribed in that respect, together with a certificate written at the foot of such copy that it is a certified true copy of such document or part of it as the case may be.
>
> (2) The certificate mentioned in subsection (1) of this section shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies shall be called certified true copies."

There is nothing in the foregoing provision, particularly subsection (2) dealing with what should appear on the certification, that suggests that the fees paid for certification of a public document should also appear on the face of the document like the date, name and official title of the public officer issuing that document, as required by subsection (2). Payment of certification fees is only a condition-precedent to the certification, so it could be stated in any other place, including another document. That point, this court also made plain in answer to a similar argument in *Daggash v. Bulama* (2004) 14 NWLR (Pt. 892) 144 @ 187 when it said that:

> "Payment of legal fee on application for a certified true copy is not part of the condition to make a document so certified a certified true copy. It is only a condition which must be fulfilled before the officer certifies a document."

See also *Uzoma v. Asodike* (2010) All FWLR (Pt. 548) 853 @ 868-869; *A.N.P.P. v. P.D.P.* (2006) 17 NWLR (Pt. 1009) 467@ 490 where it was said that certification fee payment contained in separate documents is sufficient. In this case, not only is there evidence of certification fee payment by petitioners first in the form of exhibit PD, showing payment by petitioners to INEC of the sum of N150,967.50 for some documents, there is also a second INEC Receipt in INEC's own letter-head and attached to exhibit PAF 4C. This latter document evidencing further payment of certification sum of N6,696.301.50k by the petitioners' "Atiku/PDP Legal Team", shows that it was made vide receipt No. RRR:27084265 3235 and on INEC's Receipt No 069727 of 25-05-2023.It specifically states on its face thus:

> "....the sum of Six Million, Six Hundred and Ninety-Six Thousand, Three Hundred and One Naira and Twenty-Five Kobo only being Payment for CTC IPO Electronic of copy of data level (not very legible) with time stamp/event history/polling units of EC8As & S yet to be uploaded, Form EC9 & Other documents 2023 Presidential Election."(Italics ours)

All that, in my opinion, is sufficient evidence of certification fee payment, even more so when the receipt indicates that the said payment also covers 'other documents' outside those specifically mentioned therein.

The burden had thus shifted to 1st respondent (INEC) to show that the monies it received from petitioners for certification fee payment did not cover the documents they are now talking about, which documents INEC interestingly also certified. That burden, INEC never discharged, especially when account is taken of the fact that it did not even give the amount assessed, if any, that petitioners were owing them for certification. By the provisions of section 104(1) of the Evidence Act an applicant for certification of public document is only obliged to pay what is assessed by the public officer. What is more, the mere fact that respondent certified the said documents for petitioners, coupled with the evidence of certification fee payment by petitioners in exhibits PD and PAF 4C, sufficiently triggers the provisions of section 168(1) of the Evidence Act, 2011 that says "when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with."This ground of the objection is therefore overruled.

Alleged Engravement of Certification: It was also argued by respondents, relying on *Belgore v. Ahmed* (2013) 8 NWLR (Pt.1355) 60 @ 100 (SC), that certification of the same documents was done by the public officer of INEC by engravement of his name, official title and date, instead of subscription, so that also invalidated the documents and rendered them inadmissible.

I have carefully perused the said documents and verified that that unlike *Belgore v. Ahmed* (supra), the documents in issue here bear the longhand signature of the relevant certifying public officer of INEC. That, in our opinion, is substantial compliance with section 104 of the Evidence Act and attracts the presumption of genuineness vide section 146 of the Evidence Act.

1st and 2nd respondents in particular also argued that exhibits PAH1, PAH2, PAH3 and PAH4 tendered by PW21 (Mr. Samuel Oduntan) and Exhibits PARIA-F tendered by PW26 (Mr. Hitler Ewunonu Nwala), were made during the pendency of this proceeding or in anticipation of it and therefore inadmissible in evidence by virtue of section 83(3) of the Evidence Act, 2011. In their response, the petitioners argued that the said documents were made pursuant to the orders of this court, pursuant to section 146(1) of the Electoral Act, 2022 permitting them to inspect documents, so they were properly before the court.

Much as I am not oblivious of our earlier ruling that these same documents, coming from witnesses whose witness statements on oath were not frontloaded with the petition, are incompetent and so already struck out, I am also of the opinion that petitioners seem to completely misconceive the objection raised by the respondents, which is to the effect that the said documents having been undeniably made during the pendency of this petition or in anticipation of it} are rendered inadmissible by the principal law guiding admissibility of evidence: the Evidence Act, 2011 and its section 83(3). It is therefore lame of the petitioners to found their breach of that provision on account of the orders of this court made pursuant to section 146(1) of the Electoral Act, 2022 that they be allowed to inspect polling documents in the custody of INEC. In any case, section 146(1) of the Electoral Act, 2022 merely states that an order for inspection of a polling document or any other document or packet in the custody of the Chief National Electoral Commissioner or any other officer of the commission may be made by an Election Tribunal or a court of competent jurisdiction if it is satisfied that the order required is for the purpose of instituting, maintaining or defending an election." This does not in any way give petitioners the leeway to adduce evidence in breach of section 83(3) of the Evidence Act, 2011. Section 146(1) of the Electoral Act, 2022 and the interim orders of this court only permitted the petitioners to inspect election documents for the purposes of "instituting or maintaining" an election petition. Nothing in that provision allows a petitioner to file evidence, let alone the bulky expert reports as in exhibits PAH1-4 and PAR1A-F, during the pendency of the petition. The whole idea behind section 83(3)of the Evidence Act, 2011 is to eliminate the danger inherent in allowing a party to manufacture and bring in evidence specifically tailored in anticipation of a case or worse still produce such fresh evidence after the case had begun and parties had fully joined issues in it. That is exactly what the petitioners sought to do with exhibits PAH 1-4 and PAR A-F prepared and filed by their experts long after pleadings in the petition had closed, when respondents would no longer have the opportunity of

retaining their own experts to respond to the evidence presented against them in the said reports. I am in agreement with the respondents, and hereby uphold their objection, that the said reports, which were admitted in evidence as exhibits PAH1, PAH2, PAH3 and PAH4 and PARIA, PARIB, PARIC, PARID, PARIE and PARIF are, without prejudice to our earlier decision that they are incompetent, is also rendered inadmissible in evidence by virtue of section 83(3) of the Evidence Act, 2011.

Inadmissibility of election documents tendered as exhibits by petitioners on grounds of absence of pleading to support them and consequential irrelevance to the petition.

The respondents' argument here went thus:

(i) That exhibits PC, PC1-PC36, being Collation Result Sheets in respect of Abla, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Cross River, Delta, Edo, Enugu, Gombe, Imo, Kaduna, Katsina, Kebbi, Niger, Osun, and Taraba States, are inadmissible in evidence, because, according to the 2nd respondent, the petitioners did not agitate any complaint in respect of them in their petition.

(ii) That exhibits PG, PG1- PG36, being BVAS reports for Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Cross River, Delta, Edo, Enugu, Gombe, Imo, Kaduna, Katsina, Kebbi, Niger, Osun, Yobe and Zamfara States, tendered by the petitioners are also inadmissible because, Petitioners, according to 2nd respondent (INEC), did not ventilate any complaint in their petition relating to Bi-modal Accreditation System (BVAS) with respect to the said States.

(iii) That exhibits PH, PH1-PH5, PH8-PH8, PH9, PH11,PH13,PH15, PH17, PH19, PH20, PH25, PH28 and PH35,which relate to INEC data on the number of registered voters and PVCs collected for the 2023 elections for Abia, Adamawa, Akwa Ibom, Anambra,Bauchi, Bayelsa, Cross River, Delta, Edo, Enugu, Gombe, Imo, Kaduna, Katsina, Kebbi, Niger, Osun, Yobe and Zamfara States, are also inadmissible because Petitioners, according to 2nd respondent, did not make any complaint in their petition with respect to the said States.

(iv) That exhibits PK, PK1-PK9, PL1-PL23, PN1-PN23, PQ1-20, and PR1-3, all of which are Forms EC8As downloaded from INEC's IReV Portal for Local Government Areas in Bayelsa and Kaduna States, and Forms EC8Bs, EC8Cs and EC40G for Local Areas in Kaduna State respectively, are also inadmissible in evidence because Petitioners, according

to 2nd respondent, joined this time by 1st respondent (INEC), did not complain about the elections in Bayelsa and Kaduna States.

(v) Furthermore, that exhibits PN1 -PN23, PQ1-PQ20, PR1-PR3, PT1-PT33, which are printouts of Bimodal Voters Accreditation data, with details including time-stamp for the presidential election, were not pleaded in the petition and so, according to 2nd respondent, also irrelevant and inadmissible in evidence.

(vi) that exhibits PP1 -PP21 and PW1 -PW10, which are Forms EC8Bs downloaded from the IREV/ for 21 Local Government Areas of Kogi State, and Forms EC8Bs for 10 Local Government Areas of Kogi State respectively, were according to INEC not specifically pleaded by the petitioners so they were also inadmissible in evidence.

(vii) that exhibits PJ1 - PJ18, PM1 - PM20, PS1 - PS10, PAK1-PAK13, PAL1, PAQ1-PAQ14, PAS1-PAS20, PAT1-PAT17, PAU1-PAU27, PAV1-PAV27, PBA1-PAB27 and PABB1 - PBB21 were irrelevant, same being not pleaded by petitioners, according to 1st respondent (INEC), and so inadmissible in evidence.

Third respondent was also in agreement with 1st and 2nd respondents in most of these arguments of inadmissibility on grounds of failure of pleading and consequential irrelevance to the petition.

Petitioners through their counsel argued that their petition covers the entire country; that in any case, in an election dispute all election materials and documents are relevant.

Resolution

It appears clear to me that the respondents' objection here is misconceived and founded on an isolated reading of paragraph 143 of the petition where the petitioners averred that "......the 1st respondent and its agents wrongly and deliberately entered wrong scores/results for the underlisted 22 (twenty-two) States, namely: .... viz (Petitioners then went on to specifically mention Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Cross River, Delta, Edo, Enugu, Gombe, Imo, Kaduna, Katsina, Kebbi, Niger, Osun, and Taraba States)." Pleadings of party is not read in that isolated manner to get at a party's complaint. Pleadings must be read holistically to get at the complaint in issue. If that is done as it should be, the respondents would have come across where petitioners left no one in doubt that their complaint about the election is nationwide and not isolated to only some few states. That much is clear first from paragraph 107 of the petition where petitioners averred as follows:

107. The petitioners shall give evidence to show the election results as purportedly declared by the 1st respondent *in respect of each State of the Federation, including* the Federal Capital Territory, the details of which are contained in the table below, are wrong:

(Italics ours)

They then proceeded to list each and every State of the Federation, including the Federal Capital Territory. They also gave in the table the 'wrong' election figures declared by INEC for each State and the FCT. In Paragraph 147 of their same petition, they listed 60 different types/sets of documents they intended relying on to prove the said averment in paragraph 107 of the wrongness of the result declared by INEC for each State and the FCT in the Presidential election. Among those documents listed by them are:

(a) BVAS CTC Reports,

(b) Forms EC8 Series (EC8A, EC88, EC8C, EC8D, EC8D (A), EC8E - Certificate of Return received by petitioners' agents at the election;

(c) Summary of total registered voters on Units basis;

(d) Summary of PVCs collected on unit basis;

(e) Data and Event logs from all BVAs machines used in the election, and

(f) PVC Collection records. These documents were specifically listed at paragraphs 147(1), (6), (36), (37), (56) and (57) of the petition.

These are the same averments/documents respondents are asserting were not pleaded by the petitioners and so irrelevant and inadmissible in evidence. They are wrong. This ambit of the objection of respondents is therefore overruled and rejected.

Objections made by only 3rd Respondent

The next set of objections to documents tendered by petitioners were raised by only 3rd respondent. I now proceed to consider them.

1. *Admissibility of Video Clips:*

The argument that the Video Clips, Exhibits PAF1-PAF3, showing statements made by INEC chairman; Mr. Festus Okoye, National Commissioner of INEC; and the European Union Election Observer Team, being statements contained in a 'computer' (as computer is

defined in the Evidence Act) did not comply with section 84 of the same Evidence Act, reason being that Dr. Alex Adum Ter (PW19) who tendered them and made the Authentication Certificate pursuant to section 84 of the Evidence Act is not their originator and so not in a position to give evidence that will satisfy the requirements of section 84 of the Evidence Act. It was further argued by 3rd respondent's counsel that Dr Ter was not in a position to be cross-examined on the said video clips so they were hearsay evidence coming from him and therefore inadmissible in evidence on that ground, too.

I am, however, of the opinion that this contention is also misconceived, especially when regard is had to paragraphs 1(a), (b), (e)(f) and (g) of the Certificate of Authentication of the said video clips made by PW19, Dr. Ter.

The authentication required by Section 84 of the Evidence Act, in the circumstances the video clips in issue were made, is statements assuring the court that they are in the exact same state they were in the internet from where Dr. Ter (PW19) downloaded them to his laptop computer and subsequently to his flash drives before bringing them to this court. That much is evident in the contents of Dr. Ter's Certificate in exhibit PAF 4B above. For the same reason, the argument that Dr. Ter is not in a position to answer questions on the said clips and so his evidence on them is hearsay is also non sequitur.

2. *Dumping of documents on court as a ground for inadmissibility*:

Next is 3rd respondent's argument that Exhibits PE, PF, PJ1 -PJ17, PK1-8, PL1-23, PM1-20, PN1-23, PP1 - PP21, PQ1 - PQ20, PR1 - PR3, PS1 - PS10, PT1-PT33, PW1- PW10, PAF1- PAF3, PAF4, PAF4B, PAF4C, PAH1-PAH4, PA/38, PAJ39, PAJ40ABC, PAJ41, PAK1-PAK13, PAL1-PAL2. PAR1-PAR(ABCDEF), PAS-PAS20, PAT1-PAT17, PAU - PAU27, PAV1-PAV19, PAW1-PAW28, PAX1.PAX13, PAYI- PAY18, PAZI - PAZ17, PBA1-PBA27, PBB1-PBB21 tendered by petitioners were simply dumped on the court, and not linked to the parts of their case they intended using them, so they should be expunged on that ground too.

The simple and straightforward answer to this argument is that the issue of dumping of documents on court, which expression in any case suggests that the documents so dumped are already in evidence before the court, only goes to the weight to be attached to the documents by the court. On this reasoning, this ground of the objection is rejected and overruled.

3. That some documents tendered were either made during the pendency of this proceeding and/or in anticipation of it and by interested persons: Third respondent also argued that exhibits PAH1, PAH2, PAH3 and PAH4made and tendered by PW21 (*Mr. Samuel Oduntan*),and exhibits PAR1 (A, B,C,D, E and F) of PW26 (Mr. Hitler Ewunonu Nwala) were not only made during the pendency of this proceeding and/or in anticipation of it but also made by persons who were well remunerated by the petitioners so they offend section 83(3) of the Evidence Act, 2011 and so inadmissible in evidence.

It was also submitted that PW21 who produced exhibits PAH1, PAH2, PAH3 and PAH4 did not produce any certificate to back up his said expertise in the relevant field to make his reports admissible in law; that besides, the purported Election Forms EC8As with which he claims to have made his analysis were not even produced by him, just as PW26 did not also identify the BVAS machines upon which he claimed to have conducted forensic analysis on, so their reports, according to 3" respondent, should also be 'treated with caution'. Counsel cited *U.T.B. v. Awanzigana Ent. Ltd.* (1994) 6 NWLR (Pt. 348) 56 @ 77 on this point.

The petitioners did not answer 3rd respondent's argument that PW21 and 26 made their reports during the pendency of this petition or in anticipation of it. All they said in paragraph 2.25 of their reply in response to that objection was that there was no evidence before the court to show that PW21 is a member of 2nd petitioner to be tagged an interested party in the outcome of the petition by virtue of section 83(3) of the Evidence Act.

My answer to the objection of 3rd respondent, first, is that whether a person is an expert to give testimony in a court does not necessarily depend on acquisition of certificates in the field concerned. See: *Aigbadion v. The State* (1999) 1 NWLR (Pt.586) 284. That is just as the issues of whether a witness is the maker of a document also only goes to the weight to be attached to that witness's evidence and not one that affects admissibility. See *Omega Bank (Nig.) Plc v. O.B.C. Ltd.* (2005) 8 NWLR (Pt. 928) 547; (2005) LPELR-2636 (SC) p. 36-37; *G. Chitex Ind. Ltd. v. O.B.I.* (Nig.) Ltd.(2005) 14 NWLR (Pt. 945) 392 @ 411 paragraph F-G (S.C).

Coming to the issue of whether the documents in issue were either made during the pendency of this proceeding and/or in anticipation of it and by interested persons, I must say that, aside our earlier ruling, which I hereby affirm, that the impeached exhibits PAH1, PAH2, PAH3 and PAH4 of Mr. Samuel Oduntan (PW21)and PAR1 (A, B, C, D, E and F) of PW26 are even incompetent by reason of petitioners' failure to accompany their petition with PW21 and 26's witness statements in line with paragraph 4(5)(b)of the First

Schedule of the Electoral Act, it is also clear to me that 3rd respondent's argument that Exhibits PAH1, PAH2, PAH3 and PAH4 of and PAR1 (A, B, C, D, E and F) were not only made by PW21 and 26 during the pendency of this petition but PW21 in particular even admitted that he was well remunerated by the petitioners for his work. Their reports are therefore inadmissible in evidence by virtue of section 83(3) of the Evidence Act, 2011. A document made in anticipation of litigation or during its pendency by persons interested is rendered inadmissible by section 83(3) of the Evidence Act, 2011. See *Anagbado v Faruk* (2019)1 NWLR (Pt.1653) 292 @ 312 (SC); *C.P.C. v. Ombugadu* (2013) All FWLR (Pt. 706) 406 @ 472-473 (SC); *Ladoja v. Ajimobi* (2016) 10NWLR (Pt. 1519) 87 @ 141 (SC); *Oyetola & Anor v. INEC & Ors.* (Unreported judgment of the Supreme Court of Nigeria of 9/5/2023 in suit no. SC/CV/508/2023), now reported in (2023) 11 NWLR (Pt.1894)125.

Exhibits PAHI, PAH2, PAH3 and PAH4 and PARI (A, B, C, D, E and F), besides their earlier confirmed incompetence, are also caught by section 83(3) of the Evidence Act and so hereby further ruled inadmissible in evidence.

3. That exhibits PBD, PBD1A, PB018, PBD1C, PBDID, PBD1A, PBD2A, PBD3, PBD4, PBEI, PBE2, PBE3, PBE4, PBE5, PBE6, PBF1, PBF2, PBF3 and PBF4 tendered by the petitioners through PW27(Mike Enahoro-Ebah) to show 2nd respondent's non-qualification for the presidential election on grounds of his alleged conviction/fine in the United States of America, forgery of certificates and dual citizenship are irrelevant to the proceeding and so inadmissible in evidence, petitioners having not pleaded necessary facts in their petition to support them.

In support of this argument of relevance of evidence as guide to admissibility, 3rd respondent cited among others the cases of *Omega Bank (Nig.) Plc v. O.B.C. Ltd.* (2005)8 NWLR (Pt.928) 547; (2005) LPELR-2636 (SC) p.36-37 (Tobi, JSC) and *Torti v. Ukpabi* (1984) 1 SCNLR 427, (1984)1 S.C.370.The petitioners, while conceding in their reply that relevance is the key to admissibility and the function of pleadings is to define and delimit with clarity and precision the real matter in controversy, submitted that documentary evidence need not be specifically pleaded to be admissible in evidence; that it is sufficient as long as facts covering such document are pleaded. In support of that, they cited among others the cases of *Kyari v. Alkali* (2001) 11 NWLR (Pt. 724) 412 @ 433-433, *Sterling Bank Plc v. Falola* (2014) LPELR-22529 (CA); *Aregbesola v. Oyinlola* (2009) 14 NWLR (Pt. 1162) 457 @ 478. They argued that by their pleading of disqualification of 2nd respondent in paragraph 146 of their petition and the 'specific pleading of documentary facts' of non-qualification of 2nd respondent in their reply to 3rd respondent's reply, 2nd and 3rd respondent were put on notice of their case of the non-qualification of 2nd respondent sought to be supported and proved by exhibits PBD, PBD1A, PBD1B, PBD1C, PBD1D, PBD1A, PBD2A, PBD3,

PBD4, PBE1, PBE2, PBE3, PBE4, PBE5, PBE6, PBF1, PBF2, PBF3 and PBF4, so these documents were admissible and properly admitted in evidence.

I have already ruled, while considering the preliminary applications/objections of respondents to the petition and replies of the petitioners, that paragraph 146 of the petition where petitioners averred to non-qualification of 2nd respondent for the 2023 Presidential Election, was bereft of facts to sustain it. I also held that the fresh facts of 2nd respondent's conviction/fine by a district court in Illinois in the United States, alleged forgery of documents and dual citizenship, all of which petitioners only introduced for the first time in their replies, were incompetent, ran afoul of both paragraphs 4(1)(d) and 16(1)(b) are incompetent, liable to be struck out and were indeed struck out. I am also aware that we have just few seconds ago again ruled here in this judgment that the evidence of PW27, through whom the said documents/exhibits now impeached by 3rd respondent were brought in, is incompetent for non-compliance with paragraph 4(5)(b) of the First Schedule to the Electoral Act, 2022. Those rulings constitute issue estoppel binding not only on the parties but this court, too, meaning, further, that this court cannot depart from them. See *Francis Shanu & Anor v. Afribank* (Nig.) Plc (2002) LPELR-3036 (SC) p.25 paragraph D-E, (2002) 17 NWLR (Pt. 795) 185; *Lawal v. Dawodu & Ors.* (1972) 1 All NLR (Pt. 2) 270; *Cardoso v. Daniel* (1986) LPELR-830 (SC) p.27 - 28; (1986) 2 NWLR (Pt. 20) 1. Consequently, the objection of 3rd respondent to the admissibility of Exhibits PBD, PBD1A, PBD1B, PBD1C, PBD1D, PBD1A, PBD2A, PB03, PBD4, PBE1, PBE2, PBE3, PBE4, PBE5, PBE6, PBF1, PBF2, PBF3 and PBF4 is hereby upheld and the said documents are further ruled inadmissible and expunged from the records of this court.

The summary of all the foregoing is that:

1. The objection to the evidence adduced by PW12(Witness Egwuma Friday), PW13 (Grace Timothy), PW14 (Grace Ajagbona), PW15 (Abidemi Joseph), PW16(Miss Edosa Obosa), PW17 (Miss Alheri Ayuba), PW18 (Miss Sadiya Mohammed Haruna), PW21(Mr. Samuel Oduntan - a Statistician); PW23 (Janet Nuhu Turaki), PW24 (Christopher Bulus Andrew), PW25 (Victoria Sani), PW26 (Hitler Ewunonu Nwala - a forensic Expert) and PW27 (Mr. Mike Enahoro-Ebah, a legal practitioner) whose witnesses statements were filed/deposed to long after the petition was filed and so did not accompany the petition as required by paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022, is upheld, and that evidence, together with the documents, Reports included, tendered by the said witnesses, are hereby expunged from the records of this court.

2. The objection of respondents to exhibits PAHI, PAH2, PAH3 and PAH4 made by Mr. Samuel Oduntan (PW21), and exhibits PAR1 (A, B, C, D, E and F) made by Mr. Hitler Ewunonu Nwala (PW26) is also further upheld and the said documents, already held incompetent and inadmissible by our earlier rulings, are again hereby pronounced inadmissible in evidence on this ground too.

3. The objection of 3rd respondent to the admissibility of exhibits PBD, PBD1A, PBD1B, PBD1C, PBD1D, PBD1A, PBD2A, PBD3, PBD4, PBE1, PBE2, PBE3, PBE4, PBE5, PBE6, PBF1, PBF2, PBF3 and PBF4 tendered by PW27, Mr. Mike Enahoro-Ebah, is also upheld and the said documents are further ruled inadmissible and expunged from the records of this court.

Save for the above, all other objections of the respondents to documents tendered by the petitioners are overruled.

The Substantive Petition

I now move to consider the substantive matter. We, however, wish to state that, despite our conclusions above on the objections raised by respondents to documents tendered by the petitioners, I am still minded to the evaluate evidence adduced and consider the merits of the petition. The only evidence I shall not revisit are exhibits PBD, PBD1A, PBD1B, PBD1C, PBD1D, PBD1A, PBD2A, PBD3, PBD4, PBE1, PBE2, PBE3, PBE4, PBE5, PBE6, PBF1, PBF2, PBF3 and PBF4 relating to 2nd respondent's alleged non-qualification that were tendered by PW27, Mr. Mike Enahoro-Ebah, the said documents in our view being bereft of pleadings to sustain them as elaborately stated earlier in this judgment.

Coming to the hearing, the petitioners called a total of 27 witnesses and closed their case on 24/6/2023. The Respondents opened their respective defences starting from the 3rd day of July, 2023. The 1st respondent called one witness one of its staff, RW1 and closed its case. The 2nd respondent also tendered documents and called one witness, RW2. The 3rd respondent did not call any witness but tendered documentary evidence.

At the close of the case of the parties, the court ordered written addresses. The addresses were all filed on schedule. In the final address for the 1st respondent filed on 14/7/2023, the learned leading senior counsel for the 1st respondent, Mr. A.B. Mahmoud, SAN, raised four issues as follows:

1. Whether having regards to section 47(2) and (3) of the Electoral Act, 2022, paragraphs 38, and 92 of the Regulations and Guidelines for the Conduct of Elections, 2022 and totality of the evidence adduced at trial the inability of the 1st respondent to transmit the polling unit results electronically in real-time using the BVAS device to the IReV portal constitutes non-compliance with the Electoral Act if such substantially affected the outcome of the Presidential Election held on the 25th day of February,2023?

2. Whether there exist cogent and credible evidence of corrupt practices to warrant the nullification of the Presidential election held on the 25th day of February 2023?

3. Whether going by the provisions of sections 131 and 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 2nd respondent was at the time of the presidential election held on the 25th day of February 2023 not qualified to contest the said election?

4. Whether upon proper construction of section134(2)(b) of the Constitution of the Federal Republic of Nigeria 1999, the requirement that a candidate must score "not less than one quarter of the votes cast at the election in each of at least two thirds of all the States in the Federation and the Federal Capital Territory, Abuja", means that a successful candidate must specifically score at least one-quarter of the votes cast in the Federal Capital Territory, Abuja in addition to two-thirds of all the States?

The 2nd respondent, through his counsel Wole Olanipekun SAN, filed his final written address on 14/7/2023. He raised for determination four issues which were listed as follows:

i. Considering the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the Constitution), the salient provisions of the Electoral Act, 2022, as well as admissible evidence on record, whether the election of the 2nd respondent into the office of President of the Federal Republic of Nigeria on 25th February, 2023, was not in substantial compliance with the principles and/or provisions of the Electoral Act, 2022.

ii. In view of the clear provisions of the Constitution, the Electoral Act, 2022 and plethora of judicial precedents on the criteria for qualification of candidates for election to the office of President, coupled with the peculiar circumstances of this petition (wherein the petitioners pleaded no fact in support of their allegation of non-qualification of the 2nd

respondent) whether the 2nd respondent was/is not eminently qualified to contest the Presidential Election of 25th February, 2023.

iii. Upon a combined reading of sections 134 and 299, as well as other relevant provisions of the Constitution, section 66 of the Electoral Act, 2022 and other relevant statutes, whether the 2nd respondent has not satisfied the necessary constitutional and statutory requirements to be declared winner of the Presidential Election of 25th February, 2023, and returned as President of the Federal Republic of Nigeria.

iv. Considering the constitution of the petitioner and the terse evidence adduced, whether this honourable court can accede to any of the reliefs being claimed by the petitioners.

The 3rd respondent through her lead counsel filed its final address on 14/6/2023. Four issues were also generated for the determination of this petition. The four issues were couched as follows:

1. Whether, having regard to the relevant and admissible evidence led by parties, the conduct of the Presidential Election held on the 25th day of February 2023 was vitiated by non-compliance and corrupt practices that was substantial enough or directly attributed to the 2nd respondent as to have affected the outcome of the election, and to justify nullification of the election in a Manner envisaged by the applicable provisions of the Electoral Act, 2022?

2. Whether the burden of proving that 1" petitioner, and not the 2nd respondent, scored majority of lawful votes cast and satisfied the constitutional requirement of having one-quarter of the votes cast in each of at least two-thirds of all the States of the Federation and the Federal Capital Territory, to be declared and returned as the winner of the Presidential election held on the 25th day of February, 2023, has been discharged by the petitioner?

3. Whether having regard to the issues joined and evidence led on the qualification of the 2nd Respondent to contest in the presidential election held on 25th February, 2023 the petitioner has established that 2nd respondent was not qualified to contest the presidential election as provided for in the Constitution of the Federal Republic of Nigeria, 1999 (as altered)?; and

4. Whether having regard to the totality of the evidence led by parties and the applicable law, the petitioners are 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?

In response to the addresses filed by the 1st, 2nd, and 3rd respondents, the petitioners through their leading senior counsel Chief Chris Uche SAN filed their respective written addresses on 21/7/23, 22/7/23 and 23/7/23. The petitioners' senior counsel filed separate written addresses in response to each of the 1st, 2nd and 3rd respondents' addresses. The issues for determination raised in the three written addresses filed by the petitioners in response to each of the written addresses of each of the respondents are the same, and they are:

1. Whether the return of the 2nd respondent in the election to the office of the President of the Federal Republic of Nigeria held on 25th day of February 2023 was not invalidated by reason of substantial non-compliance with the provisions of the Electoral Act, 2022 on electronic transmission of results for collation and verification.

2. Whether the 2nd respondent was lawfully declared and returned as the winner of the presidential election held on 25th day of February 2023, having not secured one-quarter of the valid votes cast in the Federal Capital Territory, Abuja as required by the Constitution of the Federal Republic of Nigeria,1999 (as amended).

3. Whether the 2nd respondent was not disqualified under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to contest the Presidential election held on 25th day of February 2023, having regard to the alleged order of forfeiture arising from drug-related offence, his acquisition of the citizenship of a country other than Nigeria, and presenting a forged certificate to the 1st respondent?

4. Whether the 1st respondent was not wrong in returning the 2nd respondent when he was not duly elected by majority of the lawful votes cast in the election.

A look at the issues formulated by the parties will show clearly that, though differently worded, they are similar in context and content. It is in the face of this that I chose the four issues formulated by the petitioners, albeit with necessary modifications, to anchor the determination of this petition. The issues for determination as modified are as follows:

1. Whether the return of the 2nd respondent in the election to the office of the President of the Federal Republic of Nigeria held on 25th day of February 2023 was invalid by reason of substantial non-compliance with the provisions of the Electoral Act, 2022.

2. Whether the 2nd respondent was lawfully declared and returned as the winner of the Presidential election held on 25th day of February 2023, having not secured one-quarter of the valid votes cast in the Federal Capital Territory, Abuja.

3. Whether the 2nd respondent was not disqualified under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to contest the Presidential election held on 25th day of February 2023, having regard to the alleged order of forfeiture arising from drug-related offence, his acquisition of the citizenship of a country other than Nigeria, and presenting a forged certificate to the 1st respondent?

4. Whether 2nd respondent was duly elected by majority of the lawful votes cast in the election and 1st respondent was right in returning him as duly elected.

Issue One

On this issue of non-compliance, the petitioner contended that the Presidential Election was fatally flawed by non-compliance with the fundamental requirement of the New Electoral Regime of Electronic Transmission of Results for collation and verification. That it was not the case of the 1st respondent that the so-called "technical glitch" was localised to a particular polling unit, ward, Local Government Area or a State but it was National.

The learned senior counsel for the petitioners canvassed that they led evidence to show that the Electoral Act, 2022 introduced use of technology to cure the mischiefs associated with the collation process at the election. He referred to the case of *Ugwu & Anor v. Ararume & Anor* (2007) 12 NWLR (Pt. 1049) 365, 439 and urged the court to apply the Mischief Rule to enforce the provision of section 64(4) and (5) of the Electoral Act, 2022 and the INEC Regulations and Guidelines for conduct of Election tendered as exhibit PAE 1 and the INEC Manual for Election Officials tendered as exhibit PAE 2. He cited Para 2.9.0 of the INEC Manual, exhibit PAE 2. He further referred to para. 38 of INEC Regulations and Guidelines, exhibit PAE 1. He canvassed that the law allowed the regulatory body the option to choose the technological device to use in the conduct of the election, and that the 1st respondent chose the BVAS machine and the IReV as admitted by all the parties. That they (petitioners) tendered as exhibits the video evidence of the undertaking and commitment by the 1st respondent through its Chairman and Spokesman as exhibit PAF1(a) to (c) and PAF 2(a) to (c) to deploy these technological innovations in the election to ensure transparency of the election and to eliminate all forms of manipulation. He contended that the 1st respondent did not either in its pleading or evidence deny this prescription by the commission; that the belated attempt by the 2nd and 3rd respondents to contend that the 1st respondent's Chairman rescinded the prescription two days

before the election by an interview is an afterthought which he said cannot alter legislation or statute birthed regulations and guidelines.

He further submitted that sections 64(4) and (5) of the Electoral Act, 2022 made the use of the BVAS machines mandatory for collation, verification and confirmation of results before announcement. In addition, counsel submitted that the INEC Regulations and Guidelines for the Conduct of Election (tendered as exhibit PAE 1) and INEC Manual for Election Officials(tendered as exhibit PAE 2) both made mandatory provisions for the results from the polling units to be transmitted real time to the IReV.

The learned senior counsel for the petitioner further contended that the RW1. The sole witness of the 1st respondent, confirmed under cross-examination that the above-said technological innovation by INEC was to guarantee the transparency of the electoral process and to guarantee the integrity of the results. That he confirmed that on 1st March 2023 when the results were announced, all the results had not been uploaded to the IReV, which was a glaring breach of the process of accountability and transparency of the collation. That the witness admitted that the system was hosted by Amazon Web Service, yet the 1st respondent did not report and declined to report the failure to Amazon Web Service. The counsel further asserted that the PW19, Dr. Alex Adum Ter (in paragraphs 42 to 83 of his witness statement on oath adopted on 13/6/23), and PW 22, Senator Dino Melaye, (in paragraphs 38 to 78 of his Witness Statement on oath adopted on 16/6/23) proffered comprehensive evidence on the deliberate bypass of the use of BVAS machines and IREV in the conduct of the election and electronic transmission of results. That, the PW 19 also tendered IReV Web shots (exhibit PAF 4) which showed clearly that as at 18th March, 2023, the results were yet to be uploaded. This evidence was neither challenged nor rebutted.

He contended further that the petitioners witnesses namely; PW12, Mr. Friday Ogwumah; PW13, Grace Timothy; PW14, Grace Ajagbona; PW 15, Abidemi Joseph; PW 16, Edosa Obosa; PW17, Alheri Ayuba; PW 18, Sadiya Mohammed Haruna; PW23,Janet Nuhu Turaki; PW 24, Christopher Bulus Ardo; and PW 25, Victoria Sanni, gave evidence which he said unequivocally established that there was a sabotage of the transmission of results electronically, contrary to what they were prepared for at their pre-election training. That they were unanimous in their testimony that whereas they were able to transmit the results of the National Assembly elections which took place on the same day, the system blocked them from transmitting the results of the presidential election. He pointed out Also that the sole witness of INEC, that is RWI, confirmed that it was the same application that was installed on the same BVAS machines used for both the presidential election and the National Assembly elections but with separate provisions for each election.

On the issue of proof, the learned senior counsel vigorously submitted that the petitioners having given credible evidence that the transmission of results for the National Assembly elections went through whilst that of the Presidential election did not, the 1st respondent, (as well as the beneficiaries of the 2nd and 3rd respondents) had a duty to explain the discrimination in transmission. With the introduction of technology into election by the Electoral Act, 2022, he contended that the burden of proof now shifts to the commission in circumstances such as this where the petitioners have proffered credible evidence of non-compliance and he urged the honourable court to so find and hold. He relied on section 136(1) of the Evidence Act, 2011. He then submitted that the burden of proving that the necessary verification and confirmation in compliance with the mandatory provisions of section 64(4) of the Electoral Act, 2022 was done, is on the 1st Respondent and indeed on all the Respondents for two reasons. The first reason he said is that it is a fact within the knowledge of the 1st respondent whether or not it carried out the said mandatory verifications and confirmations as well as relevant materials (election results and accreditation data directly transmitted from the polling units and the hard copies of the election results which it collated) were at all material times in the custody of the 1st respondent and it was the 1st respondent that carried out the collation in issue. That the second reason is that the petitioners are asserting the negative, namely, that the 1st respondent failed to carry out the mandatory verifications and confirmations, whilst the 1st respondent and indeed all the other respondents are asserting the positive. He submitted that the position of the law is that the burden of proof is on the person asserting the positive and not on the person asserting the negative. He relied on the decision of this court in the case of *Amale & Ors. V. Mustapha & Ors.* (2022) LPELR-56897 (CA), pp. 41-42, paras. D-E, adopting the Supreme Court decision on this issue, in the case of *Adegoke v. Adibi & 7 Anor* (1992) LPELR-95 (SC); (1992) 5 NWR (Pt.242) 410 that:

> "The principle is that the burden of proof lies on he who asserts and not on he who asserts the negative of an issue."

He therefore submitted that the burden is on INEC and indeed on the other respondents to prove that the non-compliance aforesaid did not or ought not to nullify the said election, which said burden he said INEC and the other respondents woefully failed to discharge. He said that this paradigm shift of the burden of proof in the new electoral jurisprudence has become even more relevant so that an electoral regulatory body does not act with impunity and expect to be protected by official presumption of regularity when it acts irregularly, hoping that all the burden of proof would rest on the petitioners, even when dared to go to court, as in the instant case.

The learned counsel canvassed further that contrary to the position of the respondents, the decision of the Supreme Court in *Oyetola & Anor v. INEC & Ors.* (2023) LPELR-60392 (SC); (2023) 11 NWLR

(Pt. 1894) 125 supports the introduction and use of technology in election management and dispute resolution. That the decision has indeed established the fact that there is an electronic collation system and the Irev. That as held by the Supreme Court in the Oyetola's case, the use of the electronic transmission system for verifying result before collation is part of the election process and operational at that. Therefore, he contended that the failure or refusal to either deploy or use the transmission system, as admitted by the 1st respondent, is non-compliance with the Electoral Act. He contended vigorously that under the new regime of technology-based elections, the old, traditional and analogue manner of proof of substantial non-compliance must yield way to a modern, dynamic and scientific approach by the courts towards proof of substantial noncompliance. The intent of the new Electoral Act, 2022 is that the old order must give way to the new order; the analogue must yield to the digital, and we urge this honourable court to resolve this issue in favour of the petitioners.

The 1st respondent made this issue of non-compliance as its issue one. In his argument of the issue, the 1st respondent canvassed that the allegation of non-compliance by the petitioner has been founded on their erroneous belief that the election results from the 176,846 polling units in Nigeria ought to have been transmitted to the Electronic Collation System of the 1st respondent. That the petitioners are contending that there exists an Electronic Collation System established by the 1st respondent to receive election result and collate it electronically. That they further contend that the 1st respondent ought to have transmitted the result sheets of all the polling units (Forms EC8A) using the BVAS device to the IReV portal real-time and that in so far as all the results from the 176,846polling units in Nigeria were not displayed or uploaded on the IReV portal, the 1st respondent ought not to have declared the 2nd respondent the winner of the election and that the declaration of the 2nd respondent by the 1st respondent as the winner was hasty. Learned counsel submitted that it is settled that where a petitioner complains of non-compliance with the provisions of the Electoral Act, the petitioner has the burden to prove the allegation of non-compliance. He referred to *Ucha v. Elechi* (2012) 13 NWLR (Pt.1317) pg.330; *Gundiri v. Nyako* (2014) 2 NWLR (Pt. 1391) 211 And section 135(1) of the Electoral Act, saying that the Petitioners beyond establishing the alleged non-compliance is duty bound to demonstrate by credible evidence that the said non-compliance in fact substantially affected the outcome of the election. He referred to *Akeredolu v. Mimiko* (2014) 1 NWLR (Pt. 1388) pg. 402 at 453. He contended that to be able to prove this allegation, the petitioners must first and foremost establish before this court the provisions of the Electoral Act or the guidelines where the 1st respondent had prescribed electronic collation using the Electronic Collation System of the 1st respondent. That it is only they have proved same that the petitioners can proceed to show that the 1srespondent did not utilize the said Electronic Collation System which it had prescribed.

The learned senior counsel for the 1st respondent further submitted that paragraph 38(i) of the guidelines, exhibit PAE2, provides that Presiding Officers shall electronically transmit or transfer results of polling units direct to the collation system prescribed by the 1st respondent. That the use of the word "Or" in paragraph 38(i) gives the Presiding Officer the discretion or option to either transmit electronically on the one hand or transfer the result to the collation system prescribed by the 1s respondent because it has been held in *N.U.P. v. I.N.E.C.*(2021) 17 NWLR (Pt.1805) p. 305 and *A.P.C. v. A.S.A.E.C.* (2022) 12 NWLR (Pt. 1845) 411 that the use of "or" is to express an alternative or to give a choice between two or more things. He posited that in this petition, two questions readily come to mind at this stage. They are-

(1) Did the 1st respondent prescribe an Electronic Collation System?

(2) What was the collation system prescribed by the 1st respondent? He contended that it is apparent from the evidence before this honourable court that the Petitioners were unable to substantiate their allegation that the 1st respondent prescribed an Electronic Collation System.

That the sole witness for the 1st respondent in his evidence in chief stated categorically that there was no electronic collation system prescribed by the 1st respondent and that the prescribed collation method was manual or better still physical collation. He referred to the evidence of RW1, which he said is supported by the testimonies of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW24, & PW25 who were all presiding officers in their respective polling units who also testified that they physically "transferred the results of their polling units to the ward collation centre" as they had been instructed in the course of their training by the 1st respondent prior to the election. That the law is trite that facts admitted need no further proof. That the petitioners' witnesses clearly admitted that collation was manual, and they complied strictly with the directive of the 1st respondent in that regard. Learned counsel further submitted that on the second leg of alleged non-compliance, even though the petitioners did not in their petition specifically state or plead in details the particular polling units where results were not transmitted using the BVAS device, they proceeded to call PW1, PW2, PW3, PW4,PW5, PW6, PW7, PW8, PW9, PW10, PW11, PW19, PW20, PW21 & PW22 in support of their allegation that results of the 176,846 polling units in Nigeria were not transmitted to the IReV viewing portal real time. He contended that the point is that parties are ad idem that the IReV Portal is a public viewing portal that allows members of the public to view the results of the election and nothing more. That this was also the decision reached by the Supreme Court in the recent case of *Oyetola v. INEC & Ors*. (supra) where it was held that: “The results transmitted to the Result Viewing Portal is to give the public at large the opportunity to view the polling unit results on the election day".

The learned senior counsel posed the question of "How has the alleged failure to upload the picture of form EC8As on the IREV portal affected the outcome of the elections of 25th February 2023. That in answering that questions put forward, the court will take note of the following facts which PW12, PW13, PW14, PW15.PW16, PW17, PW18, PW23, PW24 & PW25 the 1st respondent's Presiding Officers confirmed. These are that:-

1. Elections went well in their respective polling units.

2. At the close of the elections, the Forms EC8As were signed by them as well as the agents of the political parties present.

3. Duplicate copies of the Forms EC8As were handed over to agents of all political parties present.

4. Following their inability to transmit the EC8As using the BVAS device, they proceeded to their ward collation centres where they handed over the result sheets to the Ward Collation Officer who then collated the results manually.

He therefore submitted that the failure of the 1st respondent to transmit or upload the results of the 10 polling units which PW/12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW24, & PW25 presided does not discharge the onus placed on the petitioners for the purpose of invalidating the Presidential election held on the 25th day of February, 2023.

Furthermore, the learned counsel for the 1st respondent contended that there was substantial compliance with the provisions of the Electoral Act, 2022. He relied on the cases of *Ali Ucha & Anor v. Elechi & Ors.* (2012) LPELR-7823(SC); (2012)13 NWLR (Pt. 1317) 330. The counsel in addition contended that the failure of the Petitioners to bring before the court duplicate copies of Form EC8As delivered to their agents at the polling units should, under section 167 (d) of the Evidence Act,2011, engender the presumption of withholding evidence. He cited also the cases of *Uduma v. Arunsi* (2012) 7 NWLR (Pt. 1298) 55; *Njiokwuemeni v. Ochei* (2004) 15 NWLR (Pt. 895) 196; and *Oyetola v. INEC* (supra). He urged the court to resolve the issue in favour of the 1st respondent.

The learned senior counsel for the 2nd respondent on this issue canvassed that section 135(1) of the Electoral Act, 2022 used the word "shall" to connote the fact that the invalidation of an election for remote and un-substantiated reasons is mandatorily forbidden. He relied on the cases of *Ugwu v. Arurume* (2007) 12 NWLR (Pt.1048) 367, 441 to 442; and *Onochie & Ors v. Odogwu* (2006) 6 NWLR (Pt. 975) 65, 89. The learned senior counsel prefaced his address on the issue with an examination of section 135 of the

Evidence Act. He contended that subsection (1) of section 135 of the Evidence Act is broken in to different limbs and compartment. The first he said is on the fact that there is prohibiting the invalidation of the election simply on the ground of noncompliance with the Act. Second, he said is that invalidation was forbidden if "if it appears" to the court that the election was substantially in accordance with the Act. That the last limb is that it must be in accordance with the principles of the Act. He relied. On the case of Skye Bank Plc v./ww (2017) 16 NWLR (Pt. 1590) 24, 94 that the word “substantial" is defined by the Black's Law Dictionary, 11th Edition, page 1729 to mean "considerate in extent, amount, or value; large in volume and number", while the New Lexicon Webster's Dictionary of the English Language (1988 Edition), at page 987, defines it as “having real existence; not imaginary; firmly based; relatively great in size, value or importance". That the essence of these definitions is to demonstrate that for any non-compliance to be substantial enough, or raised to the degree of invalidating an election, it must be of a high nature or degree, as opposed or mere conjecture or gainsaying. He submitted that all over the commonwealth, this section is a recurring decimal in the corpus juris, with slight variations in their wordings. He submitted also that since the First Republic, similar sections have been in our respective statutes, as contained in section 93 of the Electoral Act, 1962, section 123 of the Electoral Act, 1982, section 52 of the Presidential Election (Basic Constitutional and Transitional Provisions) Decree, 1999, section 121 of the Electoral Act, 2001, section 135 of the Electoral Act, 2002, section 146 of the Electoral Act,2006 and section 139 of the Electoral Act,2010.He cited *Ogboru v. Okowa* (2016) 11 NWLR (Pt. 1522) 84 at 148 where the apex court, while appreciating the fact that it is impossible to have a perfect election anywhere in the world, held that in the proof of an allegation of non-compliance, the petitioner must do the following;

> "Where however the petitioner contends that an election or return in an election should be invalidated by reason of corrupt practices or non-compliance, the proof must be shown forth:
>
> (i) That the corrupt practice or non-compliance took place; and
> (ii) That the corrupt practice or non-compliance substantially affected the result of the election.
>
> The quantum of measurement and consideration is not to show that there was a proof of non-compliance, as it is almost impossible to have a perfect election anywhere in the world. The measure however, is whether the degree of non-compliance is sufficient enough as to vitiate the credibility of the election held. The reason for the proof on the balance of probability is not farfetched therefore", He also referred to the case of *Andrew v. INEC* (2018) 9 NWLR (Pt. 1625) 507 at 553.

The learned senior counsel further submitted that the law is well settled and the Act has not changed the principle that Form EC8A forms the foundation of the pyramid for election results. See Agagu v. Mimiko (2009) 7 NWLR (Pt. 1140) 342 at 488, *Ukpo v. lmoke* (2009) 1 NWLR (Pt. 1121) 90 at 168. In fact, paragraph 91(i) of the Regulations and Guidelines for the Conduct of Elections, 2022, provides thus: "Voting takes place at polling units. Therefore, Forms EC8A and EC60E are the building blocks for any collation of results". Arising from this provision, he contended that the collation of results happens on ground, in the full glare of everybody, and neither in the air nor in the 'cloud', He pointed out that the results signed by the Presiding Officers and attested to by all the polling unit agents among who were PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW 24 and PW25 could not transmit results to the IReV and that this was the basis of their allegation of non-compliance. That that assumption of the petitioner is a faux pas or non-sequitur. He also referred to paragraph 18 of the petition, where the petitioners have alleged that lithe election was not conducted in compliance with the provisions of sections 47 (2) & (3),60(1),(2)& (5),64(4)(a)& (b),64(4),(6),(7) & (8),71 of the Electoral Act, Paragraphs 3.3.0 and 3.4.0 of the 1st respondent's Published Manual for Election Officials, 2022, paragraphs 19, 35, 38, 40, 41, 42, 43, 47, 48, 50, and 62 of the 1st respondent's Published Regulations and Guidelines for the Conduct of Elections 2022... "That a consideration of each of these provisions will determine whether this Court can accord the Petitioners any form of seriousness at all. That section 47(2) & (3), which provides for accreditation with the use of the card reader or any other technological device; section 64(4)(a) and (b) which mandates the P.O. to reconcile the votes cast with the number of accredited voters; 64 (4), (6), (7) & (8), which provides for the procedure for resolving dispute or discrepancies in the collation of results; section 71, and section 73 which prescribes for the types of forms to be used for the election. That the centre-piece of the petitioners' grouse is that the results were not electronically transmitted and uploaded to the IReV "in real time". He referred to the provision of section 60(5) of the Electoral Act, which provides that lithe presiding officer shall transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the commission". Proper appreciation of the provision of section 60(5), with respect to INEC's prerogative to prescribe the mode of transfer of results, was contextualized by the several provisions of the manual and regulations. That paragraph 19 of the Regulation provides the procedure for accreditation while paragraph 35 provides the procedure for sorting of votes after election. He referred the court to the clear provision of paragraph 38 of the Regulations, and submit that the said provision did not support the contention of the petitioners; but rather, it provides for multiple/hybrid procedures, whether manually or electronically. That the only grouse expressed by the petitioners through their evidence was that the results were not electronically transmitted to the next level of collation and upload to the IReV "in real time" or immediately. He contended that the petitioners did not allege that any of the other procedures of the election,

starting from the accreditation, voting, sorting, counting votes, entry into the relevant forms, and manual transmission was not complied with. That the testimonies of PW4, PW11, PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW19, PW20, PW22, PW23, PW24, and PW25 are very instructive, as despite being witnesses for the petitioners, all testified to the fact that the only issue with the entire web of processes was that of electronic transmission and upload to the IReV through the BVAS in real time.

The learned senior counsel made a definition of the phrases “Electronically Transmit” or "Transfer" and transmit or transfer as Tinubu Presidential Legal Team (TPLT) used in the regulations. He said that the distinctions are very clear to the effect that while “transmit” connotes electronic activities, If transfer" infers physical activity. He summed up that even if non-transmission through electronic means is at all, a non-compliance, the obligation of the petitioners would still remain to answer the question," how then has the non-transmission affected the result of the election?" that in *Ucha v. Elechi* (2012) 13 NWLR (Pt. 1317) 330 at 359, the Supreme Court:

> “Where a petitioner complains of non-compliance with the provisions of the Electoral Act, 2010 (as amended), he has a duty to prove it polling unit by polling unit, ward by ward and the standard required is proof on the balance of probabilities and not on minimal proof He must show figures that the adverse party was credited with as a result of the non-compliance. Forms ECBA, election materials not stamped/signed by presiding officers. He must establish that non-compliance was substantial, that it affected the election result. It is only then that the respondents are to lead evidence in rebuttal”.

He further referred to the decision of the Supreme Court in *Abubakar v. Yar'Adua* (2009) All FWLR (Pt. 457) 1; (2008) 19 NWLR (Pt. 1120) 1, which settles every issue, whether raised by the Petitioners or imagined by them in this petition, and more particularly, at page 156 of the report, where the Supreme Court held that: "if there is evidence that despite all the non-compliance with the Electoral Act, the result of the election was not affected substantially, the Election Tribunal must, as a matter of law, dismiss the petition, and that accords with section 146(1) of the Electoral Act now section 139(1)”.

The learned senior counsel drew the attention of this court to the unreported decision of the Federal High Court, Abuja Judicial Division, per Nwite, J.in FHC/ABJ/CS/1454/2022- *Labour Party v. Independent National Electoral Commission*, delivered on 23rd January, 2023, in that case, the question for determination in the originating summons is as follows:

> "Whether having regard to combined effect of section 47(2), 50(2), 60 (5) and 62(1)(2) and other relevant provisions of the Electoral Act, 2022, the respondent can still insist on manual collation of results in the forthcoming general election".

Declaratory reliefs were subsequently sought in line with the main question for determination. After considering the relevant provisions of the Electoral Act, the Regulations and Guidelines, as well as the Manuals, the learned trial Judge held as follows:

> "Now a close reading of section 50(2) has provided for voting and transmission of results, to be done in accordance with the procedure to be determined by the Commission. This is to say that the Commission is at liberty to prescribe or choose the manner in which election results shall be transmitted.... In view of the foregoing, can the act of the defendant in collating and transferring election results manually in the forthcoming 2023 General Elections be said to be contrary to the relevant provisions of the Electoral Act, 2023? The answer can only be in the negative, as there in nowhere in the above cited sections where the Commission or any of its agent is mandated to only use an electronic means in collating or transfer election results and number of accredited voters, in a way and manner deemed fit by it ... By provisions of section 50(2) and 60(5) of the Electoral Act, 2022, the correct interpretation of the said statute is that INEC is at liberty to prescribe the manner in which election results will be transmitted, and I so hold."

While he admitted that the above is a decision of the Federal High Court, he inter alia referred to the case of *Rossek v. A.C.B. Ltd.* (1993) 8 NWLR (Pt. 312) 382 at 434-435, where the Supreme Court held that a judgment of any Court of record is binding on all parties and persons, unless it is set aside by an appellate court; and failure by any person or authority to regard such judgment will only lead to anarchy. He then drew the attention of the court to the fact that the judgment was also tendered as exhibit XI before this honourable court, through the respondent's sole witness. He urged the court to resolve this issue in favour of the 2nd respondent.

For the 3rd respondent, the learned senior counsel Prince L.O. Fagbemi SAN on this issue one canvassed that the law is axiomatic that proof of non-compliance for seeking nullification of election has to pass two distinct tests of substantiality. The non-compliance must be substantial and it must also substantially affect the outcome of the election by virtue of section 135(1) of the Electoral Act, 2022.That this is the overwhelming duality burden. He cited the apex court's interpretation of identical precursor

provision in the 2002 Electoral Act, in *Buhari v. Obasanjo* (2005) 7 SC (Pt. 1) 1; (2005) 13 NWLR (Pt. 941) 1 per Belgore, JSC, at page 191 that (the elementary evidential burden of "the person asserting must prove" has not been derogated from by section 135(1). The petitioners must not only assert but must satisfy the court that the non-compliance has so affected the election result to justify nullification".

He submitted that generally no evidential burden will shift to the respondent(s) to offer evidence in rebuttal unless that initial hurdle was crossed by petitioners. He referred to *Ngige v. I.N.E.C.* (2015) 1 NWLR (Pt. 1440) 281 at 329 paras C-F. That the allocation of primary burden under section 135(1) of the extant Electoral Act reflects the recognition by the lawmakers that elections in Nigeria or anywhere else for that matter are not conducted by angels or a perfect superhuman. The petitioners defaulted in satisfying the two test of substantiality test that could avail them in this case. He pointed out that in several paragraphs of the petition, heavy weather was made of the supposed mandatory uploading of the result on the 1st respondent's IReV as an indispensable validator of the electoral process. That this is a triply flawed proposition. First, he said it is not the provision of the Act that such result upload must be carried out. That even if it were so expressly provided (which he said is not the case) a breach would still not suffice to void an entire election. He cited section 135(1) of the Electoral Act. Secondly, he canvassed that if it was a provision in INEC regulations (which it was, Reg. 38), non-compliance with it cannot form the basis for voiding an election. That the power to make the regulations derives from section 148 of the Act which is made subject to limitations imposed on its controlling effect by section 135(1) of the self-same Electoral Act, 2022. Thirdly, that if it was an assurance or commitment made by INEC Chairman (in his capacity as an official of the Commission as pleaded by petitioners), his decision later reverse it does not render the election invalid. He referred to section 139 of the Electoral Act and also exhibit XI the judgment of Nwite, J. affirming the discretion of INEC to electronically transmit results of election from polling units. That such an administrative innovation designed by the 1st respondent, for uploading of the results does not have the force to invalidate an election which has been concluded by the declaration of the results at the polling unit. Once the election result has been announced at the polling unit, it cannot be cancelled under any guise extra-judicially save in very limited circumstances by administrative review of INEC. See *Doma v INEC* (2012) 13 NWLR (Pt. 1317) 297 at 328 C-D. and *Ikpeazu v. Otti* (2016) 8 NWLR (Pt. 1513) 38 at 84-85 G-B.

The learned senior counsel contended further that the petitioners were in grave error in their case theory from paragraphs 17-71 of the petition that having regard for the provisions of the CFRN, the Electoral Act, 2022. Regulations and guidelines for the Conduct of Elections, 2022 issued by the 1st respondent and the Manual for Election Officials 2023, failure to upload from polling unit to IReV

invalidated the election. He opined that the law is ensconced that in election matters which are sui generis, rules and procedures in election Petitions are not to be applied like those in ordinary civil matters. See *A.P.C. v. P.D.P. & Ors.* (2021)LPELR-52975(CA). That the only contraventions that constitute a ground to challenge an election are those expressly prohibited by the Electoral Act. He relied on *Nyesom v. Peterside*, supra only contraventions that constitutes a ground to challenge an election are those expressly prohibited by the Electoral Act. The learned senior counsel canvassed that the provisions of the regulations however, state otherwise. Regulations 38 provides for completion of all polling, Presiding Officer shall: (i) electronically transmit or transfer the result of the polling unit, direct to the collation system as prescribed by the Commission. (ii) Use the BVAS to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), as prescribed by the Commission and (i) Take the BVAS and the original copy of each of the forms in a tamper-evident envelope to the Registration Area/Ward collation officer, in the company of Security Agents. The poling agents may accompany the presiding officer to the RA/Ward Collation Centre"

He submitted that the above provisions of the Regulations cannot override the Act, to furnish independent grounds for a petition. Conversely, section 47(2) unambiguously makes it mandatory for INEC to use the technological device for accreditation of voters as condition for voting. Clearly, if the intention of the draftsman was to equally make it mandatory for the electronic transmission or transfer of results from the polling units to the collation centre the Act itself would have clearly said so. It further prescribes consequence for not deploying the use of card reader or any other technological device for the purpose of accreditation, while being silent on what should result in non-electronic transmission of results. In other words, the Act permits but it does not compel electronic transmission of results. That without conceding if such infraction of regulations 38 was established, section 60(5) of the Electoral Act cannot be a basis for the challenge of an election. He cited *Emmanuel v Umana & Ors.* (2016) LPELR-40037 (SC), (reported as *Udom v. Umana* (No.1) (2016) 12 NWLR (Pt. 1526)179). He contended that a careful perusal of Clause 38 connotes that the draftsman intended that the BVAS and IReV technology be permitted in the electoral process, where practicable. This is due to the statement “Electronically transmit or transfer" in the relevant Regulation. He submitted that the use of (or' in that clause denotes the existence of an alternative; showing that the word 'or' was employed to separate “electronically transmit" from the word "transfer" to a specific physical location- the ward collation centre.

Further, counsel contended that Clause 93 of the INEC Regulations provides for use of hard copy results for ward collation; failing which recourse can be made to electronically transmitted results or results from the IReV portal to continue collation. But where none of these exists, the collation officer shall ask for duplicate hard copies issued by the commission to the following bodies in the order below; (i) The

Nigeria Police Force; and (ii) Agents of political parties. That the above Clause 93 provides that INEC works first with hard copies, then IReV as fall back or duplicate hard copies of the election result, which will subsequently be employed in the collation of results; in that order. The word 'hard copies' in the same Regulations, reveals the recognition of an alternative to the electronic transmission; so that it is neither obligatory nor absolute. That a contrary argument will render redundant the provisions of Clause 48 and 93 of the INEC Regulations. He relied on the case of *Adegboyega Isiaka Oyetola v. INEC* (supra) SC/CV/508/2023 judgment delivered on the 9th of May, 2023, (now reported in (2023) 11 NWLR (Pt. 1894)125) court Per Agim, JSC pronounced its reasoning on the issue on pages 23-24 held that the polling unit results transmitted to the collation system provides the relevant collation officer the means to verify a polling unit result as the need arises for the purpose of collation. The results transmitted to the result viewing portal is to give the public at large the opportunity to view the polling unit results on the Election Day..."

The learned senior counsel submitted therefore that uploaded results are only a backup and that it is for use of the collation officer if need arises. That the petitioners witnesses admitted the presumed correctness of the actual results. See section 149(1) of the Electoral Act, 2022; *Nyesom v Peterside* (2016) 7 NWLR (Pt. 1512) 452 @532-533.

That the petitioners who fielded these witnesses must be held bound by their testimonies, as they never sought to convert them to hostile witnesses, seeing that their evidence confirmed the correctness of the results, notwithstanding non-transmission of the results real time. See *Nwobodo v. Onoh* (1984) 1 SCNLR 1; *Ipigansi & Anor v INEC & Ors.* (2019) LPELR-48907. That the Petitioners must necessarily show by cogent evidence that their witnesses were wrong; and that there was substantial non-compliance which substantially affected the result of the election to their detriment. He relied on section 135(1) of the Electoral Act, 2022; *Abubakar Atiku v. INEC* (2020) 12 NWLR (Pt. 1737) pg.37@ 125, paras. A-C; 127-128, paras. B-A; 154-155, paras. F-A; *Andrew v. I.N.E.C.* (2018) 9 NWLR (Pt. 1625) 507 @ 574. He finally on this issue submitted that the provisions of sections 47(2), 60(1)(2)(5), 64(4)(5)(6)(7)(8) of the Electoral Act, 2022 becomes apparent that the collation of the results as stated earlier shall be (manual and where the manually collated results is suspected to be incorrect, same shall be subjected to verification and confirmation by using number of accredited voters and the results recorded and transmitted directly from the polling units in to IREV portal).He urged the court to resolve this issue in favour of the 3rd respondent.

Resolution

This issue of non-compliance is directly standing on the first ground of this petition. By paragraph 16(a) of the petition, the petitioners stated that the election of the 2nd respondent is invalid by reason of non-

compliance with the provisions of the Electoral Act, 2022. By section 134(1)(b) of the Electoral Act, non-compliance with the Act is a ground for questioning or challenging an election.

Primarily, the law is well settled that the results declared by INEC (1st respondent) in an election enjoy a presumption of regularity. In other words, they are prima facie correct. See section 168(1) of the Evidence Act, 2011, recently applied by the Supreme Court in *Atuma v. A.P.C. & Ors*. (2023) LPELR-60352 (SC); (2023)16 NWLR (Pt. 1910) 371 where Jauro, JSC held at pp. 40-41 as follows:

> "By virtue of section 168(1) of the Evidence Act, 2011, presumption of regularity inures in favour of judicial or official acts, including those carried out by INEC. The exact words of the subsection are thus:
>
> "When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with."

See *P.D.P. v. I.N.E.C.* (2022) 18 NWLR (Pt. 1863) 653; *Udom v. Umana* (No.1) (2016)12 NWLR (Pt. 1526) 179.

Fortunately for the appellant and 1st respondent, it is only a presumption, which implies that it is rebuttable. Any person who questions the validity of an act in favour of which there is a presumption of regularity, has a duty to rebut the presumption with cogent and credible evidence. A flimsy or half-hearted rebuttal will not suffice.

> "Any petitioner who complains that the result as declared is either wrong or not in compliance with the Electoral Act has the onus of proving the contrary. See *Nyesom v. Peterside* (2016) LPELR-40036 (SC); (2016) 7 NWLR (Pt. 1512) 452. This case was relied upon by the Supreme Court in the case of Andrew &Anor v. INEC (2017) LPELR 48518 (SC);(2018) 9 NWLR (Pt. 1625) 507 where the Supreme Court held per Onnoghen, JSC (as he then was) as follows:
>
> > "...secondly, one of the main planks on which the petition is based is non-compliance with the provisions of the Electoral Act, 2010 (as amended). For one to succeed on that ground, it is now settled law that where a petitioner alleges non-compliance with the provisions of the Electoral Act, he has the onus of presenting credible evidence from eye witnesses at the various polling units who can testify directly in proof of the alleged non-compliance-See *Buhari v. Obasanjo* (2005) 13 NWLR(Pt.941) 1 at 315-316: Buhari v. INEC (2008) 19 NWLR (Pt.1120)246 at

391-392: *Okereke v. Umahi* (2016) 11NWLR (Pt.1524)438 at 473. *Nyesom v. Peterside* (2016)7 NWLR (Pt.1512) 452, etc."

Generally, it is the law that he who alleges must offer the requisite proof. The petitioners have the burden of proof and they must succeed on the strength of their case as per their pleadings. The level of proof required is two-fold. The first level is that there is non-compliance. The second level is to prove that the non-compliance substantially affected the result of the election. The learned senior counsel for the petitioners had in this petition laboriously argued that the burden of proof is on the person asserting the positive and not on the person asserting the negative. The petitioners, it appears from their position, tend to cross the line of misconception as to who has the burden of proof in our adversarial system of justice in civil cases when the primary onus of proof is on the Petitioner who makes all the claims against the respondents in this petition. The position was explained further by this court in the case of *Dashe & Ors. v. Durven & Ors*. (2019) LPELR-48887 where my learned brother Ugo, JCA held:

> "While it is true that the burden of proof is generally on the person who substantially asserts the positive of an issue, and not on the person who makes a negative assertion, there is a caveat to that principle to the effect that where a negative assertion forms an essential part of a plaintiff's case (as it evidently is in the case of the appellants) the burden of proof of such allegation rests on him. The law on this point was lucidly stated by Bowen L.J. in *Abrath v. N.E. Railway* Co 11 QBD 440 at 457 when he said that: "Now in an action for malicious prosecution, the plaintiff has the burden throughout of establishing that the circumstances of the prosecution were such that the Judge can see no reasonable and probable cause for instituting it. In one sense that is the assertion of a negative, and we have been pressed with the proposition that, when a negative is made out, the onus of proof shifts. That is not so. If the assertion of a negative is an essential part of a plaintiff's case, the proof of the assertion still rests upon the plaintiff. The terms 'negative and affirmative' are after all, relative, and not absolute."? See also Phipson on Evidence,15th Edition, Paragraph 4.03 at page 56;The Article Burden and Standard of Proal by Justice Niki Tobi, in Chief Afe Babalola's Law & Practice of Evidence in Nigeria, and *Muraina & Ors v. Omolade & Ors* (1968) 359 @ 362. See also sections 131, 132 and 133 of the Evidence Act, 2011 stating that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist; that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given, and that in civil cases, the burden of first proving existence

> or non-existence of fact lies is on the party against whom judgment would be given if no evidence were produced on either side."

Usually, the burden of proof is the debt owed by the petitioners to the success of their petition. The burden of proof rests upon the party who substantially asserts the affirmative of the issue. It is fixed at the beginning of the trial by the state of the pleadings. If the party with the burden fails or could not discharge the burden, the decision must be against him. The case of *Adegoke v. Adibi* (supra) relied upon by the petitioners was cited in the recent case of *Folarin v. Agusto* (2023) LPELR-59945 (SC); (2023) 11 NWLR (Pt. 1896) 559 where the Supreme Court Per Okoro, JSC held as follows:

> "in all civil cases, the burden of proof lies on whoever desires the court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts to have existed. Indeed the burden of proof lies on the party who would fail if no evidence at all were given on either side. See sections 131 and 132of the Evidence Act, 2011. *Akinbade v. Babatunde* (2018) 7 NWLR (pt 1618) 366, *Adegoke v. Adibi* (1992) 5 NWLR (Pt. 242) 410 at 423. Section 133 of the Evidence Act, 2011 makes the position very clear that the burden of proof in civil cases is not static as in criminal cases where the prosecution has a duty to proof the defence beyond reasonable doubt. In civil cases, the burden of proof shifts from one side to the other until all the issues in the pleadings have been dealt with. In other words, where a plaintiff has discharged the evidential burden put on him, the burden would shift to the defendant to call evidence either in proof or rebuttal of some evidence made by the plaintiff. And the standard of proof in all civil proceedings is on the balance of probability. See: *Orji v. Orji Textile Mills (Nig.) Ltd.* (2009) 18 NWLR (Pt. 1173) 467; (2010) All FWLR (Pt. 519) 999, *Maihaja v. Gaidam* (2(18) 4 NWLR (Pt. 1610) 454 at 502, *Eleme v Akenzua* (2000)6 SCNJ 226 at 238; (2000) 13 NWLR (Pt.683)92. *First African Trust Bank Limited v. Partnership Investment Co. Ltd.* (2003) 18 NWLR (Pt. 851) 35 at 57; (2003)12 SC (Pt.1) 90."

It is therefore settled that the terms "Negative" and "affirmative" are relative and not absolute. The burden of first proving existence or nonexistence of an assertion or fact whether positive or negative lies on the party against whom judgment would be given if no evidence were produced on either side.

In the instant case, it is fundamental to point out that, from the pleadings, the allegation of non-compliance is generated by the petitioners. Under sections 134(1) and 135 of the Electoral Act, the level of

proof required for the success of the petition is doubled. There must be proof of non-compliance and the further proof that the non-compliance affected substantially the result of the election.

In the face of such an allegation of non-compliance, the court is enjoined by the law not to invalidate an election if it appears that the election was conducted substantially in accordance with the principles of the Electoral Act.

All said and done, the petitioners have the primary burden of proving that there was non-compliance and that the non-compliance affects substantially the result of the election before the burden can shift to the Respondents to establish that there was no substantial non-compliance with the Electoral Act in the conduct of the election.

The petitioners have in their petition pleaded some of the facts relating to their complaint of non-compliance to the Electoral Act, 2022. The key paragraphs of their petition in that regard are paragraphs 18, 22, 23, 25, 28, 29, 35, 36, 37, 38, 39, 40, 41, 43, 44, 46 and 48 of the petition.

The respondents joined issues with the petitioners in respect of this issue and they all denied the facts pleaded by the petitioners. The denials of the 1st respondent, in its reply are very significant.

In paragraphs 17, 18, 19, 31, 32, 33, 34, 35, 36 and 37 of the 1st respondent reply to the petition, the 1st respondent in a great measure denied all the allegations of the petition. Since these paragraphs are direct and straight denial by the 1st respondent, the burden of proof remains on the petitioners to establish their claim as required by the law.

Apart from the 1st respondent who is the primary respondent due to the fact that it is its acts that are challenged in this petition, the 2nd and 3rd respondents who are the beneficiaries of the declaration of results also joined issues with the petitioners. The 2nd respondent in its reply to the petition countered all that the petitioners pleaded in respect of this issue one with paragraphs 6, 33, 56 and 57 thereof. The 3rd respondent countered the petitioners allegations with paragraphs 26, 37 and 40 of its reply to the petition.

Non-compliance in ordinary parlance means failure or refusal to do something that you are officially or statutorily supposed to do. See *Shuluwa & anor v. Tor J. Aye* (2015) LPELR-40476 (CA) citing *Ojukwu v. Yar 'adua* (2009) 12 NWLR (Pt. 1154) 50 at 40 and *Akeredolu v. Mimiko* (2013) LPELR-20889 (CA).

The Electoral Act, 2022 in an explicit manner, has laid out clearly grounds upon which an election can be questioned in section 134 thereof. Then there is section 135 of the said Act which looks like a proviso

to section 134. For a proper appreciation of the intendment of the law, section 134 and 135 of the Electoral Act must be considered together. Sections 134(1)(b) and 135(1) read:

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

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

135(1) An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election.

This ground of non-compliance to the Electoral Act has been in all our Electoral Laws even from when we had parliamentary system of government. The courts have over the years shed a lot of light on the requirement of the law in proving the allegation of non-compliance. A short chronicle of the decisions of our courts will throw more light on the evidential burden of proving non-compliance.

In *Bassey v Young* (1963) LPELR-15465 (SC); (1963) 1SCNLR 61, Brett, JSC in the then Federal Supreme Court held as follows:

> "... *Akinfosile v. ljose* (1960) 5 FSC 192, where the court held that a petitioner who alleges in his petition a particular non-compliance and avers in his prayer that the non-compliance was substantial must so satisfy the court. If there should be any inconsistency between the two decisions, it is the decision of this court that binds us, and it would appear to me that we are bound by the authority of *Akinfosile v. ljose* to hold that the petitioner must show both that irregularities took place and that they might have affected the result of the election."

In *Awolowo v. Shagari & Ors.* (1979) LPELR-653 (SC); (1979)6-9 SC 51, the Supreme Court of Nigeria in the 1979 Election Contest held per Obaseki, JSC as follows:

> "Once a petitioner alleges a particular non-compliance and averred in his prayer that it was substantial it is his duty so to satisfy the court or Tribunal having cognisance of the question. See *Akinfosile v. Ijose* (1960)5 FSC 92 at 99 (a case dealing with Regulation 7 of the Elections (House of Representatives)Regulations 1958 which is in *pari materia* with section 111 of the Electoral Decree 1977 as ..... to vitiate an election, the non-compliance

> must be proved to have affected the results of the election. See *Sorunke v. Odebunmi* (1960) 5 FSC at pp. 177 And 178, where Ademola, CJN, delivering the judgment of the Federal Supreme Court said: "Finally, in considering whether the election was void under the Ballot Act, Lord Coleridge said at page 751 of the judgment: 'If this proposition be closely examined it will be found to be equivalent to this, that the non-observance of the rules or forms which is to render the election invalid, must be so great as to amount to a conducting of the election in a manner contrary to the principle of an election by ballot, and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of the voters, or in other words, the result of the election. When Lord Coleridge refers to a majority of voters, he cannot mean to say that non-compliance may be overlooked unless it affects over half of the votes cast. He referred to a non-compliance, which "affected the majority of voters, or in other words, the result of the election."It cannot be doubted that here Lord Coleridge means that those electors wishing to vote who formed a majority in favour of a particular candidate must have been prevented from casing a majority of votes in his favour with effect. This does not require that all their votes must have been disallowed; it will be sufficient if enough of their votes are disallowed to give another candidate a majority of valid votes."

See also the cases of *Buhari & Anor v Obasanjo & Ors*. (2005) LPELR-815 (SC); (2005) 13 NWLR (Pt. 941) 1 and *C.P.C. v. I.N.E.C. & Ors*. (2011)LPELR-8257 (SC); (2011)18 NWLR (Pt.1279) 493.

> In all these decisions, the evidential burden of proof of non-compliance lies on the petitioner who must first prove that there was non-compliance, and secondly that the non-compliance has substantially affected the results being contested. Let me say at the risk of sounding repetitive, that it is after the onus on the petitioner is discharged to the satisfaction of the court that the onus would shift to the respondents to establish that the results were not affected.

It follows, therefore, from the authorities referred to that for the petitioners to succeed in their allegation of non-compliance, they must plead clearly in their petition the non-compliance and call witnesses or place before the court cogent and credible evidence of such non-compliance. The petitioners need to place before this court evidence based on their pleadings indicating that the non-compliance has affected the votes cast at the election and that the impact is substantial enough to invalidate the election.

The petitioners, it must be underlined, pleaded in paragraph 4 of the petition that the petitioners had "agents in all the polling units, ward collation centres, Local Government Collation Centres and State Collation centres in all the states of the Federation and the Federal Capital Territory as well as the National Collation Centre". Of this crowd of agents, the Petitioners did not call any of their agents at the polling unit. The said agents at the Polling Units were the ones who were meant to sign and collect duplicate results in Form EC8A. The few agents called were State and National collation agents. Largely, their testimonies were hearsay. Let us now examine their evidence before the court.

The PW1 is Captain Joe Agada (Rtd.). His statement on oath is at pages 198 to 200 of the petition. He was the petitioners collation agent for Kogi State. In paras. 7, 8 and 11 of his statement, he deposed that from his “analysis", he discovered various forms of non-compliance and corrupt practices such as suppression of votes, manipulation of BVAS machines, manipulation of accreditation, intimidation and harassment of voters, massive thumb-printing of ballot papers, etc.

This witness did not give particulars of these malpractices. There was no forensic report to support allegation of multiple thumb printing at the polling units. In *P.D.P. & Anor v. INEC & Ors.* (2019) LPELR-48101(CA), this court Per Agim, J.C.A.(as he then was) held that it is only a polling unit agent or a person who was present at a Polling Unit during polls that can give admissible evidence of what transpired during the poll in that unit. See also *Goyol & Anor v. INEC & Ors.* (2012) 11 NWLR (Pt. 1311) 207 at 218 and *Buhari v. INEC & Ors.* (2008) 19 NWLR (Pt.1120) 246 at 424. In the instant case, PW1 was not a Polling Agent. He was a Collation Agent. When cross-examined, he said he would be wrong to say that he was present when all the ballot papers and boxes were manipulated; that he visited only 20 Polling Units out of the over 3,000 Polling Units in Kogi State. He admitted that his party had Polling Unit Agents in all the Polling Units and that they are still alive.

The PW2 is also a Collation Agent. His witness statement on oath is at pages 213-215 of the petition. His statement is similar to that of the PW1. He is Dr. Solarin Sunday Adekunle. He was the collation agent of the petitioner for Ogun State on the Election Day. Under cross-examination, he said he only visited 19 polling units out of the 5,040 of the polling units in Ogun State.

PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10 and PW11are all collation agents. The evidence of these witnesses centred around the events and the duties carried out by the Polling Unit Agents of the petitioners. They agreed under cross-examination that the Polling Unit Agents functioned very well in their units.

Under our law, specifically in section 43 of the Electoral Act. 2022, polling agents are permitted to be appointed by political parties for each polling unit and collation centre. The wisdom in this is for each of the political parties involved in an election to be represented by its own agents. The duties of an agent are to represent the interest of his/her principal, Having regard to the fact that no mortal man can be in all the places at the same time, the law allows political parties to have their agents at all polling units and collation centres. It is therefore not anticipated by the law for any political party to appoint an octopus agent with his tentacles in all the polling units and collation centres. This is humanly not practicable. When, therefore, evidence is required to prove what happened in any polling unit or a collation centre, it is only the agent who witnessed the anomaly or the malfeasance that can legally and credibly testify. See *Buhari v. Obasanjo (supra); Oke & Anor v. Mimiko* (supra) and *Andrew v. PDP* (supra).

It follows, therefore, that PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11, PW19, PW20, PW22, who were State and National Collation agents of the petitioners can only testify of the events in their units or collation centres where they voted or acted as agents and not all over the states of the Federation. The polling agents as presented in this petition, it must be noted, are not shown to be experts. The issue of their analysing results of the election at the Ward, Local Government, State and National Level without calling polling unit agents who witnessed the real casting of votes and events at the voting units cannot therefore arise. They cannot validly testify of non-compliance at the Polling Unit level. Their evidence can only count as to what they saw, not what they were told by their field agents. What they were told is hearsay evidence. Section 38 of the Evidence Act, 2011 specifically states that hearsay evidence is not admissible except as provided for in the law. This court and the Supreme Court in several cases have explained the intendment of this Legislation. In *JA.M.B. v. Orji* (2008) 2 NWLR (Pt. 1072) 552, the court held:

> "What then is hearsay? Evidence of a statement made to a witness by a person who is not himself called as a witness mayor may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and admissible when it is proposed to establish by evidence not the truth of the statement but the fact that it was made."

See also: *Utteh v. State* (1992) LPELR-6239; (1992) 2 NWLR (Pt. 223) 257; *Ukut v: State* (1995) LPELR-3357(SC); (1995) 9 NWLR (Pt.420) 392; *Kaza v State* (1994) LPELR-1671 (SC); (2008) 7 NWLR (Pt. 1085) 125, *Buhari v. Obasanjo* (2005) LPELR-815(SC); (2005) 13 NWLR (Pt. 941) 1. It is therefore settled law that hearsay evidence is not admissible to prove a fact of non-compliance with the Act.

It follows that the evidence of the collation agents in this instant case who are PW1, PW2, PW3, PW5, and PW7 relating to suppression of votes, multiple thumb printing of ballot papers, entering of wrong scores/results, disruption of voting, are inadmissible hearsay and are hereby discountenanced.

In the instant petition, the petitioners called 27 witnesses and tendered documents and exhibits. The main and crucial complaint of the petitioners from the evidence placed before the court was the inability of the presiding officers employed and used by the 1st respondent to upload and transmit the polling unit results to the 1s respondent's Result Viewing Portal (IReV) and the electronic collation system. Of the 27 witnesses called by petitioners, ten of them were presiding officers who manned some polling units on the Election Day. A look at their evidence will bring out the facts of how the presidential election was conducted in some of the polling units on 25th of February 2023. These witnesses are PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW24 and PW25.

The PW12 is Egwumah Omachukwu. The witness was on subpoena. He was the Presiding Officer in Polling Unit 017, Ward 03, Aba North of Abia State. His evidence is that the election was conducted at his polling unit and that at the end of the election, the results were recorded on the result sheet and duplicate copies given to the party agents at the polling unit. He stated that he had challenges in uploading the Presidential election results from his Polling Unit to the IReV Portal and Electronic Collation Portal.

When cross-examined, the PW12 testified that the election was peaceful and that it was the image of the result on Form EC8A that was supposed to be uploaded to the IReV Portal. He further testified that the result sheets were delivered at the Ward Collation Centre to the INEC Ward Collation Officer. He said he was happy with the conduct of the election.

The PW13, Grace Timothy, who was the Presiding Officer for a Polling Unit in Bauchi State, corroborated the testimony of the PW12. She could not upload the result of the election to the IReV but that the party agents signed Form EC8A and that she took the original result to the Ward collation centre.

The PW14, Grace Ajagbonna, whose station was Polling Unit 6, Ward 1, Yagba West Local Government Area of Kogi State, equally testified that the election result from her unit (Form EC8A) was signed by her and all the party agents before she took the result to the Ward Collation Centre.

The PW15 Abidemi Joseph was the Presiding Officer in charge of Polling Unit 047, Ward 09 Maje of Babanbola Community in Maje, Suleja, Niger State. She gave the evidence also that election was conducted in her Unit and that the results were signed by her and the party agents before she took it to the Ward Collation Centre. She also could not upload the result to the IReV viewing portal of INEC.

The PW16, Edosa Obosa was the Presiding Officer at Polling Unit 09 Uwelu Health Centre, Egor Ward 05, Edo State. She equally testified that even though voting went well in the election at her Polling Unit, she was unable to upload the result of her unit to the IREV using the BVAS. She did the manual recording of the results into form EC8A and signed the result along with the party agents. The result was equally taken by her to the Ward Collation Centre.

The same story was told by the PW17, Alheri Ayuba who presided at the polling unit 085, Garki Ward 02, F.C.T., Abuja. She used BVAS for accreditation of voters but could not upload the results through BVAS to IReV. She and the party agents signed the results and she took the results to the Ward Collation Centre.

Even the testimony of Muhammed Haruna Sadiya, the PW18, is in the same order. She was the presiding officer for Unit 085, AMAC City Centre, Ward 06 in FCT, Abuja. She testified she could not also upload the results to the IReV. She entered the results manually to Form EC8A and took it to the Ward Collation Centre.

She testified that she gave copies of the result to the party agents before taking the original to the Ward Collation Centre.

Janet Nuhu Turaki, the PW23 who was the Presiding Officer for Bolari West Ward 04, AB Bomala Danladi Jalo Polling Unit 03, Gombe State, could not upload the results to IReV after using BVAS to snap the result as recorded in Form EC8A. She however testified that the party agents signed the results with her before she took the result to the ward collation centre.

The same run of evidence was given by PW24 Christopher Bulus Ardo, Presiding Officer in Maru Ward 04 Polling Unit 012Tsohuwar Kasuwa Maru, Zamfara State. In Paragraph 9 of his deposition on Oath, he said the election was successful except for failure to upload the results to the IReV.

The PW25, Victoria Sanni, who was the presiding at Polling Unit 020, Ward 01, Batagarawa Local Government Area of Katsina State, had the same testimony and experience with the BVAS and the issue of uploading results to IReV.

The testimonies of these witnesses were so clear and cogent that the election went well. The only difficulty was in uploading the results to the IReV portal. These highlighted witnesses were all called by the Petitioners. The witnesses here were emphatic that the voting and the election in their respective units went well, the votes were collated and results announced at the Polling Units. Party agents signed the result Form EC8As.

The witnesses called to establish the fact of non-upload of results emphatically and directly testified that the election went well and votes were accounted for and sent to the Ward Collation Centre for collation of the results. These ten witnesses were all Presiding Officers engaged by the 1st respondent for the election of 25/2/2023.

There is no gainsaying the fact that under the Electoral Act, 2022, election is not just a process, it is a well-regulated process. In fact, in the case of *Oke & anor v. Mimiko & Ors*. (2013) LPELR-21368(SC); (2014) 1 NWLR (Pt. 1388) 225, the Supreme Court, Per Peter-Odili, J.S.C. scripting out the meaning of Election, held as follows:

> "On this vexed issue, I would want to hang for support on the case of *Abubakar v. Yar'Adua* (2008) 19 NWLR (Pt.1120) 1 at 70 in which "election" was defined thus:
>
> > 'Election is a process spanning a period of time and comprises a series of actions from registration of voters to polling'."

Then in *Bille v State* (2016) LPELR-40832(SC):(20016)15NWLR (Pt. 1536) 363, the court per Per Ngwuta, JSC (P.30.paras C-E) explained further that "Election is defined as, *inter alia*, the act of choosing or selecting one or more from a greater number of persons, things, courses or rights". See Black's Law Dictionary Special Deluxe Fifth Edition, page 464. The Oxford Advanced Learner's Dictionary, page 372 defines it as "the action or an instance of choosing by vote one or more of the candidates for a position especially a political office."

The process of election commences with the nomination of candidates through political party primaries. Then it moves into the election proper which entails the voting, the collation and announcement of results. To make these processes tidy, clearer and credible, the Electoral Act devotes time into making provisions for specificity of actions and steps at each stage. It will not be out of place, my lords, considering the strategic and fundamental nature of our election to survey some of the provisions of the law in this respect. The law made provision for accreditation of voters and voting in section 47 of the Act. The Section provides:

> "47(1) A person intending to vote in an election shall present himself with his voter's card to a Presiding officer for accreditation at the polling unit in the constituency in which his name is registered.

(2) To vote, the presiding officer shall use a smart card reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters, to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission.

(3) Where a smart card reader or any other technological device deployed for accreditation of voters fails to function in any unit and a fresh card reader or technological device is not deployed, the election in that unit shall be cancelled and another election shall be scheduled within 24 hours if the Commission is satisfied that the result of the election in that polling unit will substantially affect the final result of the whole election and declaration of a winner in the constituency concerned."

This law has made it mandatory for accreditation of voters for the election to be done with the aid of a smart card reader or any other technological device that may be prescribed by the 1st respondent. The 1st respondent exercised the discretion given by the law to prescribe the use of Bimodal Voter Accreditation System for short and popularly known as "BVAS" or "BVAS Machine". As the name indicates. BVAS is primarily a technological device for accreditation. By Paragraph 18(a) of the Regulations and Guidelines for the Conduct of Elections, 2022, the use of BVAS for accreditation is mandatory and all the poll officers who fail to use it for accreditation shall be accused of dereliction of duties and penalised. It is after a voter passes accreditation that he will be allowed to vote.

The bottom line of every election exercise is to choose one out of many or to show affirmation of the approval of a candidate who wins the election to lead the country in the instant case as the President of the country. To achieve this goal, election must be result oriented and successful. A successful election must produce a winner who is expected to emerge by popular vote and as specified in section 134 of the 1999 Constitution. It is in this respect that all votes cast at an election must be duly secured, collated and counted.

The Electoral Act is so clear and explicit on the issue of the votes cast and the results at the election. Let me start with section 25 of the Electoral Act which provides thus:

"25(1) The results of all the elections shall be announced by the-

(a) Presiding officer at the polling unit;

(b) Ward Collation Officer at the registration area or Ward Collation Centre;

(c) Local Government or Area Council Collation Officer at the Local Government or Area Council Collation Centre; and

(d) State Collation Officer at the State Collation Centre.

(2) The returning officer shall announce the result and declare the winner of the election at-

(g) State Collation Centre in the case of a Presidential election; and

(h) National Collation Centre in the case of election of the President.

(3) The Chief Electoral Commissioner shall be the returning officer at the Presidential election.

This provision makes it clear and straight forward that voting for all elections takes place at the polling units and that is where election is won or lost. The law requires that since the Presidential Election, unlike others, is not done in one location but throughout the country, collation of votes commences at the Registration Area/Ward level after voting then, it moves to the Local Government Level, and then to the State Collation Centre and finally to the National Collation centre. It is after this that the winner of the election shall be announced.

Furthermore, sections 60 and 62 of the Electoral Act deal with the counting and collation of votes cast. These Sections provide thus:

"60(1) The presiding officer shall, after counting the votes at the polling unit, enter the votes scored by each candidate in a form to be prescribed by the commission as the case maybe.

(2) The form shall be signed and stamped by the presiding officer and counter signed by the candidates or their polling agents where available at the polling unit.

(3) The presiding officer shall give to the polling agents and the police officer where available a copy each of the completed forms after it has been duly signed as provided under subsection (2).

(4) The presiding officer shall count and announce the result at the polling unit.

(5) The presiding officer shall transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission.

"62(1) After the recording and announcement of the result, the presiding officer shall deliver same along with election materials under security and accompanied by the candidates or their polling agents, where available, to such person as may be prescribed by the commission.

(2) The commission shall compile, maintain and update, on a continuous basis, a register of election results to be known as the National Electronic Register of Election Results which shall be a distinct database or repository of polling unit by polling unit results" including collated election results, of each election conducted by the commission in the Federation, and the Register of Election Results shall be kept in electronic format by the Commission at its national headquarters.

(3) Any person or political party may obtain from the Commission, on payment of such fees as may be determined by the Commission, a certified true copy of any election result kept in the National Electronic Register of Election Results for a State, Local Government, Area Council, registration area or electoral ward or polling unit, as the case may be, and the may be in printed or electronic format."

These provisions of the Electoral Act are very simple, plain and straight forward and do not require any technical rule of construction. The law is trite that where words used in a statute are clear and unambiguous the courts are enjoined to interpret the words in their ordinary and natural meanings. Words used are to be interpreted in a way that will not clash with and defeat the manifest intention of the legislation. Every legislation is scripted by the law makers with a purpose. The court must be careful not to interpret the law so as to create absurdity or make nonsense of the law. See *Umeano & Ors. v. Anaekwe & Anor*: (2022) LPELR-56855 (SC); *Jegede & Anor v. I.N.E.C. & Ors*. (2021) LPELR-5548 (SC); (2021) 14 NWLR (Pt. 1797) 409; *Aguma v. A.P.C. & Ors*. (2021)LPELR-55927 (SC); (2021) 14 NWLR (Pt. 1796) 351; *Lado & Anor v. Masari & Ors.* (2019) LPELR-55596 (SC); (2021) 13NWLR (Pt. 1793) 334.

The law as prescribed in sections 60 and 62 of the Electoral Act, 2022 does not in any form or sense make any provision or pretension as to any form of counting and collation of Election results other than manual collation. In *Oyetola v. INEC* (supra), the Supreme Court, per Agim, JSC held on the transmission of results, the essence and status of the collation system and the INEC IReV portal as follows:

> "As I had held herein, there is no part of the Electoral Act requiring the Presiding Officer to transmit the accredited voters in a polling unit or the polling unit result du ring election to the INEC data base as part of the election process. As stated in S. 62 (1) of the Electoral

Act, 2022 "After the recording and announcement of the result, the presiding officer shall deliver same along with election materials under security and accompanied by the candidates or their polling agents, where available, to such person as may be prescribed by the Commission. This is to enable the Commission compile, maintain and update, on a continuous basis, a register of election results. This intention is clear from subsection (2) of S.62 which provides that lithe Commission shall compile, maintain and update, on a continuous basis, a register of election results to be known as the National Electronic Register of Election Results which shall be a distinct database or repository of polling unit by polling unit results, including collated election results, of each election conducted by the Commission in the Federation, and the Register of Election Results shall be kept in electronic format by the Commission at its national headquarters....

As their names depict, the Collation System and the INEC Result Viewing Portal are part of the election process and play particular roles in that process. The Collation System is made of the centres where results are collated at various stages of the election. So the polling units results transmitted to the collation system provides the relevant collation officer the means to verify a polling unit result as the need arises for the purpose of collation. The results transmitted to the Result Viewing Portal is to give the public at large the opportunity to view the polling unit results on the Election Day. It is clear from the provisions of Regulation 38(i) and (ii) that the Collation System and Result Viewing Portal are different from the National Electronic Register of Election Results. The Collation System and Result Viewing Portal are operational during the election as part of the process, the National Electronic Register of Election Results is a post-election record and is not part of the election process."'

See pages 22-23 of the report.

With this state of the law, let us now assess the case of the petitioners in this petition. The petitioners, as earlier mentioned in this judgment, are claiming that the failure of the 1st respondent to upload the election results constitutes non-compliance to the Electoral Act. They pleaded thus in paragraphs 14 and 15 of their petition:

"13. The petitioners hereby plead and shall rely on Form EC8D(A) (being the summary of final collation of results) and Form EC8E (being the final declaration of result) issued by the 1st respondent, not only to show the purported scores as recorded by the 1st respondent, but

also to show the invalidity of the scores as recorded therein. Notice is hereby given to the 1st respondent to produce the original copies of these documents at the hearing of this petition. The petitioners further state that on the face of the Form EC8D (A), there are calculation errors as shown and contained in the report of the Statisticians which the petitioners shall rely upon, and which is herein pleaded.

14. The petitioners plead and also rely on the reports and evidence by their experts, including statisticians, forensic examiners and other experts pursuant to the orders for inspection, examination and production of election materials granted to the petitioners by this honourable court."

The petitioners by this pleading are relying on the summary of final collation and declaration of results which are in Forms EC8D (A) and EC8E as issued by the 1st respondent. The issues generated on this were not about the scores but the alleged invalidity of the scores and the error of calculation of the scores.

This pleading was not admitted by the 1st respondent. In reply, the 1st respondent joined issues with the petitioners in paragraphs 9, 10 and 11 of their reply filed on 11/4/2023 thus:

"9. The 1st respondent denies paragraph 12 of the petition. It states further that it did not wrongly return the 2nd respondent as the winner of the Presidential Election held on Saturday, February 25, 2023. The 1st respondent did not allocate or ascribe any vote to any of the candidates at the said election.

The 1st respondent only tallied and recorded the votes scored by the respective candidates as prescribed by the Electoral Act. The 1st respondent pleads and shall at the hearing of this petition rely on the relevant result sheets as diligently collated and declared by it.

10. In specific response to paragraph 14 of the petition, the 1st respondent states that the results contained in Forms EC8D(A) and EC8E constitute a true reflection of the valid votes scored by the respective candidates at the election and further avers that there are no calculation errors on the face of the Forms.

11. In further answer to paragraph 14 of the petition, the 1st respondent shall contend at the trial that the alleged calculation or report of statisticians hired and retained by petitioners which was not front-loaded at the time of filing this petition are wrong and unreliable."

It is settled law that issues for trial by the court are joined in the pleadings and that parties and indeed the court are bound by the pleadings of the parties. The petitioners' case stands to collapse if no evidence is called on the issue. See *Oruwari v. Osler* (2012) LPELR-19764 (SC), (2013) 5 NWLR (Pt. 1345) 534 and *Kubor & Anor v. Dickson & Ors*. (2012)LPELR-9817 (SC), (2013)4 NWLR (Pt.1345)534. In the instant case, the petitioners anchored their case in this issue on the report of the statistician, forensic examiner and other experts. The Statistician's Report referenced by paragraphs 14 and 15 of the petition was tendered in court through PW21, Mr. Samuel Oduntan. He testified on 14/6/2023. The Statistician's Reports were tendered, admitted and marked exhibit PAH1, PAH2, PAH3 and PAH4 respectively. This Report was challenged by the respondents, and in our earlier ruling we came to the conclusion that it was incompetent and liable to be struck out and was in fact struck out. Without prejudice to that ruling, I wish to assess its value nevertheless. PW21, the maker of the said Reports, was cross-examined in court by all the respondents and he showed clearly that he is an unreliable witness. He was contradicting himself on issues around his report. Apart from the fact that this witness is a subpoenaed witness whose witness statement on oath was not frontloaded, he did not present himself as a credible witness. Hear him under his cross-examination by Mahmoud, SAN, for the 1st respondent:

> "I have formal training in Information Technology (IT), I stated so in my written statement.
>
> I was commissioned by the petitioners. I was compensated by the petitioners for my work. I am an expert in statistics. Apart from what I stated in paragraph 5 of my witness statement. I have enough experience in my work and election Petitions. One does not need to be an expert to read INEC Form EC8As.
>
> I commenced my work sometimes in April. It took me about a month to complete my assignment. I cannot recall any proceeding where I admitted that I am not an expert. I agree that if my primary data is defective or incomplete, my conclusions could be wrong or incorrect. I also agree that if my methodology is wrong my conclusion will be wrong. I have seen page 4 of exhibit PAH1, That page refers to the methodology I used. I was referring to Forms EC8As.
>
> I inspected the Forms EC8As at the INEC Headquarters. I do not know if those Forms EC8As are before the court. I am aware that the Form EC8As are stored in the various State Headquarters.

If what I stated in paragraph 2 at page 4 of exhibit PAH1 is wrong my conclusion will be wrong.

I have seen column 1 of Vol.3 (exhibit PAH4) at page 1 line 1. It refers to polling unit 009 Ward 6 of Anambra State."

When cross-examined by Chief Wole Olanipekun, SAN, for the 2nd respondent, the PW21 said:

"I have seen paragraph 5(a) of my written statement on oath. It is true that' did not present the Report in *Khalil v. Yar'Adua*. I agree that no pictorial images of the electoral documents I referred to in my statement are attached to my statement...."

"I am aware that PDP won the election in Adamawa State. By my Report, we are not satisfied by the votes returned by INEC in Adamawa State including the votes scored by the 1st petitioner. I say so because I am not satisfied by irregular votes recorded in Adamawa State that is why I sought the deduction of those votes. By my Report, the petitioners won the election in 12 States. By my figures, I am not satisfied with the score for PDP in those States because they are printed with irregularities. I am also aware that Labour Party also won the election in 12 States. In all the States won by Labour Party, I have also called for the deduction of those votes.

I was in the situation room of the PDP on the day of the election. I have seen the Report for Kano State in exhibit PAH2."

Furthermore in response to the cross-examination of the learned senior counsel for the 3rd respondent, Fagbemi, SAN, the P.W.21 said:

"It is true that I have been following INEC activities since 1999. There was a time that INEC Chairman said the Results for the 2023 elections will be transmitted electronically and real time. I did not hear the INEC Chairman announce two days to the election that due to security and cash crunch challenges it will not be possible to transmit the results as promised. The inspection of the Electoral Documents was carried out in the presence of the agents of PDP. I did not make copies of those documents. I was assisted in my assignment by a number of people. Each of these people played a role. I stated the role played by each of those persons. I have seen volume 3 of my report.

The said vol.3 of my report deals with INEC documents which were not signed/or stamped. I did not indicate which of them were not signed or stamped.

I have seen the table in paragraph 11.2 of my witness statement. Only 26 States are mentioned therein. In my report on the electoral documents not signed or stamped I mentioned 28 States. I stated that I analysed the electoral documents from 36 States. It is true that a candidate's votes cannot be deducted more than once in a unit.

I did not conduct extraction of the BVAS Report.

I am aware that BVAS machine was used for accreditation. I am the only one who signed the Report because I was the team lead. I worked in all the States where alteration took place including States where PDP won."

It is trite in our law that cross-examination is a formidable tool for the demolition of the case of the opponent. The purpose of cross-examination is to discredit the witness called by the adversary. In the recent case of *P.D.P. & Ors. v Muhammad & Anor* (supra),the Supreme Court held that the primary object of cross-examination is to contradict the evidence of the opponent's witness in order to weaken his case. It is best resorted to in order to test the veracity of the witness.

It has in the instant case been clearly established that by cross-examination the PW21's testimony has lost its steam and value.

A closer look at the reports, exhibits PAH1- PAH3, will indicate that the witness was talking of 5,270 polling units wherein he claimed that Form EC8A series were altered and or not signed. It also talked of 15,002 polling units where Form EC8A's were not stamped and I signed, yet all that is contained in the report are figures and data of these forms. None of the physical forms was exhibited in the Report or tendered separately by any of the witnesses. In that situation, it is very difficult for the court to ascertain the truth of the allegation that several Forms EC8A series had a lot of alterations and that they were not signed by the presiding officers. The law particularly requires that the presiding officers must sign the results. Signing form EC8A is subscribing to the authenticity of the results. Where there is allegation that the Forms were not signed, it must be clearly proved by the petitioners. The result Forms must be presented in Court for the Court to verify lack of signature/stamp and any alteration on the forms. Since PW21 who authored exhibits PAH3 and PAH4 did not place in his report, and the petitioners did not call any of the polling unit agents to testify and place the Forms before the court to give vent to the allegation of alteration and non-signing of the Form EC8As for the 5,270 polling units listed in exhibit PAH2 and the form EC8As not

signed and stamped for the 15,002 polling units in exhibit PAH3, that allegation is unfounded and not proved as required by the law.

On petitioners' allegation that 1st respondent failed to collate the election result using the Electronic Collation System, the petitioners have not been able to prove that the Electoral Act or the Guidelines made it mandatory for electronic collation system. I have carefully considered the submissions of the parties on this issue of non-compliance with the provisions of the Electoral Act and the Paragraphs of the Regulations and Guidelines for the Conduct of the Election, 2022. The Independent National Electoral Commission (INEC), the 1st respondent herein, is established by section 153(1)(f) of the Constitution of the Federal Republic of Nigeria, 1999, and part of its functions as stated in Paragraph 15, Item F, Part I of the Third Schedule to the said Constitution, is to organize, undertake and supervise elections, including election to the offices of the President and Vice President, among other political offices listed. Being a creation of the Constitution, INEC is empowered by section 160(1) of the Constitution to make its own rules or otherwise regulate its own procedure; and in so doing it shall not be under the control of the President. Indeed, by section 158(1) of the Constitution, INEC shall not be subject to direction or control of any authority or person.

By section 4 of the 1999 Constitution, the legislative powers of the Federal Republic of Nigeria is vested in the National Assembly, which in the exercise of that power has enacted the Electoral Act, 2022 to regulate the conduct of elections in the Federal, State and Area Councils of the Federal Capital Territory. Section 47(2) of the Electoral Act, relied upon by the petitioners mandates every presiding officer to use a smart card reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission, Also, under section 60(5) of the Act, the Presiding Officer shall transfer the results of the election, including the total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission. Section 62(1) of the Act specifically provides that after the recording and announcement of the result, the Presiding Officer shall deliver same along with election materials under security and accompanied by the candidates or their agents where available to such person as may be prescribed by the Commission. Further, section 64(4) states that a Collation Officer or returning Officer at an election shall collate and announce the results of an election subject to his/her verification and confirmation that-

(a) number of accredited voters stated on the collated result are correct and consistent with the number of accredited voters recorded and transmitted directly from polling units under section 47(2) of the Act; and

(b) the votes stated on the collated result are correct and consistent with the votes or results recorded and transmitted directly from the polling units under section 60(4) of the Act.

At this stage, it should be noted that section 47(2) referred to in section 64(4)(a) relates to procedure for accreditation of voters by the Presiding Officer using the technological device prescribed by the Commission. As for section 60(4) referred to in section 64(4)(b) of the Act, it only mandates the Presiding Officer to count and announce the result at the polling unit. In fact, subsection (5) of section 60 goes ahead to mandate the Presiding Officer to transfer the result including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission,

The Act also provides in section 64(5) that the Collation Officer or Returning Officer shall use the number of accredited voters recorded and transmitted directly from polling units under section 47(2) of the Act and the votes or results recorded and transmitted directly from polling units under section 60(4) of the Act to collate and announce the result of an election if a collated result at his or a lower level of collation is not correct.

From the aforementioned sections, it is clear that while subsection (4) of section 64 provides for what the collation or returning officer will use to verify and collate the results, subsection (5) also provides for what the collation or returning officer will use to collate the results. Subsection (6) of the same section provides for what the collation or returning officer will use to determine the correctness of disputed result where there is a dispute. These are:

(a) the original of the disputed collated result for each polling unit where the election is disputed (which in our view means the physical or hard copy of the disputed collated result);

(b) the technological device used for accreditation of voters in each polling unit where the election is disputed;

(c) the data of accreditation recorded and transmitted directly from each polling unit where the election is disputed as prescribed under section 47(2) of this Act;and

(d) the votes and result of the election recorded and transmitted directly from each polling unit where the election is disputed as prescribed under section 60(4)of the Act (which requires only the counting and announcement of the result at the polling unit).

A careful examination of the above sections relied upon by the petitioners shows that the Electoral Act had used the words “deliver” in section 62(1), "transfer" in section 60(5) and “transmitted directly" 'in sections 50(2), 64(4), (5) and (6), of the Electoral Act, 2022, in stating how results of elections should be handled under those provisions. A look at the definitions of those words in the Black's Law Dictionary, Sixth Edition shows that the word "transfer" is defined at page 1497 as "to conveyor remove from one place, person, etc., to another;" or to "pass or hand over from one to another"; or to "specifically to change over the possession or control." The word "transmit" on the other hand is defined by the same Law Dictionary to mean "to send or transfer from one person or place to another or to communicate."

In my view, the Electoral Act, 2022 has used the words “deliver", "transfer" and “transmitted directly” interchangeably to describe how the results of the election shall be moved from one stage to another until the results are finally collated and declared. In all these, the Electoral Act, 2022 has not specifically provided that the results of the election shall be electronically transmitted.

It is in the exercise of its powers under section 160(1) of the 1999 Constitution and section 148 of the Electoral Act, 2022,INEC, that the 1st respondent herein, made the Regulations and Guidelines for the Conduct of Elections, 2022 as well as INEC Manual for Election Officials, 2023. In paragraphs 14(a) and 18(a) of the Regulations, the 1st respondent prescribed the Bimodal Voter Accreditation System (BVAS) as the technological device for the purpose of accreditation and verification of voters in the 2023 General Elections.

The petitioners have also hinged their allegation of non-compliance on paragraphs 38(i) and (ii), 48(a), (b) and (c), 50(v), (vii) and (xx), 51(ii), 54(xii), 55(xii) and 93 of the Regulations and Guidelines. Paragraph 38 of the Regulations provides:

“38.On completion of all the poling units voting and results procedures, the Presiding Officer shall:

(i) Electronically transmit or transfer the result of the polling unit, direct to the collation system as prescribed by the Commission.

(ii) Use the BVAS to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), as prescribed by the Commission.

(iii) Take the BVAS and the original copy of each of the Forms in tamper evident envelope to the Registration Area/Ward Collation Officer, in the company of Security Agents. The Polling Agents may accompany the Presiding Officer to the RA/Ward Collation Centre."

"48(a) An election result shall only be collated if the Collation Officer ascertains that the number of accredited voters agrees with the number recorded in the BVAS and votes scored by Political Parties on the result sheet is correct and agrees with the result electronically transmitted or transferred directly from the Polling Unit as prescribed in these Regulations.

(b) If a collation or returning officer determines that a result from a lower level of collation is not correct, he/she shall use the result electronically transmitted or transferred directly from that lower level to collate and announce the result.

(c) If no such result has been directly transmitted electronically for a polling unit or any level of collation, the provision of Clause 93 of these Regulations shall be applied."

"50. The Registration Area/Ward Collation Officer shall:

(v) Compare the number of voters verified by the BVAS with the number of accredited voters and total votes cast for the Polling Unit as contained in Form EC8A series for each Polling Unit.

(vii) Validate the scanned copy of Form EC8A and upload same to the IReV Portal with the assistance of the Registration Area Technical Support Staff (RATECHs);

(xx) Electronically transmit or transfer the result directly to the next level of collation as prescribed by the Commission.

51. Where there is any discrepancy in a result submitted by a Presiding Officer to the RA/Ward Collation Officer as verified from result transmitted or transferred directly from the Polling Unit, the RA/Ward Collation Officer shall:

(i) Request explanation from the Presiding Officer(s) concerned about the circumstances of the discrepancy;

(ii) Locate the point of discrepancy, resolve the discrepancy using the electronic result and request the Presiding Officer to endorse the resolution; and

(iii) Make a report of the discrepancy to the next level of collation."

"93. Where the INEC hardcopy of collated results from the immediate lower level of collation does not exist, the Collation Officer shall use electronically transmitted results or results from the IReV portal to continue collation. Where none of these exist, the Collation Officer

shall ask for duplicate hardcopies issued by the Commission to the following bodies in the order below:

(i) The Nigeria Police Force; and

(ii) Agents of political parties."

From the foregoing provisions of the Regulations and Guidelines relied upon by the petitioners, it is clearly evident to me that although the Electora1 Act has provided in section 62(1) for the delivery by the Presiding Officer of the result along with other election materials under security and accompanied by candidates or their polling agents, where available, to such person as may be prescribed by the 1st respondent, the 1st respondent has by Paragraph 38 of the Regulations and Guidelines quoted above, introduced electronic transmission to a collation system in addition to the physical transfer of the election results to the Registration Area/Ward Collation Officer.

As stated earlier, the technological device prescribed by INEC in the conduct of the 2023 election is the Bimodal Voter Accreditation System (BVAS). The functions of the BVAS as stated in paragraphs 14(a) and 18(a) is for verifying the voter, through a positive identification of the voter and authentication of the voter, by matching his or her fingerprints or face (facial recognition),thus accrediting the voter to vote at the election and storing the data and number of such accredited voters. By Paragraph 38(ii) and (iii) of the Regulations, the BVAS is also to be used by the Presiding Officer to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), after which the Presiding Officer shall take the BVAS and the original copy of each of the forms to the Registration Area/Ward Collation Officer.

From the above functions of the BVAS, it is clear to me that apart from using the BVAS to scan the physical copy of the polling unit result and upload same to the Result Viewing Portal (IReV), there is nothing in the Regulations to show that the BVAS was meant to be used to electronically transmit or transfer the results of the Polling Unit direct to the collation system. It should be noted that INEC Results Viewing Portal (IReV) is not a collation system. The Supreme Court in *Oyetola v. INEC* (2023) LPELR-60392(SC), (2023) 11 NWLR (Pt. 1894) 125 has explained the difference between the Collation System and the IReV. In that case, Agim, JSC held as follows:

"As their names depict, the collation system and the INEC Result Viewing Portal are part of the election process and play particular roles in that process. The Collation System is made of the centres where results are collated at various stages of the election. So, the polling units results transmitted to the collation system provides the relevant collation officer the means to verify a polling unit result as the need arises for the purpose of

collation. The results transmitted to the Result Viewing Portal is to give the public at large the opportunity to view the polling unit results on the Election Day."

A community reading of the relevant provisions of the Electoral Act, 2022, the Regulations and Guidelines for the Conduct of Elections, 2022 and the INEC Manual for Election Officials, 2023, shows the Electoral Act expressly provides in section 62(1) that after recording and announcement of the result, the Presiding Officer shall deliver same along with election materials under security and accompanied by the candidates or their polling agents to such persons as may be prescribed by the Commission. The Regulations and Guidelines as well as the INEC Manual also state that hardcopies of election results shall be used for collation and it is only where no such hardcopies of the election results exist that electronically transmitted results or results from the IReV will be used to collate the results.

I had earlier said that the non-compliance that can significantly affect the result of an election must be such that is substantial enough to cause the court to invalidate it as prescribed by section 135(1) of the Electoral Act. The burden and standard of proof is primarily on the petitioners to establish the existence of those facts or allegations asserted by them. Section 131(1) of the Evidence Act. 2011 provides expressly that:

"131(1) Whoever desires any court to give judgment as to any legal right or disability dependent on the existence of facts which he asserts must prove that those facts exist."

It is important to note here that although Election petitions are sui generis, they are governed by the Evidence Act. See *Buhari v. Obasanjo* (2005) 2 NWLR (Pt. 910) 241; *A.P.C. v P.D.P. & Ors.* (2015)LPELR-24587(SC), (2015)15 NWLR (Pt. 1481) 1.

Where, therefore, an election petition is founded on allegations of non-compliance as in the instant case, from the myriad of decisions, the onus is directly on the petitioners not only to establish such through credible and compelling evidence, they have to go further and demonstrate through credible evidence that the non-compliance was substantial and that the non-compliance truly affected the results of the election to warrant their being annulled. See *Akinlade & Anor v. I.N.E.C.* (2019) LPELR-55090 (SC), (2020)17NWLR (Pt. 1754)439; *Audu v. I.N.E.C. & Ors.* (No.2) (2010) 13 NWLR (Pt.1212)456,519; *Oke v. Mimiko* (No.2) (2014)1 NWLR (Pt.1388) 332; *Kente v. Ishaku & Ors*. (2017) LPELR-42077 (SC). (2017) 15 NWLR (Pt. 1587) 94; *Ndakene v. Adamu & Ors.* (2023) LPELR-59972 (SC), (2023) 9 NWLR (Pt. 1889) 389.

The Electoral Act made provision for declaration of results and the posting of results of the election. The law makes provision in sections 66 and 68 of the Act as follows:

"66. In an election to the office of the President or Governor whether or not contested and in any contested election to any other elective office, the result shall be ascertained by counting the votes cast for each candidate and subjected to the provisions of sections 133, 134 and 179 of the Constitution, the candidate that receives the highest number of votes shall be declared elected by the appropriate returning officer.

68. The Commission shall cause to be posted on its notice board and website, a notice showing the candidates at the election and their scores, and the person declared as elected or returned at the election."

By the law, results are declared by the counting of votes cast in the election, and in accordance with the Constitutional provision for the election of the President as in sections 133 and 134 of the Constitution. The votes so counted and collated are the votes cast at the polling units.

Let me underline here that in the conduct of an election, certain processes must have been walked over to conclude and confirm that the election was conclusive. The steps outlined by the law must not be broken. These steps are:

(a) Accreditation

(b) Conduct of polls

(c) Counting of votes

(d) Collation and announcement of results

(e) Signing of result forms

(f) Publication of results.

The reliefs sought by the petitioners are declaratory in nature. It is trite law that where a party seeks declaratory reliefs the burden is on him to establish his claim. His success is on the strength of his own case and not on the weakness of the defence of the respondents or the defendants: See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt.1482) 205,297; *Ogah v. Ikpeazu* (2017) 17 NWLR (Pt. 1594) 299.

It is also the law that the pleading and the claim of the petitioners determine the burden and the standard of proof that is required. By section 135(1) of the Evidence Act, 2011, if the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal it must be proved beyond

reasonable doubt. See the application of this provision in *P.D.P. v. I.N.E.C. & Ors.* (2014) LPELR-23808 (SC) 40, (2014) 17 NWLR (Pt. 1437) 525; *Agi v. P.D.P. & Ors.* (2016) LPELR-42578 (SC), (2017)17 NWLR (Pt.1595) 386; *A.P.C. & Anor v. Obaseki & Ors*. (2021) LPELR-55004 (SC), (2022) 2 NWLR (Pt. 1814) 273; and *Sulaiman & Ors. v. A.P.C. & Ors.* (2022) LPELR-58846 (SC), (2023) 5 NWLR (Pt. 1877) 211. In all these cases, the position of our law is that whenever crime is alleged, even if the case in a civil case, its proof must be that of proof beyond reasonable doubt.

In the instant case, the petitioners have grounds of non-compliance with the Electoral Act, 2022 and allegation of corrupt practices. Section 134(1) (b) refers to the ground of corrupt practices or non-compliance. If the ground pursued in any petition is simply non-compliance with the Act and there is no tincture of allegation of crime, the proof required would be on the balance of probabilities. But the standard of proof in any ground that is primarily on corrupt practices would require proof beyond reasonable doubt, that allegation being criminal in nature.

In the instant case and on the issues being resolved here, the petitioners tendered some documentary evidence directly from the Bar. The objections to the admissibility of most of the documents had earlier been dealt with by this court in the earlier ruling on the objections as to the admissibility of the documents and some of them have been held inadmissible in evidence.

The petitioners called two star-witnesses alongside other witnesses. Their star witnesses are PW19, Dr. Alex Adum Ter and the PW22, Senator Dino Melaye.

The sworn evidence on oath of PW19 is at pages 131 to 160 of the petition. In paragraph 23 and 30 of his sworn deposition, Dr.Ter (PW19) said as follows:

> "23. I know that on the face of the Form ECBD (A), there are calculation errors as shown and contained in the Report of the Statisticians which the petitioners shall rely upon.
>
> 30. The non-compliance consists of refusal to authenticate all the intending voters in the election using the technological/electronic device prescribed by the 1st respondent in addition to failure of the 1st respondent to transfer the outcome of the election directly into the portal of the 1st respondent created for the viewing of the public as a means to ensure the integrity of the elections at the polling unit and the electronical collation system before the declaration as to who is the winner of the election."

There are no particulars supplied in his statement on oath. All that can be read from this statement are projections without substance. When he was cross-examined by A.B. Mahmoud, SAN, for INEC, he stated thus:

> "It is true that I am a lawyer and politician. I am the National Coordinator for the petitioners, I was not at the National Collation Centre. I was throughout at the National Situation Room of the petitioner. That Situation Room was in Abuja. I remained in Abuja until the declaration of the results. I voted in my Polling Unit. I was accredited in my polling unit and l cast my ballot without any hitch.
>
> "My political party had agents in all the polling units in the county. We had agents at the Wards, Local Governments and State Collation Centres." While some agents signed the result sheets, some did not sign. In places where election took place, our agents signed. I am not an ICT Expert.
>
> "It is true that I made statements in my depositions dealing with ICT. At Paragraph 23 of my first witness statement, I referred to certain calculations. We did our calculations together with the statisticians.
>
> "I stated that INEC did not transmit results into the IReV and the Electronic Collation System for the Presidential Election.
>
> "There were two transmission systems. I did not use the Device Management System I referred in Paragraph 59 of my first deposition. In my view there was no technical hitch.
>
> "The information contained in respect of other states were received from other sources. There were over 176,000 polling units. By exhibit PAF4 (c) about 9,403 polling units were affected out of the over 176,000 polling units. It is not correct that in view of exhibit PAF4 (c) my statement in paragraph 98 is wrong.
>
> "I know Samuel Oduntan. He was in our situation room.
>
> "I know that the polling unit is the primary source of votes cast in an election. It is in the units that Forms EC8As are issued. It is also in the units that the BVAS Machines are used. As National Coordinator I did not work in any of the polling units during the election. I did not work in any of the levels of collation of results In my witness statement I did not demarcate from facts known to me personally and those relieved from other sources. I have seen paragraph 120 of my witness statement. The allegations of corrupt practice listed in paragraph 120 were related to me. The same thing with the statement in paragraphs 121-150.The statements were related to me by the State Collation Agents. The facts I stated in

paragraph 134 of my statement were also related to me by my Local Government and State Collation Agents. The same with the allegation at paragraph 136 of my statement which I got from video. I know that Festus Okoye featured in one of the videos played today. I have not heard that Festus Okoye is dead. Prof. Mahmoud, the INEC Chairman also featured in one of the videos. I cannot confirm whether the INEC Chairman is dead or alive. Before I came today to give evidence, I did not hear that the INEC Chairman has died.

It is true that I stated in paragraph 139 of my statement that the results as tabulated and as declared by INEC are wrong. It is true that I did not furnish any other result other than that I tabulated in paragraph 139 of my statement.

Upon cross-examination by Umoh, SAN, for 3rd respondent, the witness stated thus:

"Before Paragraph 3 of my statement, I did not separate the information I received from the ones I know personally. My complaint is that there was no real time transmission of results. It is the result declared at the polling unit that is transmitted. It is true that BVAS is deployed at the commencement of the voting and transmission of result after the result has been announced at the polling unit.

I want my candidate to be declared the winner. I also want the election to be declared a nullity."

The sworn deposition on oath of the next star witness of the petitioners, PW22, Senator Dino Melaye, is almost a rehash of the entire petition. What he said on cross-examination by A.B. Mahmoud, SAN, for INEC is as follows:

"On the election day, I was in Kogi State and in Abuja. After voting in my polling unit in Kogi State, I moved to Abuja for my assignment as the National Collation Agent for the petitioners. I was accredited and voted. My party had agents in all the polling units in the Country. Not all our polling agents signed the Result of the election. I cannot remember how many that did not sign.

"As National Collation Agent for my party, I know the procedure for collation of election results across the country. Results declared at the polling units are taken to the ward collation level, Local Government level, State collation level and then the National Collation Centre. Before it is taken to the Ward Collation level, it is transmitted to the INEC

Portal. I was at the National Collation Centre. The normal procedure is that the Returning Officers from the States bring results to the National Collation Centre.

"One of my complaints is that INEC failed to transmit the Results to the IReV Portal. As a National Collation Agent, I depended on information from my agents across the country. I can see paragraphs 51, 52, 53, 54, 55, 56, 57 and 58 of my statement on oath. I made mention of Device Management System. *I did not see the Device Management System. The Statement that the Device was used came from INEC.*

"I made mention of a device called Collation Support and Result Verification System (CSRVS). I did not see the device but relied on what INEC said. I was not in Borno State physically on the day of the election.

Upon further cross-examination by Olujinmi, SAN, for 2nd respondent):

"I confirm that votes are cast at the polling units. At the close of voting, the Presiding Officer will sort, count and record the Results in Form EC8A. It is the Result in the Form EC8A that is supposed to be transmitted to the IReV Portal. The result in the Form EC8A is taken the Ward Collation Centre. *The failure to transmit the Result into the IReV portal will not change the Result already recorded in the Form EC8A.*

I have seen my deposition in paragraph 3 of my statement. The facts I know were separated from those I do not know personally by the context of the statements. I have also seen paragraph 23 of my witness statement. I know the facts stated therein. I have seen paragraph 145 of my statement wherein I set out the results as declared by INEC. Those results are wrong. *I did not set out the correct result in my statement but I briefed my statistician.*

I stated that not all PDP Agents signed the results.

I did not set out the names of the agents but I stated that agents refused to sign. IReV is in the line of collation of Results since results are transmitted to it.

It is true that there is the ward, Local Government and State Collation Centres. IReV is not a Collation Centre but is a process in the election.

I have seen paragraph 159 of my statement. I do not know the names of those polling agents."

When cross-examined by Fashanu, SAN, for 3rd respondent, he stated as follows:

> "It is true that I voted on the Election Day. INEC used the BVAS machines. I have seen paragraphs 36 and 37 of my statement. Therein I stated that votes were wrongly allocated to the 2nd respondent. The votes wrongly allocated are in paragraph 145 of my Written Statement. *I did not state the votes that were massively deducted from the votes of the petitioners.* I have seen paragraph 55 of my statement. I was not physically present at emperor Technology China. I have certificate in Information Technology.
>
> "I voted in Kogi. I only voted but did not visit any polling unit, but interacted with my agents. I did not mention life video but I mentioned video. All the interactions I mentioned in my statement were communicated to me by my agents. I have seen paragraph 23 of my statement. I submitted all the list of infraction made therein to my statistician and it forms part of his report. I am not a staff of INEC.

The testimonies of these star witnesses under cross-examination aggregated the same account given by other witnesses that the election went well. Accreditation with the BVAS device was alright. The agents of the petitioners were on ground at the polling units and that the results were entered on Form EC8As and duplicate copies given to the agents.

The facts elicited from the cross-examination of these witnesses have belied much of the strands of their written statements on oath. This, of course, is a challenge to the credibility of the evidence of the PW19 and PW22. While cross-examination has the capacity to tarnish the credibility of a witness, it also has the corresponding capacity of strengthening the case of the opponent. In the instant case, the evidence elicited from the PW19 and PW22 on cross-examination has fortified, in my opinion, the case of the respondents that there was nothing wrong with the results of the 2023 Presidential Election and that there was substantial compliance with the Electoral Act. 2022.

That also played out in the cross-examination of PW20, Olatunji O. Shelle. His deposition on oath is at pages 204 to 207of the petition. At paragraphs 10 to 11 of the statement, he, PW20, said:

> "10. The Presidential Election was compromised and set up to fail even before the election began on 25 February 2023 as the contract for the distribution of electoral material was given to an entity headed by a chieftain of the All Progressives Congress (APC) by name M.C. Oluomo.

11. Since the contract for the distribution of electoral materials was given to an entity headed by a chieftain of the All Progressives Congress, the said chieftain deliberately failed to supply electoral materials to the stronghold of the petitioners in Lagos State or places he knew the and 3rd respondents are likely not to get much votes."

When PW20 was cross-examined by Mahmoud, SAN, for 1st respondent, he said:

"I am a strong member of the PDP. I am not happy with the process. On the Election Day, I went to my polling unit at Eti Osa to vote. There are about 14 thousand polling units in Lagos.

"Apart from my polling unit, I visited about 40 other polling units. The polling units are very close to each other. I was able to cast my vote without any problem. The result in my polling unit was entered in the polling unit Result Sheet.

"I left the polling unit around 2.30 pm when the result in my polling unit was announced. I do not know the result in my polling unit. I do know the winner of the election in my polling unit. I have seen paragraph 10 of my statement. I have not seen the contract I mentioned in Paragraph 10 of the statement.

"I also have no personal knowledge of the secret and hidden polling units I mentioned in Paragraph 14 of my statement but I have an idea. I did not report to idea. I did not visit any of the secret polling units."

Upon further cross-examination by Yusuf Ali, SAN, for the 2nd respondent, he said:

"I know that Labour Party won the Presidential Election in Lagos State as declared by INEC. I seen Paragraph 8 of my statement. It was not part of my duty to fill any of the Forms I mentioned in Paragraph 8 of my Statement.

"The Baale of Gbara I mentioned in paragraph 13 of my statement has not been joined in the petition. I was not at the meeting called by the Baale.

"Apart from the INEC officials and the policemen, none of the voters wore any uniform in the polling station. I have seen paragraph 16 of my statement. I do not know how many ballot boxes were snatched. I only know of the ones in my constituency.

"I mentioned violence in about 15 polling units at paragraph 18 of my statement. The 15 polling unit I mentioned in Paragraph 18 and in the same school premises. I personally

witnessed the violence. I did not do anything as it was not my duty. I did not personally fill any of the Forms in paragraph 24 of my statement."

In response to the cross-examination of the learned senior counsel for the 3rd respondent, Mr. Umoh, SAN, PW20 said:

"It is true that the election was contested by 18 political parties including PDP. As announced by INEC, Labour Party won the election in Lagos State. I have seen paragraph 2 of my statement.

"I have also seen paragraph 22 of my statement. Apart from the result announced by INEC, I have no other result."

This is the same trend in the account of these witnesses. They were majorly giving account of not only the polling stations they voted but other places not within their reach. The significant tone is that they testified of casting their votes without any problem. The results, by their admission, were properly declared and taken to the ward collation centres.

The irony, though, is that the witnesses did testify to a peaceful and valid election in their polling units where they voted and then turned around to give evidence of alleged infractions in polling units where they were not present. Their testimonies in that respect are hearsay. Hearsay evidence is not admissible and has no value in proving the petition filed by the petitioners.

Furthermore, in the instant petition, 1st respondent consistently maintained that the "technical glitch" that occurred on the election day was the failure of the lie-transmission" server to upload Polling Unit results for the presidential election into the IReV portal. It claimed that the glitch only prevented the members of the public from viewing or accessing the results that were already uploaded and listed on the 1st respondent's e-transmission system. On their part, the petitioners asserted in their petition that the "glitch" claimed by 1st respondent was actually a bypass by 1st respondent to tilt and switch the results of the Presidential Election in favour of the 2nd and 3rd respondents (See Paragraph 40). In furtherance of that assertion, they pleaded in paragraphs 41 and 42 of their petition as follows:

41. The petitioners shall subpoena Pricewater House Coopers (PWC) to produce Quality Assurance Report and to testify; subpoena Activate Technologies Limited - BVAS Supplier and Emperor Technology Limited (also known as Shenzhen Emperor Technology Company Limited) - the BVAS Manufacturers to produce relevant supply documents and to testify. The petitioners shall also subpoena Sulfman Consulting Ltd to produce the

Vulnerability Assessment & Penetration Testing (VAT) Report and to testify. The petitioners shall also subpoena expert witnesses in respect of the electronic collation system and the IReV portal.

42. The petitioners shall also subpoena Kaspersky Endpoint Security (of Thurhill Office Park, Bekker Road, Midrand, South Africa) that provided the system security for the VAS and -transmission system deployed by the 1st respondent to produce relevant documents and data as well as testify on the system security. *The petitioners shall also subpoena Globacom Nigeria Limited, the internet provider for the system deployed by the 1st respondent which internet was disconnected from the BVAS machines before transmission*. The petitioners shall further subpoena Infrastructure Concession Regulatory Commission (ICRCL with office at FDA, Area II, Abuja, which conducted due diligence on the e-transmission system deployed by the 1s respondent using full business case that had inputs from Emperor Technology limited and issued "Certificate of No Objection" for the system to be deployed. The petitioners shall further subpoena National Institute of Technology Development Agency (NITDA) with office at Gimibiya Street, Area II, Abuja, the government agency which tested the technology in issue before deployment in Nigeria and issued relevant permits, certifications, and licences for its deployment."

The petitioners applied to the court for subpoena to issue to the witness listed in paragraphs 41 and 42 of the petition on 26/5/2023.These witnesses were not called by the petitioners and no reason was given as to why they backed down from calling the witnesses they pleaded to call in proof of their petition. It is trite that litigation, particularly election dispute litigation, is fought on pleadings. Parties swim or sink with their pleadings. In the case of *Anyafulu & Ors. v. Meka & Ors.* (2014) LPELR-22336 (SC), (2014) 7 NWLR (Pt. 1406) 396, the Supreme Court Per Kekere-Ekun, JSC held that:

> "Litigation is fought on pleadings. They are the pillars upon which a party's case is founded. Not only do they give the other side notice of the case they are to meet at the trial, they also define the parameters of the case. In other words, parties are bound by their pleadings. Any evidence led on facts not pleaded goes to no issue while any pleadings in respect of which no evidence is led are deemed abandoned. In effect, where the pleadings are deficient no matter how cogent the evidence led, the case would fail. See: *Nwokorobia v. Nwogu* (2009)10 NWLR (1150)553; Shell B. P.v. Abedi (1974) 1 SC 23; *Ebosie v. Phil-Ebosie* (1976) 7 SC 119; *George v. Dominion Flour Mill Ltd*. (1963) 1 All NLR 71,(1963) 1 SCNLR 117."

See also *Ifeanyichukwu Osondu Co. Ltd. & Anor v. Akhigbe* (1999) LPELR (SC). (1999) 11 NWLR (Pt.625) 1. Those pleadings in paragraphs 41-42 of the petition having been abandoned are discountenanced.

In the same vein Paragraph 96 of the petition averred that Agents of the 2nd and 3rd respondents disrupted the election, votes scored were not accurately recorded and that ballot papers were torn. The petitioners averred that video recording shall be tendered. However, the video recording was not tendered in that regard. In this respect, the presumption in section 167(d) of the Evidence Act, 2011, that they withheld the said video recording because it would be against them if tendered, shall also apply.

From the foregoing therefore, it is very clear and certain that the petitioners have failed to prove that the 2023 Presidential election and the return of the 2nd respondent was invalidated by reason of corrupt practices or non-compliance with the Electoral Act, 2022.

Issue one is therefore resolved in favour of the respondents and against the petitioners.

Issue Two

> Whether 2nd respondent was lawfully declared and returned as the winner of the Presidential election held on 25th day of February 2023, he having not secured one-quarter of the total valid votes cast in the Federal Capital Territory, Abuja.

The petitioners commenced their argument of this issue by first making the trite point that the 1999 Constitution of the Federal Republic of Nigeria is the organic and Supreme Law of this country, They then submitted that the relevant provision of that Constitution that requires interpretation here is section 134(2) stating that:

> "A candidate for an election to the office of the President shall be deemed to have been duly elected where there being more than two candidates for the election-
>
> (a) he has the highest number of votes cast at the election; and
>
> (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja."

They submitted, correctly, that there are two limbs to this provision - the first limb (A) stating that a Presidential Candidate must have majority or highest votes cast at the election, and limb (8) stating that

such candidate must have not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States of the Federation and the Federal Capital Territory, Abuja.

The word 'AND' in limb (B), they argued, is conjunctive and not disjunctive, so, to be validly returned, a presidential candidate must, in addition to scoring majority or highest votes in the election and scoring a quarter of the votes in at least 2/3 or 24 States of the Federation, also, compulsorily, poll at least a quarter (or 25%) of the total votes cast in the election in the Federal Capital Territory, Abuja. They placed a lot of emphasis. on the word 'and' appearing in section 134(2)(b) before the “Federal Capital Territory, Abuja" and strongly recommended to us the Black's Law Dictionary's definition of that word as well as dicta of Tobi, JSC in *Buhari v. I.N.E.C.* (2008) 19 NWLR (Pt. 1120) 246, where the word 'and' appearing in the 2006 Electoral Act equivalent of section 135(1) of the Electoral Act, 2022 was construed as disjunctive. They further buttressed their argument by referencing section 2(2) of the same 1999 Constitution stating that "Nigeria shall be a Federation consisting of States and the Federal Capital Territory, Abuja." They said that provision gave the Federal Capital Territory of Abuja a special status different from the States.

They next pointed to section 3(1) of the 1999 Constitution where the 36 States of the Federation are specifically listed and submitted that the Constitution by that provision left no one in doubt by what it means by States.

They argued that it is because the Federal Capital Territory, Abuja is not a State hence the Constitution in its section 299 made provisions for its application to three named areas of structures of government, to wit the Legislature, the Executive and the Judiciary. Reproducing the said section 299 of the Constitution and relying on the Webster's Dictionary's definition of the phrase 'as if' appearing in it, they argued that those two words indicate that the Federal Capital Territory Abuja merely resembles a State but is not a State. Subsection (c) of section 299, they submitted, clearly states and is limited to exercise of legislative, executive and judicial powers by the Federal Capital Territory, and not matters of procedure for Presidential election exclusively dealt with by section 134(2)(b)of the Constitution. They argued, with verve, that the word 'and' in section 134(2)(b) of the Constitution making polling of one-quarter of the votes of the Federal Capital Territory, Abuja, mandatory for return of a president has nothing to do with any special status of the citizens or voters in Abuja but rather with the special status of the Federal Capital Territory (FCT), Abuja, as the cosmopolitan convergence of all federating units, tribes, religions and people of variegated backgrounds of the country as well as its being the seat of power of the nation's leadership. They said the mandatory 25% vote poll in the Federal Capital Territory for return of a president is intended as a reflection of the President's wide acceptability by the majority of the Nigerian people, as he is not

expected to be a tenant or an unpopular President in the nation's seat of power where he is supposed to reside to provide leadership to the country. They rounded off by citing *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt. 61)377among other cases to say that where the language used by a statute is clear, as they reasoned section 134(2)(b) of the Constitution and its 'and' is, the court must give such provision its literal meaning, Since it is common ground, as further evidenced by exhibit PB and exhibits PC 1-37 (Declaration of Result and Summary of Results of the Election respectively), that 2nd respondent polled only 90,902 votes in the Federal Capital Territory Abuja of Abuja, which is just 18.99% of the total votes of 478,652 cast in the FCT" Abuja in the presidential election, he did not meet the Constitutional threshold to be returned, so 1st respondent (I.N.E.C.) was wrong in declaring him elected.

All three respondents were opposed to this interpretation of section 134(2)(b) of the Constitution by petitioners. Since their arguments followed the same course, we can conveniently state them arguments together without diminishing from the weight and cogency of individual submissions. All of them argued that to accept the interpretation put on section 134(2)(b) of the 1999Constitution by petitioners will result in absurdity, as it will mean that even if a presidential candidate scores 100% votes in all the 36States of the Federation but fails to poll 25% of the votes cast in the FCT, he would still not be returned. That argument, they submitted, will confer a veto power on and make the voters of the FCT super voters. Such construction, it was submitted by them, will in effect defeat the true intention and objective of the Constitution that makes all votes in all parts of the country equal.

To get at the true intentions of the draftsmen of the Constitution in section 134(2)(b), they argued, the court needs to first take a close look at section 17(1) & (2) (a) of the 1999 Constitution stating that "every citizen shall have equality of rights, obligations and opportunities before the law" and consider it alongside section 299 of the same Constitution. They said the objective of section 134(2)(b) of the Constitution is to ensure that no particular segment of the country alone is able to determine who becomes President of this country; that a person elected President must have widespread acceptance across the country. Section 299 of the same Constitution stating that "The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation," minces no words in stipulating that the Federal Capital Territory maintains equal status with other States of the Federation, especially in terms of the application of the Constitution, they submitted. In further support of that contention,all three respondents referenced the Supreme Court's decision of *Bakari v. Ogundipe* (2021) 5 NWLR (Pt. 1768) 1 @ 38 where it was said that

> "By virtue of the provisions of section 299 of the Constitution it is so clear that the Federal Capital of Nigeria has the same status of a State. It is as if it is one of the States of the Federation."

They also referenced the earlier decision of this court in *Ibori v. Ogboru* (2009) 6 NWLR (Pt. 920) 102 @ 138, where it was confirmed that

> "The Federal Capital Territory, Abuja is to be treated like a State by virtue of section 299 of the 1999Constitution....If the Federal Capital Territory, Abuja, is to be treated like any other State, then it is not superior to or inferior to any other State in Nigeria."

Respondents argued that what can be gathered from section 134(2)(b) of the 1999 Constitution read together with section 299 and decided cases, is that the provisions of the Constitution apply to the Federal Capital Territory (FCT) as if it were one of the States of the Federation. They said that the use of the word 'AND' in section 134(2) of the Constitution indicates nothing more than that the FCT Abuja is considered as one of the States of the Federation in construing the two-thirds of the States of the Federation in which a candidate is required to score one-quarter of the votes cast. This point, INEC in particular submitted, is very critical, because there is no way the draftsman of the Constitution would have referred to the FCT in section 134(2)(b) of the Constitution without the use of the word 'and', seeing that the FCT is not actually a State but deemed to be a State. Besides being the capital of the country, it argued, the FCT has no special status over and above the other 36 States of the Federation. Any interpretation to the contrary, it was submitted by INEC, will only result in an absurdity and against the spirit of equality and fairness that is well entrenched in the Constitution. To further buttress its argument, INEC particularly drew our attention to section 179(2)(b) of the Constitution in respect of Governorship elections in the State. Counsel on its behalf pointed out that in section 179(2)(b) of the Constitution the draftsman did not give the State Capitals special status in respect of elections into the office of the Governor in the 36 States of the Federation. It urged us to take note of the fact that the 36 State Capitals were not in any way ascribed special status in a manner that a person to be elected Governor must have at least 25% of the votes cast in the respective State capitals. I.N.E.C. rounded off by submitting that if the draftsman of the Constitution had wanted to give the voters of the FCT a special status, separate from other States, or if it was their intention to make obtaining 25% of the votes of F.C.T, a requirement for election as President they would have expressly stated so in section 134(2). Counsel urged us to resolve this issue against the petitioners.

Second respondent on his part added that elections in any part of the world is about votes and voters and that there is no superiority of vote and voters. Zeroing down specifically on section 134(2)(b)of the

Constitution, 2nd respondent's counsel pointed out that there is no comma in the entire section 134(2) (b) of the Constitution, particularly immediately after the word 'States' and the succeeding 'and' connecting the Federal Capital Territory with the States. That deliberate omission, it was submitted by counsel on his behalf, suggests that the reading of that subsection has to be conjunctive and not disjunctive. Learned counsel to 2nd respondent also argued that by virtue of section 299 of the Constitution, the Federal Capital Territory, Abuja, is taken 'as if' it is the 37th State of the Federation.

Any contrary interpretation, learned counsel also submitted, would lead to absurdity, chaos, anarchy and alteration of the very intention of the legislature. Counsel cited among others the cases of: *Nafiu Rabiu v. State* (1980) 12 NSCC 291 @ 300-301,(1981)2 NCLR 293; *Marwa v. Nyako* (2012) 6 NWLR (Pt. 1296) 199@306-307; *A.D.H. Ltd. v. A.T. Ltd.* (2006) 10 NWLR (Pt. 986)635@649; *Awolowo v. Shagari* (1979) NSCC 87 @ 102; *Abraham Adesanya v President, Federal Republic of Nigeria* (1981) 12 NSCC 146@ 167-168, (1981) 2 NCLR 358 and *A.-G., Abia State v. A.-G.,Federation* (2002) 6 NWLR (Pt.763) 265@365 in support of their argument of the true intention of the Constitution in its provisions including section 134(2)(b). Learned counsel said even petitioners also admitted that the FCT is the 37th State of the Federation, going by paragraph 107 of their petition where they listed the F.C.T. as the 37th State, after listing the States mentioned in section 3(1) of the Constitution as numbers 1-36.

Second respondent in his Reply address made the further alternative argument that going by the decision of the apex court in *Awolowo v. Shagari* (1979) LPELR-653 (SC); (1979) All NLR 120;(1979) 6-9 SC 37 as regards the calculation of one-quarter of the total votes in Kano State that was the last State the President-elect in that election needed to make the Constitutional threshold, he met the Constitutional provision to be returned elected, even going by the petitioners' interpretation to the provisions of section 134(2)(b) of the 1999 Constitution, he having polled 90,902 of the total 460,071 votes cast in the FCT. By the decision in *Awolowo v. Shagari* (supra), its learned senior counsel Chief Wole Olanipekun, SAN, argued, 2nd respondent by polling 90,902 of the total 460,071votes cast in the F.C.T., even surpassed the one quarter of 2/3 votes of the FCT which, according to learned counsel, is just 76,678.5 of 306,714.

On their part, counsel to 3rd respondent, aside reasoning along the same lines as 1st and 3rd respondents albeit without taking sides with this new alternative argument of 2nd respondent introduced by 2nd respondent only in his reply, submitted, in addition, that if the intention of the drafters of the 1999 Constitution was to make 25% score in the Federal Capital Territory (FCT), Abuja, a mandatory requirement, they would have included in section 134(2)(b) of the Constitution the preposition 'in' after the word 'and', to make 134(2)(b) read “he has not less than one-quarter of the votes cast

at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja." At the very least, the Constitution would have provided for similar language to indicate that the requirement extends to the FCT Abuja as a separate unit from the 36 States of the Federation.

Resolution of Issue

This issue basically borders on the interpretation of section 134(2)(b) of the 1999 Constitution. The appropriate starting point for the resolution of this issue, therefore, is to reproduce, for ease of reference, section 134(2)(a) & (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the interpretation of which is in contention. It reads:

"134(2) A candidate for an election to the office of President shall be deemed to have been duly elected, where, thereby being more than two candidates for the election-

(a) he has the highest number of votes cast at the election; and

(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja."

The contention is as to the interpretation to be accorded to paragraph (b) of subsection (2) of section 134 quoted above, In particular, the contention is whether or not by the wordings in that paragraph a candidate must, in addition to scoring not less than one-quarter of the votes cast in at least two-thirds of the States in the Federation, also score one-quarter of the votes cast in the Federal Capital Territory Abuja (FCT) before he can be deemed to have been duly elected. In other words, whether in determining two-thirds of the States of the Federation the Federal Capital Territory is to be included and regarded as one of the States of the Federation, or its status is to be regarded as distinct from the other States of the Federation, such that scoring one-quarter of votes in the FCT is a mandatory requirement for a candidate to be deemed duly elected as President.

It is pertinent to state that unlike interpretation of statutes, the interpretation of Constitution has its own guiding principles. In *F.R.N. v. Nganjiwa*, which was cited by the petitioners as SC/794/2019, but which is reported as *F.R.N. v. Nganjiwa* (2022) 675 LPELR-58066 (SC), (2022) 17 NWLR (Pt. 1860) 407, the Supreme Court has succinctly reviewed decided cases on interpretation of the Constitution and outlined these guiding principles:

(a) In interpreting the Constitution, which is the supreme law of the land, mere technical rules of interpretation of statutes should be avoided, so as not to defeat the principles of government enshrined therein. Hence a broader interpretation should be preferred, unless there is something in the text or in the rest of the Constitution to indicate that a narrower interpretation will best carry out the objects and purpose of the Constitution.

(b) All sections of the Constitution are to be construed together and not in isolation.

(c) Where the words are clear and unambiguous, a literal interpretation will be applied, thus according the words their plain and grammatical meaning.

(d) Where there is ambiguity in any section, a holistic interpretation would be resorted to in order to arrive at the intention of its framers.

(e) Since the draftsperson is not known to be extravagant with words or provisions, every section should be construed in such a manner as not to render other sections redundant or superfluous.

(f) If the words are ambiguous, the lawmaker's intention must be sought, first, in the Constitution itself, then in other legislation and contemporary circumstances and by resort to the mischief rule.

(g) The proper approach to the construction of the Constitution should be one of liberalism and it is improper to construe any of the provisions of the Constitution as to defeat the obvious ends which the Constitution was designed to achieve.

See also on this: *Nafiu Rabiu v. State* (1980) 8 -11 SC 130 at 148, (1981) 2 NCLR 293; *A.-G., Bendel State v. A.-G., Federation & Ors.* (1981) NSCC 314 at 372-373, (1982) 3 NCLR 1; *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 281; *Savannah Bank Ltd. v. Ajilo* (1989) 1 NWLR (Pt. 97) 305 at 326; and A.-G., *Abia State v. A.-G., Federation* (2005) All FWLR (Pt. 275) 414 at 450,(2006)16 NWLR (Pt. 1005) 265, which were also referred to by the apex court.

In finding appropriate answer to this issue, I wish to observe, first, that with all due respect to counsel to the petitioners, their interpretation of section 134(2)(b) of the 1999 Constitution founded principally on a fixation with the word "and" appearing between the phrases the has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation," and lithe Federal Capital Territory, Abuja, "is completely fallacious, if not outrightly ludicrous. Even their

recourse to the case of *Abubakar v Yar'adua* (2008) 19 NWLR (Pt.1120) 1, does not help their argument because Tobi, JSC made it clear that a purposive rule of interpretation will not be appropriate "... where the intention of the lawmaker is clear, precise and unequivocal, so much so that a person can say "Yes this is what the lawmaker has in his mind."

Thus, in the interpretation of the Constitution, the principles upon which the Constitution was established rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions. See: *Global Excellence Communications Ltd v. Donald Duke* (2007) 6 NWLR. (Pt. 1059)22 at 41 -41 (SC); (2007) LPELR-1323 (SC) at pages 18-19;*A.-G. of Bendel State v. A.-G., Federation* (1982) 3 NCLR 1; *Saraki v.F.R.N.* (2016) 3 NWLR (Pt. 1500) 531; *Skye Bank Plc v. Iwu* (2017)16 NWLR (Pt. 1590) 24; *Shelim v. Gobang* (2009) All FWLR (Pt.496) 1866 at 1878 (SC), (2009) 12 NWLR (Pt.1156)435.

That, this is the position is not at all open to doubt. In *Bronik Motors Ltd v. Wema Bank Ltd*. (1983) LPELR-808 (SC); (1983) 1SCNLR 296, Nnamani, JSC, of blessed memory, speaking for the apex court, confirmed it when, after a painstaking analysis of the cases on the point, said at pages 30-32 that:

> A Constitution is a living document (not just a statute) providing a framework for the governance of a country not only for now but for generations yet unborn. In construing it, undue regard must not be paid to merely technical rules otherwise the objects of its provisions as well as the intention of the framers of the Constitution would be frustrated.
>
> As was stated in *Minister of Home Affairs v. Fisher* (1979) 2 W.L.R. 899, (1980) A.C. 319 @ 323, a constitutional requirement should not necessarily be construed in a manner according to rules which apply to Acts of Parliament. Although the manner of interpretation of a constitutional instrument should give effect to the language used, recognition should also be given to the character and origins of the instrument. Such an instrument should be treated as sui generis calling for principles of interpretation of its own suitable to its character without necessary acceptance of all the presumptions that are relevant to legislation of private law.
>
> "It has also been accepted by all our courts that a broad and liberal interpretation should prevail in interpreting the provisions of our Constitution although one has constantly to bear in mind the object which such provisions were intended to serve. Sir Udo Udoma, J.S.C, very aptly stated this in *Nafiu Rabiu v. The State* (1980)8-11 SC 130@148, (1981)2 NCLR 293 where the learned Justice said:

> 'My Lords, it is my view that the approach of this Court to the construction of the Constitution should be, and so it has been, one of liberalism, probably a variation of the theme of the general *maxim ut magis valeat quam pereat*. I do not conceive it to be the duty of this Court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accordance with the words and sense of such provisions will serve to enforce and protect such ends."

Some years down the line in *Global Excellence Communication Ltd. v. Donald Duke* (2007) LPELR-1323 (SC), (2007) 6 NWLR (Pt.1059) 22, Onnoghen, JSC, later CJN, reiterated the relevant principles for interpretation of the Constitution, with His lordship saying, among others, at page 19, that:

> "The principles upon which the Constitution was established, rather than the direct operation or literal meaning of the words used measure the scope and purpose of its provisions. The words of the Constitution are therefore not to be read with stultifying narrowness."

All these were further followed by this court recently in *Federal Republic of Nigeria v. Muhammadu Maigari Dingyadi* (2018) LPELR-4606 (CA), in the following way at page 33:

> "One main guiding post is that the principles upon which the Constitution was established rather than the direct operation or literal meaning of the words used measure the purpose and scope of its provisions: See Global Excellence Communications Ltd. v. Donald Duke (2007) 6 NWLR (Pt. 1059) 22 @ 41-41 (SC);*Attorney-General of Bendel State v. Attorney General of the Federation* (1982) 3 NCLR 1; *Saraki v. F.R.N*. (2016) 3 NWLR (Pt. 1500) 531; *Skye Bank Plc v. Iwu* (2017) 16 NWLR (Pt. 1590) 24. There is always a need for the fulfilment of the object and true intent of the Constitution, Therefore, the Constitution must always be construed in such a way that it protects what it sets out to protect and guide what it is meant to guide - *Adeleke v. Oyo State House of Assembly* (2006) 6 NWLR (Pt. 1006) 608. In interpreting the Constitution of a nation, it is the duty of the Court to ensure the words of the Constitution preserve the intendment of the Constitution- *Okogie v. A.-G. Lagos State* (1989)2 NCLR 337, *Abaribe v. Speaker*; Abia State House of Assembly (2002) 14 NWLR (Pt. 788) 466, *Marwa v. Nyako* (2012) LPELR-7837 (SC), (2012) 17 NWLR (Pt. 1296) 199. Every Constitution has a life and moving spirit within it and it is this spirit that forms the raison de'entre of the Constitution without which the Constitution will be a

dead piece of document. The life and moving spirit of the Constitution of this country is captured in the preamble. It has been held that when a Constitutional provision is interpreted, the cardinal rule is to look to the preamble to the Constitution as guiding star, and the directive principles of State Policy as the 'book of interpretation', and that while the preamble embodies the hopes and aspirations of the people, the directive principles set out the proximate grounds in the governance of the country - *Thakur v. Union of India* (2008) 6 SCC 1.

"In other words, in interpreting the wordings of section 212(1)(a) of the 1999 Constitution (as amended), the Court should be guided by principles upon which the Constitution was established rather than by the direct operation or literal meaning of the words used in the provision, and where the literal meaning of the words used are not in consonance with the guiding principles, literal interpretation must be jettisoned for another approach that accords with the guiding principles of the Constitution - *Abaribe v. Speaker*; *Abia State House of Assembly* (supra) (2002) 14 NWLR (Pt. 788) 466; *Global Excellence Communications Ltd v. Donald Duke* (2007) 6 NWLR (Pt. 1059) 22. The interpretation that would serve the interest of the Constitution and best carries out its objects and purpose must always be preferred - *Kalu v. State* (1988) 13 NWLR (Pt. 583)531."

Following these well-settled guidelines, our first port of call in unlocking the argument of the petitioners is the preamble to the 1999 Constitution and the Directive Principles of State Policy contained therein all of which embody the principles of the Constitution. The preamble to the 1999 Constitution loudly proclaims equality between citizens as its cornerstone among others, thus:

"We the people of the Federal Republic of Nigeria;

Having firmly and solemnly resolved;

……..

And to provide a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom, equality and Justice, and for the purpose of consolidating the Unity of our people:Do Hereby make And Give to Ourselves the following Constitution:"

For those who are not used to reading preambles, the Constitution still in its Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the Constitution, which this

court aptly described as the 'road to construction' in *F.R.N. v. Dingyadi* (supra), repeats this equality principle. Under its social objectives provision of that Chapter in section 17 thereof, it again proclaims that:

"11(1) The State social order is founded on ideals of freedom, equality and Justice.

(2) In furtherance of the social order-

(a) Every citizen shall have equality of rights, obligations and opportunities before the law;"

Equality of rights in every citizen as stated in this provision cannot by any means be read to exclude equality of the weight and value of their votes. No, it includes it. Even more so, when the issue here is the right of every such citizen to elect with their votes their President whose policies are supposed to and will affect all of them equally regardless of which part of the country they reside or live.

So even stopping here, the futility and hollowness in the argument of the petitioners that the votes of the voters in the FCT, Abuja have more weight than other voters in the country, to the extent of their votes purportedly have a veto effect on other votes, is rendered bare. That notwithstanding, let us still proceed to consider, for whatever it is worth, their interpretation of section 134(2)(b) of the same 1999 Constitution, which incidentally centres around the word 'and' in that provision.

In the first place, the settled position of the law is that in interpreting a constitutional provisions the Court should be guided by the principles upon which the Constitution was established, rather than by the direct operation or literal meaning of the words used in the provisions, and where the literal meaning of the words used are not in consonance with the guiding principles, literal interpretation must be jettisoned for another approach that accords with the guiding principles of the Constitution. It is quite clear that a calm reading of section 134(2)(b) of the Constitution will leave no one in doubt that the use of the word 'and' by the framers, between the words "of the States in the Federation" and "the Federal Capital Territory, Abuja" indicates nothing more than the framers' understandable desire for consistency in referring to the Federal Capital Territory by that name, as it is done all through the Constitution whenever reference is made to the Federal Capital Territory. The word 'and' and 'Federal Capital Territory, Abuja' do not by any means imply the meaning imputed to it by the petitioners.

In any event, section 299 of the Constitution dispels any lingering doubt that may still be existing in anyone's mind by stating clearly that:

"The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation; and accordingly-

(a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja;

(b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution.

(c) the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be necessary to bring them into conformity with the provisions of this section."

(Emphasis mine)

This provision states most unequivocally that the entire provisions of the Constitution shall apply to the Federal Capital Territory as if it were one of the States of the Federation. It is noteworthy that the punctuation mark employed by the framers immediately after the part of that provision ending with "Federation" emphasized by me, is a semicolon whose function in a sentence is to separate independent clauses of a compound sentence: See Meriam Webster's Online Dictionary which defines 'semicolon' as "a punctuation mark used chiefly in a coordinating function between major sentence elements (such as independent clauses of a compound sentence)." WIKIPEDIA also explains its use thus:

"In the English language, a semicolon is most commonly used to link two independent clauses that are closely related in thought, such as when restating the preceding idea with a different expression."

The point being made here is that, contrary to the position of the petitioners, by the express provisions of section 299 above, the provisions of the entire Constitution shall apply to the Federal Capital Territory as if it were one of the States of the Federation. This means that section 134(2)(b) of the same Constitution, requiring a Presidential candidate to poll at least one quarter of the votes cast in two-thirds of the States of the Federation in order to be returned elected) means nothing more than that the Federal Capital Territory shall be taken into account in calculating the said two-third of the States of the Federation.

In other words, the FCT is no more than one of the States of the Federation for the purpose of that calculation. Nothing more than that is can be implied or inferable from section 134(2)(b) of the Constitution.

If anything, this position is confirmed in the cases of *Bakari v. Ogundipe* (2021) 5 NWLR (Pt. 1768) 1 at 38, where it was said by the apex court that

> "By virtue of the provisions of the section 299 of the Constitution it is so clear that the Federal Capital of Nigeria has the same status of a State; it is as if it is one of the States of the Federation";

and *Ibori v. Ogboru* (2009) 6 NWLR (Pt. 920) 102 at 138, where it was confirmed by this court that

> "The Federal Capital Territory, Abuja is to be treated like a State by virtue of section 299 of the 1999 Constitution....If the Federal Capital Territory, Abuja, is to be treated like any other State, then it is not superior to or inferior to any other State in Nigeria."

It is also my considered view that if the framers had wanted to make scoring one-quarter of votes cast in the Federal Capital Territory, Abuja, a specific requirement for the return of a Presidential candidate, they would have made that intention plain by using words that clearly separate the scoring of one-quarter of votes in the Federal Capital Territory as a distinct requirement.

As expressly stated in section 299 of the Constitution, for the purposes of fulfilling the requirements of section 134(2)(b) of the Constitution for the return of a Presidential candidate as duly elected, the Federal Capital Territory, Abuja, is to be treated as one of the States in the calculation of two-third of the States of the Federation. Such that if the candidate polls 25% or one-quarter of the votes in two-thirds of 37 States of the Federation (FCT Abuja inclusive), the Presidential candidate shall be deemed to have been duly elected, even if he fails to secure 25% of the votes cast in the Federal Capital Territory, Abuja, as the 2nd respondent did.

In conclusion, I hold without any equivocation that in a Presidential Election, polling one quarter or 25% of total votes cast in the Federal Capital Territory of Abuja is not a separate precondition for a candidate to be deemed as duly elected under section 134 of the Constitution. In consequence, issue 4 is also resolved against the petitioners and in favour of the respondents,

Issue 3

Whether 2nd respondent was not disqualified under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to contest the Presidential election held on 25th day of February 2023, having regard to the alleged order of forfeiture arising from drug-related offence, his acquisition of the citizenship of a country other than Nigeria, and presenting a forged certificate to the 1st respondent?

I do not intend to reopen this issue, having already ruled on it while considering the preliminary objections of respondents. I held therein that the petitioners did not plead facts in support of non-qualification or disqualification of 2nd respondent in their petition and their efforts to remedy it through their replies to respondents' replies were belated and of no avail. That ruling constitutes issue estoppel, binding not only on the parties but on this court, meaning, that this court cannot depart from it: See *Uwemedimo v. Mobil Producing (Nig.) Unltd*. (2022) 2 NWLR (Pt. 1813) 53 @ 78 paragraph E-F (SC); *Francis Shanu & Anor v. Afribank (Nig.) Plc* (2002) LPELR-3036 (SC) p. 25 paragraph D-E; (2002)17 NWLR (Pt. 795) 185; *Fadiora v. Gbadebo* (1978) 3 SC 219;*Lawal v. Dawodu & Ors*. (1972) 1 All NLR (Pt. 2) 270; *Cardoso v Daniel* (1986) LPELR-830 (SC) p. 27-28, (1986) 2 NWLR (Pt.20)1;*Ladega v. Durosinmi* (1978) 3 SC 82.

This issue is therefore discountenanced.

Issue Four

This issue is whether 2nd respondent was elected by majority of lawful votes cast in the election and 1st respondent was right in declaring him elected.

In addressing this issue, Chief Chris Uche, SAN, for the petitioners argued that 1st respondent admitted that the petitioners won the election in 21 States, which States he listed as Adamawa, Akwa Ibom, Bauchi, Bayelsa, Borno, Delta, Ekiti, Gombe, Jigawa, Kaduna, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Osun, Sokoto. Taraba, Yobe, and Zamfara. He contended that that is an admission against interest. He relied on the cases of *Dr Jeremiah O. Abalaka v Prof. Ibironke Akinsete & Ors* (2023) LPELR-60349 (SC), (2023) 13 NWLR (Pt. 1901) 343 and *Dr Shettima Bukar Abba v. Alhaji Musa Abba Aji & Ors*.(2022) LPELR-56592 (SC), (2022) 11 NWLR (Pt. 1842) 535.

Counsel next picked on the evidence of PW21 (Mr. Samuel Oduntan) and exhibits PAH1, PAH2, PAH3 and PAH4 tendered by the said PW21 to contend that he produced evidence of the expert to prove the petition. Counsel submitted that where a party testifies on a material fact the adversary must offer

Counter evidence either to cross-examine the witness or to offer counter evidence, else the court should accept the evidence as true. He said that when a team of experts jointly undertake a project and produce a report, the repot could be tendered by one of them in court as PW21 did. He relied on *S.P.D.C. v. Adamkue* (2003) 11 NWLR (Pt. 832) 532; *S.P.D.C. v. Farah* (1995) 3 NWLR (Pt.382)148.Counsel said that since 1st respondent failed to adduce evidence to contradict exhibit PAH1, the court should accept, believe and act on it. He relied on the case of *MIA & Sons v. F.H.A.* (1991) 8 NWLR (Pt.209) 295 and contended further that the 2nd respondent failed to explain the owner of the name 'Adekunle' on the NYSC discharge certificate presented by the 2nd respondent to the 1st respondent; that the 2nd respondent failed to cross-examine the PW27 on that document. He urged the court to resolve this issue in favour of the petitioners.

Resolution of Issue 4

This issue covers ground 3 of the petition. The facts in support of this ground 3 were pleaded to by the petitioners from paragraphs 105 to 145 of the petition. The petitioners specifically pleaded in paragraphs 106 to 107 as follows:

"106. The petitioners shall lead evidence at the hearing to show that:-

(a) the result of the election as announced by the 1st respondent and especially the votes allocated to the 2nd respondent do not represent the lawful valid votes cast at the election; and

(b) the lawful votes cast at the election were deliberately and massively deducted from the 1st petitioner's scores by the 1st respondent in order to return the 2nd respondent.

107. The petitioners shall give evidence to show the Eection results as purportedly declared by the 1st respondent in respect of each State of the Federation,including the Federal Capital Territory, the details of which are contained in the Table following, are wrong:"

The table referred to by the petitioners is the table of results declared by the 1st respondent. There is no other set of results placed before this court by the petitioners to form the basis of our finding of fact as to whether the declared result is wrong or not. Success or failure in an election depends on figures, which is in turn dependent on votes garnered by each candidate. So, where the complaint in an election petition is that the candidate returned did not poll majority or highest votes in the election to be returned, as contended here by the petitioners, not only must the figures disputed be pleaded, the figures or votes the petitioner perceives as the correct figures of the election ought to and must also be pleaded. That is not only logical,

support for it can be found in several decisions, among them *Nadabo v. Dabai* (2011) 7 NWLR (Pt. 1254) 155@ 177 where Okoro, JCA, as he then was,said:

> "When a petitioner is alleging that the respondent was not elected by majority of lawful votes, he ought to plead and prove the votes cast at the various polling stations, the votes illegally credited to the 'winner' and the votes which ought to have been deducted from the supposed winner, in order to see if it will affect the result of the election. Where this is not done, it will be difficult for the court to address the issue. See *Awolowo v. Shagari* (1979) 6-9 SC 51."(Italics mine)

See also *Ojo v. Esohe & 2 Ors*. (1999) 5 NWLR (Pt. 603) 444 @ 450-451 (per Tabai, JCA as he then was). The averments of petitioners in paragraph 107 of the petition only showed thevotes declared by INEC, which the petitioners are disputing as manipulated. Nowhere in the petition did petitioners plead what they considered the authentic votes of the election to guide the court in the inquiry suggested by them in this allegation that 2nd respondent did not poll majority of lawful votes in the election.

Their petition therefore did not meet the legal threshold to ignite a proper inquiry by this court, and so lame even on the pleadings.

Going further, if wemust at all, the petitioners' claim is that 19,702 polling units results contain various forms of infractions.They asserted that results from a total of 4,307 Polling Units are without stamp on the respective Forms EC8A from the States and details are said to be in the Statistician's Report, which report we have repeatedly held incompetent and inadmissible.

They also contended that results from 1,300 polling units do not have signatures of the Presiding officers on the respective Forms EC8A.

It was also alleged that results from 6,418 polling units have and indicate zero accreditation.

It was further alleged that 9,463 polling units across 30 states showed that the votes returned are in excess of accredited voters. Furthermore, that the presiding officers failed to properly fill and countersign alterations in election forms, including Forms EC8A, EC8B, EC8C and EC8D in over 40,000 polling units which they claimed were in the statistician's report,

It is clear from the averments in the petition as captured above that neither the particulars of the polling units in issue nor those involved in the irregularities were given by the petitioners. In any case, our law is well settled that before a party can legally rely on fraud or forgery or any form of malpractice as

alleged in this petition, the facts must not only be pleaded but particulars thereof must be provided in the pleadings: See *Omodele Ashabi Eya & Ors v. Alhaja Risikatu Olopade & Anor* (2011) 11 NWLR (Pt. 1259) 505.

The petitioners in the pleadings from paragraphs 128 to 142, averred to issues of violence and disruptive activities. These allegations are criminal in nature. The standard of proof, where an allegation of crime is made in an election petition, is beyond reasonable doubt and not on the balance of probabilities: see *Emmanuel v. Umana & Ors*. (2016) LPELR- 40037(SC), reported as *Udom v. Umana* (No.1) (2016) 12 NWLR (Pt. 1526) 179.A complaint of massive suppression, deduction and allocation of votes connotes forgery or fraud, particulars of which must be pleaded and proved beyond reasonable doubt. *Kakih v. P.D.P. & Ors* (2014) LPELR-23277 (SC) p.51-52; (2014) 15 NWLR (Pt.1430) 37 *Nwobodo v. Onoh* (1984) LPELR-2120 (SC), (1984) 1 SCNLR 1.

First respondent joined issues with the petitioners' allegations in paragraphs 92 to 142 of the petition.

The 2nd respondent and the 3rd respondents in a similar manner joined issues with the petitioners in calling on them to prove their claims as required by the law.

What this entails is that, the petitioners who made all these allegations have the burden to prove all their allegations as required by law.

The petitioners have placed reliance on the evidence of their Statistician and forensic expert evidence, who are PW21 and PW26 respectively. I have had time to look at the evidence of these witnesses and had ruled that their evidence, apart from being improperly before the court, is also hearsay. The statistician's report rolled out figures of Forms which he claimed were either not signed or stamped, but none of the Forms referred to was attached to the report. The Polling Unit Agents of the petitioners who were present in all the polling units round the country were not called to testify to any problem or difficulties in their polling units on the 25th day of February 2023 Presidential Election. That is fatal to the petitioners'case.

In *Belgore v. Ahmed* (2013) 8 NWLR (Pt.1355) 60@100, it was said by Tabai, JSC, in lead judgment as follows:

> "With respect to the volume of documentary evidence,I wish to state at the risk of repetition, that they were merely tendered across the bar by learned counsel for the petitioners at the trial. He did not, and was not in a position, to answer questions or

otherwise speak on any of them. Their makers were not called. In such circumstances was the trial tribunal bound to ascribe probative value to them? I shall answer this question in the negative.The trial tribunal had no duty to accord probative value to the mass of documents, their status、as certified public documents notwithstanding.

"There is no doubt that the petitioners' decision to tender the mass of documentary evidence at the trial was prompted by the urgency dictated by section 285(6) of the 1999 Constitution (as amended). That, however, does not diminish the petitioners/ appellants' burden and standard of proof of the petition. They had a duty to prove their petition according to law."

This position of the law may have been fairly watered down under the current electoral regime by section 137 of the Electoral Act, 2022 stating that:

It shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged.

But even at that, it cannot be gainsaid that oral evidence is necessary to explain discrepancies in original or certified true copies of election documents where the complaint verges on whether an alteration or amendment in an original or of a polling unit Result was made with intent to falsifying it or whether it was simply made to correct an apparent human error in the course of making entries in the result. Such situation would surely need a witness to explain or speak to the documents in order to prove falsification of election documents when it is so alleged, as pointed out in *Belgore v. Ahmed* (supra). See also *Waziri Ibrahim v. Shagari* (2007) 3 EPR 99 @ 131; (1983) 2 SCNLR 176 where it was again said by the apex court that:

"An amended document by itself does not speak of motive behind the amendment. Without more, an altered or amended document is as genuine as an unamended one, Therefore, the admission of exhibits C to V, the returns from States from which exhibits B and 81 were collated without any evidence to add a sting to the innocent amendment appearing on some of them offers no help to the case of the appellant,I find myself therefore unable to accept the submission of the learned counsel for the appellant that because returning officers amended and altered the returns in exhibits C to V from 15 States, that fact *ipso facto* means that the returning officers have not complied with the sections 65(5), 66, 70 and 119 of the

> Electoral Act 1982. There must be evidence of indictment or of immoral, unlawful and illegal motive."

See also *Buhari v. Obasanjo* 23 NSQR 442@727, (2005) 13 NWLR (Pt. 941) 1 where it was again said by the apex court that:

> 'The position of law regarding the type of evidence which must be led in support of allegations in which figures or scores of candidates at an election are being challenged should come direct from the officers who were on the field where the votes were counted and/or collated."

All the above, in my humble view, also explain the rationale for the employment of the adverb 'manifestly' by the draftsman in section 137 of the Electoral Act, 2022. What that word suggests is that the non-compliance complained of must be apparent on the face of the electoral document. It must not be something that can be explained away by oral evidence.

I have in this judgment explained the issue of evidence of witnesses who were not polling unit agents.

The collation agents of the parties who testified were giving accounts of stories related to them by people who were not called as witnesses in this petition.

The petitioners, through their counsel, strenuously argued in this petition that:

> "The true and current position of the Electoral Law in Nigeria now is that a party who alleges non-compliance with the provisions of the Electoral Act, 2022 for the conduct of elections need not call oral evidence if the originals or certified true copies of election documents used in the conduct of the election manifestly discloses the infractions alleged. This is section 137 of the Electoral Act, 2022. They contended that careful and dispassionate examination of all the exhibits tendered and supported by the uncontroverted reports of PW21 and PW26 manifestly discloses large scale 'irregularities' never before witnessed in Nigeria.”"

This interpretation of section 137 of the Electoral Act 2022 by the petitioners has generously and swiftly silenced the otherwise potent adverbial word “manifestly" used by the legislature in that section of the law. "Manifestly" is defined by Online Dictionary:www.dictionary.com to mean:"In a way that can be readily

seen by the eye or the understanding; plainly or obviously; evidently." This means for the petitioners to throw up their arms and say we need not call oral evidence in proving non-compliance as they are canvassing, the certified copies of documents presented must be manifestly or readily seen to convey the fact of non-compliance.

In *Oyetola & Anor v INEC* (supra), the Supreme Court Per Jauro, JSC at PP58 to 59 held as follows:

> "The appellants have also argued that by virtue of section 137 of the Electoral Act, they were relieved of the burden or duty of calling witnesses to prove allegations of noncompliance with the Electoral Act.The said section 137 provides thus:
>
> > "It shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the noncompliance alleged." The above provision is drafted in simple" clear and unambiguous words. The duty of this court is therefore to apply a literal interpretation thereto by giving the words their natural" literal and ordinary,meanings,devoid of any embellishment.See Kassim v. Adesemowo (2021) 18 NWLR (Pt.1807)67, *Aguma v. A.P.C.* (2021) 14 NWLR (Pt. 1796) 351, *F.B.N. Plc v. Maiwada* (2013) 6 NWLR (Pt. 1348) 444, Mil. Adm., *Benue State v. Ulegede* (2001) 17 NWLR (Pt. 741) 194. It is indubitable that section 137 of the Electoral Act only applies where the non-compliance alleged is manifest from the originals or certified true copies of documents relied on. In the instant case, neither exhibit BVR nor any other document relied on by the appellants remotely disclosed, non-compliance with the provisions of the Electoral Act. Hence, the section cannot be of any assistance to them. In the circumstance, they still had a duty to call witnesses who witnessed the alleged acts of non-compliance to testify."

From this authority it is the law that where the documents tendered and relied upon by the petitioners do not manifestly disclose the noncompliance alleged, the petitioners would still need to call witnesses who witnessed the alleged acts of non-compliance to testify.

In the instant case, the petitioners tendered loads of certified copies of documents. The petitioners filed five (5) schedules of documents, the First Schedule was filed on 30th May,2023; the second was filed 31st May, 2023; the third was filed 24 June, 2023; the fourth was filed 7th June 2023 and the fifth Schedule was filed 21st June, 2023, From these schedules of documents, a lot of exhibits were generated and tendered.

These exhibits were objected to by the respondents. I had earlier on in this judgment dealt with these documents and objections. However, I want to have a look at these documents to see if they manifestly show any lack of compliance.These exhibits include the following:

1. Exhibits PG, PG1, to PG3 which were The print-outs of Bimodal Voter Accreditation System (BVAS) for Abia State, Adamawa State, Akwa-Ibom State, Anambra State, Bauchi, Bayelsa, Benue, Borno, Cross-River, Delta, Ebonyi, Edo, Ekiti, Enugu, F.C.T, Abuja, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo,Osun,Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara, were admitted though objected to.

2. Exhibits PH, PH1 to PH36 which were The INEC Data on Number of Registered Voters and Collected PVCS for the 2023 General Election for the States fisted on the First Schedule of Documents as Numbers 46-82 were admitted.

The second schedule of documents was filed on 31/5/2023.From this schedule the exhibits are:

3. Exhibits PJ, PJ1 to PJ17 which were the bundles of Forms EC8As for 17 Local Government Areas of Abia State and the INEC authentication, certificate dated 19/3/2023 were admitted.

4. Exhibits PK1 to PK9; PLI to PL23; PM1 to PM2 which were the bundles of Forms EC8As for8 Local Governments of Bayelsa State, 23 local Governments of Kaduna were State, and 20 Local Governments Oyo State were admitted along with the Authentication Certificate for Kaduna State and for Ogun State respectively.

5. Exhibits PN1 to PN29; and PP1 to PP21 which were the bundles of Forms EC8Bs for Kaduna and Kogi States- Bundles of Forms EC8Bs for 23 Local Governments of Kaduna State Bundles of Forms EC8BS for 21 Local Government Areas for Kogi State.

6. Exhibits PQ1 to PQ20 which were the bundles of Forms EC8Cs for the 20 Local Government Areas of Kaduna State were admitted.

7. Exhibits PRI to PR3; PS1 to PS10 which were copies of Forms EC40GS for Giwa Local Government Area and for five Local Government Areas of Ogun State were admitted.

8. Exhibits PT1 to PT33 which were the bundle of print outs of Bimodal Voters Accreditation System (BVAS) and accreditation Data for Abia; Adamawa; Akwa Ibom; Anambra,

Bauchi; Bayelsa; Benue; Borno;Cross-River; Delta; Ebonyi; Edo; Ekiti; Enugu;Gombe; Imo;Jigawa; Kaduna; Kano; Kebbi; Kogi;Katsina; Kwara; Lagos; Nassarawa; Niger; Ogun;Ondo; Osun; Oyo; Plateau; Rivers State and the FCT.

9. Exhibits PAW1 to PAW25; bundles of CTCs of forms EC8As from Delta State.

10. Exhibits PAX1 to PAX13, copies of EC8As from Ebonyi State.

11. Exhibits PAY1 to PAY18 copies of form EC8As from Edo State.

12. Exhibits PAZ1 to PAZ17- Copies of forms EC8As from Enugu State.

13. Exhibits PBA1 to PBA27- Copies of Form EC8As from Imo State.

14. Exhibits PBS1 to PBS21 - Copies of Form EC8AS from 21 Local Government Areas of Kogi State.

Surprisingly, the documents were dumped on the court without any witness linking them up documents with the specific complaints of non-compliance. It is settled law that despite the tendering of exhibits in proof of a petition/case, the onus of proving the case pleaded and for which the documents were tendered in evidence, lies on the petitioner. In the instant petition, a lot of documents were tendered from the Bar. When a party decides to rely on documents to prove his case, there must be a link between the documents and the specific areas of the petition. The party must relate each document to the specific areas of his case for which the documents were tendered. Failure to link the documents is fatal and catastrophic as it is in this case.

The Supreme Court in the recent case of *Tumbido v. INEC & Ors*. (2023) LPELR-60004 (SC), (2023) 15 NWLR (Pt.1907) 301 held Per Jauro, JSC (at P.43, paras. C-F) as follows:

> "The practice of dumping documents on the court without speaking to them has been deprecated by this court on numerous occasions. No court is entitled to conduct inquisitorial investigations into the contents of a document or purport thereof in its chambers. The Appellant ought to have called a witness to speak to the photographs and video recording before the court.See *Makinde v. Adekola* (2022) 9 NWLR (Pt.1834)13; *Maku v. Al-Makura* (2016) 5 NWLR (Pt. 1505) 201; *A.C.N. v. Nyako* (2015) 18 NWLR (Pt.1491)352."

Further contributions in the Judgment made by Nweze, JSC at pp. 48-49, paras. E-F are as follows:

> "As it were, the appellant merely dumped exhibits 1-22 and M on the trial court. That approach was,clearly,at variance with the position which this Court had taken in several cases, old and recent,that a party who produces an exhibit, so that the court could utilise it in the process of adjudication, must not dump it on the court, but must tie it to the relevant aspects of his case. In this case, the appellant failed to do so. In one word, the said exhibits were, simply, dumped on the triaI tribunal. That was not good enough, Ivienagbor v.Bazuaye (1999)9 NWLR (Pt.620) 552; (1999) 6 SCNJ 235,243; *Owe v. Oshinbanjo* (1965) 1 All NLR 72 at 75; *Bornu Holding Co. Ltd. v. Alhaji Hassan Bogoco* (1971)1 All NLR 324 at 333; *Alhaji Onibudo & Ors.v. Alhaji Akibu & Ors.* (1982) 7 SC 60, 62; *Nwaga v. Registered Trustees Recreation Club* (2004) FWLR (Pt.190)1360, 1380-1381; *Jalingo v. Nyame* (1992)3 NWLR (Pt. 231) 538; *Ugochukwu v. Co-operative Bank* (1996) 7 SCNJ 22; (1996) 6 NWLR (Pt. 456)524. Others include: *W.A.B. Lid. v Savanah Ventures* (2002) FWLR (Pt. 112) 53, 72; (2002) 10 NWLR (Pt.775) 401; *Obasi Brothers Ltd. v. M.B.A. Securities Ltd*. (2005) 2 SC (Pt.1) 51, 68; *A.N.P.P.v. I.N.E.C.(*2010)13 NWLR (Pt. 1212) 549; *Ucha v. Elechi* (2012) 13 NWLR (Pt. 1317) 330, 360; *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) 202, 323-324."

In this situation, it is invariably correct that all the allegations raised in this petition have not been proved as required by our law. See: *Buhari v. I.N.E.C.* (2008) LPELR-814 (SC) p.172-173 paragraphs E-D; (2008) 19 NWLR (Pt. 1120) 246, where it was held by Tobi, JSC, that:

> "A petitioner who contests the legality or lawfulness of votes cast in an election and the subsequent result must tender in evidence all the necessary documents by way of forms and other documents used at the election. He should not stop there. He must call witnesses to testify to the illegality or unlawfulness of the votes cast and prove that the illegality or unlawfulness substantially affected the result of the election. The documents are amongst those in which the results of the votes are recorded. The witnesses are those who saw it all on the day of the election; not those who picked the evidence from an eye witness. No. They must be eye witnesses too. Both forms and witnesses are vital for contesting the legality or lawfulness of the votes cast and the subsequent result of the election. One cannot be a substitute for the other. It is not enough for the petitioner to tender only the documents. It is incumbent on him to lead evidence in respect of the wrong doings or irregularities both in the conduct of the election and the recording of the votes; wrong doings and irregularities which affected substantially the result of the election. Proving an election petition or proof

of an election petition is not as easy as the Englishman finding coffee on his breakfast table and seeping it with pleasure; particularly in the light of section 146(1) of the Electoral Act. A petitioner has a difficult though not impossible task."

It is also important to draw our minds to the fact that criminal allegations are usually and directly made personal.For allegations of crime to be proved against the respondents it must be proved that they committed the corrupt acts or aided, abetted, consented to, or procured their commission.Furthermore, it must be proved that the corrupt practices substantially affected the outcome of the election. See *Omisore v. Aregbesola* (2015) (supra).

The law also places the onus on the petitioners to demonstrate by credible evidence that the alleged corrupt practice indeed occurred and that it affected substantially the outcome of the election. In that quest, the petitioners pleaded some States where the malpractices allegedly occurred. One of such States is Sokoto State. They called PW19, PW21 and PW22 to prove their allegations that the 1st respondent cancelled results from 241 polling units in Sokoto State in respect of National Assembly elections in the State but went ahead to declare result for the presidential election.The three witnesses (PW19, PW21 and PW22) were not in Sokoto during the election.There is also no evidence tendered of the cancellation of results in any of the units alleged. PW19 and PW22, when cross-examined, said they were in Kogi State where they voted and later came to Abuja. The PW21 is the statistician who testified of over-voting, non-signing and cancellation on forms used. But he did not tender or show those compromised forms. The same occurred in their testimonies in Kano State, Kogi State, Lagos State and Rivers State.

From the foregoing consideration, it is very clear that there was no credible evidence by the petitioners to prove the allegations of corrupt practices. Under this issue raised, the petitioners were asking if the 1st respondent was not wrong in returning the 2nd respondent when he was notduly elected by majority of the lawful votes cast in the election. From the facts placed before the court, the 1st respondent declared the results of the election by which the 2nd respondent was returned.

Section 134(2) of the 1999 Constitution talks of the highest number of votes cast at the election if the contest was among more than two candidates, as in the instant case, not majority of votes cast as propounded by the petitioners. The 1st respondent was therefore right from the results declared by her, in the absence of any rival or alternative result placed before this court by the petitioners, that the 2nd respondent who scored 8,794,726 votes, as against 6,984,520 votes scored by the petitioners in the election, scored the highest number of lawful votes cast in the election. Issue 4 is accordingly resolved against the petitioners and in favour of the respondents.

Having resolved all the four issues against the petitioners, I find that the petitioners have not successfully proved any of the grounds as laid out in paragraph 16 of their petition. It is my conclusion that this petition also lacks merit.

Final Orders

Having considered and decided that the three Petitions Nos.CA/PEPC/03/2023; CA/PEPC/04/2023 and CA/PEPC/05/2023 are all devoid of merit, the three petition are hereby dismissed. Accordingly, I affirm the declaration and return of Bola Ahmed Tinubu by the Independent National Electoral Commission (INEC) as the duly elected President of the Federal Republic of Nigeria. The parties in the three petitions are to bear their respective costs.

ADAH, 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 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 (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

(Pt. 1388) 225; *Eze v. Umahi & Ors*. (2022) LPELR-59157(SC); (2023) 6 NWLR (Pt.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 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 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 1st Schedule of the Electoral Act, the election petition to be filed is well regulated. See paragraph 4(5), (6) of the Electoral Act, 2022 which provides as follows:

"4(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 claborately 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 read the lead the rulings and the judgments of my learned brother, Haruna Simon Tsammani, JCA in the above consolidated petitions. I agree with his reasoning and conclusion in the ruling and judgment in each petition and adopt same as mine. I add a few words for emphasis.

I have had a preview of the lead judgment of my learned brother, Haruna Simon Tsammani, JCA. I agree with his reasoning and conclusion therein. In addition, I state that the interpretation of section 134(2) of the Constitution being urged on us is against all settled principles guiding interpretation of the provisions of the Constitution. The provisions of the Constitution must be read together to discover the intention of the framers of the Constitution A court of law has no power to take away or limit the words of the Constitution or import into it what it does not say. See *Elelu-Habeeb 7 Anor v. The Hon. Att. Gen. of the Federation & Ors.* (2012)LPELR-15515(SC) at 119-122(B-E); (2012)12NWLR (Pt.1318) 423. A narrow interpretation that would do violence to the provisions of the Constitution and fail to achieve the goal set by it must be avoided.

Our Constitution is based on the principles of Freedom, Equality and Justice in all ramificatios, and is for the purpose of consolidating the unity of our people. Section 14(1) and (2) states that the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice. The participationby the people in their government shall be ensuredI in accordance the provisions of the Constitution, The right to vote is at the foundation of our democracy. It is the most potent and priceless opportunity a citizen has to have a say in who governs. Every citizen who is qualified to vote must be afforded equal opportunity to cast his or her vote to elect leaders who governs. Our constitutional principles of freedom, equality and justice, democracy and social justice means that the vote of each citizen shall count in the election of leaders who governs. Each and every vote should count equally. No vote should weigh more than the other. The principles of equality of votes must be protected by the court. The interpretation of section 134(2)(b) of the Constitution being urged on us by the petitioners is an unjust manipulation of

the Constitution to create inequality of votes. It negates the principles of equality and justice, democracy and social justice and participation of the people in their government enshrined in our Constitution. It is capable of further dividing the citizens of this country. The politicians are good at using all sorts of means and sentiments to divide the citizens of this country. The interpretation being urged on usis their latest invention in that regard. Unfortunately, they found a ready alliance in those who should know better. The interpretation being urged on us is squarely against the letters and sprit of our Constitution and it is hereby rejected.

Based on the above and the fuller reasons lucidly explained in the lead judgment, I too dismiss the petition.

On the whole, I too dismiss each of the three consolidated petitions. I abide by the final orders made in the lead petition in respect of the petitions.

UGO, J.C.A.: I had earlier read in draft the rulings and judgments of my learned brother, Haruna Simon Tsammani, J.C.A. 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 ofthe very fixed view that the issues agitated by the petitioner therein concerning 3rd respondent's alleged disqualifcation 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*. in 3rd and 4th respondent's favour herein, with the apex 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* (2009) 10 NWLR (Pt.1094) 100 @ 115, 119-120 (SC); *Sosan & Ors. v. Odemuyiwa & 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 theapex 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. I.N.E.C*. (2008) 19 NWLR (Pt. 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 point 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 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 filtering such results before releasing them to the IReV portal, (ii) INEC replacing its in-house I. 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 v: INEC* (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)1All NLR 214@ 218; 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 transmission of their 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 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 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 Akune Oputa, J.SC, always maintained is "the surest road to the shrine of truth and justice." See *Dibiamaka & Ors. v. Osakwe & Ors*. (1989) 2 NSCC 253 @ 260 lines 46-50, (1989) 3 NWLR (Pt. 107) 101(per Oputa, JSC) and *Ojegeze v The State* (1988) 1 NWLR (Pt.71) 404 @ 420 paragraph G-H. Here, the assertion of petitioners is that 1st respondent. INEC, merely used the excuse of glitch in 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 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 Party and its candidate were again declared by 'manipulative and unfriendly' INEC to have scored as much as 428,690 votes in that State. In the same Enugu State, PDP and its candidate also was declared by INEC to have polled 15,745 votes: a number that is also nearly 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, Is petitioner in CA/PEPC/03/2023, I 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 DeIta 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 mueh as 259,738 votes. That is as against alleged INEC-favoured 2nd respondent, who, by INEC's declaration, again polled a relatively miserly 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 Governor, 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 INEC 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.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 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 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 (Pt. 107) 101 and Bozin v. The State (1985) LPELR-799 (SC)p.9; (1985) 2 NWLR (Pt.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 alI, 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 (Pt. 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, is 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 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 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 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; (2013)7 NWLR (Pt. 1352) 124. It also makes no difference that the said Reports have been put in the form of print.Books, it must be noted, cannot be cross-examined1. 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 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 think that he was right in not attaching any weight to the views expressed in the books 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 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 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 easily 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 electionis 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, J.S.C., 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, thatI 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 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.I am in agreement with and I adopt all the reasons and conclusions stated therein, both in respect of the rulings on the objections and the merits of the three consolidated petitions.

CA/PEPC/03/2023 and CA/PEPC/05/2023

Although all the issues in Petitions Nos. CA/PEPC/03/2023 and CA/PEPC/05/2023, have been exhaustively resolved in the lead judgment, I deem it only pertinent to highlight a fundamental vice which has ab initio affected those two petitions, especially as it relates to the petitioners' essential contention or premise upon which they predicated those two petitions. In petitions Nos. CA/PEPC/03/2023 and CA/PEPC/05/2023, the petitioners have premised their ground that the Presidential Election conducted on 25th February, 2023 by Independent National Electoral Commission (INEC) is invalid by reason of corrupt practices and non-compliance,on their contention that by the provisions of the Electoral Act, 2022 and the Regulations and Guidelines for Conduct of Elections, 2022, INEC is mandatorily required to electronically transmit election results to the collation system and to the INEC Results Viewing Portal (IReV). They contended that the 1st respondent had deliberately refused to comply with those mandatory provisions and had manipulated the results of the election through various corrupt practices which they alleged in those petitions. However, in both Petitions Nos. PEPC/03/2023 and PEPC/05/2023, exhibits X1 and X2 were tendered, respectively, to show that the Labour Party, which the 2nd petitioner in Petition No. is PEPC/03/2023, had before the elections approached the Federal High Court, Abuja by way of originating summons in suit No.FHC/ABJ/CS/1454/2022: *Labour Party v. INEC*, for a determination that

> "by the provisions of the Electoral Act, 2022, INEC, the 1st respondent has no power to opt for manual method other than the electronic method provided for by the relevant provisions of the Electoral Act" and for "An order of this honourable court directing/compelling the respondent to comply with the Electoral Act, 2022on electronic transmission of result in the forthcoming General Election."

In its judgment, the Federal High Court, Abuja Division had dismissed the suit and held that

> "... there is nowhere in the above cited sections where the Commission or any of its agents is mandated to use an electronic means of collating or transferring of election result.If

> any, the Commission is only mandated to collate and transfer election results and number of accredited voters in a way or manner deemed by it."

Additionally, this court's attention was referred to the judgment of this Court in Appeal No. CA/LAG/CV/332/2023: *A.P.C.v. Labour Party & 42 Ors*, delivered on the 19th of June, 2023, in which this court set aside the judgment of the Federal High Court, Lagos Division in another Suit No.FHC/L/CS /370/2023: *Labour Party & Ors v. INEC*, again filed by the Labour Party (the 2nd petitioner in PEPC/03/2023) before the Lagos Division of the Federal High Court to obtain an order of mandamus compelling INEC to electronically transmit or transfer election results as provided in its Regulations, after losing in the Abuja Division of the same court.

In the judgment of this court of 19/07/2023 in Appeal No.CA/LAG/CV/332/2023, this court particularly held at pages 23-24 there of that:

> "It is difficult for Suit No. FHC/L/CS/370/2023 which gave rise to this appeal to escape the label of abuse of court process. I said so because the objective of the suit is to compel the 43rd respondent to adopt a particular way of transmitting or transferring the result of the election in Lagos State. This objective is not in any way different from what the objective the 1st respondent wanted to achieve in Suit No. FHC/ABJ/CS/1454/2022. Similar parties are the same in the two suits; the 2nd - 42nd respondents are members of the 1st respondent which litigated Suit No.FHC/ABJ/CS/1454/2022, the 2nd _ 42nd respondents' interest is the same with that of the 1st respondent so they are the 1st respondent's privies. Both suits are against the same defendant i.e. the 43rd respondent herein and filed in the same court albeit different divisions of thecourt. The decision of Emeka Nwite, J. of Abuja Division of the lower court which dismissed the 1st respondent's suit holding that on the interpretation of the provisions of sections 60(5) and 62(2) of the Electoral Act, 2022, INEC the 43rd respondent herein is at liberty to prescribe or choose the manner in which election result shall be transmitted finally settles the issue. I therefore find in Suit No. FHC/L/CS/370/ 2023 which is herein being appealed against all the trademarks of a cause that is an abuse of judicial process."

Exhibits X1 and X2 tendered in petitions Nos. PEPC/03/2023and PEPC/05/2023, respectively, as well as the decision of this court in Appeal No. CA/LAG/CV/332/2023 (supra), are subsisting judgments of court which are not only binding on the parties,but which constitute issue estoppel in relation to the petitioners'essential contention in the these two petitions, which is, that the 1st respondent is by the Electoral

Act, 2022 and the Regulations and Guidelines for Conduct of Elections, 2022 the 1st respondent is mandatorily required to electronically transmit and collate results of the Presidential election.

The doctrine of *issue estoppel* is that once an issue has been finally decided by a competent court, the issue will not be allowed to be relitigated by the same or even by different parties. See*: Ikotun v: Oyekanmi & Anor:* (2008) LPELR-1485(SC) at page 25, paras. A-B; (2008) 10 NWLR (Pt.1094) 100; and *A.P.C. v. P.D.P. & Ors* (2015) LPELR-24587(SC) at 116, (2015) 15 NWLR (Pt.1481) 1.Specifically, in *Ezewani v. Onwordi & Ors* (1986) LPELR-1214(SC), (1986) 4 NWLR (Pt. 33) 27, the Supreme Court, per Oputa, JSC held at page 47 paras. B-E, that:

> "Strictly speaking therefore, the concept and value of an estoppel is to bar a person from denying or asserting anything to the contrary of that which has, in the contemplation of law, been established as the truth either by the acts of judicial or legislative officers or by his own deed or representation, express or implied."

It is clearly evident that the decisions of the Federal High Court in exhibits X1 and X2 tendered in Petitions NJos.PEPC/03/2023 and PEPC/05/2023, respectively, as well as the decision of this Court in Appeal No. CA/LAG/CV/332/2023: *A.P.C. v. Labour Party & 42 Ors* (supra), have dealt a death knell to the petitioners' in the two petitions, having finally decided the issue around which the petitioners have built their claim of non-compliance and corrupt practices in those two petitions, namely - that the 1st respondent is by the provisions of the Electoral Act, 2022 and the Regulations and Guidelines for Conduct of Elections, 2022, mandatorily required to electronically transmit election results to the collation system and the INEC Result Viewing Portal (IReV).

In addition to this obviously fundamental deficiency which I have highlighted above, the lead judgment just delivered had exhaustively considered all the other issues and rightly concluded that the petitioners in Petitions Nos. CA/PEPC/03/2023 and CA/PEPC/05/2023 have failed to establish all the allegations contained in their petitions, I adopt all those reasons and conclusions stated therein in also finding the two petitions devoid of merit.

Petition dismissed.