1. ABUBAKAR ATIKU
2. PEOPLES DEMOCRATIC PARTY (PDP)

V.

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. TINUBU BOLA AHMED
3. ALL PROGRESSIVES CONGRESS

SC/CV/935/2023

SUPREME COURT OF NIGERIA

JOHN INYANG OKORO, J.S.C. *(Presided and Read the Leading Judgment)*
UWANI MUSA ABBA AJI, J.S.C.
MOHAMMED LAWAL GARBA, J.S.C.
IBRAHIM MOHAMMED MUSA SAULAWA, J.S.C.
ADAMU JAURO, J.S.C.
TUJANI ABUBAKAR, J.S.C.
EMMANUEL AKOMAYE AGIM, J.S.C.

THURSDAY, 26TH OCTOBER 2023

APPEAL - Appellate jurisdiction - Exercise of - Role and function of appellate court - What it involves.

APPEAL - Determination of appeal by Supreme Court - Basis of - What Supreme Court considers - Importance of issues for determination.

APPEAL - Fresh evidence on appeal - Reception of - Principles governing - Jurisdiction of Supreme Court to admit fresh evidence in election appeals - Source of.

APPEAL - Issues for determination - Appeal at Supreme Court - Importance of in determination of appeal.

APPEAL - Preliminary objection to appeal - Object and limits of Whether can be raised against motion.

APPEAL - Validity of appeal - Sole ground of appeal - Validity of to sustain appeal where other grounds incompetent.

CONSTITUTIONAL LAW - Interpretation of Constitutional and statutory provisions - Principles governing - Whether candidate for presidential election must score 25% of votes cast in Federal Capital Territory.

CONSTITUTIONAL LAW - Presidential election - Court of Appeal sitting over petition challenging result of - Status of - Procedure applicable thereat.

COURT - 'Bias' against judicial officer - Meaning of - Where alleged - How treated - Duty on party raising same.

COURT - Jurisdiction of court - Meaning and nature of - Where court lacks jurisdiction - Effect - Proper order to make.

ELECTION PETITION - Allegation of forgery in election petition - Nature of - How proved.

ELECTION PETITION - Amendment of petition - Rules relating thereto - Whether amendment can be made after expiration of period to present petition.

ELECTION PETITION - Collation and transmission of election result - Power of INEC to prescribe manner of - nature of - Whether fettered.

ELECTION PETITION - Collation and transmission of election. result - Different levels prescribed therefor - Unavailability of result on IReV - Whether constitutes ground to nullify election.

ELECTION PETITION - Collation and transmission of election result - Petitioner alleging failure to electronically collate and transmit election results - Burden of proof thereon - How discharged.

ELECTION PETITION - Collation of election result - INEC Result Viewing Portal (IReV) - Function of - Whether a collation centre - Whether same as collation system - Where it fails - Whether consequential on collation of result.

ELECTION PETITION - Determination of election petition – Time limit therefor - Whether can be extended.

ELECTION PETITION - Election petition - Sui generis nature of - Implication thereof - Distinction with ordinary civil proceeding - Attitude of court thereto.

ELECTION PETITION - Election result - Election result declared by INEC - Presumption of correctness of.

ELECTION PETITION - Front-loading of evidence - Aim of - Witness deposition - When to file - Whether can be filed after expiration of time for filing petition.

ELECTION PETITION - Infraction of INEC Regulations and Guidelines - Whether can invalidate election.

ELECTION PETITION - Pleadings - Duty on Tribunal or court to confine itself to pleadings of parties.

ELECTION PETITION - Pleadings in election petition - Need not to be vague, evasive or imprecise.

ELECTION PETITION - Pleadings in election petition - Petitioner's reply to respondent's reply - When necessary -What it should contain and what it should not.

ELECTION PETITION - Presidential election - Court of Appeal sitting over petition challenging result of - Status of - Procedure applicable thereat.

ELECTION PETITION - Presidential election - What candidate requires to be declared winner thereof - Whether must score 25% of votes cast in FCT.

ELECTION PETITION - Proof - Allegation of non-compliance with conduct of election - Burden of proof of on petitioner - Whether section 137 Electoral Act relieves petitioner thereof - How construed.

ELECTION PETITION - Proof - Non-compliance with provisions of Electoral Act - Burden on petitioner alleging - How discharged - What he must show.

ELECTION PETITION - Proof of election petition - Fresh or additional evidence - When can be adduced - Limits thereto.

ELECTION PETITION - Proof of election petition - When petitioner cannot call additional witness or evidence in support of petition.

ELECTION PETITION- Proof of election petition - Who can adduce evidence of what transpired in polling unit or collation centre - Where polling agent or collation agent not called as witness - Effect.

ELECTION PETITION - Witnesses in election petition - Subpoenaed witness - Need to file witness statement on oath thereof along with petition.

EVIDENCE - Deposition of witness - Deposition not made before court - Treatment and admissibility of.

EVIDENCE - Deposition of witness - Where not signed by witness - Effect - How treated - Whether of evidential value.

EVIDENCE - Proof - Allegation of forgery in election petition - Nature of - How proved.

EVIDENCE - Proof - Allegation of non-compliance with conduct of election - Burden of proof of on petitioner - Whether. section 137 Electoral Act relieves petitioner thereof - How construed.

EVIDENCE - Proof - Non-compliance with provisions of Electoral Act - Burden on petitioner alleging - How discharged - What he must show.

EVIDENCE - Proof of election petition - Fresh or additional evidence - When can be adduced - Limits thereto.

EVIDENCE - Proof of election petition - When petitioner cannot call additional witness or evidence in support of petition.

EVIDENCE - Proof of election petition - Who can adduce evidence of what transpired in polling unit or collation centre - Where polling agent or collation agent not called as witness - Effect.

EVIDENCE - Witnesses - Subpoenaed witness - Witness subpoenaed by court - Witness subpoenaed by party - Distinction between - Implication thereof

EVIDENCE - Witnesses in election petition - Subpoenaed witness - Need to file witness statement on oath thereof along with petition.

INTERPRETATION OF STATUTES - 'Shall' in section 135(1), Electoral Act - Meaning of.

INTERPRETATION OF STATUTES - Side note - Function of interpretation of statutes.

JURISDICTION - Jurisdiction of court - Meaning and nature of - Where court lacks jurisdiction - Effect - Proper order to make.

NOTABLE PRONOUNCEMENT - On Need for parties and counsel to refrain from media trial and judgment.

NOTABLE PRONOUNCEMENI - On Need for use of technology in conduct of elections.

PRACTICE AND PROCEDURE - Affidavit evidence - Affidavit sworn outside Nigeria for use in Nigerian court - Rules governing admissibility of.

PRACTICE AND PROCEDURE - Appeal - Appellate jurisdiction - Exercise of - Role and function of appellate court - What it involves PRACTICE AND PROCEDURE - Appeal - Appellate jurisdiction - Matter or issue over which trial or lower court lacks jurisdiction to adjudicate - Whether appellate court can exercise jurisdiction.

PRACTICE AND PROCEDURE - Appeal - Appellate jurisdiction of Supreme Court in election petitions - Where derived from - Extent of - Scope of - Section 22, Supreme Court Act.

PRACTICE AND PROCEDURE - Appeal - Determination of appeal by Supreme Court - Basis of - What Supreme Court considers - Importance of issues for determination.

PRACTICE AND PROCEDURE - Appeal - Issues for determination - Appeal at Supreme Court - Importance of in determination of appeal.

PRACTICE AND PROCEDURE - Appeal - Validity of appeal - Sole ground of appeal - Validity of to sustain appeal where other grounds incompetent.

PRACTICE AND PROCEDURE - 'Bias' against judicial officer - Meaning of - Where alleged - How treated - Duty on party raising same.

PRACTICE AND PROCEDURE - Deposition of witness - Where not signed by witness - Effect - How treated - Whether of evidential value.

PRACTICE AND PROCEDURE - Fresh evidence on appeal - Reception of - Principles governing - Jurisdiction of Supreme Court to admit fresh evidence in election appeals - Source of.

PRACTICE AND PROCEDURE - Front-loading of evidence - Aim of - Witness deposition - When to file - Whether can be filed after expiration of time for filing petition.

PRACTICE AND PROCEDURE - Jurisdiction of court - Meaning and nature of - Where court lacks jurisdiction - Effect - Proper order to make.

PRACTICE AND PROCEDURE - Pleadings - Aim and essence of - Need to adhere to rules of court relating thereto - Duty on Tribunal or court to confine itself to pleadings of parties in election petition.

PRACTICE AND PROCEDURE - Pleadings in election petition - Need not to be vague, evasive or imprecise.

PRACTICE AND PROCEDURE - Pleadings in election petition - Petitioner's reply to respondent's reply - When necessary - What it should contain and what it should not.

PRACTICE AND PROCEDURE - Preliminary objection to appeal - Object and limits of - Whether can be raised against motion.

PRACTICE AND PROCEDURE - Witnesses - Subpoenaed witness - Witness subpoenaed by court - Witness subpoenaed by party - Distinction between - Implication thereof.

PRINCIPLES OF INTERPRETATION - Interpretation of Constitutional and statutory provisions - Principles governing - Whether candidate for presidential election must score 25% of votes cast in Federal Capital Territory.

PRINCIPLES OF INTERPRETATION - Interpretation of statutes - Principles governing - 'Shall' in section 135(1), Electoral Act - Meaning of.

PRINCIPLES OF INTERPRETATION - Interpretation of statutes - Side note - Function of in interpretation of statutes.

STATUTE - 'Shall' in section 135(1), Electoral Act - Meaning of.

WORDS AND PHRASES - Bias - Meaning and nature of.

WORDS AND PHRASES - Jurisdiction of court - Meaning and nature of.

WORDS AND PHRASES - 'Shall' in section 135(1), Electoral Act, Meaning of.

Issues:

1. Whether the law of Nigeria as presently constituted allows the Supreme Court to receive the kind of fresh evidence sought to be tendered by the appellants and act on it at the appeal stage.
2. Whether the Court of Appeal was right in refusing to hold that failure of the 1s respondent to electronically transmit results from polling units nationwide for the collation of results of elections introduced by the Electoral Act, 2022 and specified in the Regulations and Guidelines for the Conduct of Elections 2022 and Manual for Election Officials 2023 does not amount to non-compliance which substantially affected the outcome of the election.
3. Whether the Court of Appeal was right in its interpretation of the provisions of section 134(2)(b) and section 299 of the Constitution of the Federal Republic of

Nigeria, 1999 (as amended) in holding that securing one-quarter of the total votes cast in the Federal Capital Territory, Abuja is not a constitutional requirement for the return of the 2nd respondent as duly. elected President of the Federal Republic of Nigeria.

4. Whether the Court of Appeal was not in error to have expunged the witnesses' statements on oath of appellants' subpoenaed witnesses, namely PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27, and the exhibits tendered by them on the ground that the witnesses' statements on oath were not filed along with the petition and that Order 3 rules 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019 is not applicable in election matters.
5. Whether the Court of Appeal was not in error in its review of the evidence of PW1, PW2, PW3, PWS, PW7 and PW22, classifying them as inadmissible hearsay evidence and in discountenancing the various exhibits tendered by the appellants.
6. Whether the Court of Appeal was in error in striking out several paragraphs of the petition and the replies of the appellants on the grounds of vagueness and lack of specificity, and for being new issues, mere denials or being repetitive.
7. Whether the Court of Appeal was not in error in its evaluation of the evidence of the appellants' witnesses on the burden of proof and clear admission against interest made by the 1s respondent.
8. Whether the Court of Appeal was right in its use of disparaging words against the appellants in its judgment evincing hostility and bias against the appellants, thereby violating their right to fair hearing, and occasioning grave miscarriage of justice.

Facts:

Election into the office of President of the Federal Republic of Nigeria was conducted by the 1st respondent on 25th February 2023 wherein the 2nd and 3nd respondents emerged winners with a total of 8,794,726 votes while the appellants came second with 6,984,520 votes. Sixteen others participated in the said election.The 1st respondent accordingly declared the 2nd and 3rd respondents winners of the election and declared the 2nd respondent as the elected President of the Federal Republic of Nigeria.

Aggrieved by the outcome of the election, the petitioners jointly filed a petition at the Court of Appeal, sitting as the Presidential Election Petition Court, to challenge the outcome of the election under four grounds 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 2d 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 appellants then sought the following reliefs:

"1. 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.

2. 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.

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

4. 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:

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

In the Further Alternative:

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

7. Any such further reliefs) 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. On 6th September 2023, judgment in the petition, including rulings in the applications, were rendered by the Court of Appeal. In the said judgment, the court substantially sustained the respondents' objections to the petition, the petitioners' reply to the respondents' respective replies, the competence of witnesses subpoenaed by the petitioners and the admissibility of several documents sought to be tendered by the appellants. After resolving all the issues in favour of the respondents, the court dismissed the petition for lacking in merit.

Dissatisfied with the dismissal of the petition, the appellants appealed to the Supreme Court by Notice of appeal filed on 18th September, 2023. On 6th October 2023, the appellants filed a motion on notice seeking two reliefs from the Supreme Court to wit:-

"(a) An Order of this honourable court granting leave to the appellants/applicants to produce and the honourable court to receive fresh and/or additional evidence by way of deposition on oath from the Chicago State University for use in this appeal, to wit: certified discovery deposition made by Caleb Westberg on behalf of Chicago State University on October 03, 2023, disclaiming the certificate presented by the 2nd respondent, Bola Ahmed Tinubu, to the Independent National Electoral Commission.

(b) AND upon leave being granted, an order of this honourable court receiving the said deposition in evidence as exhibit in the resolution of this appeal."

The grounds for the application, numbering 20, were well set out in the motion paper. In support of the application was also a 20- paragraph affidavit. The respondents respectively opposed the application and filed counter-affidavits and written addresses.

The motion was taken first at the hearing of the appeal, and ruling reserved.

In resolving the application and the appeal, the Supreme Court considered and construed the following Constitutional and statutory provisions:

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

"134(2) A candidate for an election to the office of 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."

Section 239(1)(a) of the 1999 Constitution, as amended:

"239. Original Jurisdiction

(1) Subject to, the provisions of this Constitution, the Court of Appeal shall, to the exclusion of any court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether-

(a) any person has been validly elected, to the Office of President or Vice-President under this Constitution;"

Section 285(6) of the 1999 Constitution, as amended:

"(6) An election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition."

Section 130(1) and (2) of the Electoral Act, 2022:

"130(1) No election or return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition", presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.

(2) In this part "tribunal or court" means –

(a) in the case of Presidential election, the Court of Appeal; and

(b) in the case of any other elections under this Act, the election tribunal established under the Constitution or by this Act."

Section 137 of the Electoral Act provides:

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

Section 135(1) of the Evidence Act, 2011:

"135. Whoever desires any court to give judgment as to any legal right or disability dependent on the evidence of facts he asserts must prove that those facts exist."

Section 22 of the Supreme Court Act:

"22. The Supreme Court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Supreme Court thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorised to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Supreme Court as a court of first instance and may rehear the case in whole or in part or may remit it to the court below for the purpose at such rehearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court."

Paragraph 4(1) of the First Schedule to the Electoral Act, 2022 provides that:

"4(1) An election petition shall:

(a) specify the parties interested in the election petition;

(b) specify the right of the petitioner to present the election petition;

(c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and

(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 petitioner."

Paragraph 14(2)(a) of the First Schedule to the Electoral Act, 2022:

"14(2) After the expiration of the time limited by –

(a) Section 132(7) of this Act for presenting the election petition, no amendment shall be made-

(i) introducing any of the requirements of paragraph 4(1) not contained in the original election petition filed, or

(ii) effecting a substantial alteration of the ground for or the prayer in the election petition, or

(iii) except anything which may be done under subparagraph 2(a)(ii), effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for or sustain the prayer in the election petition."

Paragraph 93 of INEC's Guidelines and Regulations for Conduct of Election 2022 which provides:

"93. Where the INEC hard copy 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. When

none of these exists, the collation officer shall ask for duplicate hardcopies issued by the commission to the following in the order below –
(i) The Nigeria Police Force; and
(ii) Agents of political parties."

Held *(Unanimously dismissing the Appeal):*

1. *On Sui generis nature of election petitions and implication thereof –*
An election petition proceeding is *sui generis*. It has its own set of laws and rules which a court must recognize and enforce. In this case, the petition giving birth to this appeal was filed on 21% of March, 2023 which was the last day of the 21 days prescribed in section 285(5) of the 1999 Constitution (as amended) for filing of election petitions after announcement of result of election. By sub-paragraph (6) thereof, an election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition and where there is an appeal, it shall be determined within 60 days from the date of delivery of judgment of the tribunal or Court of Appeal. The 180 days prescribed for the hearing of the petition by the Court of Appeal lapsed on 17th September, 2023. In other words, the Court of Appeal had lost its jurisdiction to entertain any matter in relation to the petition. The appellants' application related to fresh evidence obtained after the judgment of the Court of Appeal and after the 21 days for filing election petitions and after the expiration of the 180 days of the filing of the petition. The implication is that the Supreme Court also lacked the jurisdiction to entertain the application as it cannot do what the Court of Appeal was no longer constitutionally permitted to do by virtue of section 285 of the 1999 Constitution (as amended). [*Buhari v. Yusuf* **(2003) 14 NWLR (Pt. 841) 446;** *Egharevba v. Eribo* **(2010) 9 NWLR (Pt. 1199) 411;** *Towowomo v. Ajayi* **(unreported) Appeal No. SC/CV/152/2022 delivered on 27/1/2023;** *Oke v. Mimiko* **(No.1) (2014) 1 NWLR (Pt. 1388) 225;** *A.P.C. v. Marafa* **(2020) 6 NWLR (Pt. 1721) 383;** *Marwa v. Nyako* **(2012) 6 NWLR (Pt. 1296) 199;** *Abubakar v. Nasamu* **(No.1) (2012) 17 NWLR (Pt. 1330) 407 referred to**.] *(Pp. 832-833, paras. D-F)*

2. *On Sui generis nature of election petitions and implication thereof –*
Election petitions are sui generis. This is to say that they are in a class of their own. An election petition is different from a common law civil action. The Electoral Act of 2022 contains mandatory provisions that give election petitions certain peculiar features which make them sui generis. They stand on their own and bound by their rules under the law. Thus, defects or irregularities which in other proceedings are not sufficient to affect the validity of the claim are not so in an election petition. A slight default in compliance with a procedural step could result in fatal consequences for the petition. Also, rules governing civil proceedings are not the same that govern election proceedings and where the Electoral Act requires recourse to the Civil Procedure Rules, it must be made subject to the provision of

the Electoral Act. A combined reading of section 285(5) of the 1999 Constitution (as amended) and paragraph 4(5) of First Schedule to the Electoral Act, 2022 shows that the time-limit for filing written statements on oath of witnesses in election petition proceedings is 21 days from the date of declaration of results, and due to the sui generis nature of election proceedings, amendment to the petition or calling of additional witnesses would not be entertained after the statutory time-limit for the filing of the petition has expired. Thus, a petitioner cannot present his case in bits otherwise the respondents rights to fair hearing would be breached. The use of the word "shall" in paragraph 4(1) and (5) of the 1st Schedule to Electoral Act makes it mandatory and conclusive. Thus, a tribunal or court extend the time circumscribed by the Constitution for a party to do a thing he could not do before the expiration of the time prescribed therefor. Such provisions like section 285(5) of the Constitution are mandatory and any exercise of discretion by the court is without jurisdiction and therefore a nullity. [*Abubakar v. Yar'adua* **(2008) 19 NWLR (Pt. 1120) 1; Kalu v. Uzor (2004) 12 NWLR (Pt. 886) 1;** *Oke v. Mimiko* **(No.1) (2014) 1 NWLR (Pt. 1388) 225;** *A.P.C. v. Marafa* **(2020) 6 NWLR (Pt. 1721) 383;** *Ararume v. INEC* **(2019) LPELR-48397;** *Orubu v. N.E.C.* **(1988) 5 NWLR (Pt. 94) 323;** *Balogun v. Dosunmu* **(1999) 2 NWLR (Pt. 592) 590;** *Hassan v. Aliyu* **(2010) 17 NWLR (Pt. 1223) 547;** *Akpamgbo-Okadigbo v. Chidi* **(No.2) (2015) 10 NWLR (Pt. 1466) 124;** *Lokpobiri v. A.P.C.* **(2021) 3 NWLR (Pt. 1764) 538;** *Abubakar v. Yar `Adua* **(2008) 4 NWLR (Pt.1078) 465,** *Ohakim v. Agbaso* **(2010) 19 NWLR (Pt. 1226) 172 referred to.]** *(Pp. 853-854, paras. C-A; 854, paras. G-H)*

3. *On Sui generis nature of election petitions and implication thereof –*
Where cases or cause of actions are time-bound or subject to time, the evidence and facts to make a litigant win his case are part and parcel of the time prescribed to be sourced for and adduced within that time, otherwise he goes empty handed for non-suit or judgment against him for not proving his case on the preponderance of evidence or his case becomes stale and expired. Just as a statute-barred case cannot be resurrected and awakened because there is fresh or additional evidence for it, so it is with an election petition that is generally *sui generis* **and time-bound**. *(P. 872, paras. C-D)*

4. *On Whether amendment can be made to petition after. expiration of period to present petition –*
The law does not allow any amendment of an election petition after the expiration of the time limited and prescribed by the Electoral Act and Practice Directions, specifically enacted to regulate and govern election petition proceedings. A discretion is exercised by the court in circumstances where the court has the jurisdiction to exercise it. In the instant case, the request of the appellants in their application to adduce fresh/additional evidence was fettered and prescribed by law that the Supreme Court did not have the jurisdiction or the discretion to go contrary to the express provision of the law. Thus, no amendment whatsoever can be entertained

by the tribunal or court after the expiration of the period within which to present an election petition [Oke v. Mimiko **(No.1) (2014) 1 NWLR (Pt. 1388) 225;** *A.P.C. v. Marafa* **(2020) 6 NWLR (Pt.1721) 383;** *P.D.P. v. Otu* **(2017) 5 NWLR (Pt. 1558) 265;** *Bello v. Yusuf* **(2019) 15 NWLR (Pt. 1695) 250;** *Buhari v. I.N.E.C.* **(2008) 4 NWLR (Pt. 1078) 546;** *Odon v. Barigha-Amange* **(No. 1) (2010) 12 NWLR (Pt. 1207) 1;** *Mato v. Hember* **(2018) 5 NWLR (Pt. 1612) 258;** *Ugba v. Suswan* **(2013) 4 NWLR (Pt.1345) 427 referred to.]** *(Pp. 872-873, paras. F-A; 919, paras. F-G)*

5. *On Rules relating to amendment in election petition –*
Paragraphs 14(2) and 16(1) of the First Schedule to the Electoral Act, *inter alia*, **outlaw any amendment of substance or introduction or addition of substance to the statement of facts relied on to support the ground of the petition after the expiration of 21 days prescribed in section 132(7) of the Electoral Act for the presentation of an election petition. In the instant case, the deposition sought to be introduced as fresh and additional evidence was one of substance, and facts and documents which were not pleaded in the petition would not be allowed in deciding the dispute between the parties.** *(Pp. 833- 834, paras. G-A; 834, para. F)*
Per OKORO, J.S.C. at pages 834-835, paras. G-F:

> **"Let me consider an unusual submission of the learned senior counsel for the appellants/ applicants. It is in respect of section 285(6) of the Constitution which states:**
>
> > **"An election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition."**
>
> **On page 3, paragraph 2.5 of appellants' reply on points of law, is argued as follows:-**
>
> > **"Interestingly, and contrary to the avowed position of the respondents, we make bold to submit that there is no such constitutional limit of 180 days on the lower court to hear and determine a Presidential election petition, such that can rob this court to exercise its powers in any manner whatsoever ….**
> >
> > **While establishing the election tribunals to deal with election matters from Houses of Assembly, National Assembly and Governorship elections, the Constitution gave jurisdiction to entertain disputes from Presidential elections only to the Court of Appeal. Thereafter, the Constitution was intentional and deliberate in setting the 180 days limit only for Elections Tribunals, and not for the Court of Appeal."**
>
> **It is shocking to have the above argument in print. It could have passed for a friendly joke but not for a serious matter like this in the apex court. It is even an unnecessary joke over a constitutional provision. After election petitions had suffered under the previous provisions which allowed election petitions to be heard even until the respondent has completed his tenure, the National Assembly**

dealt with the mischief by limiting the time which election petition shall be determined, it is unfair to suggest that we go back to those dark days.

My Lords, there is nothing in section 285(6) of the Constitution to suggest that the Court of Appeal can hear Presidential election petition without time limitation. The lower court is bound by the provision of section 285(6) of the said Constitution when sitting to hear election petition just as other election Tribunals."

6. *On Whether time-limit for determining election petitions can be extended –*

The 180 days imposed on election tribunals and courts hearing election petitions is immutable and cannot be extended. In the instant case, it was clear that the 21 days provided for the filing of petitions having long expired, even if the appellants had applied for extension of time to amend their petition in order to bring in the depositions as fresh evidence, it would not have been granted. [**A.N.P.P. v. Goni (2012) 1 NWLR (Pt. 1298) 147;** *Ugba v. Suswan* **(2014) 14 NWLR (Pt. 1427) 264;** *Samuel v. A.P.C.* **(2013) 10 NWLR (Pt. 1892) 195;** *Ezenwankwo v. A.P.G.A.* **(2022) 18 NWLR (Pt. 1863) 537;** *Thedioha v. Okorocha* **(2016) 1 NWLR (Pt. 1492) 147;** *Shettima v. Goni* **(2011) 18 NWLR (Pt. 1279) 413;** *Obi v. INEC* **(2007) 11 NWLR (Pt. 1046) 560;** *Akinnuoye v. Milad., Ondo State* **(1997) 1 NWLR (Pt. 483) 564 referred to.]** *(P. 976, paras. C-E)*

Per JAURO, J.S.C. at page 976, paras. A-D:

"There is no gainsaying that election petitions are sui generis, guided by a distinct set of rules and procedure. Perhaps the most distinct feature of election petitions under Nigerian law is that it is time bound. By virtue of section 285(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), an election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition. The time limit imposed by the Constitution has been held by this court in a legion of decisions to be like the Rock of Gibraltar. It is immutable, it cannot be expanded, extended or enlarged. The implication of this is that once the 180 days elapse, the trial court can no longer entertain the petition or aspects of it and this court will in turn lack the jurisdiction to do anything that the trial court (in this instance, the Court of Appeal) could have done."

7. *On Exercise of appellate jurisdiction and role and function of appellate court -*

The appellate adjudicatory process is primarily focused on scrutinizing whether the trial court erroneously accepted or rejected any evidence presented during the proceedings. It involves a careful examination of how the trial court treated the evidence introduced by evidence on opposite sides of an imaginary scale and assessing their relative weight; in essence, to gauge whether the trial court conducted a thorough, critical and judicious evaluation of the evidence and whether it adopted the correct approach in its assessment. Moreover, it encompasses the assessment of whether the

evidence lawfully admitted in the proceedings was substantial enough to substantiate the conclusions and inferences drawn by the trial court.

Thus, the role of the appellate court hinges on fundamental inquiries such as:

(a) Did the trial court make its factual determinations based on sufficient evidence?

(b) Did it commit errors in the acceptance or rejection of evidence?

(c) Did it diligently weigh the evidence provided by the contending parties?

(d) an assessment of whether the evidence lawfully admitted in the proceedings was substantial enough to substantiate the conclusions and inferences drawn by the trial court.

(Pp. 1395-994, paras. E-B)

8. *On Jurisdiction of appellate court over matter which trial or lower court lacks jurisdiction to adjudicate –*

An appellate court lacks the requisite jurisdiction to consider any issue over which the trial/lower court lacks or lost jurisdiction over the said issue at the time it was raised in an appeal before the court. In this case, because the Court of Appeal has lost the jurisdiction to conduct valid judicial proceedings in the appellants' election petition on ground of effluxion of the constitutionally prescribed time within which the jurisdiction could be exercised, it lacked the jurisdiction to entertain and adjudicate over the appellants' motion seeking to produce fresh or additional or further evidence in support of the said petition which was apparently filed after the effluxion of the time for the exercise of the jurisdiction over the petition, on the 06/10/2023.

The implication was that there was no jurisdiction to assume by the Supreme Court in stepping into the "shoes" or place of the trial Court of Appeal to validly exercise to consider and adjudicate over the motion as an appellate court. *[Ehuwa v. Ondo S.I.E.C.* **(2006) 18 NWLR (Pt. 1012) 544;** *Shettima v. Goni* **(2011) 18 NWLR (Pt. 1279) 413;** *Ikenya v. P.D.P.* **(2012) 12 NWLR (Pt. 1315) 493;** *Bello v. Damisa* **(2017) 2 NWLR (Pt. 1550) 455;** *Ecobank (Nig.) Ltd. v. Anchorage Leisures Ltd.* **(2018) 8 NWLR (Pt. 1650) 116;** *B.O.I. Ltd. v. Awojugbagbe Light Ind. Ltd.* **(2018) 6 NWLR (Pt. 1615) 220;** *Ezenwankwo v. A.P.G.A.* **(2022) 18 NWLR (Pt. 1863) 537;** *Danladi v. Udi* **(2022) 9 NWLR (Pt. 1834) 185 referred to and applied.]** *(Pp. 915-916, paras. D-A)*

9. *On Basis of determination of appeal by Supreme Court –*

All appeals are decided upon the issues formulated for determination by the parties. What this means is that any matter not covered by any issue for determination is of no moment. In this case, even if the fresh deposition is admitted, it would not be determined in the appeal as none of the seven issues for determination distilled by the appellants related to the certificate forgery sought to be introduced afresh, and the Supreme Court cannot

exercise original jurisdiction. [*Saliba v. Yassin* **(2002) 4 NWLR (Pt. 756) 1;** *Sanusi v. Ayoola* **(1992) 9 NWLR (Pt. 265) 275; G.** *Chitex Industries Ltd. v Oceanic Bank Int'l (Nig.) Ltd.* **(2005) 14 NWLR (Pt. 945) 392 referred to.]** *(P. 837, paras. E-G)*

10. *Extent of appellate jurisdiction of Supreme Court. in election petitions –*
The jurisdiction of the Supreme Court is donated by the Constitution and the Electoral Act regarding election petition appeals. It does not have the vires to admit fresh evidence and fresh deposition and it cannot invoke section 22 of the Supreme Court Act where the lower court has lost its jurisdiction to also admit it. Moreso, there was no paragraph of the petition to accommodate a case of certificate forgery. *(P. 837, paras. D-E)*

11. *On Construction of section 137 Electoral Act and whether relieves petitioner of burden of proof of noncompliance –*
Section 137 of the Electoral Act has not absolved a petitioner of the need to lead credible evidence to prove non-compliance. It states clearly that oral evidence may not be necessary if and only if originals or certified true copies manifestly disclose the non-compliance. In this case, the appellants did not demonstrate the originals or certified true copies of documents they want the court to rely on. Given where such documents were tendered in evidence, it had to be shown that they manifestly disclosed the non-compliance. Thus, the Court of Appeal was right that the failure to transmit results to the IReV did not affect the result of the election. (P. 850, paras. E-G)

12. *On Burden on petitioner alleging non-compliance with provisions of Electoral Act and what he must prove –*
By virtue of section 135(1) of the Electoral Act, 2022, an election shall not be liable to be invalidated by reason of non-compliance with the provisions of the Act if it appears to the Election Tribunal or court that the election was conducted substantially in accordance with the principles of the Act and that the non-compliance did not affect substantially the result of the election. By that provision, it is crystal clear that a petitioner seeking to nullify an election on the ground of noncompliance –

(a) must lead evidence to prove the non-compliance; and

(b) must show to the court how the noncompliance substantially affected the outcome of the election.

Both must be achieved at the same time.

From the evidence in this case, the appellants abandoned the duty imposed on them to lead credible evidence to prove non-compliance but relied solely on the failure of the 1st respondent to transmit result real time to the IReV Portal. [*Buhari v. Obasanjo* **(2005) 13 NWLR (Pt. 941) 1;** *Ucha v. Elechi* **(2012) 13 NWLR (Pt. 1317) 330** *C.P.C. v. I.N.E.C.* **(2011) 18 NWLR (Pt. 1279) 493;** *Buhari v. I.N.E.C.* **(2008) 4 NWLR (Pt. 1078) 546;** *Yahaya v.*

Dankwanbo **(2016) 7 NWLR (Pt. 1511) 284;** *A.P.C. v. Marafa* **(2020) 6 NWLR (Pt. 1721) 383 referred to.]** *(Pp. 848-849, paras. E-A)*

Per ABBA AJI, J.S.C. at pages 877, paras. C-H; 878, paras. F-G:

> **"Finally, the appellants have put up an unpleaded case that the failure to use or transmit/transfer results electronically has affected the results of the election and are therefore by their reliefs asking for a cancellation or re-run or run-off. Nevertheless, they have not prayed that their own results or score from the manually collated and transmitted results be declared invalid since the failure or lack of the use of BVAS or IREV amounted to the invalidity of their votes also. Furthermore, I would have expected them to come up with a detailed analysis and breakdown of the substantiality of the failure of the use of BVAS and how it has upturned and affected the votes of the appellants against the votes of the 2nd and 3rd respondents to upturn and overturn the results of the Presidential election. In essence, the appellants ought to have proved that the substantial non-compliance would have overturned the 8,794,726 votes of the 2nd respondent in favour of and above the 6,984,520 votes purportedly scored by the appellants. In other words, the non-compliance should be able to overturn the tables in favour of the appellants. It is a lame and bare case to allege substantial noncompliance without showing how the results of the election would have been different but for the non-compliance or that the pendulum would have swung to the other side. There might have been non-compliance that affected the 25/2/2023 presidential election, especially the failure to transmit/transfer electronic results. However, how large or small is the non-compliance to have affected the results of the presidential election one way or the other? This is unfortunately the burden the appellants have not been able to shift or prove!**
>
> **…. May I further counsel lawyers or experts in election petition that when you base the ground of your election petition on substantial non-compliance, it is better you make it arithmetic and mathematical since figures only count, than go grammatical, hypothetical or legal. No matter how grave or minute, thick or thin, the non-compliance may be, if a figure cannot change the results, you do not have a case at all!"**

13. *On Function of IReV and whether same as collation system -*

The INEC Result Viewing Portal (IReV) is not a collation system. There is a difference between a collation system and the IReV portal though both are part of the election process. Whereas the collation system is made up of the centres where results are collated at various stages of the election, the IReV Portal is to give the public the opportunity to view the polling unit results on the election day.

What this means is that where the IReV portal fails, it does not stop the collation of results which up to the last election was manually done. The failure or malfunctioning of the IReV deprives the public and even election administrators and monitors the opportunity of viewing the portal and comparing the result collated with the ones transmitted into the IReV. [*Oyetola v. I.N.E.C.* **(2023) 11 NWLR (Pt. 1894) 125 referred to.]** *(P. 849, paras. B-D)*

14. *On Power of INEC to prescribe manner of transmission of election results -*

The combined effect of sections 60(5), 62(1), 64(4) & (6) of the Electoral Act, 2022, suggests that INEC is at liberty to prescribe the manner in which election results are to be transmitted. It is a hybrid system meant to be a buffer and cushion to the erstwhile manual system that encouraged and facilitated falsification and manipulation of results. Although the word "shall" is used therein, it denotes obligation where all things are equal. Moreover, subsection (5) of section 60 of the Electoral Act directs and gives liberty and latitude to INEC to "transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission". Thus, although it is desirable that electronic transmission of election results is made mandatory, nevertheless the appellants would still have to prove that they would have won the election, whether it was used or not. *(Pp. 875, paras. E-G; 876, paras. E-F)*

15. *On Levels of collation of election result and whether unavailability of result on IReV ground to nullify election -*

By virtue of Paragraph 93 of INEC's Guidelines and Regulations for Conduct of Election, recourse to the electronically transmitted result for the purpose of collation would only arise where the hard copy of the result sheets does not exist. Where the electronically transmitted result or the result on the IReV portal does not exist, the Commission will ask for the copies handed over to the Nigeria Police or agents of political parties. The elaborate arrangement made by the 1s respondent for collation of results is to make sure that at every point of collation, there is a result either from the hard copy with INEC, or electronically transmitted copy, or IReV portal copy or a hard copy given to the Nigeria police and finally a copy given to the political parties. Thus, the unavailability of the election result on the IReV portal for whatever reason cannot be a ground upon which an election could be nullified, particularly as it was not the case of the appellants that the hard copies of the result sheets did not exist at any level of collation. *(Pp. 849-850, paras. H-C)*

16. *On Burden of proof on petitioner alleging failure to electronically collate and transmit election results –*

By virtue of section 135(1) of the Evidence Act, 2011, the burden of proving the allegation that the Presidential election must be invalidated merely because the election results were not electronically collated and transmitted

lies squarely upon the appellant who so alleged. In the instant case, all the witnesses called by the appellants, most especially PW12, PW13, PW14, PWI5, PW16, PW17, PW18, PW22, PW23, PW24 and PW25 admitted under cross examination that not only did they conduct the accreditation process as required by law, but that the voting went on successfully, the votes cast were sorted and entered into the appropriate Forms EC8A, presiding officers duly signed the results along with the party agents, the results were announced at the respective polling units, party agents and police officers (on *ad hoc* duty) were given their copies, while the presiding officers submitted their respective copies to the ward collation centers in the company of party agents. Similarly, the said witnesses equally agreed that they took photographs of the election results with the BVAS, and that the offline transmission function was later activated. Thus the appellants failed to discharge the burden on them. *(Pp. 943-944, paras. H-E)*

17. *On Who can give evidence of what transpired in polling unit or collation centre –*

When evidence is required to prove what happened in any polling unit or collation center, it is only the agent who witnessed the anomaly or the malfeasance that can legally and credibly testify. In this case the Court of Appeal was right when it held that PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11, PW19, PW20 and PW22 who were State and National collation agents of the appellants could only testify of the events in their units or collation centers where they voted or acted as agents and not all over the States of the Federation; and that the evidence of the collation agents PW1, PW2, PW5 and PW7 who were the appellants' State collation agents and national collation agents and were not present in all the polling units which results they disputed, relating to suppression of votes, multiple thumb-printing of ballot papers, entering of wrong scores/results, disruption of voting in respect of all the polling units other than the ones that they were present at were inadmissible hearsay. They were most likely informed by the polling unit agents who were alive but failed to testify. [*Buhari v. Obasanjo* **(2005) 13 NWLR (Pt. 941) 1;** *Ladoja v. Ajimobi* **(2016) 10 NWLR (Pt. 1519) 87;** *Hashidu v. Goje* **(2003) 15 NWLR (Pt. 843) 352 referred to and applied.]** *(Pp. 857-858, paras. E-E; 1029, paras. F-H)*

18. *On Need for pleadings in election petition not to be vague, evasive or imprecise –*

By virtue of Paragraph 4(1) of the First Schedule to the Electoral Act, 2022 an election petition must demonstrate with specificity the complaints of the petitioner and the relief sought from the court. It gives no room for vagueness and imprecision. This is in line with the rule of pleading that where an averment is not supported by evidence the averment is deemed abandoned; for, in keeping with the *audi alteram partem* **rule to prevent surprise or ambush on the defendant, it is the plaintiff's claim that would**

enable him to file his defence. It follows therefore that a petition must be detailed and comprehensive on material facts depending on the reliefs sought, and not evasive or vague so as to elicit a response from the respondents. [*Ekwunife v. Wayne (W/A) Ltd*. **(1989) 5 NWLR (Pt. 122) 422;** *Akande v. Adisa* **(2012) 15 NWLR (Pt. 1324) 538;** *P.D.P. v. I.N. E.C.* **(2012) 7 NWLR (Pt. 1300) 538 referred.]** *(P. 860, paras. F-H)*

19. *On When petitioner's reply to respondent's reply necessary and what it should contain and what it should not –*
By virtue of paragraph 16(1)(a) of the First Schedule to the Electoral Act, 2022 the Act frowns at the introduction of new facts, grounds or prayers tending to amend or add to the averments of the petition in the petitioner's reply. Thus, a petitioner is only required to file a reply in answer to new issues of facts which may be raised in the respondent's reply which were not dealt with in the petition. This means that where there are no new issues of facts raised in the respondent's reply, there would be no need for the petitioners' reply. In this case, the Court of Appeal was right to have struck out the affected paragraphs for disclosing no particulars together with some paragraphs in the appellants' replies to the respondents' replies which sought to bring in new evidence through the back door; and for striking out the affected paragraphs and replies of the appellants for being vague, imprecise, lacking in particulars and seeking to ambush the respondents vide the petitioners' replies. [*Oni v. Oyebanji* **(2023) 13 NWLR (Pt. 1902) 507;** *Ogboru v Okowa* **(2016) 11 NWLR (Pt. 1522) 84 referred to.]** *(P. 861, paras. A-C; G-H)*

20. *On Presumption of correctness of election result declared –*
Election results are presumed by law to be correct until the contrary is proved. It is however a rebuttable presumption. In other words, there is a rebuttable presumption that the result of any election declared by a returning officer is correct and authentic and the burden is on the person who denies the correctness and authenticity of the return to rebut the presumption. In this case, the appellants did not put forward any alternative figure as their rightful votes scored in the election, other than the scores presented by the 1st respondent showing that the 2nd respondent scored the highest number of votes. It was therefore presumed correct. [*Abubakar v. Yar 'Adua* **(2008) 19 NWLR (Pt.1120) 1;** *C.P.C. v. I.N. E.C.* **(2011) 18 NWLR (Pt. 1279) 493;** *Buhari v. Obasanjo* **(2005) 13 NWLR (Pt.941) 1;** *Hashidu v. Goje* **(2003) 15 NWLR (Pt.843) 352;** *Udom v. Umana* **(No.1) (2016) 12 NWLR (Pt. 1526) 179 referred to.]** (P. 864, paras. A-D)

21. *On When petitioner cannot call additional witness or evidence in support of petition –*
A party to an election petition will not be allowed to call additional witness or rely on additional facts after the 21 days allowed for filing election petition has lapsed, or to bring in an amendment of the nature of the fresh

evidence sought to be adduced by the appellants. The Court of Appeal and the Supreme Court had lost the jurisdiction to entertain any fresh/additional evidence after the appellants had filed their witness statements on oath and their respective documents in support of their petition. The deposition sought to be freshly relied upon was not part of the listed documents. Thus, the Supreme Court did not have the jurisdiction to entertain the appellants' motion for fresh document on non-qualification of the 2nd respondent. *(Pp. 832-833, paras. F-B; 835-836, paras. H-A)*

22. *On Limits to when fresh or additional evidence can be adduced in election petition –*
Where a time is prescribed for doing a thing, fresh or additional evidence will not elongate the time or give life to that matter. Similarly, where new, additional or fresh evidence or witnesses are presented in an election petition after the expiration of the prescribed time, the courts have always disallowed it because of the nature of election petition. [*I.N.E.C. v. Yusuf* **(2020) 4 NWLR (Pt. 1714) 374 referred to.]** *(P. 872, paras. E-F)*

23. *On Nature of allegation of forgery in election petition and how proved –*
An allegation of forgery is criminal that must be proved beyond reasonable doubt. In this case, considering also the Caliber of who were involved, it was safer and better by oral proof in a criminal proceeding to leave no stone unturned, than to settle by affidavit evidence. *(P. 874, paras. F-G)*

24. *On Whether infraction of INEC Regulations and Guidelines can ground election petition to invalidate election –*
The failure to obey the directive or instruction in the INEC Regulations and Guidelines cannot be relied upon as a ground for an election petition to invalidate an election if the failure is not contrary. to any provision of the Electoral Act. Thus, as long as an act (commission) or omission in relation to the Guidelines and Regulations is not contrary to the provisions of the Electoral Act it shall not of itself be a ground for questioning the election, and the failure to follow the Regulations and Guidelines which were made in exercise of the powers conferred by the Electoral Act, cannot in itself render the election void. [*Jegede v. I.N.E.C.* **(2021) 14 NWLR (Pt. 1797) 409 referred to.]** *(P. 876, paras. A-E)*

25. *On Principles governing interpretation Constitutional and statutory provisions and whether candidate for presidential election must score 25% of votes cast in FCT –*
One of the vital concerns of interpretation of statutes is that a court of record should be minded to make broad interpretation or what is sometimes referred to as giving same a liberal approach. A court should give a holistic interpretation to a statute or the Constitution as required by law. A court must give the Constitution or a statute a purposeful and people-oriented interpretation. Thus, in interpreting the Constitution or

any statute for that matter, a narrow and selfish approach should be avoided. The duty of the court in interpreting statute should be such that it serves the generality of the people and not for a select few. It is trite that the legislature does not intend creating injustice or an absurdity; hence the court must always adopt a construction or interpretation which will not reduce legislation to futility and absurdity. In the instant case, the Court of Appeal was right when it held that if the framers of the Constitution had wanted to make the scoring of one-quarter of votes cast in the Federal Capital Territory 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. [*N.U.R.T.W. v. R.T.E.A.N.* **(2012) 10 NWLR (Pt.1307) 170;** *Rabiu v. State* **(1980) 8 - 11 SC 130;** *Gov., of Kwara State v. Dada* **(2011) 14 NWLR (Pt. 1267) 384;** *AP.C. v. Marafa* **(2020) 6 NWLR (Pt.1721) 383;** *P.D.P. v. INEC* **(1999) 11 NWLR (Pt. 626) 200;** *Bakari v. Ogundipe* **(2021) 5 NWLR (Pt. 1768) 1;** *Ibori v. Ogboru* **(2005) 6 NWLR (Pt.920) 102;** *Buhari v. Obasanjo* **(2005) 13 NWLR (Pt.941) 1;** *Awolowo v. Shagari* **(1979) 6-9 SC 51;** *Ishola v. Ajiboye* **(1994) 6 NWLR (Pt. 352) 506;** *Magbagbeola v. Sanni* **(2005) 11 NWLR (Pt. 936) 239;** *Gafar v. Govt. of Kwara State* **(2007) 4 NWLR (Pt. 1024) 375;** *Dickson v. sylva* **(2017) 8 NWLR (Pt. 1567) 167 referred to**.] *(Pp. 851-852, paras. F-A; 879, paras. E-H)*

Per AGIM, J.S.C. at pages 1049-1050, paras. E-B:

> **"lt is obvious that states of the Federation and the Federal Capital Territory, Abuja were lumped together as a group by subsection (2) (b) above. What differentiates the constituents of the group is their names and nothing more. One of them is called Federal Capital Territory and the rest called States of the Federation. Subsection (2)(b) clearly refers to two-thirds of all the constituents of the group enumerated therein as the minimum number from each of which a candidate must have one-quarter of the votes cast therein. There is nothing in subsection (2)(b) that requires or suggests that it will not apply to the areas listed therein as a group. The argument of learned SAN that the provision by using the word "and" to conclude the listing of the areas to which it applies has created two groups to which it applies differently is, with due respects, a very imaginative and ingenious proposition that the wordings of that provision cannot by any stretch accommodate or reasonably bear. If S. 134(2) of the 1999 Constitution intended that the Federal Capital Territory, Abuja should be distinct from States of the Federation as a distinct group it would not have listed it together with States of the Federation in (b). Also, if S. 134(2) had intended having one-quarter of the votes cast in the Federal Capital Territory Abuja as a separate requirement additional to the ones enumerated therein, it would have clearly stated so in a separate paragraph numbered (c). It is glaring that S.134(2) prescribed two requirements that must be cumulatively satisfied by a presidential candidate in an election**

contested by not less than two candidates, before he or she can be deemed duly elected president. It prescribed the first requirement in (a) and the second one in (b). It did not impose a third requirement and so there is no (c) therein."

26. *On Distinction between witness subpoenaed by court and witness subpoenaed by party and implication thereof –*
The witnesses subpoenaed by the court cannot be the same as witnesses the parties have subpoenaed by themselves, although all are subpoenaed witnesses. It follows that once a witness was summoned via a subpoena based on the application of a party to the petition, the provisions of paragraph 4(5) of the 1st Schedule to the Electoral Act, 2010 (as amended) shall be complied with. The petitioners, who applied for the subpoenas in this case had the duty to file the depositions of the subpoenaed witnesses at the time of filing the petition. [*P.D.P. v. Okogbuo* **(2019) LPELR-48989 referred to and applied.]** *(Pp. 883, paras. E-F; 884, paras. B-C)*

27. *On Need to file witness statement on oath of subpoenaed witness along with petition –*
Although paragraph 54 of the First Schedule to the Electoral Act, 2020 allows resort to the Federal High Court (Civil Procedure) Rules, it is only where such is not present or provided for in the Electoral Act. Paragraph 54 qualifies, limits and restricts the applicability of the Federal High Court (Civil Procedure) Rules. It permits the application of the Federal High Court Rules with such modification as would render them applicable having regard to the Electoral Act and the Schedule thereto. Thus, Order 3 rule 3(1)(e) of the Federal High Court (Civil Procedure) Rules, 2009 which permits that depositions of subpoenaed witnesses need not be filed at the commencement of the suit cannot apply to defeat or negate the time limits set in the Electoral Act, 2022. To allow a petitioner to file an additional witness statement at any stage of the election petition 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 the petition was filed. The current approach of the courts in Nigeria is to apply the electoral laws. [*Ogba v. Vincent* **(2015) LPELR-40719 referred to.]** *(P. 892, paras. B-G)*

28. *On Aim of front-loading and whether witness deposition can be filed after expiration of time for filing petition –*
Where a witness deposition is sought to be filed after the expiration of time for the filing of a petition, that deposition cannot be made part of the facts upon which the petition can be proved. The purpose of front-loading of documents is to acquaint the other side in advance with the evidence of the parties so as to enable them put their case or defend their position appropriately. In this case, the appellants having failed to include the names of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23,

PW24, PW25, PW26 and PW27, who were not. official or adverse witnesses were not allowed to do so after the time for filing witness statements on oath had elapsed. [*I.N.E.C. v. Yusuf* **(2020) 4 NWLR (Pt. 1714) 374 referred to.]** *(P. 884, paras. E-H)*

29. *On Effect and treatment of unsigned deposition –*
In Nigeria, a witness statement on oath, in any form, made before a person authorized to administer oath, can be made extra judicially or outside judicial proceedings for the purpose of using same as evidence in a judicial proceeding. Such witness deposition must be signed by the witness as deponent before it can be admitted and adopted as his evidence in a proceeding in court. An affidavit or deposition not signed by the deponent is useless. Without the deponent's signature, it is not his affidavit or deposition.
In the instant case, Carl Westberg who made the oral deposition in exhibit C did not sign the deposition as the deponent. Gwendolyn Bedford who recorded it did not indicate why the deponent did not sign the deposition. Even in the USA, the law requires the deposition to be signed by the deponent unless he waives his signature or refuses to sign it. As it is, the oral deposition sought to be introduced as evidence in the appeal was a documentary record by Gwendolyn Bedford of what Carl Westberg said on 3-10-2023 in the Law office of 1st appellant's Lawyers. Since Carl Westberg was not a witness in this case, what he said was therefore hearsay evidence by virtue of section 37 of the Evidence Act, 2011. *(Pp. 1036-1037, paras. G-B)*

30. *On Rules governing admissibility of affidavit sworn outside Nigeria for use in Nigerian courts –*
The rules of practice in courts of foreign jurisdictions, no matter how convenient they may seem, do not have extra-territorial application in Nigeria, and thus cannot bind Nigerian courts, including the Supreme Court who are only bound by their rules. They may only be drawn from if they are similar and/or same with the rules applicable in Nigeria. In this case the Federal Rules of procedure of the USA (28 USCSS.1782) under which the deposition sought to be introduced was taken do not have any extra territorial application in Nigeria. Thus, the requirements for authenticating an affidavit procured from any country other than Nigeria as provided for under section 110 of the Evidence Act, 2011 must be followed. [*South Atlantic Petroleum Ltd. v. Minister of Petroleum Resources* **(2014) 4 NWLR (Pt. 1396) 24;** *B.M. Ltd v. Woermann-Line* **(2009) 13 NWLR (Pt.1157) 149 referred to.]** *(P. 1035, paras. F-H)*

31. *On Treatment and admissibility of deposition not made before court –*
A deposition not made before a court of competent jurisdiction can only qualify as hearsay evidence or deposition that is not within the personal knowledge of the deponent. In this case, the appellants sought to rely on

fresh/additional evidence revealed that the "deposition of Caleb Westberg" was taken before "Gwendolyn Bedford, a Certified Shorthand Reporter ... at the offices of Dechert LLP". That expressly implies that the evidence sought to be put in and considered by the Supreme Court was made by a 3 party before lawyers and a shorthand reporter. That was contrary to admissibility of documentary evidence as to facts in issue provided in section 83 of the Evidence Act, 2011. *(Pp. 1036-1037, paras. G-D)*

32. *On Meaning and nature of jurisdiction of court and effect where court lacks jurisdiction –*
The jurisdiction of a court is the authority which a court possesses to decide matters brought before it or to take cognizance of matters presented in a formal way for its decision. The jurisdiction of a court is a fundamental and priceless commodity in the judicial process. It is the fulcrum, centre pin or the main pillar upon which the validity of, any decision of any court stands and around which other issues rotate. Thus, it cannot be assumed or implied; it cannot also be conferred by a party or by consent or acquiescence of parties. [*Ogunmokun v. Milad., Osun State* **(1999) 3 NWLR (Pt. 594) 261;** *S.P.D.C. (Nig.) Ltd. v. Isaiah* **(2001) 11 NWLR (Pt. 723) 168;** *Attorney-General, Federation v. Sode* **(1990) 1 NWLR (Pt. 126) 500 referred to.]** *(Pp. 831, paras. G-H; 832, paras. B-D)*

33. *On Proper order where court lacks jurisdiction –*
The proper order to make by a court where it finds that it lacks the requisite jurisdiction to entertain a matter or process filed before it is to strike out such a matter or process. [*Obi v. INEC* **(2007) 11 NWLR (Pt. 1046) 560;** *Oloriode v. Oyebi* **(1984) 1 SCNLR 390;** *Adesokan v. Adetunji* **(1994) 5 NWLR (Pt. 346) 540;** *Gombe v. P.W. (Nig.) Ltd.* **(1995) 6 NWLR (Pt. 402) 402;** *B.L. L.S. Co. Ltd. v. M.V. Western Star* **(2019) 9 NWLR (Pt. 1678) 489; A.-G.,** *Lagos State v. Eko Hotels Ltd.* **(2018) 7 NWLR (Pt. 1619) 518;** *C.B.N. v. Okojie* **(2015) 14 NWLR (Pt. 1479) 231 referred to.]** *(Pp. 916, paras. B-D)*

34. *On Principles governing interpretation of statutes and meaning of 'shall' in section 135(1), Electoral Act –*
It is a fundamental doctrine of interpretation that a statute must be construed literally, where the words contained therein are apparently clear and unambiguous. Thus, words in a statute should be accorded their ordinary and literal meaning where they so appear to be clear and unambiguous. In this case, the word "shall" as couched in the phrase "shall not be liable to be invalidated" in section 135 (1) of the Electoral Act, 2022 denotes a mandatory, imperative and obligatory sense; that which is required by law, constituting a command. [N.B.N. Ltd. v. Opeola **(1994) 1 NWLR (Pt. 319) 126;** *Akinfosile v. Ijose* **(1960) SCNLR 447;** *Macaulay v. R.Z.B. Austria* **(2003) 18 NWLR (Pt. 852) 286;** *Ugwu v. Ararume* **(2007) 12 NWLR (Pt. 1048) 365;** *Onochie v. Odogwu* **(2006) 6 NWLR (Pt. 975) 65 referred to.]** *(Pp. 964-965, paras. E-A)*

35. *On Principles governing interpretation of statutes –*
It is not the duty of the court to ascribe a meaning other than the language of the statute in order to evade its consequence. The consequences of a statute are those of the legislature, not the Judge. A Judge who regiments himself to the consequences of a statute is moving outside the domain of statutory interpretation [*Amaechi v. INEC* **(2008) 5 NWLR (Pt. 1080) 227 referred to.]** *(P. 1015, paras. B-D)*

36. *On Function of side note in interpretation of statutes –*
A side note denotes an explanatory note, a note at the side of a statutory provision or text. Literally, a side note is a marginal note in a text; a secondary or supplementary note to the main text or section of a statute. Although side notes (explanatory notes) to statutes are generally not considered as veritable aids to interpretation of statutes, nevertheless it is permissible for the courts to regard the general purpose and mischief at which the statute is aimed, bearing in mind the side (explanatory) note in, question.
By virtue of the side note to section 3(1) of the 1999 (regarding the names of the 36 States of the Federation), which states "States of the Federation and the Federal Capital Territory, Abuja", the Federal Capital Territory, Abuja shall be reckoned with as the 37 State of the Federation. That removed any doubt about the status of the Federal Capital Territory. [*Uwaifo v. A.-G., Bendel State* **(1983) 4 NCLR 1;** *Fernandez v. F.R.C.N.* **(Unreported) CA/L/692/2011 del. 2nd July 2013 referred to and applied.]** *(P. 953, paras. B-F)*

37. *On Aim and essence of pleadings and need to adhere to rules of pleadings –*
The essence of pleadings is to compel the respective parties to accurately and precisely state the issues upon which the case ought to be contested, thereby avoiding any element of surprise by either party. Thus, parties are precluded from adducing evidence which goes outside the facts pleaded. Once the rules of pleadings are breached, the proceedings cannot be seen to be free and fair within the imperative contemplation of section 36 (1) of the 1999 Constitution. In the instant case, the appellants, as petitioners, were not diligent enough in presenting their case at the trial court. The paragraphs of the petition were clearly couched to overreach the respondents. Thus, where the petitioners' pleadings are insufficient, or grossly devoid of basic particulars, as in the instant case, such a petition is liable to be dismissed by the court. The failure by the appellants to provide specific particulars of polling units, wards, or local governments where malpractices allegedly occurred in the States, and the failure to provide such basic particulars on allegations of commission of crime were bound to have taken the respondents by surprise. [*Ugbodume v. Abiegbe* **(1991) 8 NWLR (Pt. 209) 261;** *Total Nig. Ltd. v. Nwankwo* **(1978) 5 SC 1;** *Emegokwue v. Okadigbo* **(1973) 4 SC 113;** *Orizu v. Anyaegbunam* **(1978) 5 SC 21 referred to and applied.]** *(Pp. 956, paras. B-D; 956-957, paras. G-C)*

38. *On Duty on Tribunal or court to confine itself to pleadings of parties in election petition –*
The court is to confine itself to issues in pleadings before it, not those matters unpleaded. To invalidate an election, even a part of the election, on unpleaded fact would be a grave injustice. In the instant case, the fourth ground of the appellants' petition was that "the 2nd respondent was at the time of the election not qualified to contest the election". The only pleaded fact in support of that ground was that "the 2nd respondent was, at the time of the election, not qualified to contest the election, not having the constitutional threshold". [*Buhari v. Obasanjo* **(2005) 13 NWLR (Pt. 941) 1 referred to.]** *(P. 873, paras. (B-C)*

39. *On Principles governing reception of fresh evidence on appeal –*
The traditional function of an appellate court generally does not extend to admission of fresh or new evidence, so doing falls within the province of the trial court. An application for fresh evidence seeks the exercise of judicial discretion which should be made only in furtherance of the court doing substantial justice to the parties judicially and judiciously. However, before any court, including the Supreme Court, can proceed to determine if it should exercise its discretion in a particular way, it must by law have the necessary competence. *(P. 994, paras. B-D)*

40. *On Jurisdiction of Supreme Court to admit fresh evidence in election appeals -*
The Supreme Court is vested with inherent and statutory jurisdiction to admit fresh evidence where, it is imperative for the purpose of serving the ends of justice. However, the exercise of the jurisdiction is not boundless, but must be exercised judicially and judiciously. While the provision of section 22 of the Supreme Court Act is clear and unambiguous, it must be reconciled with the specific provisions and requirements of election appeals, which are governed by a distinct set of rules and timelines. *(P. 995, paras. A-C)*

41. *On Principles governing reception of fresh evidence on appeal –*
Fresh evidence is not received as a matter of course. The conditions that must co-exist before the court can grant its discretion to allow fresh evidence are:

(a) **the fresh evidence could not have been obtained with reasonable diligence at trial;**

(b) **such evidence, if admitted, would have**

(c) **important effect on the subject of the appeal; such evidence***, ex facie*, **is apparently capable of being believed**,

(d) **such evidence would have influenced the judgment of the lower court in favour of the appellants, had it been available; and**

(e) **if such evidence is admitted, further evidence from the opposing party will not be needed**.

The conditions/principles must be conjunctively complied with by the applicant. Where any of them is not satisfied, the application will be refused.

In the instant case, the appellants failed to convince the Supreme Court on why it waited until after the Court of Appeal delivered judgment in the petition and lost its 180 days before bringing the said deposition sought to be admitted in the Supreme Court. The Presidential election was conducted on 25th February 2023 and the 1s respondent declared the 2d respondent as winner of the election on 1st March, 2023. Thereafter, the appellants filed their petition on 21st March 2023. The appellants could explain what attempts they made between the publication of the 2nd respondent's Form EC9 and accompanying documents in June 2022 and the date of filing of the petition on 21/3/2023 to obtain the document from Chicago State University; or between the date of filing the petition and the conclusion of trial. Those questions were critical in the quest of the Supreme Court's efforts to decide whether the new evidence sought to be adduced could have been obtained by the appellants with reasonable diligence for use at the trial. The appellants were tardy and were not reasonably diligent in their attempt at obtaining the documents which they sought to have received in the Supreme Court. [*Onwubuariri v. Igboasoyi* **(2011) 3 NWLR (Pt. 1234) 357;** *Adegbite v. Amosun* **(2016) 15 NWLR (Pt. 1536) 405;** *Adeleke v. Aserifa* **(1990) 3 NWLR (Pt. 136) 94;** *Oboh v. Nigerian Football League Ltd.* **(2021) 4 NWLR (Pt. 1766) 305;** *Owata v. Anyigor* **(1993) 1 NWLR (Pt. 276) 380;** *U.B.A. Plc v. BTL Ind. Ltd.* **(2005) 10 NWLR (Pt. 933) 356; 4. -G.,** *Oyo State v. Fairlakes Hotels Ltd.* **(1988) 5 NWLR (Pt. 92)** 1; *Statoil (Nig.) Ltd. v. Inducon (Nig.) Ltd.* **(2018) 1 NWLR (Pt. 1704) 45;** *Subaya Metalware (Nig.) Ltd. v. Toyota Motor Corp.* **(2022) 8 NWLR (Pt. 1833) 497;** *Oboh v. N.F.L. Ltd.* **(2022) 5 NWLR (Pt. 1823) 283;** *Williams v. Adold/Stamm Int'1 (Nig.) Ltd.* **(2017) 6 NWLR (Pt. 1560) 1;** *Dike-Ogu v. Amadi* **(2020) 1 NWLR (Pt. 1704) 45 referred to and applied.]** (*Pp. 906-907, paras. F-D; 907-908, paras. F-A; 914-915, paras. H-C)*

Per ABBA AJI, J.S.C. at pages 873-874, paras. F-B:

> **"If the appellants/applicants pleaded and "challenged the election of the 2nd respondent on the ground of his qualification to contest the said election and more especially on the basis that the 2nd respondent forged document to the Independent National Electoral Commission"; what then was the basis of that ground and the evidence to be adduced before the Tribunal? Was it then a guessed ground of the petition or forum shopping or a ground of petition that was not ripe and immature? Were the appellants/applicants basing that ground on what they did not see or what was not handy? It is preposterous, a dangerous campaign of calumny and contempt to base and predicate a ground of petition over what the petitioners are not very sure of or did not have the facts and evidence on ground. The import and need for the allowance or grant of fresh or additional evidence is where it is practically difficult or impossible**

to obtain the evidence before the trial and not to speculate on what may be obtained or to lighten an extreme difficulty. This is actually not the case of the appellants/ applicants since this same issue was made their ground of the petition, though without pleaded facts."

42. *On Object and limits of preliminary objection and whether can be raised against motion –*

A preliminary objection is usually to terminate a substantive suit *in limine* **and not to terminate an application or motion. By the nature and purpose of preliminary objection, the procedure is only adopted for the hearing of an appeal and not for any other process. In other words, preliminary objection cannot be raised in normal interlocutory applications which come up in the usual conduct of the business of the court. In the instant case, the preliminary objection raised by the 2nd respondent in challenge of appellants' notice of motion was not proper in law and as such incompetent.** [*U.B.N. v. Petro Union Oil & Gas Co. Ltd.* **(2022) 7 NWLR (Pt. 1829) 199;** *Zenith Bank Plc v. John* **(2015) 7 NWLR (Pt. 1458) 393;** *S.P.D.C. v. Amadi* **(2011) 14 NWLR (Pt. 1265) 157 referred to.]** *(Pp. 870-871, paras. H-E)*

43. *On Status of Court of Appeal when sitting over petition challenging result of Presidential election and procedure applicable thereat –*

The original jurisdiction vested in or conferred on the Court of Appeal to entertain, adjudicate over and determine the question as to whether any person declared and returned as the President was validly elected makes that court one of first instance or the trial court before which the person/s challenging the validity of the election should or shall initiate or commence the legal action in which the question can properly and validly be raised for determination. The Constitution did not provide how such a legal action challenging the validity of the election of any person to the Office of President shall be initiated or commenced before the Court of Appeal, but in section 248 provides for the practice and procedure for that court, which, "subject to the provisions of any Act of the National Assembly" the President of the Court of Appeal may make to govern proceedings in the court, generally. The National Assembly, in exercise of its constitutional powers and authority, specifically and specially, enacted the Electoral Act, 2022 regulate elections and related matters generally, including the settlement of disputes arising from such elections and related matters in order to complement the constitutional provisions on the resolutions/ determination of questions arising from the elections and related matters. The Electoral Act gives life and practical effect to the constitutional provisions on disputes and questions that arise from elections and related matters.

It was in compliance with section 130 (1) and 130(2) and other relevant provisions of the Electoral Act, 2022, that the appellants (as petitioners) presented *"the petition"* **in and before the Court of Appeal to challenge and raise the question as to the validity. of the election of the 2nd respondent to**

the office of the President of the Federal Republic of Nigeria for determination by that court as the court of first instance or trial court in line with the provision of section 239(1)(a) of the Constitution. As stipulated in section 130(2)(a) of the Act, for the purpose of the determination of the Presidential election presented before it by the appellants, the Court of Appeal sits as a "tribunal or court" of first instance and so reference in the Act to a tribunal or court in that context, refers to the Court of Appeal exercising the original jurisdiction vested or conferred on it under the provision of section 239(1)(a) of the Constitution. *(Pp. 909-910, paras. C-F)*

44. *On When sole ground of appeal can sustain appeal –*
An appeal can be heard and determined on a sole surviving ground of appeal where all other grounds are held to be incompetent by the court. *(P. 997, paras. E-F)*

45. *On Meaning of 'bias' and treatment of allegation of bias against judicial officer and duty on party raising same –*
The term 'bias' is a mental inclination or tendency; prejudice towards one or more of the parties to a case, over which the judge presides. An allegation of bias against a judicial officer is not taken merely as a matter of course! An allegation of bias, or likelihood of bias, against a judge is usually a very serious matter which must not be taken lightly. It must be supported by clear, cogent, direct and unequivocal evidence from which real likelihood of bias could be inferred as against mere suspicion. Essentially, the test applied is based on the perception of a reasonable man who is knowledgeable of the facts and circumstances, and not that of a capricious and unreasonable man.
In the instant case, the appellants' grouse was that the Court of Appeal used certain expressions like 'indecorous', 'dishonourable practice, 'clever by half', 'fallacious', 'foul play', 'smuggle', 'cross the line of misconception', 'correct evidence from the market', 'those who are not used to reading preambles', 'those who should know better' and 'hollowness in the argument of the petition' and alleged that the choice of those words and expressions demonstrated the court's contempt and disdain for the appellants and their counsel. However, in the scenario as depicted by the records, there was no cogent or reasonable ground to believe that the words and expressions employed by the Court of Appeal were meant, in any way, to disparage or belittle the appellants or their learned counsel. Contrary to the allegation, the attitudinal disposition of the Court of Appeal towards the appellants and their learned counsel was manifestly cordial and respectful throughout the trial of the petition. [*Nwalatu v. Anibire* **(2010) 10 NWLR (Pt. 1203) 545;** *Abalaka v. Akinsete* **(2023) 13 NWLR (Pt. 1901) 343;** *Osuji v. Ogualaji* **(2020) 9 NWLR (Pt. 1728) 134;** *Secretary, Iwo Central L.G. v. Adio* **(2000) 8 NWLR (Pt. 661) 115;** *Obadara v. The President West District Grade B Customary Court* **(1964) ANLR 331 referred to.]** *(P. 966, paras. B-H)*

46. NOTABLE PRONOUNCEMENTS:

On Need for parties and counsel to refrain from media trial and judgment –
Per OKORO, J.S.C. at pages 864-865, paras. F-A:

> **"Finally, let me say a few words concerning issue No.7 which is whether the lower court was right in its use of disparaging words against the appellants in its judgment evincing. hostility and bias against the appellants, thereby violating their right to fair hearing and occasioning grave miscarriage of justice. I have read the judgment of the court below and have seen the context in which those words were used and it is my view that they were not meant to disparage the appellants or their counsel. As Judges we are trained to be template in our use of words and we shall continue to do so. Litigants are advised to trust the courts whenever their matter is before it. It is very unbecoming these days that while a matter is pending in court, litigants engage in press conferences analyzing the case and reaching conclusions.**
>
> **Based on this, some of their followers send threatening messages to Judges and Justices. Matters in court are said to be sub judice and as such parties and probably their counsel should refrain from media trial and media judgment."**

Per ABUBAKAR, J.S.C. at pages 1032-1033, paras. G-A:

> **"Counsel must generally review their conduct and refrain from engaging social media to achieve what they cannot canvass or achieve in court. I totally agree with my learned brother that the time has come for all counsel to be strictly professional and desist from engaging the social media in launching assault on the dignity and integrity of the courts. Counsel must learn from this grievance that what is said in the social media and press is not as indelible as what constitutes an integral part of a judgment. Let me also say at this point that enough is enough."**

47. NOTABLE PRONOUNCEMENT:

On Need for use of technology in conduct of elections –
Per ABBA AJI, J.S.C. at pages 876-877, paras. F-C:

> **"Modernity and technology stare us in the face, and we cannot turn back the hand of time. To go against the use of technology or electronic transmission or transfer of election results in this hi-tech time and period is to be an enemy of democracy and to stick to the vicious cycle of election rigging, manipulation, falsification and subterfuge.**
>
> **Sincerely, the enactment of the 2022 Electoral Act was greeted with much relief and celebration, because we thought it would put things right and Nigerians will have their legitimate mandates delivered to them. In fact, the use, ease, fastness, security, convenience, accuracy,**

betterment and comfort of the use and deployment of electronic gadgets and devices in elections and transmission/transfer of results cannot be overemphasized nor compared with the old, rugged, uncertain and insecure system of manual voting and transmission of results.
Surely and I believe that the new Electoral Act came in to address and cure the mischief that bedevilled the old Electoral Act, by introducing electronic voting and transmission/transfer of votes, which ought to have been adhered to by the commission, considering the promises and presentations in connection thereto the Electoral Act made by INEC to Nigerians and the billions of Naira released for that purpose. I will also encourage that the Legislators should nip to the bud the issue of laxity and latitude given to the Commission to choose whichever method of transmission it wants; but adhere to a mandatory, clear and unarguable duty and obligation to be carried out by INEC via a clean and unambiguous statute."

Nigerian Cases Referred to in the Judgment:

A. -G., Abia State v. A.-G., Fed. (2002) 6 NWLR (Pt. 763) 264
A. -G., Bendel State v. A.-G., Fed. (1981) 3 NCLR 1.00
A.-G., Fed. v. Abubakar (2007) 10 NWLR (Pt. 1041) 1
A. -G., Fed. v. Sode (1990) 1 NWLR (Pt. 126) 500
A. -G., Lagos State v. Eko Hotels Ltd. (2018) 7 NWLR (Pt. 1619) 518
A. -G., Oyo State v. Fairlakes Hotels Ltd. (1988) 5 NWLR (Pt. 92) 1
A.C.B. PIc v. Losada (Nig.) Ltd. (1995) 7 NWLR (Pt. 405) 26
A.C.N. v. Nyako (2015) 18 NWLR (Pt. 1491) 352
A.G. Leventis (Nig.) Plc v. Akpu (2007) 17 NLWR (Pt. 1063) 416
A.N.P.P. v. Goni (2012) 1 NWLR (Pt. 1298) 147
A.P.C. v. Marafa (2020) 6 NWLR (Pt. 1721) 383
A.T. Ltd. v. A.D.H. Ltd. (2007) 15 NWLR (Pt. 1056) 118
Abacha v. Fawehinmi (2000) 6 NWLR (Pt. 660) 228
Abalaka v. Akinsete (2023) 13 NWLR (Pt. 1901) 343
Abegunde v. O.S.H.A. (2015) 8 NWLR (Pt. 1461) 314
Abubakar v. I.N. E.C. (2020) 12 NWLR (Pt. 1737) 37
Abubakar v. Nasamu (No.1) (2012) 17 NWLR (Pt. 1330) 407
Abubakar v. Yar'adua (2008) 19 NWLR (Pt. 1120) 1
Abubakar v. Yar'adua (2008) 4 NWLR (Pt.1078) 465
Adegbite v. Amosun (2016) 15 NWLR (Pt. 1536) 405
Adegboye v. Ajiboye (1987) 3 NWLR (Pt. 61) 432
Adegoke Motors v. Adesanya (1989) 3 NWLR (Pt. 109) 250
Adeleke v. Aserifa (1990) 3 NWLR (Pt. 136) 94
Adenle v. Olude (2002) 18 NWLR (Pt. 799) 413
Adesanya v. President, F.R.N. (1981) 2 NCLR 358
Adesokan v. Adetunji (1994) 5 NWLR (Pt. 346) 540

Adetoun Oladeji (Nig.) Ltd. v. N.B. Plc (2007) 5 NWLR (Pt.1027) 415
Agagu v. Mimiko (2009) 7 NWLR (Pt. 1140) 342
Agi v. P.D.P. (2017) 17 NWLR (Pt. 1595) 386
Ajide v. Kelani (1985) 3 NWLR (Pt. 12) 248
Ajomale v. Yarduat (No. 1) (1991) 5 NWLR (Pt. 191) 257
Akande v. Adisa (2012) 15 NWLR (Pt. 1324) 538
Akinfosile v. Ijose (1960) SCNLR 447
Akinnuoye v. Milad., Ondo State (1997) 1 NWLR (Pt. 483) 564
Akpamgbo-Okadigbo v. Chidi (No. 1) (2015) 10 NWLR (Pt.1466) 171
Akpamgbo-Okadigbo v. Chidi (No.2) (2015) 10 NWLR (Pt.1466) 124
Al-Hassan v. Ishaku (2016) 10 NWLR (Pt. 1520) 230
Alakija v. Abdulai (1998) 6 NWLR (Pt. 552) 1
Amaechi v. I.N.E.C. (2008) 5 NWLR (Pt. 1080) 227
Anaekwe v. Mashahsha (2001) 12 NWLR (Pt. 720) 70
A.P.M. v. INEC (Unreported) Appeal No. CA/PH/SEN/06/2023 delivered on 10t August, 2023
Ararume v. I.N.E.C. (2019) LPELR-48397
Ashiru v. I.N.E.C. (2020) 16 NWLR (Pt. 1751) 416
Ashiru v. Olukoye (2006) 11 NWLR (Pt. 990) 1
Awolowo v. Shagari (1979) (1979) 6-9 SC 51
B.L.L.S. Co. Ltd. v. M.V. Western Star (2019) 9 NWLR (Pt. 1678) 489
B.M. Ltd. v. Woermann-Line (2009) 13 NWLR (Pt. 1157) 149
B.O.I. Ltd. v. Awojugbagbe Light Ind. Ltd. (2018) 6 NWLR (Pt. 1615) 220
Bakari v. Ogundipe (2021) 5 NWLR (Pt. 1768) 1
Balogun v. Dosunmu (1999) 2 NWLR (Pt. 592) 590
Belgore v. Ahmed (2013) 8 NWLR (Pt. 1355) 60
Bello v. Damisa (2017) 2 NWLR (Pt. 1550) 455
Bello v. Yusuf (2019) 15 NWLR (Pt. 1695) 250
Buhari v. I.N.E.C. (2008) 19 NWLR (Pt. 1120) 246
Buhari v. I.N.E.C. (2008) 4 NWLR (Pt. 1078) 546
Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1
Buhari v. Yusuf (2003) 14 NWLR (Pt. 841) 446
C.B.N. v. Okojie (2015) 14 NWLR (Pt. 1479) 231
C.P.C. v. I.N.E.C. (2011) 18 NWLR (Pt. 1279) 493
Copytech Design and Print (Nig.) Ltd. v. F.B.N. (2021) LPELR 2 – 53621
Crestar Int. Nat. Res. Ltd. v. S.P.D.C.N. Ltd. (2021) 16 NWLR (Pt. 1800) 453
D.T.T. Ent. (Nig.) Co. Ltd. v. Busari (2001) 1 NWLR (Pt. 695) 482
Dabo v. Abdullahi (2005) 7 NWLR (Pt. 923) 181
Dabup v. Kolo (1993) 9 NWLR (Pt. 317) 254
Dangana v. Usman (2013) 6 NWLR (Pt. 1349) 50
Danladi v. Udi (2022) 9 NWLR (Pt. 1834) 185
Dickson v. Sylva (2017) 8 NWLR (Pt. 1567) 167
Dike-Ogu v. Amadi (2020) 1 NWLR (Pt. 1704) 45
Director, SSS v. Agbakoba (1999) 3 NWLR (Pt. 595) 314
Doma v. INEC (2012) 13 NWLR (Pt. 1317) 297
Dongtoe v. C.S.C., Plateau State (2001) 9 NWLR (Pt. 717) 132

Ebebi v. Ozobo (2022) 1 NWLR (Pt. 1810) 165
Ecobank (Nig.) Ltd. v. Anchorage Leisures Ltd. (2018) 8 NWLR (Pt. 1650) 116
Edosa v. Ogiemwanre (2019) 8 NWLR (Pt. 1673) 1
Efet v. I.N.E.C. (2011) 7 NWLR (Pt. 1247) 423
L8 Egharevba v. Eribo (2010) 9 NWLR (Pt. 1199) 411
Ehinlanwo v. Oke (2008) 16 NWLR (Pt. 1113) 357
Ehuwa v. O.S.I.E.C. (2006) 18 NWLR (Pt. 1012) 544
Ekwunife v. Wayne (W/A) Ltd. (1989) 5 NWLR (Pt. 122) 422
Enekwe v. I.M.B. (Nig.) Ltd. (2006) 19 NWLR (Pt. 1013) 146
Enilolobo v. N.P.D.C. Ltd. (2019) 18 NWLR (Pt. 1703) 168
Eyitayo v. Kazeem (2020) LPELR-50360
Eze v. Unijos (2017) 17 NWLR (Pt. 1593) 1
Ezenwankwo v. A.P.G.A. (2022) 18 NWLR (Pt. 1863) 537
F.B.N. Plc v. Agbara (2020) 15 NWLR (Pt. 1748) 537
F.R.N. v. Nganjiwa (2022) 17 NWLR (Pt. 1860) 407
F.R.N. v. Usman (2012) 8 NWLR (Pt. 1301) 141
Fagbemi v. A.P.C. (2023) LPELR – 61089
Fernandez v. F.R.C.N. (Unreported) Appeal No. CA/L/692/2011 delivered on 02/07/2013
G. Chitex Ind. Ltd. v. Oceanic Bank Int'l (Nig.) Ltd. (2005) 14 NWLR (Pt. 945) 392
Gadi v. Male (2010) 7 NWLR (Pt. 1193) 225
Gafar v. Govt., Kwara State (2007) 4 NWLR (Pt. 1024) 375
Gbenga v. A.P.C. (2020) 14 NWLR (Pt. 1744) 248
Gombe v. P.W. (Nig.) Ltd. (1995) 6 NWLR (Pt. 402) 402
Gov., Kogi State v. Yakubu (2001) 6 NWLR (Pt. 710) 521
Gov.; Kwara State v. Dada (2011) 14 NWLR (Pt. 1267) 384
Gundiri v. Nyako (2014) 2 NWLR (Pt. 1391) 211
Hashidu v. Goje (2003) 15 NWLR (Pt.843) 352
Hassan v. Aliyu (2010) 17 NWLR (Pt. 1223) 547
Husseini v. Mohammed (2015) 3 NWLR (Pt. 1445) 100
I.N.E.C. v. P.D.P. (2012) 7 NWLR (Pt. 1300) 538
I.N.E.C. v. Yusuf (2020) 4 NWLR (Pt. 1714) 374
Ibori v. Ogboru (2005) 6 NWLR (Pt.920) 102
Igwe v. A.C.B. Ltd. (1999) 6 NWLR (Pt. 605) 1
Ihedioha v. Okorocha (2016) 1 NWLR (Pt. 1492) 147
Ikenya v. P.D.P. (2012) 12 NWLR (Pt. 1315) 493
Ikweki v. Ebele (2005) 11 NWLR (Pt. 936) 397
Ishola v. Ajiboye (1994) 6 NWLR (Pt. 352) 506
Iyoho v. Effiong (2007) 11 NWLR (Pt. 1044) 31
Jegede v. I.N.E.C. (2021) 14 NWLR (Pt. 1797) 409
Kakih v. P.D.P. (2014) 15 NWLR (Pt. 1430) 374
Kalu v. Uzor (2004) 12 NWLR (Pt. 886) 1
Labour Party v. INEC (Unreported) Suit No. FHC/ABJ/ CS/145/2022 delivered on 23/1/2023
Ladoja v. Ajimobi (2016) 10 NWLR (Pt. 1519) 87
Lafia L.G. v. Gov., Nasarawa State (2012) 17 NWLR (Pt. 1328) 94

Lokpobiri v. A.P.C. (2021) 3 NWLR (Pt. 1764) 538
Macaulay v. R.Z.B. Austria (2003) 18 NWLR (Pt. 852) 286
Madukolu v. Nkemdilim (1962) SCNLR 341
Magbagbeola v. Sanni (2005) 11 NWLR (Pt. 936) 239
Marwa v. Nyako (2012) 6 NWLR (Pt. 1296) 199
Mato v. Hember (2018) 5 NWLR (Pt. 1612) 258
Mohammed v. Wammako (2018) 7 NWLR (Pt. 1619) 573
N.B.N. Ltd. v. Opeola (1994) 1 NWLR (Pt. 319) 126
N.C.S.B. v. Innoson (Nig.) Ltd. (2022) 6 NWLR (Pt. 1825) 82
N.U.R.T.W. v. R.T.E.A.N. (2012) 10 NWLR (Pt. 1307) 170
Narumal & Sons Nig. Ltd. v. Niger Benue Co. Ltd. (1989) 2 NWLR (Pt. 106) 730
Noibi v. Fikolati (1987) 1 NWLR (Pt. 52) 619
Nwachukwu v. Eneogwe (1999) 4 NWLR (Pt. 600) 629
Nwalatu v. Anibire (2010) 10 NWLR (Pt. 1203) 545
Nwalatu v. N.B.A. (2019) 8 NWLR (Pt. 1673) 174.
Nwankwo v. Yar'adua (2010) 12 NWLR (Pt. 1209) 518
Nwawuba v. Enemuo (1988) 2 NWLR (Pt. 78) 581
Nwobodo v. Onoh (1984) 1 SCNLR 1
Nyesom v. Peterside (2016) 7 NWLR (Pt. 1512) 452
Neribe v. Dave Engr. Co. Ltd. (1994) 8 NWLR (Pt. 361) 124
Obadara v. The President West District Grade B Customary Court (1964) ANLR 331
Obasanjo v. Yusuf (2004) 9 NWLR (Pt. 877) 144
Obasi v. Onwuka (1987) 3 NWLR (Pt. 61) 364
Obi v. I.N.E.C. (2007) 11 NWLR (Pt. 1046) 560
Obineche v. Akusobi (2010) 12 NWLR (Pt. 1208) 383
Oboh v. N.F.L. Ltd. (2021) 4 NWLR (Pt. 1766) 305
Oboh v. N.F.L. Ltd. (2022) 5 NWLR (Pt. 1823) 283
Odon v. Barigha-Amange (No. 1) (2010) 12 NWLR (Pt. 1207)
Ogba v. Vincent (2015) LPELR-40719
Ogbechie v. Onochie (No.1) (1986) 2 NWLR (Pt. 23) 484
Ogboru v. Okowa (2016) 11 NWLR (Pt. 1522) 84
Ogunmokun v. Milad., Osun State (1999) 3 NWLR (Pt. 594) 261
Ohakim v. Agbaso (2010) 19 NWLR (Pt. 1226) 172
Oilfield Supply Centre v. Johnson (1987) 2 NWLR (Pt. 58) 625
Ojokolobo v. Alamo (1987) 3 NWLR (Pt.61) 377
Ojukwu v. Obasanjo (2004) 12 NWLR (Pt. 886) 169
Ojukwu v. Onwudinwe (1984) 1 SCNLR 284
Ojukwu v. Yar'Adua (2009) 12 NWLR (Pt. 1154) 50
Okafor v. Nnaife (1987) 4 NWLR (Pt. 64) 129
Oke v. Mimiko (No.1) (2014) 1 NWLR (Pt. 1388) 225
Okechukwu v. Obiano (2020) 8 NWLR (Pt. 1726) 276
Okereke v. Umahi (2016) 11 NWLR (Pt. 1524) 438
Okwuokenye v. Reg. Trustees, St. Jude Anglican Church (2017) LPER-50735
Oloriode v. Oyebi (1984) SCNLR 390
Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205
Oni v. Oyebanji (2023) 13 NWLR (Pt. 1902) 507

Onochie v. Odogwu (2006) 6 NWLR (Pt. 975) 65
Onwubuariri v. Igboasoyi (2011) 3 NWLR (Pt. 1234) 357
Opara v. Dowel Schlumberger (Nig.) Ltd. (2006) 15 NWLR (Pt. 1002) 342
Orianzi v. A.-G., Rivers State (2017) 6 NWLR (Pt. 1561) 224
Orubu v. N.E.C. (1988) 5 NWLR (Pt. 94) 323
Osuji v. Ogualaji (2020) 9 NWLR (Pt. 1728) 134
Oteki v. A.-G., Bendel State (1986) 2 NWLR (Pt. 24) 648
Owata v. Anyigor (1993) 1 NWLR (Pt. 276) 380
Owners of the "Arabella" v. N.A.I.C. (2008) 11 NWLR (Pt.1097) 182
Owosho v. Dada (1984) 7 SC 149
Oyetola v. I.N.E.C. (2023) 11 NWLR (Pt. 1894) 125
Oyeyemi v. Comm. for Local Govt. (1992) 2 NWLR (Pt. 226) 661
P.D.P. v. I.N.E.C. (1999) 11 NWLR (Pt. 626) 200
P.D.P. v. I.N.E.C. (2012) 7 NWLR (Pt. 1300) 538
P.D.P. v. I.N.E.C. (2022) 18 NWLR (Pt. 1863) 653
P.D.P. v. Mohammed (2015) LPELR – 40859
P.D.P. v. Okogbuo (2019) LPELR-48989
P.D.P. v. Otu (2017) 5 NWLR (Pt. 1558) 265
Rabiu v. State (1980) 8 - 11 SC 130
Rossek v. A.C.B. Ltd. (1993) 8 NWLR (Pt. 312) 382
S.P.D.C. v. Amadi (2011) 14 NWLR (Pt. 1265) 157
S.P.D.C.N. Ltd. v. Isaiah (2001) 11 NWLR (Pt. 723) 168
Saleh v. Abah (2017) 12 NWLR (Pt. 1578) 100
Saliba v. Yassin (2002) 4 NWLR (Pt. 756) 1
Samuel v. A.P.C. (2013) 10 NWLR (Pt. 1892) 195
Sanusi v. Ayoola (1992) 9 NWLR (Pt. 265) 275
Sapo v. Sunmonu (2010) 11 NWLR (Pt. 1205) 274
Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156
Sec., Iwo Central L.G. v. Adio (2000) 8 NWLR (Pt. 661) 115
Sha'aban v. Sambo (2010) 10 NWLR (Pt. 1226) 353
Shettima v. Goni (2011) 18 NWLR (Pt. 1279) 413
Shinkaft v. Yari (2016) 7 NWLR (Pt. 1511) 340
Sifax (Nig.) Ltd. v. Migfo (Nig.) Ltd. (2018) 9 NWLR (Pt. 1623) 138
Skye Bank Plc v. Iwu (2017) 16 NWLR (Pt. 1590) 24
South Atlantic Pet. Ltd. v. Min. of Pet. Res. (2014) 4 NWLR (Pt. 1396) 24
Statoil (Nig.) Ltd. v. Inducon (Nig.) Ltd. (2018) 1 NWLR (Pt.1704) 45
Statoil (Nig.) Ltd. v. Inducon (Nig.) Ltd. (2018) 9 NWLR (Pt.1625) 586
Stitch v. A.-G., Fed. (1986) 5 NWLR (Pt. 46) 1007
Subaya Metalware (Nig.) Ltd. v. Toyota Motor Corp. (2022) 8 NWLR (Pt. 1833) 497
Temile v. Awani (2001) 12 NWLR (Pt. 728) 726
Tofowomo v. Ajayi (Unreported) Appeal No. SC/CV/1526/2022 delivered on 27th January, 2023
Tukur v. Govt. of Gongola State (1989) 4 NWLR (Pt. 117) 517
U.B.A. Plc v. BTL Ind. Ltd. (2005) 10 NWLR (Pt. 933) 356
U.B.N. Plc v. Petro Union Oil & Gas Co. Ltd. (2022) 7 NWLR (Pt. 1829) 199
Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330

Udom v. Umana (No.1) (2016) 12 NWLR (Pt. 1526) 179
Ugba v. Suswan (2013) 4 NWLR (Pt.1345) 427
Ugba v. Suswan (2014) 14 NWLR (Pt. 1427) 264
Ugbodume v. Abiegbe (1991) 8 NWLR (Pt. 209) 261
Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 365
Ukpo v. Imoke (2009) 1 NWLR (Pt. 1121) 90
Ukweni v. Gov., Cross River State (2008) 3 NWLR (Pt. 1073)
Uwaifo v. A.-G., Bendel State (1983) 4 NCLR 1
Uzodinma v. Izunaso (No.2) (2011) 17 NWLR (Pt. 1275) 30
Veepee Ind. Ltd. v. Cocoa Industries Ltd. (2008) 13 NWLR (Pt. 1105) 486
Wada v. Bello (2016) 17 NWLR (Pt. 1542) 374
Williams v. Adold/Stamm Int'l (Nig.) Ltd. (2017) 6 NWLR (Pt. 1560) 1
Womiloju v. Anibire (2010) 10 NWLR (Pt. 1203) 545
Yahaya v. Dankwanbo (2016) 7 NWLR (Pt. 1511) 284
Yantaba v. Gov., Katsina State (2020) 1 NWLR (Pt. 1811) 259
Yusuf v. A.P.C. (Unreported) Appeal No. CA/KN/EP/GOV/ KAN/05/2023 delivered on 24th August, 2023
Zenith Bank Plc v. John (2015) 7 NWLR (Pt. 1458) 393

Foreign Cases Referred to in the Judgment:

A. v. Secretary for the Home Department (2005) 2 AC 68
Akintoye-Agbaje v. Agbaje (2010) UK SC 13
Chandler v. A.P.P. (1964) AC 763
George v. Rocketi (1990) 170 CLR 104
Hilton v. Guyot, 454 US 100, 102 Sct. 177 (1981)
Holton v. Holton (1946) 2 AER 534
Liversidge v. Anderson (1941) 3 All ER 338
Stephen v. Cruckhel Rural District Council (1960) 2 QB 373
W.R. v. Camberne Justices (1955) 1 QB 41

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999 (as amended), Ss. 2(1)(2), 3(1), 6(6)(a), 13(1), 17(1), 36(1), 131, 134(2), 137(1)(i)(j), 134(2)(b)(4), 177, 237(1), 239(1)(a) (2), 248, 285(1)(a)(5)(6)(9)(12), 287(3), 297(1), 298, 299(1), 134(2)(b); 3rd Schedule, Para. 15
Electoral Act, 2022, Ss. 47(2), 50(2), 60(5), 62(1), 64(4)(6), 66(1), 130(1)(2)(a)(b), 132(7)(8), 134(2)(b), 135(1), 137; 1st Schedule, paras. 4(1)(d)(2)(5), 5(b)(c), 14(2)(a), 16(1)(a)(d), 41(1), 46(4), 54, 93
Electoral Decree, 1977, S. 34A(2)(c)(ii)
Evidence Act, 2011, Ss. 37, 83(1)(b), 110, 123, 135, 140
Supreme Court Act, Cap. S15, Laws of the Federation of Nigeria, 2004, Ss. 22 and 33
Electoral Act, 2020, 1st Schedule, paras. 41(8), 54

Nigerian Rules of Courts Referred to in the Judgment:

Court of Appeal Rules, O. 10
Federal High Court (Civil Procedure) Rules, 2019, 0. 2 r. 9,
O.3 rr. 2 & 3 and O. 13 r. 4
Supreme Court (Amendment) Rules, 2014, 0. 6 r. 5(4)
Supreme Court Rules, 1985, O. 2 rr. 9 & 12(1)(2)(3) and 0. 6 r. 5(4)

Foreign Rules of Court Referred to in the Judgment:

United States of America Federal (Rules on Civil Procedure)
0. 32(a)(1)(A)

Books Referred to in the Judgment:

14th Century in the Statute of 28,1354 Cap. 3, in the reign of Edward III
Ben Nwabueze: Nigeria 93: The Political Crisis and Solutions,
Ibadan Spectrum Books Ltd, 1994, Pp. 39-40,
Black's Law Dictionary, 11th Ed., 2019, Pp. 335, 336 and 1151 Corpus Juris Secundum, a Veritable Encyclopedic Collection of Laws, 2021 Ed.
Decree No. 39, 1999; Dakas C.J. Dakas: The Judiciary and Nation Building, Pp. 276-277
Henry Campbell Black: Handbook on the Constitution and Interpretation of the Laws, 1896, P. 334
I.M.M. Saulawa, JCA: The Legal Profession: Historical Perspectives, Principles, Practice, Challenges and Prospects (A Paper presented at the Faculty of Law, Bayero University, Kano on July 15, 2018
Lord Denning MR: The Due Process of Law, Reprinted 2012, Pp. 188-189
Lord Denning, M.R: The Due Process of Law Reprinted 2012, @ V; The Closing Chapter 2008, @ V Manual for Election Officials 2023
Oputa, JSC: Judicial Ethics, Law, Justice and the Judiciary, 1990
Peter Macalister-Smith: Comity in Encyclopedia of Public Law, 1992, P. 672
Pre-Election and Election Appeals Practice Directions, 2023
Regulations and Guidelines for the Conduct of Elections, 2022, Paras. 38, 48, 50(1), 51, 53, 54, 55, 60, 62(1), 91, 92, 93 Rupert Cross: Statutory Interpretation, 1st Edition (1981) e-print P. 113
The June 12 Experience, Current Themes in Nigeria Law, Pp. 276 – 277
US President James Madison (1809 - 1817)

Appeal:

This was an appeal against the decision of the Court of Appeal sitting in first instance as the Presidential Election Petition Court dismissing the petition of the appellants challenging the return by the 1st respondent of the 2nd respondent as winner of the Presidential Election held on 25th February 2023. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: John Inyang Okoro, J.S.C. (Presided and Read the Leading Judgment);
Uwani Musa Abba Aji, J.S.C.; Mohammed Lawal Garba, J.S.C.; Ibrahim Mohammed Musa Saulawa, J.S.C.;
Adamu Jauro, J.S.C.; Tijjani Abubakar, J.S. C.; Emmanuel Akomaye Agim, J.S.C
Appeal No.: SC/CV/935/2023
Date of Judgment: Thursday, 26 October 2023
Names of Counsel: Chief Chris Uche, SAN; Eyitayo Jegede, SAN; Prof. Mike Ozekhome, SAN; Nella Andem-Ewa Rabana, SAN (*with them*, Ahmed T. Uwais, A.B. Mahmoud, SAN; Dr. Kemi Pinheiro, SAN; Abdullahi Aliyu, SAN; S.O. Ibrahim, SAN (with them, Aminu Sadauki, Esq. and Wendy Kuku, Esq.) - *for the 1st Respondent*
Chief Wole Olanipekun, SAN; Yusuf Ali, SAN; Emmanuel Ukala, SAN; Prof. Taiwo Osipitan, SAN (*with them*, Akintola Makinde, Esq.) - *for the 2nd Respondent* Chief Akin Olujinmi, SAN; Chief Charles Uwensuji Edosonwan, SAN; Chief Adeniyi Akintola, SAN and Chief Afolabi Fashanu, SAN (*with them,* Olumide Olujinmi, Esq.) - *for the 3rd Respondent*

Court of Appeal:

Division of the Court of Appeal from 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, 6™ September 2023
Names of 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 Aliyu, SAN; Sir Stephen Adehi, SAN; T.M. Inuwa, SAN; 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; 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*

Counsel:

Chief Chris Uche, SAN; Eyitayo Jegede, SAN; Prof. Mike Ozekhome, SAN; Nella Andem-Ewa Rabana, SAN (*with them,* Ahmed T. Uwais, Esq.) - *for the Appellants*
A.B. Mahmoud, SAN; Dr. Kemi Pinheiro, SAN; Abdullahi Aliyu, SAN; S.O. Ibrahim, SAN (*with them,* Aminu Sadauki, Esq. and Wendy Kuku, Esq.) - *for the 1st Respondent*

Chief Wole Olanipekun, SAN; Yusuf Ali, SAN; Emmanuel Ukala, SAN; Prof. Taiwo Osipitan, SAN (*with them*, Akintola Makinde, Esq.) - *for the 2nd Respondent*

Chief Akin Olujinmi, SAN; Chief Charles Uwensuji Edosonwan, SAN; Chief Adeniyi Akintola, SAN and Chief Afolabi Fashanu, SAN (*with them*, Olumide Olujinmi, Esq.) - *for the 3rd Respondent*

OKORO, J.S.C. (Delivering the Leading Judgment): This is an appeal against the judgment of the Court of Appeal (sitting as the Presidential Election Petition Court) in suit No. CA/PEPC/OS/2023 and delivered on 6th September, 2023. In the said judgment, the court below substantially sustained the respondents' objections to the petition, the petitioner's reply to the respondents' respective replies, the competence of witnesses subpoenaed by the petitioners and the admissibility of several documents sought to be tendered by the appellants. After resolving all the issues in favour of the respondents, the lower court dismissed the petition for lacking in merit. Dissatisfied with the dismissal of the petition, the appellants filed notice of appeal on 18th September, 2023.

A brief fact of the case giving birth to this appeal are that election into the office of President of the Federal Republic of Nigeria was conducted by the Independent National Electoral Commission (INEC) on 25th February, 2023 wherein the 2nd and 3rd respondents emerged winners with a total of 8,794,726 votes while the appellants came second with 6,984,520 votes. Sixteen others participated in the said election. The first respondent accordingly declared the 2nd and 3rd respondents' winners of the election and declared the 2nd respondent as the elected President of the Federal Republic of Nigeria.

Aggrieved by the outcome of the election, the petitioners jointly filed a petition at the court below to challenge the outcome of the election under four grounds 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 appellants as petitioners then sought the following reliefs:

1. 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.
2. 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.
3. That it may be determined that the 2nd respondent was at the time of the election not qualified to conduct the said election.
4. 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:

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

In the Further Alternative:

6. That the election to the offices of the President of Nigeria held on 25th February, 2023, be nullified and a fresh election (re-run) ordered.
7. 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. On 6th September, 2023, judgments in the petition, including rulings in the applications were rendered by the court below. As I said earlier, the appellants' petition was dismissed.

Dissatisfied with the stance of the lower court dismissing their petition, the appellants have appealed to this court. Notice of appeal was filed on 18th September, 2023 containing 35 grounds of appeal. Appellants filed their brief of argument on 2nd October, 2023 while the 1st, 2nd and 3rd respondents filed theirs on 7th October respectively.

On 6th October, 2023, the appellants filed a motion on notice seeking two orders from this court and at the hearing of the appeal on 23rd October, 2023, the said motion was taken

first and ruling reserved till today. I shall proceed to determine the said motion before resolving the issues in this appeal.

Motion on Notice Filed On 6th October, 2023

As I alluded to above, the appellants filed motion on notice on 6th October, 2023 seeking two orders from this court to wit: -

"(a) An Order of this honourable court granting leave to the appellants/applicants to produce and the honourable court to receive fresh and/or additional evidence by way of deposition on oath from the Chicago State University for use in this appeal, to wit: certified discovery deposition made by Caleb Westberg on behalf of Chicago State University on October 03, 2023, disclaiming the certificate presented by the 2nd respondent, Bola Ahmed Tinubu, to the Independent National Electoral Commission.

(b) AND upon leave being granted, an order of this honourable court receiving the said deposition in evidence as exhibit in the resolution of this appeal.

The grounds for the application are well set out in the motion paper. They are twenty in number as follows:

1. One of the grounds of the appellants/applicants petition before the court below is that the 2d respondent was not qualified at the time of the election to contest the election as required by section 137(1)(i) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. Based on facts available to the appellants/ applicants at the time of filing their petition, the 1st appellant/ applicant through his United States of America Lawyers, Alexander de Gramont and Angela M. Lui of the Law firm of Dechert LLP of 1900K Street, NW, g Washington DC 20006 - 1110, unsuccessfully applied to Chicago State University for the release of copies of the academic records of the 2nd respondent.
3. Given the strict privacy laws in the jurisdiction of Chicago State University, the request for the release of the academic records and certificate issued to the 2nd respondent could not be granted without an order of court and for the purpose of use in pending court proceedings.
4. The 1st applicant through his said US-based Attorneys thereupon brought an action in the U.S. District Court for the Northern District of Illinois - In Re: Application of Atiku Abubakar for an Order directing Discovery from Chicago State University Case No. 23.CV-05099 for an order for the production of documents and testimony for use in a proceeding in a foreign court. Seeking documents and testimony from Chicago State University concerning the authenticity and origin of documents purporting to be the educational records of the 2nd respondent, Bola A. Tinubu.
5. The 2nd respondent applied and was joined in the matter as an intervenor, vehemently opposing the application.
6. On September 19, 2023, the court issued an order granting the application.
7. Thereafter, the 2nd respondent applied for an emergency stay of the court order; claiming that he would suffer irreparable damage and injury if his educational records were released; which order of stay was granted.

8. On September 30, 2023, the court overruled the 2nd respondent's objections and ordered Chicago State University to produce the documents on October 2, 2023, and to produce a witness for deposition on October 2, 2023.
9. On October 2, 2023, Chicago State University produced the documents pursuant to the court's order.
10. On October 3, 2023, also pursuant to the court's order, Chicago State University provided a witness to give deposition testimony, in which deposition, Chicago State University disclaimed ownership and authorship of the document, that the 2nd respondent presented to INEC, purporting to be "Chicago State University certificate" and also disclaimed issuing any replacement certificate to him.
11. The deposition was not in existence or available at the time of filing the petition or at the hearing of the petition.
12. The deposition sought to be adduced is, along with its accompanying documents, such as would have important effect in the resolution of this appeal.
13. The deposition is relevant to this matter, having confirmed that the certificate presented by the 2nd respondent to the Independent National Electoral Commission (INEC) did not emanate from Chicago State University, and that whoever issued the certificate presented by the 2nd respondent, did not have the authority of the Chicago State University, and that the 2nd respondent never applied for any replacement certificate nor was he issued any replacement certificate by the Chicago State University.
14. The deposition which is on oath deposed to in the presence of the 2nd respondent's Attorney is credible and believable, and ought to be believed.
15. The deposition is clear and unambiguous, and no further evidence is needed to be adduced on it.
16. The evidence is such that could not have been obtained with reasonable diligence for use at the trial, as the deposition required the commencement of the suit in the United States of America before receiving same. It was not possible to obtain the said evidence before the trial at the court below.
17. The deposition was made on October 03, 2023 after the conclusion of trial at the court below, and was not available to be tendered at the trial.
18. Presentation of a forged certificate to the Independent National Electoral Commission by a candidate for election to the office of President of the Federal Republic of Nigeria is a weighty constitutional matter, requiring consideration by the courts as custodians of the Constitution.
19. The original certified deposition has been forwarded to the honourable court by a letter addressed to the Chief Registrar of the Supreme Court.
20. It is in the interest of justice for this honourable court to exercise its discretion in favour of the appellants/ applicants.

In support of the application is a 20 paragraphs affidavit deposed to by Uyi Giwa-Osagie, Nigerian citizen, a legal practitioner and legal adviser to the 1st appellant with exhibits A - H annexed. Learned senior counsel for the appellants/applicants, Chief Chris Uche, SAN leading senior and other counsel, filed a written address in support of the motion.

Upon receipt of the said motion on notice, the 1st respondent filed an 11 paragraphs counter-affidavit deposed to by one Gift Nwadike, a legal secretary in the law firm of Dikko

and Mahmoud, lead counsel to the 1st respondent. A written address in opposition to the motion was also filed and signed by A. B. Mahmoud, SAN, lead counsel for 1st respondent.

For the 2nd respondent senator Michael Opeyemi Bamidele, a legal practitioner and long standing Associate of the 2nd respondent deposed to a counter affidavit of 20 paragraphs on 12/10/2023. Annexed to the counter-affidavit are exhibits 1 - 9. In support of the counter-affidavit and in opposition to the motion, learned senior counsel for the 2nd respondent, Chief Wole Olanipekun, SAN, leading senior and other counsel, filed a written address on the same date the counter affidavit was filed.

The 3rd respondent's counter affidavit was deposed to be one Peter Emaikwu, a Legal Executive in the Law firm of Olujimi and Akeredolu, lead counsel for the 3rd respondent. The 9 paragraphs counter affidavit is supported by a written address filed by Chief Akin Olujinmi, SAN.

Upon receipt of the various counter affidavits, the appellants filed a further affidavit of 20 paragraphs deposed to by the same Uyi A. Giwa-Osagie with 12 exhibits further annexed. Learned senior counsel also filed reply on points of law to the written addresses filed by the 1st, 2nd and 3rd respondents in their opposition to the appellants/applicants' motion on notice for fresh evidence and/or additional evidence.

At the hearing of this motion, both the applicants and the respondents adopted their supporting and counter-affidavits respectively. They also adopted and relied on their various written addresses. In the applicants written address, the learned senior counsel submitted one issue for determination to wit:

> Whether this honourable court ought to exercise its discretion in favour of the appellants/applicants by granting the prayers sought.

The 1st respondent's senior counsel also donated a sole issue for determination as follows:

> Whether in view of the peculiar facts of this case, this honourable court can proceed to grant the instant application.

For the 2nd respondent, Chief Olanipekun, SAN submitted one issue thus:

> Considering the background of this case, as well as bonds the applicable constitutional and statutory provisions relevant to election appeals and proceedings, whether this honourable court will grant this application.

Finally, Chief Akin Olujinmi, SAN, leading other counsel for the 3rd respondent opined that the crucial question to address in this motion is

> "Whether this court has jurisdiction to entertain this application."

Now, taking a clinical look at the four issues, it is crystal clear that they all say the same thing. And put in simple terms, it is whether the law of Nigeria as presently constituted allows this court to receive the evidence in question and act on it at this stage.

In his argument, the learned counsel for the appellants submitted that this court has the power, the jurisdiction and the discretion to grant an application to adduce fresh additional evidence on appeal. Referring to Order 2 rule 12(1)(2) and (3) of the Supreme Court Rules and the case of *Uzodinma v. Izunaso* (No.2) (2011) 17 NWLR (Pt. 1275) 30 at 53 paragraphs G - H, learned senior counsel submitted that the grant of this application will be in furtherance of the course of justice. That this is a case in which the 2nd respondent was purportedly declared as the winner of the election to the office of the President of the Federal Republic of Nigeria and the appellants/applicants have amongst other grounds, challenged the election of the 2nd respondent on the ground that the 2nd respondent presented a forged document to the

Independent National Electoral Commission. That the appellants have also challenged in their appeal the striking out of their pleadings raising the issue of qualification of the 2nd respondent to contest the said election. Learned Silk also relied on the cases of: *Nigerian Customs Service Board & anor v. Innoson Nigeria Ltd. & ors* (2022) 6 NWLR (Pt. 1825) page 82 at 98 and *Dike-Ogu v. Amadi* (2020) 1 NWLR (Pt. 1704) page 45 at 65.

According to learned Silk, the evidence required to establish that the certificate presented by the 2nd respondent to the 1st respondent in support of his qualification to contest the said election is the deposition from the Chicago State University, which deposition did not become available until after the determination of the case by the lower court. He contended that the appellants/ applicants have successfully explained the delay and difficulties in obtaining the said evidence earlier than now. Relying on the case of *Saleh v. Abah & ors* (2017) LPELR-41914 (SC) page 1 at 28; (2017) 12 NWLR (Pt. 1578) 100, the learned SAN urged this court to resolve the sole issue in favour of the appellants and grant the application.

In response to the above argument, the learned senior counsel for the 1st respondent A. B. Mahmoud, SAN submitted and urged this court to dismiss the appellant's application as they have failed to meet the conditions for grant of same. He opined that election petitions are sui generis, and as such this court in determining this application, must take into consideration the peculiarity of the instant appeal which is an appeal against the judgment of the Court of Appeal sitting as the Presidential Election Petition Court and based on the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2022. He stated the three conditions that have to be met before the fresh evidence can be admitted and urged this court to hold that the appellants/applicants failed to fulfill the conditions, relying on the cases of *Adeleke v. Aserifa* (1990) LPELR- 116 (SC); (1990) 3 NWLR (Pt. 136) 94; *Owata v. Anyigor* (1993) 2 NWLR (Pt. 276) 380, *U.B.A. Plc v. B.T.L. Industries Ltd.* (2005) 10 NWLR (Pt. 933) 356 amongst others. It is his contention that the appellants were tardy and were not reasonably diligent in their attempt at obtaining the documents which they seek to be received in these proceedings.

That having not acted with reasonable diligence, this court ought not to grant the instant application, also relying on *Oboh & anor v. NFL Ltd. & ors* (2020) LPELR - 55520 (SC); (2022) 5 NWLR (Pt. 1823) 283; *Adeleke v. Aserifa* (supra).

Learned senior counsel also drew the attention of this court to the decision of the court below which has not been appealed against that the petition did not plead facts in support of non-qualification or disqualification of the 2nd respondent in their petition and that their efforts to remedy it through their replies to respondents' replies were belated and were rightly refused. According to him, the deposition of Caleb Westberg is irrelevant since the appellants didn't the not raise the issue of forgery at the lower court. Relying on the case of *Okwuekenye & anor v. Registered Trustees of St. Jude Anglican Church & anor* (2017) LPELR - 50735 (CA), he submitted that evidence not supported by pleadings goes to no issue.

Learned silk further submitted that in so far as the deposition of Caleb Westberg is solely to disdain the certificate presented by the 2nd respondent and attached to his form EC9 dated 17th June, 2022, which the 1st respondent published as far back as 24th day of June, 2022, the appellants' complaint in that regard is a pre-election matter which by section 285(9) of the Constitution of the Federal Republic of Nigeria, 1999 is statute barred as such an action ought to have been initiated within 14 days of the 2nd respondent's submission of his form EC9 or the publication by the 1st respondent. He urged this court to so hold.

According to learned senior counsel, an allegation of presentation of false or fake certificate is rooted in the criminal offence of forgery which requires proof beyond reasonable doubt. He contended that the deposition by Caleb Westberg which seeks to establish a case of forgery against the 2nd respondent, without more cannot ground a conviction for forgery as proof beyond reasonable doubt cannot be solely based on an affidavit evidence, relying on *Abubakar & anor v. INEC & ors* (2020) 12 NWLR (Pt. 1737) 37 at 10; *Agi v. P.D.P*. (2017) 17 NWLR (Pt. 1595) 386 at 470 and *Mohammed v. Wammako* (2017) LPELR - 42667 (SC); (2018) 7 NWLR (Pt. 1619) 573.

Learned silk argued further that the deposition of Caleb Westberg alone does not, under our law, constitute credible evidence to establish a case of forgery.

Finally, the learned SAN submitted that this appeal being based on an election matter where a trial court is to hear matters and deliver judgment not later than 180 days after the filing of the petition, the implication is that all evidence ought to be adduced at the trial court and judgment delivered within 180 days. That it was not the intention of the draftsman of the Constitution to allow and. permit the receipt of evidence in an election matter when the trial court, the court vested with the powers to receive evidence has lost jurisdiction over the matter. He wondered what would happen now that all parties have filed and exchanged briefs with no arguments canvassed in respect of the additional evidence sought to be adduced in the instant appeal there being no room to extend time under the Pre- Election and Election Appeals Practice Directions 2023 of the supreme court. He urged the court to dismiss the application.
In his contribution in opposition to the grant of this motion, s learned senior counsel for the 2nd respondent, Chief Olanipekun, SAN submitted that this court is without the vires to consider the said deposition either as oral or documentary evidence, more so when the evidence was not considered by the court of first instance within the 180 days timeframe provided by the Constitution of the Federal Republic of Nigeria, relying on the case of *Towowomo v. Ajayi* (Unreported) Appeal No. SC/CV/1526/2022 delivered on 27th January, 2023. That the lower court having lost its jurisdiction since 17th September, 2023, upon expiration of the 180 days from the date of filing the petition by the appellants, this court cannot grant this application.

That section 22 and 33 of the Supreme Court Act give power to Order 2 rule 12(1) of the Rules of this court and that can only happen if the lower court still has jurisdiction.
Referring to *Onwubuariri & ors v. Igboasoyi & ors* (2011) 3 NWLR (Pt. 1234) 357 at 381 and *Adegbite v. Amosun* (2016) 15 NWLR (Pt. 1536) 405 at 422 learned Silk contended that the appellants/applicants failed to satisfy the five conditions enunciated in those cases before the application can be granted. According to learned SAN, the failure of the appellants/applicants to have validly pleaded facts and the document sought to be received in evidence is fatal to this application, relying also in *Adeleke v. Aserifa* (supra), *Obasi v. Onwuka* (1987) 3 NWLR (Pt. 61) 364 at 370 and *Statoil Nig. Ltd. v. Induction Nig. Ltd*. (2018) 9 NWLR (Pt. 1625) 586 at 601. Making reference to USA Fed. (Rules on Civil Procedure) 32(a)(1)(A), the learned silk opined that the failure to invite the All-Progressives Congress and INEC to participate in the deposition made in the U.S. renders exhibits C and D inadmissible, Moreso, since the alleged forged certificate is alleged to have been submitted to INEC.

It is his further contention that exhibits C and D have no utility or affirmity with this appeal for the fact that there is no ground of appeal upon which they can be structured as well as there being no accommodative issue for determination, relying on the cases of *Ladoja v. Ajimobi* (supra), *Orianzi v. Attorney General of Rivers State* (2017) 6 NWLR (Pt. 1561) 224 at 268, *Husseini v. Mohammed* (2015) 3 NWLR (Pt. 1445) 100 at 124 - 124.

Finally, learned senior counsel submitted that exhibits C - D unpretentiously attempt to allege a criminal offence of forgery against the 2nd respondent. He opined that a criminal offence must be proved beyond reasonable doubt as provided in section 135 of the Evidence Act. Also referring to the case of *A.C.N. v. Nyako* (2015) 18 NWLR (Pt. 1491) 352 at 388 - 389, and *Kakih v. P.D.P.* (2014) 15 NWLR (Pt. 1430) 374 at 421 - 422. He concluded that the Supreme Court does not have original jurisdiction to try the case of forgery. He urged this court to refuse the application and hold that it is an abuse of court process.

For the 3rd respondent, Chief Akin Olujinmi, SAN made submissions which are similar to those by the learned counsel for the 1st and 2nd respondents. With due respect to the learned silk, I shall refer to them in the process of resolving the sole issue in this application.

In the appellants/applicants reply on points of law, learned senior counsel lists some paragraphs of counter-affidavit of 2nd respondent which he alleges consist of legal arguments, objections and conclusions which he urged that they be struck out. On issue of jurisdiction, he submitted that section 285(6) which pegs 180 days for the hearing and determination of election petitions does not include the Court of Appeal but only election tribunals.

Learned silk submitted that issue of qualification is for both pre and post election matters referring to section 137(1)(j) of the Constitution, 1999 (as amended). He urged the court to grant this application in the interest of justice as was done by this court in *Amaechi v. I.N.E.C.* (2008) 5 NWLR (Pt.1080) 227 and *Obi v. I.N. E.C.* (2007) 11 NWLR (Pt. 1046) 560.

In resolving the sole issue submitted for the determination of this motion, I wish to start from the beginning. And the beginning is the issue of jurisdiction. Whereas the respondents in their various written addresses have urged this court not to grant this application as it is an exercise in futility, that the Supreme Court does not have jurisdiction to look into or act on exhibits C and D if admitted into the proceedings, the learned senior counsel for the appellants submitted otherwise. I have already summarized their various positions and I shall refer to them as we proceed.

It is elementary to state that the jurisdiction of a court is the authority which a court possesses to decide matters brought before it or to take cognizance of matters presented in a formal way for its decision; In the case of *Ogunmokun v. Mil. Ad., Osun State* (1999) 3 NWLR (Pt. 594) 261 at 265, this court stated that:

> "Jurisdiction of the court is the basis, foundation and life wire of access to court in adjudication under Nigerian Civil Process. As courts are set up under the Constitution, Decrees, Acts, Laws and Edicts, they cloak the courts with the powers and jurisdiction of adjudication. If the Constitution, Decrees, Acts, Laws and Edicts do not grant jurisdiction to a court or tribunal, the court and the parties cannot by agreement endow it with jurisdiction as no matter how well intentioned and properly conducted the proceedings, once it is incompetent, it is a nullity and an exercise in futility."

The jurisdiction of a court has further been defined as very fundamental and priceless commodity in the judicial process. That it is the fulcrum, centre pin or the main pillar upon which the validity of any decision of any court stands and around which other issues rotate. Thus; it cannot be assumed or implied, it cannot also be conferred by a party or by consent or acquiescence of parties. See: S.P.D.C. (Nig.) *Ltd. v. Isaiah* (2001) 5 SC (Pt. II) 1; (2001) 11 NWLR (Pt. 723) 168, *Attorney General of the Federation v. Sode* (1990) 1 NWLR (Pt. 126) 500 at 541. That is the general nature of jurisdiction.

I must emphasize that the matter under which the application is brought is an appeal in an election petition. It is trite that election petition proceeding is sui generis. It has its own set of laws and rules which a court must recognize and enforce. See *Buhari v. Yusuf* (2003) 14 NWLR (Pt. 841) 446, *Egharevba v. Eribo* (2010) 9 NWLR (Pt. 1199) 411. In the circumstance of this matter, this court in determining this motion has to take into consideration the peculiarity of the instant appeal which is an appeal against the judgment of the Court of Appeal sitting as the Presidential Election Petition Court based on the provisions of the Constitution of the Federal Republic of Nigeria and the Electoral Act, 2022.

I have carefully perused page 1 of vol. 1 of the record of appeal and it is clear that the petition giving birth to this appeal and particularly this application was filed on 21st of March, 2023 which was the last day of the 21 days prescribed in section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) for filing of election petition after announcement of result of election. By sub paragraph (6) thereof, an election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition and where there is an appeal, it shall be determined within 60 days from the date of delivery of judgment of the tribunal or Court of Appeal. As pointed out by learned senior counsel for the respondents, the 180 days prescribed for the hearing the petition by the Court of Appeal lapsed on 17th September, 2023. In other words, the court below lost its jurisdiction to entertain any matter in relation to the petition. This application before us relates to fresh evidence obtained after the judgment of the lower court and after the 21 days for filing election petition and after the expiration of the 180 days of the filing of the petition. What are the legal and/or constitutional implications of the above scenario in relation to exhibits C and D sought to be received into these proceedings. Several of the decisions of this court have taken care of the above scenario. One of the most recent cases decided by this court is the case of *Tofowomo v. Ajayi* (Unreported) Appeal No. SC/ CV/152/2022 delivered on 27/1/2023 wherein this court stated as follows:

> "In the circumstances of this case, this court cannot activate section 22 of the Supreme Court Act, 2004 since the 180 days provided by the Constitution to determine the appellant's claim at the trial court has lapsed since 1st January, 2023, The originating summons was filed on 5/7/22 and expired on 1/1/23 at the Federal High Court. This appeal was taken on 2/1/23 and there is no opportunity for the contentious issue of facts in controversy in this appeal to be sent back to the trial court. See *Ezenwankwo v. A.P.G.A. & ors* (2022) LPELR - 57884 (SC). The issue of the merit of the allegations of false information was not tried by the two lower courts and cannot be tried by this court pursuant to section 22 of the Supreme Court Act. This court cannot do what the trial court is no longer constitutionally permitted to do by virtue of section 285 of the Constitution."

See also *Oke v. Mimiko* (No.1) (2014) 1 NWLR (Pt. 1388) 225 at 253 and *A.P.C. & anor v. Marafa* (2020) 6 NWLR (Pt. 1721) 383 at 423.

As stated by the appellants/applicants in their application, the reliefs they seek is an order of this court granting them leave to produce and for this court "to receive fresh and/or additional evidence by way of deposition on oath ...." Clearly, the application runs foul of paragraphs 14(2) and 16(1) of the First Schedule to the Electoral Act which inter alia outlaws any amendment of substance as in this case or introduction or addition of substance to the statement of facts relied on to support the ground of the petition after the expiration of 21 days prescribed in section 132(7) of the Electoral Act for the presentation of an election petition.

There is no doubt that the deposition is one of substance and that is in fact why the appellants are seeking to introduce it into this appeal for the avoidance of doubt, I shall reproduce section 14(2)(a) of the First Schedule to the Electoral Act, 2022 as follows:

"14(2) After the expiration of the time limited by-

(a) Section 132(7) of this Act for presenting the election petition, no amendment shall be made-

(i) introducing any of the requirements of paragraph 4(1) not contained in the original election petition filed, or

(ii) effecting a substantial alteration of the ground for or the prayer in the election petition, or

(iii) except anything which may be done under subparagraph 2(a)ii), effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for or sustain the prayer in the election petition."

Nothing can be clearer than the above provision which clearly states that a petitioner shall not be permitted to amend his petition after 21 days allowed by section 132(7) of the Electoral Act. The applicants herein have not even applied to this court to amend their petition in order to reflect the facts of forgery and exhibits C and D sought to be admitted into the proceedings. Facts and documents which were not pleaded in the petition have no place in deciding the dispute between the parties. I still wonder how the appellants intend to use those documents in this appeal.

Let me consider an unusual submission of the learned senior counsel for the appellants/applicants. It is in respect of section 285(6) of the Constitution which states:

"An election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition."

On page 3, paragraph 2.5 of appellants' reply on points of law, is argued as follows:-

"Interestingly, and contrary to the avowed position of the respondents, we make bold to submit that there is no such constitutional limit of 180 days on the lower court to hear and determine a presidential election petition, such that can rob this court to exercise its powers in any manner whatsoever ….

While establishing the election tribunals to deal with election matters from Houses of Assembly, National Assembly and Governorship elections, the Constitution gave jurisdiction to entertain disputes from Presidential elections only to the Court of Appeal. Thereafter, the Constitution was intentional and deliberate in setting the 180 days limit only for Elections Tribunals, and not for the Court of Appeal."

It is shocking to have the above argument in print. It could have passed for a friendly joke but not for a serious matter like this in the apex court. It is even an unnecessary joke over a constitutional provision. After election petitions had suffered under the previous provisions which allowed election petitions to be heard even until the respondent has completed his tenure, the National Assembly dealt with the mischief by limiting the time which election petition shall be determined, it is unfair to suggest that we go back to those dark days.

My Lords, there is nothing in section 285(6) of the Constitution to suggest that the Court of Appeal can hear Presidential election petition without time limitation. The lower court is bound by the provision of section 285(6) of the said Constitution when sitting to hear election petition just as other election Tribunals. As was rightly submitted by learned senior counsel for

the 3rd respondent, Chief Akin Olujinmi, SAN, for which I wholly agree, the appellants knew they had to prove the allegation of non-qualification raised at paragraphs 16(d) and 146 of their petition against the 2nd respondent within the 180 days adjudication window provided in section 132(8) of the Electoral Act, 2022 for determination of petition by the lower court which expired since 17th September, 2023. The 180 days having expired, the lower court therefore no longer has jurisdiction to allow the deposition sought to be introduced into the trial of the petition. This is the law which at this stage is elementary. Consequently, since the lower court no longer has jurisdiction to entertain any such application, it follows *ipso* jure that this court also has no jurisdiction to allow the deposition to be used in this appeal. It is settled law that where the time for doing a thing is limited by the Constitution or statute, the court cannot extend the time. That was the decision of this court in *Brig. Gen. Mohammed Buba Marwa & ors v. Admiral Murtala Nyako & ors* (2012) LPELR-7837 (SC); (2012) 6 NWLR (Pt. 1296) 199 where Onnoghen, JSC (as he then was) held as follows:

> "It is settled law that the time fixed by the Constitution for the doing of anything cannot be extended. It is immutable, fixed like the rock of Gibraltar. It can not be extended, elongated, expanded, or stretched beyond what it states:" (page 36 paragraph D).

See also *Abubakar & ors v. Nasamu & ors* (2012) LPELR-7826 (SC); (No.1) (2012) 17 NWLR (Pt. 1330) 407.

It has to be noted as I stated earlier in this ruling and for which there are several judicial decisions in this country that the 180 days imposed on election tribunals and courts hearing election petitions is immutable and cannot be extended. The appellants/applicants have not even applied for extension of time to bring in the said depositions or extension of time to amend their petition. Let me say it clearly that the 21 days provided for the filing of petitions having long expired, even if the appellants had applied for extension of time to amend their petition in order to bring in the depositions, it would not have been granted. This principle was again restated by Onnoghen, JSC (as he then was) in *A.N.P.P. v. Goni* (2012) 1 NWLR (Pt. 1298) 147 at 192 when he said:-

> "Despite the decision of this court, since October, 2011 on the time fixed in the Constitution, some of the Justices of the lower court still appear not to have gotten the message. From where will the election tribunal get the jurisdiction to entertain the retrial after expiration of the 180 days assigned by the Constitution? The answer is obviously in the negative. It should be constantly kept in mind that prior to the provision of section 285(6) of the 1999 Constitution (as amended), there was no time limit for the hearing and determination of an election by the election tribunals or the appeals arising therefrom. That situation resulted in undue delay in the hearing and determination of an election petition by the election tribunals or the appeals arising therefrom. The amendment to the original section 285 of the 1999 Constitution by allotting time within which to hear and determine election petition and appeals arising therefrom is designed to ensure expeditious hearing and conclusion of election matters ..... if the decision of the lower court is allowed to stand as urged by the respondents, it would reintroduce the earlier mischief which the amendment sought to correct."

See *Ugba v. Suswan* (2014) LPELR-22882 (SC); (2014) 14 NWLR (Pt. 1427) 264. The above statement by this court is very explicit, clear and simple. As it is, the provision of the

Constitution has spoken, there cannot be an addendum or another reopening of the case at the lower court its jurisdiction having lapsed.

My Lords, I have taken time to state the law on this issue to show the futility of this motion. It cannot be granted. The jurisdiction of this court is donated by the Constitution and the Electoral Act regarding election petition appeals. We do not have the vires to admit this deposition and we cannot invoke section 22 of the Supreme Court Act since the lower court has since lost its jurisdiction. Moreso, there is no paragraph of the petition to accommodate a case of forgery. Again, the appellants have distilled seven issues for the determination of this appeal and none relates to certificate forgery. One wonders what the appellants intended to do with the deposition since appeals are heard on the issues distilled for determination by the parties. In *Saliba v. Yassin* (2002) 4 NWLR (Pt. 756) 1, this court stated clearly that all appeals are decided upon the issues formulated for determination. What this means is that any matter not covered by any issue for determination is of no moment. Should the deposition be admitted, it will float in the appeal as this court cannot exercise original jurisdiction even if we are to start a new case for the appellants. See also *Sanusi v. Ayoola* (1992) 9 NWLR (Pt. 265) 275, *G. Chitex Industries Ltd. v. Oceanic Bank Int'1 Nig. Ltd.* (2005) 14 NWLR (Pt. 945) 392.

Finally My Lords, on this application, I wish to state that fresh evidence is not received as a matter of course. There are conditions which must co-exist before the court can grant this type of application as can be garnered from decided authorities of this court which include but not limited to *Onwubuariri & ors v. Igboasoyi & ors* (2011) 3 NWLR (Pt. 1234) 357 and *Adegbite v. Amosun* (2016) 15 NWLR (Pt. 1536) 405 at 422, cases cited by the learned senior counsel for the 2nd respondent. Simply put, the conditions are that:

(1) the fresh evidence could not have been obtained with reasonable diligence at trial,
(2) such evidence, if admitted would have important effect on the subject of the appeal,
(3) such evidence, *ex-facie*, is apparently capable of being believed,
(4) such evidence would have influenced the judgment of the lower court in favour of the appellants, had it been available and
(5) and if such evidence is admitted, further evidences from the opposing party will not be needed.

Taking the first condition for example, the appellants failed to convince this court on why it waited until after the court below delivered judgment in the petition and lost its 180 days before bringing the said deposition sought to be admitted in this court. As was pointed out by the learned senior counsel for the 1st respondent, A. B. Mahmoud, SAN, the Presidential Election was conducted on the 25th February, 2023 and the 1st respondent declared the 2nd respondent as winner of the election on the 1st day of March, 2023. Thereafter, the appellants filed their petition at the registry of the court below on the 21st day of March, 2023. If I may ask, what attempts did the appellants make between the publication of the 2nd respondents' Form EC9 and accompanying documents in June 2022 and the date of filing of the petition on 21/3/2023 to obtain the document from Chicago State University? Again, what attempts did the appellants make to obtain these documents between the date of filing the petition and the conclusion of trial? To say the least, the above questions are critical in the quest of this court's efforts to decide whether the new evidence sought to be adduced could have been obtained by the appellants with reasonable diligence for use at the trial. With due respect to the appellants, I think they were tardy and were not reasonably diligent in their attempt at obtaining the

documents which they seek to have this court receive in this appeal. In *Adeleke v. Aserifa* (*supra*), this court held that where the evidence is available and could with reasonable care and diligence be made available to the applicant at the time of the trial, as in the instant case, the court should refuse to exercise its discretion to receive such evidence.

From all I have stated above, it is crystal clear that the additional evidence by way of deposition on oath does not fit into the issues submitted for the determination of this appeal. The application of the appellants/applicants in the circumstance is hereby refused and accordingly, dismissed.

Main Appeal

In view of the nature of this appeal, I have decided to brush aside the other motion by Chief Olanipekun, SAN and hear all the issues distilled by the appellants on the merit. The said motion is hereby struck out.

Learned senior counsel for the appellants distilled seven issues for the determination of this appeal as follows: -

(1) Whether the lower court was right in refusing to hold that failure of the 1st respondent to electronically transmit results from polling units nationwide for the collation of results of elections introduced by the Electoral Act, 2022 and specified in the Regulations and Guidelines for the Conduct of Elections 2022 and Manual for Election Officials 2023 does not amount to non-compliance which substantially affected the outcome of the election.

(2) Whether the lower court was right in its interpretation of the provisions of section 134(2)(b) and section 299 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in holding that securing one-quarter of the total votes cast in the Federal Capital Territory, Abuja is not a constitutional requirement for the return of the 2nd respondent as duly elected President of the Federal Republic of Nigeria.

(3) Whether the lower court was not in error to have expunged the witnesses' statement on Oath of appellants' subpoenaed witnesses, namely, PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27, and the exhibits tendered by them on the ground that the witnesses' statement on oath were not filed along with the petition and that Order 3 rule 2 and 3 of the Federal High court (Civil Procedure) Rules, 2019 is not applicable in election matters.

(4) Whether the lower court was not in error in its review of the evidence of PW1, PW2, PW3, PWS, PW7 and PW22, classifying them as inadmissible hearsay evidence and in discountenancing the various exhibits tendered by the appellants?

(5) Whether the lower court was in error in striking out several paragraphs of the petition and the replies of the appellants on the grounds of vagueness and lack of specificity, and for being new issues, mere denials or being repetitive.

(6) Whether the lower court was not in error in its evaluation of the evidence of the appellants' witnesses on the burden of proof and clear admission against interest made by the 1st respondent.

(7) Whether the lower court was right in its use of disparaging words against the appellants in its judgment evincing hostility and bias against the appellants,

thereby violating their right to fair hearing, and occasioning grave miscarriage of justice.

The 1st respondent through her senior counsel also formulated seven issues. The issues are:

(i) Whether the court below was right in holding that the appellants failed to establish that the transmission a/the polling unit results through the BVAS to an Electronic Collation System for collation and verification was a mandatory requirement of the Electoral Act, 2022 and failed to prove that the Presidential Election conducted on the 25th of February 2023 was invalid by reason of non-compliance with the provisions of the Electoral Act?

(ii) Whether the court below was right in its interpretation of section 134(2) (b) of the Constitution of the Federal Republic of Nigeria and in holding that the 2nd respondent who secured one-quarter of the votes cast in two-thirds (2/3) of 37 States (FCT Abuja inclusive) is deemed to have duly been elected even if he failed to secure 25% of the votes cast in the Federal Capital Territory, Abuja?

(iii) Whether the Court below was right in discountenancing the written statements on oath of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27 as well as the documentary evidence tendered through them?

(iv) Whether the court below was right in striking out paragraphs 92, 95, 98, 121, 126, 129, 133, 143 and 146 of the petition along with paragraphs 1(vii), (a), (b), (c) and (viii) as well as paragraphs 1.2(i), (i1), (iii), (viii), (xi)(i), (24) and (25) of the petitioners' reply having found that the paragraphs in the petition were vague and imprecise while the paragraphs in the petitioners' reply introduced new facts in violation of the provisions of the First Schedule to the Electoral Act?

(v) Whether the use of innocuous words by the court below in its evaluation of the evidence adduced before it, which words the appellants consider to be harsh, could amount to a breach of the appellants' right to fair hearing?

(vi) Whether the court below was right in its decision that the evidence of PW1, PW2, PW3, PWS, PW7, PW21, PW22 and PW26 were hearsay and therefore inadmissible in evidence?

(vii) Whether the court below was right in its evaluation of the evidence of the appellants' witnesses, arrived at a correct decision and properly ignored the purported admission in paragraph 18 of the 1st respondent's reply when the alleged admission was not material for the determination of the case before its?

For the 2nd respondent, his senior counsel donated seven similar issues as hereunder stated:-

(1) Considering the combined provisions of paragraph 15 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended); section 47(2), 60 and 64 of the Electoral Act, 2022; paragraphs 38, 48, 50, 51, 54, 55, 91, 92, 93 of the Regulations and Guidelines for the Conduct of Election, 2022; the judgment of the Federal High Court in FHC/ABJ/CS/1454/2022 - *Labour Party v. INEC* admitted by the lower court as exhibit Xl; the judgment of the Court of Appeal in appeal No. CA/LAG/CV/332/2023 *All Progressives Congress v Labour Party & 42 ors*, and the preponderance of evidence before

the lower court: Whether the lower court did not come to a right decision in its interpretation and conclusion regarding the position of the law, *vis-à-vis* petitioners/appellants' complaints.

(2) Upon a combined reading of the preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 17(1), 134(2) (b), 299(1), thereof; section 66 of the Electoral Act, 2022 and other relevant statutes, whether the lower court was not right in coming to the conclusion that the 2nd respondent satisfied all constitutional and statutory requirements to be declared winner of the presidential election held on 25th February, 2023, and returned as President of the Federal Republic of Nigeria.

(3) Having regard to the appellants' pleadings before the lower court, vis-à-vis the provisions of paragraphs 4(1)(d)(2) and 16(1)(a) of the First Schedule to the Electoral Act, 2022 and Order 13 rule 4 of the Federal High Court (Civil Procedure) Rules, 2019, coupled with consistent judicial authorities on the fundamental nature of pleadings, whether the lower court did not rightly strike out offensive paragraphs of the petition and petitioners' reply to the respondents' respective replies.

(4) In view of the clear provisions of section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 132(7) of the Electoral Act, 2022, paragraph 4(5) of the First Schedule to the Electoral Act, 2022 and the settled line of judicial authorities on the subject, whether the lower court did not rightly strike out the witness statements on oath and expunge the evidence of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW19, PW21, PW23, PW24, PW25, PW26 and PW27.

(5) Was the lower court not right when it upheld the respondents' objection to the admissibility of the documents tendered by the appellants and struck out the said documents?

(6) Considering the clear provision of section 135 of the Electoral Act, the pleadings and the reliefs sought by the petitioners/appellants as well as the admissible evidence before the lower court, whether the lower court was not right in dismissing the appellants' petition.

(7) In view of the circumstances of the petition before. the lower court, the terse evidence adduced by the appellants and the state of the law on the respective subjects, whether the lower court could rightly be accused of bias by the appellants.

My Lords, six issues were however decoded by the learned senior counsel for the 3rd respondent which are as follows: -

1. Whether the Court of Appeal was not right in striking out the paragraphs of the petition filed in violation of paragraph 4(1)(d) of the 1st Schedule to the Electoral Act, 2022 together with the associated witness statements on oath and the documents in support thereof?
2. Whether the Court of Appeal rightfully struck out the offensive replies and/or paragraphs of the replies of the petitioners and the associated witness statements on oath as well as the documents in support thereof, filed in violation of paragraph 16(1) of the 1s Schedule to the Electoral Act, 2022?

3. Whether the Court of Appeal was not right to strike out the witness statements on oaths not filed along with the petition within the mandatory 21 days time frame for filing of petition with the associated documents relating to the depositions as well as the evidence of expert witnesses who were also interested in the petition?
4. Whether having regard to the prescription of the law on allegations of non-compliance, failure of the petitioners to
   (i) plead with specificity particulars of the polling units complained of;
   (ii) tender and demonstrate relevant documents; and
   (iii) call necessary witnesses who can give direct evidence on the allegations, the Court of Appeal was not justified in concluding that petitioners did not prove the allegations of noncompliance and how it substantially affected the outcome of the election?
5. Whether where the decision of a court is supported by the law, the mere use of alleged strong words in the judgment against the appellant by the court can without more invalidate the judgment of the court.
6. Whether having regard to the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Court of Appeal rightly concluded that, 25% of votes cast in the Federal Capital Territory need not be met before a candidate can be declared winner of the presidential election?

There is no doubt that all the issues submitted by all the parties are similar and any could be adopted for guidance. I propose however to determine this appeal based on the issues as formulated by the appellants; after all, it is their appeal.

Issue One:

The thrust of issue one is whether the lower court was right in refusing to hold that the failure of the 1s respondent to electronically transmit results from polling units nationwide for the collation of results introduced by the Electoral Act, 2022 and specified in the Regulations and Guidelines for the Conduct of Elections 2022 and Manual for Election Officials 2023 does not amount to non-compliance which substantially affected the outcome of the election.

Chief Chris Uche, SAN, learned senior counsel for the appellants submitted in the main that by virtue of section 64(4) of the Electoral Act, 2022, the collation officers and returning officers of the 1st respondent including the National Chairman of the 1st respondent, were under a statutory obligation towards mandatory verifications and confirmations at all stages required before the announcement of the results of the election. Learned silk further contended that at the trial the appellants subpoenaed several INEC Presiding Officers including PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW24 and PW25 who handled the BVAS Machines at the polling units on the election day who confirmed the non-transmission of results of the presidential election electronically from the BVAS machines, whereas the results for the National Assembly election held simultaneously, were electronically transmitted without difficulty. That the appellants' witnesses gave evidence that the bypass of the use of the prescribed verification technology was nationwide, affecting the entire polling units and collation of results all over Nigeria, and substantially affected the outcome of the election. That the sole witness of the 1s respondent Lawrence Bayode admitted under cross-examination that the deployment of the technology of BVAS and IReV was to guarantee the transparency of the electoral process and the integrity of the results, but claimed that there was a “technical glitch” that made the system fail to work on the election day which technical glitch was not explained

by the 1st respondent. The appellants contended that the failure to transmit the result electronically led to manipulation of the results in favour of the 2nd respondent.

The learned silk then urged this court to depart from its previous decisions pursuant to Order 6 rule 5(4) of the Supreme Court Rules on the manner of proof of non-compliance with the provisions of the Electoral Act in the light of the novel provision of section 137 of the Act and paragraph 46(4) of the 1st Schedule to the Act. The learned SAN submitted that the assurances given to the public by the 1st respondent as a public institution that results will be electronically transmitted was dashed. It is his contention that the election ought to be nullified by reason of the gross' misrepresentation by the 1st respondent based on the *"doctrine of legitimate expectation"* as applied by this court in *Stitch v. A.-G., Federation* (1986) 5 NWLR (Pt. 46) 1007.

The learned silk concluded on this issue that given the introduction of technology into the collation process by the new Election Act, 2022, the judicial approach and attitude must of necessity be different from the analogue past. He then invites this court to depart from its decisions on mode of proof of noncompliance with the Electoral Act in election petitions as was the case in *Nyesom v. Peterside* (2016) 7 NWLR (Pt. 1512) 452, *Okereke v. Umahi* (2016) 11 NWLR (Pt. 1524) 438, *Shinkafi v. Yari* (2016) 7 NWLR (Pt. 1511) 340 amongst others. He urged the court to resolve this issue in favour of the appellants.

In response, the learned senior counsel for the 1st respondent, A. B. Mahmoud, SAN urged this court to decline the invitation to overrule its previous decisions on the manner of proof of noncompliance because such invitation is not usually taken lightly by this court. He contended that the conditions for such application does not exist in this appeal, relying on *Veepee Industries Ltd. v. Cocoa Industries Ltd*. (2008) 13 NWLR (Pt. 1105) 486 at 520 paragraphs D - G. That the appellant has not contended that the previous decisions sought to be departed from were given per *incuram* or erroneous in law.

On the argument that the 1st respondent failed to electronically transmit result, he submitted that the only reference to electronic transmission of polling unit results appears in paragraph 38(1) of the Guidelines published by INEC for the Conduct of the Election wherein it provides that presiding officers shall electronically transmit or transfer results of the polling units directly to the collation system prescribed by the 1st respondent. That the use of the word "OR" in the said paragraph 38(1) of the Guidelines gives the presiding officers the discretion or option to either transmit electronically or transfer the result to the collation system prescribed by the 1st respondent.

Learned senior counsel submitted that the main complaint of the appellants relates to the alleged failure to transmit the election result to the IReV Portal for members of the public to view; and that this amounts to non-compliance. He submitted that the IReV portal is only a public viewing portal and not a collation portal relying on *Oyetola v. I.N.E.C.* (2023) NWLR (Pt. 1894) 125. He urged the court to hold that the failure did not substantially affect the result of the election which was properly collated and result announced

In his argument, Chief Olanipekun, SAN for the 2nd respondent submitted that by all extant relevant laws, INEC has the prerogative of determining the mode and manner for the transmission of election results and that the lower court was perfectly right and in order when it so held. He faulted the appellants' claim and basis of allegation of non-compliance with respect to the presidential election in focus on their claim that the results of the election results were not electronically transmitted to the IReV in real time, not that it was not transmitted at all and that the 1st respondent did not ensure that the results were collated on the IReV. He also

faulted the appellants' insistence that the results ought to have been collated electronically on the IReV and that omitting to do this automatically nullified result of the election. Referring to the case of *Labour Party v. INEC* in suit No. FHC/ABJ/CS/145/2022 delivered on 23/1/2023 by Nwite, J. of the Federal High Court which decided that there is nothing in a combined reading of sections 47(2), 50(2), 60(5) and 62(1) and (2) of the Electoral Act, 2022 which suggests that, INEC is mandated to only use an electronic means in collating or transferring of election result. Rather that INEC is at liberty to prescribe the manner in which election results will be transmitted.

That by section 287(3) of 1999 Constitution, all authorities and persons are bound to enforce the terms of the judgment until set aside by an appellate court. He submitted that all through the gamut of the Electoral Act, the appellants were unable to refer to the lower court to a singular provision which prescribe electronic collation of result or even electronic transmission of results and that was why the court below held that the petitioners were unable to prove that the Electoral Act or Guidelines made it mandatory for electronic collation system, He submitted further that the appellants failed to show that the result collated was different from the one they perceived belonged to them.

Learned silk submitted finally that the Electoral Act, 2022, the INEC Regulations and Manual points irresistibly to a manual collation of result contrary to electronic collation touted by the appellants. The reason being that by paragraph 93 of the Regulations, the only circumstance where electronic copy of result. becomes relevant is where there is no hard copy of the result, then the electronic copy can be resorted to during collation. He urged the court to resolve this issue against the appellants.

In his submission, Chief Akin Olujinmi, SAN, for the 3rd respondent submitted that the appellants seem to have admitted their failure to prove allegation of non-compliance when they pleaded with this court to depart from the earlier established legal position that non-compliance be proved on polling unit basis. He submitted that there is nothing compelling presented by the appellants to warrant a departure from the established legal order, relying on *Nyesom Wike v. Peterside (supra), Belgore v. Ahmed* (2013) 8 NWLR (Pt. 1355) 60 amongst others. He urged this court to decline the invitation.

According to learned Silk, any argument for relaxing the established standard of proof of allegation of non-compliance, must not be driven by sentiments and cavalier presentation of a case seeking to overturn the will of millions of the electorate in a Presidential election. He contended that the appellants merely half-heartedly offered 27 witnesses many of whom were incompetent witnesses while purporting to prove allegation of non-compliance covering over 176,000 polling units spread across the 36 States that make up the Federation of Nigeria. That based on inadequate evidence, the allegation of non-compliance must fail, relying on *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1 and *Atiku Abubakar v. INEC* (2020) 12 NWLR (Pt. 1737) 37. He urged the court to resolve this issue against the appellants.

In their reply brief, the learned senior counsel faulted the response of the respondents in relation to their call for this court to depart from its previous decision touching issue of non-compliance. According to him, his argument is based on the introduction of section 60(5) and (6) and 137 of the Electoral Act, 2022 and paragraph 46(4) of the First Schedule to the Act which provisions were not in the 2010 Electoral Act. That these new provisions deal with the new manner of transmission of results, as contained in paragraph 38(i) and (ii) of the Regulations and Guidelines for Conduct of Elections 2022 and the legislative intervention to reduce calling of numerous witnesses.

Resolution:

By section 135(1) of the Electoral Act, 2022, 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 the Act and that the non-compliance did not affect substantially the result of the election. From the provision of the Electoral Act stated above, it is crystal clear that a petitioner seeking to nullify an election on the ground of non-compliance, must not only lead evidence to prove the non-compliance but must also show to the court how the non-compliance substantially affected the outcome of the election. A petitioner in this situation must therefore adopt a kind of double barrel approach, you don't fire one barrel and leave the other intact. Both must be fired together at the same time. See *Buhari v. Obasanjo* (2005) 7 SC (Pt.1) 1; (2005) 13 NWLR (Pt. 941) 1, *Ucha v. Elechi* (2012) 13 NWLR (Pt. 1317) 330.

From the evidence as can be garnered from the record, the judgment of the court below and the arguments of both parties this appeal, one thing is very clear and that is: the appellants abandoned the duty imposed on them to lead credible evidence to prove non-compliance but relied solely on the failure of the 1st respondent to transmit result real time to the IReV Portal. According to the appellants, this was enough to nullify the election of the 2nd respondent. What exactly is the IReV Portal? The court below held that the IReV is not a collation system. This court, in *Oyetola v. INEC* (2023) LPELR-60392 (SC); (2023) 11 NWLR (Pt. 1894) 125 made it clear that there is a difference between a collation system and the IReV portal though both are part of the election process. Whereas the collation system is made up of the centres where results are collated at various stages of the election, the INEC Result Viewing Portal is to give the public the opportunity to view the polling unit results on the election day. What this means is that where the IReV portal fails, it does not stop the collation of results which up to the last election was manually done. The failure or malfunctioning of the IReV deprives the public and even election administrators and monitors the opportunity of viewing the portal and comparing the result collated with the ones transmitted into the IReV. Truth must be told, the non-functioning of the IReV may also reduce the confidence of the voting public in the electoral process.

My Lords, the Electoral Act empowers the 1st respondent to determine the electronic devise to be used during election and their purpose. The lower court held that the IReV is not a collation system and I agree. I refer to paragraph 93 of the 1st respondent's Guidelines and Regulation for the Election which provides that:

> "Where the INEC hard copy 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. When none of these exists, the collation officer shall ask for duplicate hardcopies issued by the commission to the following in the order below –
>
> (i) The Nigeria Police Force; and
>
> (ii) Agents of political parties."

Paragraph 93 of 1st respondent's Guidelines and Regulations reproduced above shows clearly that recourse to the electronically transmitted result for the purpose of collation will only arise where the hardcopy of the result sheets does not exist. Given when the electronically transmitted result or the result on the IReV portal does not exist, the Commission will ask for the copies handed over to the Nigeria Police or agent of political parties. The elaborate arrangement made by the 1st respondent for collation of results is to make sure that at every

point of collation, there is a result either from the hard copy with INEC, or electronically transmitted copy, or IReV portal copy or a hard copy given to the Nigeria police and finally a copy given to the political parties. I think I can confidently say, and in agreement with the respondents that the unavailability of the election result on the IReV portal for whatever reason cannot be a ground upon which an election could be nullified, particularly as it is not the case of the appellants that the hard copies of the result sheets did not exist at any level of collation.

My Lords, having failed to prove its petition by the conventional method known to this court, the appellants urged this court to depart from several decisions of this court on ways of proving non-compliance. They have not shown that those judgments were reached *per incuriam* or that there was any miscarriage of justice.

Section 137 of the Electoral Act relied upon by the appellants for their failure to prove non-compliance in the manner we are used to, provides:

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

The above provision has not absolved a petitioner of the need to lead credible evidence to prove non-compliance. It states clearly that oral evidence may not be necessary if and only if originals or certified true copies manifestly disclose the non-compliance. In this case, the appellants have not demonstrated the originals or certified true copies of documents they want the court to rely on. Given where such documents are tendered in evidence, it has to be shown that they manifestly disclose the non-compliance.

On the whole, it is my well-considered opinion which accords with the views of the court below that the failure to transmit results to the IReV did not affect the result of the election. Accordingly, this issue is resolved against the appellants.

Issue Two:

This issue is whether the lower court was right in its interpretation of the provisions of section 134(2)(b) and section 299 of the Constitution of the Federal Republic of Nigeria, 1999 (as) amended) in holding that securing one-quarter of the total votes cast in the Federal Capital Territory, Abuja is not a Constitutional requirement for the valid return of a candidate as duly elected President of the Federal Republic of Nigeria. In his argument, the learned senior counsel urged this court to interpret the word "AND" in section 134(2)(b) of the Constitution conjunctively and not disjunctively which will make it compulsory for a candidate to score 1/4 or 25% of votes cast in the Federal Capital Territory before he can be President of the Federal Republic of Nigeria. The respondents argue otherwise.

My Lords, on pages 8234 to 8235 of vol. 10 of the record of appeal, the lower court made the following decision:

> "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-thirds of the States of the Federation. Such that if the candidate polls 25% or one-quarter of 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."

To be very honest, I do not see anything wrong with the above decision. It is basic that one of the vital concerns of interpretation of statutes is that a court of record should be minded to make broad interpretation or what is sometimes referred to as giving same a liberal approach. A court should give a holistic interpretation to a statute or the Constitution as required by law. Probably, I may add that a court must give the Constitution or a statute a purposeful and people-oriented interpretation. See *N.U.R.T.W. & Anor v. R.T.E.A.N.* (2012) 10 NWLR (Pt. 1307) 170, *Rabiu v. The State* (1980) 8 - 11 SC 130. What I am trying to say is that in interpreting the Constitution or any statute for that matter, a narrow and selfish approach should be avoided. The duty of the court in interpreting statute should be in such a way that it serves the generality of the people and not for a select few. It is trite that the legislature does not intend creating injustice or an absurdity; hence the court must, always adopt a construction or interpretation which will not reduce legislation to futility and absurdity. See *Governor of Kwara State & ors v. Jerome Oladele Dada* (2011) 14 NWLR (Pt. 1267) 384.

Let me drive this matter home. The poser rendered by the learned senior counsel for the 2nd respondent in their brief comes handy. Assuming that a candidate scores the highest number of votes in a presidential election and has 25% or one-quarter of votes in 30 out of 36 States and Abuja but failed to secure the 25% in the FCT Abuja, are we saying that he cannot be president? Is that what the legislature intended? I do not think so. The court below made it very clear when it held that

> "if the framers had wanted to make the scoring of one-quarter of votes cast in the Federal Capital Territory 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"

The above decision of the lower court is unassailable and I have no difficulty in agreeing with it. I see no merit in this issue and I resolve it against the appellants.

Issue Three:

This issue calls on this court to interrogate the decision of the court below and answer the question whether the lower court was not in error to have expunged the witness statements on oath of appellants' subpoenaed witnesses, namely, PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27 and the exhibits tendered by then on the ground that the witnesses statements on oath were not filed along with the petition and that Order 3 rules 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019 is not applicable in election matters.

Learned senior counsel for the appellants faults the decision of the court below for relying on paragraph 4(5) of the 1st Schedule to the Electoral Act, 2022 and for failure to apply the provision in Order 3 rules 2 and 3 of the Federal High Court (Civil Procedure) Rules. He submitted that the interpretation given to paragraph 4(5)(b) of the First Schedule to the Electoral Act, 2022 by the lower court in disallowing the testimonies of the appellants' subpoenaed witness will only lead to absurdity and prevent petitioners from compelling relevant evidence in possession of an adversary.

In reply, the three senior counsel for the respondents in their various briefs submit in unison that the 21 days prescribed for filing of election petition cannot be extended under any guise and that paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, cannot be enlarged to accommodate witnesses' statements on oath which were not filed along with the petition. That having responded to the petition based on the facts and witness statements front-loaded, their

right to fair hearing will be trampled upon by allowing new evidence through those witnesses when they have no right of further reply. They urged the court to resolve this issue against the appellants.

Let me reiterate the already trite position of the law that election petition is *sui generis*. That is to say it is in a class of its own. As was held by this court in *Abubakar v. Yar'adua* (2008) 19 NWLR (Pt. 1120) 1, this is no longer a moot point. It is different from common law civil action. In *Kalu v. Uzor* (2004) 12 NWLR (Pt. 886) 1 at 20, this court stated clearly that the Electoral Act of whatever version (particularly that of 2022) contains mandatory provisions, thus election petitions have certain peculiar features which make them sui generis. They stand on their own and bound by their rules under the law. It was further held that defects or irregularities which in other proceedings are not sufficient to affect the validity of the claim are not so in an election petition., A slight default in compliance with a procedural step could result in fatal consequences for the petition. It has to be noted that rules governing civil proceedings are not the same which govern election proceedings and where the Electoral Act requires recourse to the Civil Procedure Rules, it must be made subject to the provision of the Electoral Act.

My noble Lords, a combined reading of section 285(5) of the Constitution of the Federal Republic of Nigeria (as amended) and paragraph 4(5) of First Schedule to the Electoral Act, 2022 shows that the time limit for the filing of written statement on oath of witnesses in election petition proceedings is 21 days from the date of declaration of results.

As was pointed out by counsel for the respondents, due to the sui generis nature of election proceedings, amendment to the petition or calling of additional witnesses will not be entertained after the statutory time limit for the filing of the petition has expired. Thus, a petitioner cannot present his case in bits otherwise the respondents rights to fair hearing will be breached. This was the position of this court in *Oke v. Mimiko* (No.1) (2014) 1 NWLR (Pt. 1388) 225.

In his contributory judgment, in the above case, Ogunbiyi, JSC (Rtd.) made the following decision:

> "By paragraph 4(1) and (5) of the First Schedule to the Electoral Act, a composite analysis of contents of an election petition has been spelt out and also a list of materials which must be accompanied. The use of the word shall in the subsections is very instructive, mandatory and conclusive. In other words, the provisions do not allow for additions and hence the procedure adopted by the appellants in seeking for extension of time is nothing other than surreptitious attempt to amend the petition. Expressly, there is no provision in the Legislation which provides for extension of time. What is more, vide paragraph 14(2) of the 1st Schedule to the Electoral Act, the appellants by section 134(1) of the Act had been totally foreclosed from any amendment which was in fact the hidden agenda promoting the application.....
>
> Further still and on a critical perusal of the application, relief 2 seeks "leave to call additional witness, to wit A.E.O.". It is pertinent to restate that at the close of pleadings, parties had submitted the list of witnesses who were to testify together with their deposition. The idea, purpose and intention of the application is suggestive of nothing more but a clear confirmation seeking an order for an amendment as rightly and ingeniously thought out by the trial Tribunal and also

> affirmed by the lower court. This will certainly violate the provisions of section 285(5) of the Constitution and section 134 of the Electoral Act."

It has to be emphasized that the use of the word "shall" in paragraph 4(1) and (5) of the 1st Schedule to Electoral Act makes it mandatory and conclusive. The question may be asked; can a court extend time circumscribed by the constitution for a party to do a thing, he could not do before the expiration of the time? The obvious answer is no. Such provisions like section 285(5) of the Constitution are mandatory and any exercise of discretion by the court is without a jurisdiction and therefore a nullify.

In *A.P.C. v. Marafa* (2020) 6 NWLR (Pt.1721) 383 at 423, this court held that applications for extension of time to call additional witnesses and to file additional witnesses statements after the prescribed period for presenting election petitions are not permitted because election matters are time bound and by reason of being sui generis, the procedure in handling them are stricter than ordinary civil matters. See also *Ararume v. INEC* (2019) LPELR-48397 at 33.

The learned counsel for the appellants had argued that the law does not compel the impossibility and that subpoenaed witnesses should be allowed to testify but as was argued by the learned senior counsel for the 1st respondent, A. B. Mahmoud, SAN, subpoenas are not a tool with which to circumvent the provisions of the law and the effect and purpose of section 285(5) of the Constitution and paragraph 4(5) of the First Schedule to the Electoral Act, 2022. It is on this note that I hold that the decision of the court below to strike out the offending witness depositions cannot be faulted. I resolve this issue against the appellants.

Issue Four:

Whether the lower court was not in error in its review of the evidence of PW1, PW2, PW3, PWS, PW7 and PW22 classifying them as inadmissible hearsay evidence and in discountenancing the various exhibits tendered by the appellants?

The issue orbits around the evaluation of the evidence of PW1, PW2, PW3, PWS, PW7 and PW22, who were the applicants' collation agents, at the court below. The appellants are aggrieved by the verdict of the court that the evidence of these witnesses were hearsay, thus inadmissible under the rule of evidence.

For the purpose of clarity, I shall herein reproduce, albeit extensively, the observation of the court below which led to the verdict complained about, as follows:

> "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 centers, Local Government Collation Centers and State Collation Centers in all the States of the Federation and the Federal Capital Territory as well as the National Collation Centers". 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 petitioner's collation agent for Kogi State. In paragraph 7, 8 and 11 of his statement, he deposed that from his "analysis, he discovered various forms of noncompliance 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. I.N.E.C.* &Ors. (2019) LPELR-48101 (CA), this court per Agim, JCA (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 *Goyol & Anor. v. INEC & Ors*. (2012) 11 NWLR (Pt. 1311) 207, 218 and Buhari v. INEC & Ors. (2008) 19 NWLR (Pt.1120) 246, 424. In the instant case, PWI 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 3000 polling units in Kogi State. He admitted that his party had polling 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, PWS, PW6, PW7, PW8, PW9, PW10 and PW11 are all collation agents.

The evidence of these witnesses centered 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 center. 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 agent at all polling units and collation centers. 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 centers. This is humanly not practicable. When, therefore, evidence is required to prove what happened in any polling unit or collation center, 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 centers 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 analyzing 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 unit 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 ...
>
> It follows that the evidence of the collation agents in this instant case who are PW1, PW2, 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".

Without reservation I endorse the above statement of the lower court which is consistent with plethora of decided cases on the subject. See *Buhari & Anor. v. Obasanjo & Ors.* (2005) LPELR-815 (SC); (2005) 13 NWLR (Pt. 941) 1; *Ladoja v. Ajimobi & Ors*. (2016) LPELR-40658 (SC); (2016) 10 NWLR (Pt. 1519) 87.

From the evidence on record it is indisputable that PW1, PW2, PW3, PWS and PW7 who were the appellants' State collation agents and national collation agents were not present in all the polling units which results they have disputed, which means that their evidence in respect of all the polling units other than the ones that they were present were clearly hearsay. They were most likely informed by the polling unit agents who were alive but failed to testify.

I must say that the above statement of the lower court had nothing to do with the court's failure to ascribe probative value to documents put in evidence pursuant to section 137 of the Electoral Act, 2022 and paragraph 46(4) of the First Schedule to the Electoral Act, as vehemently submitted by the appellants. Indeed the point is instructive in view of the fact that the court had earlier on page 8,102 of the record rejected and overruled the 3rd respondent's preliminary objection seeking that documents tendered by the appellant be expunged for being dumped on the court.

The finding of the lower court in discountenancing the evidence/analysis of PW1, PW2, PW3, PW5, and PW7 same being based on hearsay, cannot be faulted. Moreso the appellants have not presented any argument to warrant the interference of this court with the finding of the lower court.

The issue is resolved against the appellants.

Issues Five:

> Whether the lower court was not in error in striking out several paragraphs of the petition and the replies of the appellants on the ground of vagueness and lack of specificity and for being new issues, mere denials or being repetitive.

This issue relates to the ruling of the lower court on the 1st respondent's preliminary objection seeking an order of court striking out 31 paragraphs of the petition on the ground that they are vague, generic, imprecise and lacking in specificity to elicit reply from it and contrary to paragraph 4(1) of the First Schedule to the Electoral Act, 2022. The courts, after scrutinizing each of those paragraphs, in a well-considered ruling, struck out 10 paragraphs, namely: 92, 95, 98, 121, 126, 129, 133, 143, 144 and 146 for being vague, imprecise and lacking in particulars.

For purpose of clarity, the court held on pages 8025 to 8,026 of the record as follows:

> "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, paragraph 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, 110, 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".

Piqued by the above ruling, the appellants now seek the interference of this court on the ground that their averments were sufficiently detailed. They also questioned the decision of the court striking out their replies to the respondents' replies to the petition, for instance, as touching on the disqualification of the 2nd respondent from contesting election for the office of the President which particulars were supplied in the appellants reply to respondents' replies.

It's is instructive to note that in paragraph 146 of the petition, the appellants simply averred that "*the 2nd respondent was at the time of the election not qualified to contest the election not having the constitutional threshold*". They did not supply the particulars of the threshold which they perceived disqualified the 2nd respondent from contesting the election as enumerated in section 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Howbeit, in their reply brief: the appellants rolled out monstrous particulars of disqualification by reason of qual citizenship, allegation of being an ex-convict in a USA District Court, having forfeited to the USA the sum of $460,000 in a drug related case. Note that these particulars referred to as "further details" were brought in by the appellants at the time when the respondents had lost their right of reply, which in essence offends the cardinal principle of fair hearing expressed in the Latin maxim *audi alterem* partem meaning let the other side be heard as well.

Paragraph 4(1) of the First Schedule to the Electoral Act, 2022 provides that an election under the Act shall:

(a) specify the parties interested in the election petition;
(b) specify the right of the petitioner to present the election petition;
(c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and
(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 petitioner.

It is clear beyond peradventure that the requirement of the law as provided above is that the petition must demonstrate with specificity the complaints of the petitioner and the relief sought from the court. It gives no room for vagueness and imprecision.

This is in line with the rule of pleading that where an averment is not supported by evidence the averment is deemed abandoned, for in keeping with the *audi alterem partem rule,* to prevent surprise or ambush on the defendant, it is the plaintiff's claim that would enable him to file his defence. See: *Wayne (WA) Limited v. Ekwunife* (1989) Vol. 20 NSCC (Pt. III) 325 at 33, reported as *Ekwunife v. Wayne (W/A) Ltd.* (1989) 5 NWLR (Pt. 122) 422; *Akande v. Adisa & Anor.* (2012) LPELR-7807(SC); (2012) 15 NWLR (Pt. 1324) 538; *P.D.P. v. I.N.E.C. & Ors*. (2012) LPELR-9724 (SC); (2012) 7 NWLR (Pt. 1300) 538.

It's follows therefore that a petition must be detailed and comprehensive on material facts depending on the reliefs sought, and not evasive or vague so as to elicit a response from the respondents.

Indeed by the provision of paragraph 16(1)(a) of the First Schedule to the Electoral Act, 2022, the Act frowns at the introduction of new facts, grounds or prayers tending to amend or add to the averments of the petition in the petitioner's reply brief. In fact, a petitioner is only required to file a reply in answer to new issues of facts which may be raised in the respondent's reply which were not dealt with in the petition. This means that where there are no new issues

of facts raised in the respondents reply, there would be no need for the petitioners' reply brief. See *Oni & Anor. v. Oyebanji & Ors*. (2023) LPELR-60699 (SC); (2023) 13 NWLR (Pt. 1902) 507.

I have critically considered the arguments of parties contained in their respective briefs of arguments vis-à-vis the record of appeal. The affected paragraphs of the petition relates to allegation of wrongful cancellation of polling unit results in various Local Governments in Sokoto State without particulars, manipulation of results in unspecified polling units in some Local Government Areas of Kogi State, wrong result entered for the appellants in unspecified polling units in Borno State, criminal allegations against Hon. Adejoh and Governor Yahaya Bello without joining them as parties to the petition, open ended allegation of disqualification against the 2nd respondent and tying critical allegations of corrupt practices in the election to a statistician report prepared by one Mr. Samuel Oduntan (PW21) without serving the said report on the respondents along with the petition to enable them respond thereto. I am unable to agree with the appellants' argument that the lower court was wrong to have struck out the affected paragraphs for disclosing no particulars together with some replies in the appellants' reply brief which sought to bring in new evidence through the back door.

I uphold the decision of the lower court striking out the affected paragraphs and replies of the appellants for being vague, imprecise, lacking in particulars and seeking to ambush the respondent vide the petitioners' reply brief. The ruling of the lower court is unassailable and this court will not interfere. This issue is resolved against the petitioners.

Issue Six:

> Whether the lower court was not in error in its evaluation of the evidence of the appellants witnesses on the burden of proof and clear admission against interest made by the 1st respondent.

This issue turns on the averment of the 1st respondent in paragraph 8 of its reply to the appellant's petition that the appellants in this case won the contested election in 21 States out of the 36 States of the Federation, namely Adamawa, Akwalbom, Bauchi, Bayelsa, Borno, Delta, Ekiti, Gombe, Jigawa, Kaduna, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Osun Sokoto, Taraba, Yobe and Zamfara States. The appellants contend that such averment is tantamount to admission against interest by the 1st respondent. They therefore question the declaration/return of the 2nd respondent as the winner of the said election.

On its part, the 1st respondent contended that its said admission is of no consequence having regard to the fact that the appellants scored 6,984,520 votes as against the 2nd respondent who scored 8,794,726 votes. That in determining the winner or loser in an election to the office of the President, the number of States won by a candidate does not merit any consideration, except in the context of geographical spread and ensuring compliance with the constitutional requirements.

In its evaluation of evidence on the issue, the court below, on page 8238 of the record had this to say:

> "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 of 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 correct figures of the election ought to and must be pleaded.

The court went further to hold on page 8254 of the record that:

> "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."

The above statement qua holding of the lower court represents the correct position of the law and I wholly endorse same.

I have earlier in this judgment resolved the issue of electronic transmission of results, which is the main thrust of the appellants' contention in this appeal. I shall not revisit the point under this issue. On the contention that the 1st respondent's averment that the appellants won 21 States out of 36 States of the Federation, thus constituting an admission against interest, the position of the law is well settled having regard to who can be declared winner of a Presidential Election in Nigeria.

Section 134(2) of the 1999 Constitution makes it explicit that

> "a candidate for an election to the office of 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.

In this appeal, the issue before us is not who among the candidates won in the majority of the States of the Federation, which is debatable, but who scored the highest number of votes cast at the election. I have strenuously combed through the respective briefs of the parties vis-à-vis the record of appeal, I am unable to find any alternative figure put forward by the appellants as their rightful votes scored in the election, other than the scores presented by the 1st respondent showing that the 2nd respondent scored the highest number of votes. It is presumed correct. In the case of *Abubakar v. Yar'Adua* (2008) 19 NWLR (Pt. 1120) 1 at 55 this court held that:

> "Election results are presumed by law to be correct until the contrary is proved. It is however a rebuttable presumption. In other words, there is a rebuttable presumption that the result of any election declared by a returning officer is correct and authentic and the burden is on the person who denies the correctness and authenticity of the return to rebut the presumption"

See *C.P.C. v. I.N.E.C. & Ors*. (2011) LPELR-8257 (SC); (2011) 18 NWLR (Pt. 1279) 493; *Buhari v. Obasanjo* (2005) 13 NWLR (Pt.941) 1; *Hashidu v. Goje* (2003) 15 NWLR (Pt.843) 352.

Following from the above, it is clear that the appellants having not put forward their perceived rightful score to rebut the result put forward by the 1st respondent, the law presumes the 1st respondent's

prove having won more States or if the 1st respondent admits that much. The figures before us show that the 2nd respondent won the highest number of votes and was accordingly returned elected. From whence therefore would we manufacture evidence to support the appellants claim that they scored the majority of lawful votes cast at the election or that there was non-compliance with the Electoral Act which affected the credibility of the election. Nowhere, definitely not from evidence on record. This issue is hereby resolved against the appellants.

Finally, let me say a few words concerning issue No.7 which is whether the lower court was right in its use of disparaging words against the appellants in its judgment evincing hostility and bias against the appellants, thereby violating their right to fair hearing and occasioning grave miscarriage of justice. I have read the judgment of the court below and have seen the context in which those words were used and it is my view that they were not meant to disparage the appellants or their counsel. As Judges we are trained to be template in our use of words and we shall continue to do so. Litigants are advised to trust the courts whenever their matter is before it. It is very unbecoming these days that while a matter is pending in court, litigants engage in press conferences analyzing the case and reaching conclusions.

Based on this, some of their followers send threatening messages to judges and justices. Matter in the court are said to be subjudice and as such parties and probably their counsel should refrain from media trial and media judgment.

I need not say more on this. A word is enough for the wise.
This issue has nothing positive to offer the appellants.

On the whole, having resolved all the issues against the appellants, it is my view that there is no scintilla of merit in this appeal and is hereby dismissed. The judgment of the court below delivered on the 6th of September, 2023 is hereby affirmed. I shall make no order as to costs.

Appeal dismissed.

ABBA AJI, J.S.C.: Being in concurrence with the lead judgment in this appeal just delivered by my learned brother, John Inyang Okoro, JSC, my contribution therewith is registered below:

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 on Saturday, the 25th of February 2023.

The appellants and the 2nd, 3rd respondents along with sixteen other political parties and their candidates 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 1st appellant, who was sponsored by the 2nd appellant came second with 6,984,520 votes. The appellants been aggrieved by the outcome of the election filed jointly this petition to challenge the election on 21/3/2023. 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 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 appellants sought the following reliefs:

(i) 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.

(ii) 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.

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

(iv) 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:

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

In the Further Alternative:

(vi) 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.

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

The appellants in proving their petition fielded 27 witnesses and tendered several documents between 30/3/2023 when the hearing commenced to 4/7/2023 when the respondents closed their case. The 1s and 2nd respondents respectively called one witness each and tendered various documents. After adoption of final written addresses of parties, the lower court delivered its judgment on 6/9/2023, dismissing the appellants' petition. Miffed with the judgment, the appellants appealed before this court vide notice of appeal with 35 grounds.

Appellants' Motion on Notice Dated 5/10/2023:

The appellants/applicants filed a motion - on 6/10/2023 seeking for:

(a) An order of this honourable court granting leave to the appellants/applicants to produce and for the honourable court to receive fresh and/or additional evidence by way of deposition on oath from the Chicago State university for use in this appeal, to wit: the certified discovery deposition made by Caleb Westberg on behalf of Chicago State University on October 03, 2023. Disclaiming the certificate presented by the 2nd respondent, Bola Ahmed Tinubu; to the Independent National Electoral Commission.

(b) And upon leave being granted, an order of this honourable court receiving the said deposition in evidence as exhibit in the resolution of this appeal.

And for such further order or orders as this honourable court may deem fit to make in the circumstances.

The grounds for the said application are as follows:

(1) One of the grounds of the appellants/applicants' petition before the court below is that the 2nd respondent was not qualified at the time of the election to contest the election as required by section 137(1)(j) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

(2) Based on facts available to the appellants/applicants at the time of filing their petition, the 1st appellant/ applicant through his United States of American lawyers, Alexander de Gramont and Angela M. Liu of the law firm of Dechert LLP of 1900K Street, NW Washington DC 20006-1110, unsuccessfully applied to Chicago State University for the release of copies of the academic records of the 2nd respondent.

(3) Given the strict privacy laws in the jurisdiction of Chicago State University, the request for the release of the academic records and certificate issued to the 2nd respondent could not be granted without an order of court and for the purpose of use in pending court proceedings.

(4) The 1st applicant through his said US-based Attorneys hereupon brought an action in the U. S. District Court for the Northern District of Illinois In Re: Application of Atiku Abubakar for an Order Directing Discovery from Chicago State University Case No. 23-CV-05099 for an order for the production of documents and testimony for use in a proceeding in a foreign court, seeking documents and testimony from Chicago State University concerning the authenticity and origin of documents purporting to be the educational records of the 2nd respondent, Bola A. Tinubu.

(5) The 2nd respondent applied and was joined in the matter as an Intervenor, vehemently opposing the application.

(6) On September 19, 2023, the court issued an order granting the application.

(7) Thereafter, the 2nd respondent applied for an emergency stay of the court order, claiming that he would suffer irreparable damage and injury if his educational records were released; which order of stay was granted.

(8) On September 30, 2023, the court overruled the 2nd respondent's objections and ordered Chicago State University to produce the documents on October 2, 2023, and to produce a witness for deposition on October 3, 2023.

(9) On October 2, 2023, Chicago State University produced the documents pursuant to the court's order.

(10) On October 3, 2023, also pursuant to the court's order, Chicago State University provided a witness to give deposition testimony, in which deposition, Chicago State University disclaimed ownership and authorship of the document that the 2nd respondent presented to INEC, purporting to be “Chicago State University certificate” and also disclaimed issuing any replacement certificate to him.

(11) The deposition was not in existence or available at the time of filing the petition or at the hearing of the petition.

(12) The deposition sought to be adduced is, along with its accompanying documents, such as would have important effect in the resolution of this appeal.

(13) The deposition is relevant to this matter, having confirmed that the certificate presented by the 2nd respondent to the Independent National Electoral Commission (INEC) did not emanate from Chicago State University, and that

whoever issued the certificate presented by the 2nd respondent, did not have the authority of the Chicago State University, and that the 2nd respondent never applied for any replacement certificate nor was he issued any replacement certificate by the Chicago State University.

(14) The deposition which is on oath and deposed to in the presence of the 2nd respondent's attorney is credible and believable, and ought to be believed.

(15) The deposition is clear and unambiguous, and no further evidence is needed to be adduced on it.

(16) The evidence is such that could not have been obtained with reasonable diligence for use at the trial, as the deposition required the commencement of the suit in the United States of America before receiving same. It was not possible to obtain the said evidence before the trial at the court below.

(17) The deposition was made on October 03, 2023 after the conclusion of trial at the court below, and was not available to be tendered at the trial.

(18) Presentation of a forged certificate to the Independent National Electoral Commission by a candidate for election to the office of President of the Federal Republic of Nigeria is a weighty constitutional matter, requiring consideration by the courts as custodians of the Constitution.

(19) The original certified deposition has been forwarded to the honourable court by a letter addressed to the Chief Registrar of the supreme Court.

(20) It is in the interest of justice for the honourable court to exercise its discretion in favour of the appellants/applicants.

The motion is supported by a 20-paragraph affidavit deposed to by Uyi Giwa-Osagie with exhibits A - H annexed thereto and a further affidavit dated and filed on 16/10/2023 with exhibits J - P. In their written address, the issue for determination was crafted by the appellants/applicants thus:

> Whether this honourable court ought to exercise its discretion in favour of the appellants/applicants by granting the prayers sought.

The respondent countered the appellants/applicants' motion vide an 11-paragraph counter-affidavit deposed to by Gift Nwadike, supported by a written address, wherein this issue for determination was proposed:

> Whether in view of the peculiar facts of this case, this honourable court can proceed to grant the instant application.

The 2nd respondent vide a 20-paragraph counter-affidavit deposed by Michael Opeyemi Bamidele, opposed the appellants/ applicants' application. Annexed thereto are exhibits 1-9 with a written address, seeking for determination the issue:

> Considering the background of this case, as well as the applicable constitutional and statutory provisions relevant to election appeals and proceedings, whether this honourable court will grant this application.

Peter Emaikwu deposed to a 9-paragraph counter-affidavit to challenge the appellants/applicants' application. Although no issue for determination was formulated by the learned Silk to the 3rd respondent in his written address, his arguments, submissions seek the dismissal of the motion.

Preliminary Challenge/Objection to Motion on Notice:

The 2nd respondent has filed a "preliminary challenge to reliefs sought by appellants", submitting that the said reliefs sought by the appellants/applicants cannot be amended as held in *Adetoun Oladeji (Nig.) Ltd. v. N.B. Plc* (2007) 5 NWLR (Pt. 1027) 415 at 438-439.
Also, that this court lacks the jurisdiction to make prejudicial findings on the substantive case at an interlocutory stage. Reliance was placed on Eze v. Unijos (2017) 17 NWLR (Pt.1593) 1 at 23.

Resolution on Preliminary Challenge Objection:

I do not see the place of this preliminary challenge since the 2nd respondent has filed counter affidavit against the appellants/ applicants' motion on notice. A preliminary objection is usually to terminate a substantive *suit in limine* and not to terminate an application/motion. See Per *Uwani Musa Abba Aji, JSC, in U.B.N. v. Petro Union Oil & Gas Co. Ltd. & Ors* (2021) LPELR-56671(SC) (P. 66, para. E); (2022) 7 NWLR (Pt. 1829) 199. Whether a preliminary objection can be raised against a motion/ application? By the nature and purpose of preliminary objection, the procedure is only adopted for the hearing of an appeal and not for any other process. In other words, preliminary objection cannot be raised in normal interlocutory applications which come up in the usual conduct of the business of the court. See *Zenith Bank Plc v. Chief Arthur John & Amp; Anor* (2015) LPELR 24315 (SC); (2015) 7 NWLR (Pt. 1458) 393; *S.P.D.C. v. Amadi* (2011) 14 NWLR (Pt. 1265) 157. Seeking to terminate a notice of motion by way of preliminary objection is unknown to our rules of court. Such practice has been held by the apex court to be outside the contemplation of Order 2 rule 9 of the Supreme Court Rules, which is akin to Order 10 of the Court of Appeal Rules. It is therefore my view that the preliminary objection raised by the respondent in challenge of applicants' notice of motion, is not proper in law and as such incompetent. See also *Zenith Bank PIc v. John & Amp; Ors* (2015) LPELR 24315 (SC); (2015) 7 NWLR (Pt. 1458) 393; *S.P.D.C. v. Amadi* (2011) 14 NWLR (Pt.1266) 157 at 192. See also Per Onyemenam, JCA, in *Eyitayo v. Kazeem* (2020) LPELR-50360(CA) (Pp. 7 - 10 paras. B).

The 2nd respondent's preliminary challenge/objection is hereby discountenanced.

Issue for Determination of Motion:

The appellants/applicants' issue for determination shall be adopted for use in the determination of this application as follows:

> Whether this honourable court ought to exercise its discretion in favour of the appellants/applicants by granting the prayers sought.

Resolution of Motion Dated 5/10/2023:

There is a basic jurisdictional issue that must be first considered concerning the appellants/applicants' application for fresh/ additional evidence on the disqualification of the 2nd respondent to contest the presidential election at the time of the election. A party to an election petition will not be allowed to call additional witness, or rely on additional facts after 21 days for filing election petition has lapsed, nor will he be allowed to bring in an amendment of this nature. See the combined effect of section 132(7) of the Electoral Act, 2022, and paragraphs 5(b)(c) and 16(d) of the First Schedule to the Electoral Act, 2022. The lower court and this court have lost the jurisdiction to entertain any fresh/additional evidence after the appellants have filed their witness statements on oath and their respective documents in support of their petition. The deposition sought to be freshly/additionally relied upon was not part of

the listed documents. Thus, this court cannot have the jurisdiction to entertain the appellants' motion for fresh/additional document on non-qualification of the 2nd respondent.

Where cases or cause of actions are time bound or subject to time, the evidence and facts to make a litigant win his case are part and parcel of the time prescribed to be sourced for and adduced within that time, otherwise he goes empty handed for non-suit or judgment against him for not proving his case on the preponderance of evidence or his case becomes stale and expired. Just as a statute-barred case cannot be resurrected and awaken because there is fresh or additional evidence for it, so is it with election petition, that is generally *sui generis* and time bound.

Where a time is prescribed for doing a thing, fresh or additional evidence will not elongate the time or give life to that matter. Similarly, where new, additional or fresh evidence or witnesses are presented in election petition after the expiration of the prescribed time, our courts have always disallowed it because of the nature of election petition. See Per Aka'ahs, JSC in *I.N.E.C. v. Yusuf & ors* (2019) LPELR- 48890(SC) (Pp. 5-15 paras. F); (2020) 4 NWLR (Pt. 1714) 374.

The appellants/applicants sought for the exercise of discretion by this court in granting its prayer. Frankly, discretion is exercised by the court in circumstances where the court has the discretion to exercise. The case of the appellants/applicants is fettered and prescribed by law that this court does not have and cannot have the jurisdiction nor discretion to go contrary to the express provision of the law. See *Oke v. Mimiko* (No.1) (2014) 1 NWLR (Pt. 1388) 225 at 253 and *A.P.C. & Anor v. Marafa* (2020) 6 NWLR (Pt.1721) 383 at 423. Per Ibrahim Tanko Muhammad JSC, in *Oke & Anor v. Mimiko & ors* (2013) LPELR-20645(SC) (Pp. 15-16, paras. C-D); (No.1) (2014) 1 NWLR (Pt. 1388) 225, on whether an amendment can be entertained by the tribunal after the expiration of the period within which to present an election petition, held specifically.

> "By the provision of paragraph 14(2) (a) and (b) of the 15 Schedule to the Electoral Act, 2010 (as amended), no amendment whatsoever shall be entertained by the tribunal after the expiration of the period within which to present an election petition ..."

The appellants in their petition based the fourth grounds of their petition that *"the 2nd respondent was at the time of the election not qualified to contest the election"*. The only pleaded fact was that "*the 2nd respondent was at the time of the election, not qualified to contest the election, not having the constitutional threshold*". The court is to confine itself to issue in pleadings before it, not those matters unpleaded. To invalidate the election, even a part of the election, on unpleaded fact would have been a grave injustice. See Per Belgore, JSC, in *Buhari & Anor v. Obasanjo & ors* (2005) LPELR-815(SC) (Pp. 147 paras. A-A); (2005) 13 NWLR (Pt. 941) 1

The appellants/applicants, who seek to rely on this fresh/ additional evidence have clearly revealed by exhibit C that the "*deposition of Caleb Westberg"* was taken before *"Gwendolyn Bedford, a Certified Shorthand Reporter... at the offices of Dechert LLP"*. This expressly implies that the evidence sought to be allowed in and considered by this court was made by a 3rd party before lawyers and shorthand reporter, and not before a court of competent jurisdiction, which can only qualify as hearsay evidence or deposition that is not within the personal knowledge of the deponent. This goes contrary to admissibility of documentary evidence as to facts in issue provided in section 83 of the Evidence Act, 2011.

If the appellants/applicants pleaded and "challenged the election of the 2nd respondent on the ground of his qualification to contest the said election and more especially on the basis that the 2nd respondent forged document to the Independent National Electoral Commission"; what then was the basis of that ground and the evidence to be adduced before the Tribunal? Was it then a guessed ground of the petition or forum shopping or a ground of petition that was not ripe and immature? Were the appellants/ applicants basing that ground on what they did not see or what was not handy? It is preposterous, a dangerous campaign of calumny and contempt to base and predicate a ground of petition over what the petitioners are not very sure of or did not have the facts and evidence on ground. The import and need for the allowance or grant of fresh or additional evidence is where it is practically difficult or impossible to obtain the evidence before the trial and not to speculate on what may be obtained or to lighten an extreme difficulty. This is actually not the case of the appellants/applicants since this same issue was made their ground of the petition, though without pleaded facts and evidence on ground. The import and need for the allowance or grant of fresh or additional evidence is where it is practically difficult or impossible to obtain the evidence before the trial and not to speculate on extreme difficulty. This is actually not the case of the appellants/applicants since this same issue was made their ground of the petition, though without pleaded facts.

I appreciate the authorities cited by the appellants/applicants but they have not gone extra miles to prove the applicability of their application in election petition, where it is generally known and believed to be time bound and *sui generis*. Although other rules of court and evidence can be taken and applied in election petition, the issue of time and timing remains sacrosanct and inviolable. The time for every election petition has been statutorily confined, limited and barred, that an appeal on it cannot be allowed to reopen an old wound or can of worms.

May I add again that the fresh/additional evidence sought to be adduced by the appellants/applicants has been hotly and arguably disputed and challenged by the respondents. It is noteworthy that a genre of disputed evidence like this one with such high propensity cannot be just allowed in without a good fight and it is wary and circumspect for the court not to easily allow it because of the effect it may have. The instant application has been so disputed that the 2nd respondent had to file different documents in challenge thereof, consequently propelling the appellants/applicants to file further affidavit. In essence, the appellants filed about exhibits A-H and J-P while the 2nd respondent filed exhibits 1-9 in challenge thereof. Aside the foregoing hot dispute that it will not be advisable to take in such evidence, the allegation of forgery is criminal that must be proved beyond reasonable doubt. Considering also the Caliber of who are involved, it is safer and better go by oral proof in a criminal proceeding to leave no stone unturned, than to settle by affidavit evidence.

All the cases cited by the appellants/applicants are on general causes or cases and not on election petition. I am eager and curious to see a case, either from this court or below, that has nailed this matter as an authority to rely upon and tow after.

I must agree with all the sundry arguments and authorities of the respondents that the motion cannot be allowed. The reliefs are hereby refused and the motion dismissed.

Main Appeal:

The appellants filed their joint brief on 2/10/2023 and dated same date. The 1st respondent's brief was filed on 7/10/2023. The 2nd respondent filed his brief on 7/10/2023. The 3rd respondent filed its brief on 7/10/2023. The appellants' reply briefs to all the respondents were filed on 12/10/2023.

My learned brother in the lead judgment has struck out the 2nd respondent's motion on notice filed on 7/10/2023. Same is hereby struck out. I shall consider the main appeal on the issues formulated by the appellants without the arguments of parties since it has been considered by my learned brother in the lead judgment.

Resolution of Issue One:

> Whether the lower court was right in refusing to hold that failure of the 1st respondent to electronically transmit results from polling units nationwide for the collation of results of elections introduced by the Electoral Act, 2022 and specified in the Regulations and Guidelines for the Conduct of Elections 2022 and Manual for Election Officials 2023 does not amount to non-compliance which substantially affected the outcome of the election. (Distilled from grounds 1, 2, 3, 4, 5, 6, and 7)

The combined effects of sections 60(5), 62(1), 64(4) & (6) of the Electoral Act, 2022, suggests that INEC is at liberty to prescribe the manner in which election results will be transmitted. It is a hybrid system meant to be a buffer and cushion to the erstwhile manual system that has encouraged and facilitated falsification and manipulation of results. Although the word "shall" have been used therein, it denotes obligation where all things are equal. Moreover, subsection (5) of section 60 of the Electoral Act directs and gives liberty and latitude to INEC to *"transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission".*

Indeed, the testimonies of PW4, PW11, PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW24 and PW25, showed that, the only issue was on the electronic transmission and upload to the IReV through BVAS in real time, but that accreditation and voting went successfully. In fact, even where the regulation and manual of INEC has not been followed, can the appellants use it to have the Presidential election nullified when the there is no substantial non-compliance to that effect to affect the results of the Presidential election? My honourable brother, Per Agim, JSC, had this to say in *Jegede & Anor v. INEC & Ors* (2021) LPELR-55481 (SC) (Pp. 25-26 paras. A); (2021) 14 NWLR (Pt. 1797) 409:

> "Failure to obey the directive or instruction of the 1st respondent in the said regulations and guidelines cannot be relied on as a ground for an election petition to invalidate the election of the 3rd and 4th respondents because such failure is not contrary to any provisions of the Electoral Act, 2010 (as amended) ... S. 153 of the Electoral Act, 2010 clearly made regulations, guidelines or manuals issued by the Independent National Electoral Commission subject to the provisions of the Electoral Act... Applying these provisions in *Nyesom v. Peterside & Ors* (2016) NWLR (Pt. 1492) 71(SC), this court held that "...it is clear that as long as an act (commission) omission in relation to the Guidelines and/or Regulations is not contrary to the provisions of the Act) it shall not of itself be a ground for questioning the election" "...the failure to follow the Manual and Guidelines which were made in exercise of the powers conferred by the Electoral Act, cannot in itself render the election void."

I would wish that the electronic transmission was made mandatory to have been done. Nevertheless, the appellants will still have to prove that they would have won the election whether it was used or not.

Modernity and technology stare us in the face, and we cannot turn back the hand of time. To go against the use of technology or electronic transmission or transfer of election

results in this hi-tech time and period is to be an enemy of democracy and to stick to the vicious cycle of election rigging, manipulation, falsification and subterfuge.

Sincerely, the enactment of the 2022 Electoral Act was greeted with much relief and celebration, because we thought it would put things right and Nigerians will have their legitimate mandates delivered to them. In fact, the use, ease, fastness, security, convenience, accuracy, betterment and comfort of the use and deployment of electronic gadgets and devices in elections and transmission/transfer of results cannot be overemphasized nor compared with the old, rugged, uncertain and insecure system of manual voting and transmission of results.

Surely and I believe that the new Electoral Act came in to address and cure the mischief that bedevilled the old Electoral Act, by introducing electronic voting and transmission/transfer of votes, which ought to have been adhered to by the commission, considering the promises and presentations in connection thereto the Electoral Act made by INEC to Nigerians and the billions of Naira released for that purpose. I will also encourage that the Legislators should nip to the bud the issue of laxity and latitude given to the Commission to choose whichever method of transmission it wants; but adhere to a mandatory, clear and unarguable duty and obligation to be carried out by INEC via a clean and unambiguous statute.

Finally, the appellants have put up an unpleaded case that the failure to use or transmit/transfer results electronically has affected the results of the election and are therefore by their reliefs asking for a cancellation or re-run or run-off. Nevertheless, they have not prayed that their own results or score from the manually collated and transmitted results be declared invalid since the failure or lack of the use of BVAS or IReV amounted to the invalidity of their votes also. Furthermore, I would have expected them to come up with a detailed analysis and breakdown of the substantiality of the failure of the use BVAS and how it has upturned and affected the votes of the appellants against the votes of the 2nd and 3rd respondents to upturn and overturn the results of the presidential election. In essence, the appellants ought to have proved that the substantial non-compliance would have overturned the 8,794,726 votes of the 2nd respondent in favour of and above the 6,984,520 votes purportedly scored by the appellants. In other words, the non-compliance should be able to overturn the tables in favour of the appellants. It is a lame and bare case to allege substantial non-compliance without showing how the results of the election would have been different but for the non-compliance or that the pendulum would have swung to the other side. There might have been non-compliance that affected the 25/2/2023 presidential election, especially the failure to transmit/ transfer electronic results. However, how large or small is the non-compliance to have affected the results of the presidential election one way or the other? This is unfortunately the burden the appellants have not been able to shift or prove! "It follows clearly that if at the end of the case of the petitioner, a case of non- compliance is established which may not affect the result of the election, it is impossible for the Tribunal to say whether or not the results were affected by the non-compliance as found could not and did not in fact affect the result of the election, then the petition is entitled to succeed on the simple ground that civil cases are proved by preponderance of accepted evidence. "See Per Adekeye, JSC, in *C.P.C. v. I.N.E.C. & Ors* (2011) LPELR-8257 (SC) (Pp. 59-60 paras. E); (2011) 18 NWLR (Pt. 1279) 493. Again, Per Katsina-Alu, JSC, in *Buhari v. I.N.E.C. & Ors* (2008) LPELR-814(SC) (PP. 190-191 paras. B); (2008) 4 NWLR (Pt. 1078) 546 re-iterated that,

"the petitioner could only succeed in this instance if he was able to prove that the failure to comply with section 45(2):

"(i) disenfranchised a particular number of his voters.

(ii) the number of votes he would have secured but for this default.
(iii) how many voters were deceived by this omission and how they would have affected the eventual outcome of the result."

Similarly, the non-compliance envisaged in the Act is such that substantially affects the result of the election and it is the duty of the petitioner who alleges same to not only prove the non-compliance but also show how it substantially affected the result of the election. It is in his own interest to do so since if he does not go the extra mile, the Tribunal or court may properly come to the conclusion that the alleged non-compliance did not affect substantially the result of the election." Per Onnoghen, JSC, in *Yahaya & anor v. Dankwanbo & Ors* (2016) LPELR-48364(SC) (Pp. 30-32 paras. C); (2016) 7 NWLR (Pt. 1511) 284.

May I further counsel lawyers or experts in election petition that when you base the ground of your election petition on substantial non-compliance, it is better you make it arithmetic and mathematical since figures only count, than go grammatical, hypothetical or legal. No matter how grave or minute, thick or thin, the non-compliance may be, if a figure cannot change the results, you do not have a case at all!

This issue is resolved against the appellants.

Resolution of Issue Two:

> Whether the lower court was right in its interpretation of the provisions of section 134(2)(b) and section 299 of the Constitution of the Federal Republic of Nigeria 1999 amended) in holding that securing one-quarter of the total votes cast in the Federal Capital Territory, Abuja is not a constitutional requirement for the return of the 2nd respondent as duly elected President of the Federal Republic of Nigeria. (Distilled from grounds 8, 9, 10, 11, and 12).

To literally interpret section 134(2)(b) of the Constitution to mean that a candidate must win one-thirds of the FCT before he is declared the winner of a presidential election will bring in mischief and absurdity rather than what the drafters of the Constitution intended. The lower court in going by the rules of interpretation of statutes held that:

> "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".

To my reasoning, this is the best interpretation of section 134(2) (b) of the Constitution and accords with other judicial precedents as we shall see below.

No interpretation of statute or Constitution must lead to absurdity or mischief or injustice. Where literal interpretation of a word or words used in an enactment will result in an absurdity or injustice, it will be the duty of the court to consider the enactment as a whole with a view to ascertain whether the language of the enactment is capable of any other fair interpretation, or whether it may not be desirable to put a secondary meaning on such language, or even to adopt a construction which is not quite strictly grammatical. See Per Wali, JSC, in *P.D.P. & Anor v. INEC & Ors* (1999) LPELR-24856(SC) (Pp. 49 para. B); (1999) 11 NWLR (Pt. 626) 200.

What if the candidate wins FCT, Abuja, but does not meet the one-quarter requirement, can he be said to have won the presidential election because of winning FCT, Abuja? FCT, Abuja, is not superior to any State of the Federation. See *Bakari v. Ogundipe & 3 Ors* (2021)

5 NWLR (Pt. 1768) 1 at 37; *Ibori v. Ogboru* (2005) 6 NWLR (Pt.920) 102 at 137-138. Thus, that to interpret section 134 of the Constitution to make scoring at least 25% of the votes cast in the FCT a condition precedent for election to the office of President will confer a veto power on the residents of said FCT such that even if a candidate fails to score 25% in the FCT, he would still not be declared as having won the presidential election.

I believe that the appellants scrambled for judicial precedents on this issue to rely on but could not get. However, there has been such a circumstance in this country of the interpretation similar to section 134 of the Constitution or the status of FCT, Abuja, in presidential election involving many candidates as in the instant one.

In *Buhari v. Obasanjo* (2005) 13 NWLR (Pt.941) 1 at 105, 242, this court held among others:

> The purport of section 134(2)(b) of the 1999 Constitution, which stipulates that where there are more than two candidates for an election to the office of President of the Federation, a candidate shall be deemed to have been elected where 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 and the Federal Capital territory of the Federation, is that a winning candidate should have the required majority. Consequently, once a winning candidate has attained the required majority, it cannot be argued that because there was no election in one State, or because the election in a State is voided, the entire election must be voided unless where the result in that State, had then been an election, would have affected the final result of the election. In the instant case, the fact that the election in Ogun State was voided by the Court of Appeal did not mean the entire election was invalid. The Court of Appeal was therefore right when it did not invalidate the entire election.

In the same case above, it was held at page 274 that "the words of section 134(2)(b) of the 1999 Constitution are clear, precise and unambiguous. The invalidation of election in any number of States does not affect the basis of the calculation of ⅔ of all the States in the Federation and the FCT, Abuja."

As to what constitutes one-quarter of the votes cast in each of at least two-thirds of all the States of the Federation, this court, Per Andrews Otutu Obaseki, JSC, in Awolowo v. Shagari & Ors (1979) LPELR- 653(SC) (Pp. 67-73, paras. F-A); (1979) 6-9 SC 51, decided:

> "It is a cardinal principle applicable to all kinds of statutes that you may not for any reason attach to a statutory provision a meaning which the words of that provision cannot reasonably bear ... It therefore does not appear to me that when reference was made in section 3A(1)(c)(ii) to one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation, the intention must be the votes cast within the geographical area set out under the Constitution and where Kano State is concerned within the geographical area of Kano State ... I therefore find myself unable to accept the proposition that votes are synonymous with States or that two-thirds of a State can be ascertained by a calculation of what two-thirds of the total votes cast in the State is. The construction that two-thirds of 19 States in the Federation is 12 ⅔ States may be correct in the abstract but in relation to the Constitution and the Electoral Decree, it is unreal. Certainly, in relation to the Presidential Election now the subject of appeal) the FEDECO did not delimit any two-thirds State, whether in

> Kano or elsewhere. FEDECO used 13 States as a criterion for voting and calculated two-thirds of the total votes cast in the 13th State to ascertain whether the votes cast for the 1st respondent in the whole 13th State was up to 25% of two-thirds of the total votes cast in the whole State. This is a departure from justice in mathematics and is a serious violation of the Decree Electoral Decree, 1977 (as amended).

With the foregoing, this issue is resolved against the appellants.

Resolution of Issue Three:

> Whether the lower court was not in error to have expunged the Witnesses' Statements on Oath of appellants' subpoenaed witnesses, namely, PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27, and the exhibits tendered by them on the ground that the witnesses' statements on oath were not filed along with the petition and that Order 3 rules 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019 is not applicable in election matters. (Distilled from grounds 13, 14, 15 and 16).

Although paragraph 54 of the First Schedule to the Electoral Act, 2020, allows reliance on the Federal High Court (Civil Procedure) Rules, it is only where such is not present or provided for in the Electoral Act. On the contrary, paragraph 41(8) of the First Schedule to the Electoral Act, 2020, has covered this area. It must be borne in mind that paragraph 54 of the First Schedule to the Electoral Act, 2020, qualifies, limits and restricts the applicability of the Federal High Court (Civil Procedure) Rules.

On the admissibility of the statements on oath of subpoenaed witnesses vis-à-vis the allowance given in Order 3 rule 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019, the lower court in *Ogba v. Vincent & Ors* (2015) LPELR-40719(CA) p. 42-44 stated amongst other things that:

> "... the provision to Order 3 rule 3(1)(e) of the Federal High Court (Civil Procedure) Rules, 2009 which permit that depositions of witnesses need not be filed at the commencement of the suit cannot apply to defeat or negate the said time limits. Paragraph 54 of the First Schedule to the Electoral Act permits the application of the said Federal High Court Rules with such modification as would render them applicable having regard to the Electoral Act and Schedule thereto as in the present case, they cannot be applied.... To allow a petitioner to file an additional witness statement at any stage of the election petition proceedings would destroy the regulated environment that must exist to ensure that both parties determined within 180 days from the date the petition was filed... The current approach of the courts in Nigeria is to apply the electoral laws."

The appellants' case at paragraphs 6.2 - 6.3 of pages 23-23 of the briefs is that it applied for subpoena to be issued some official witnesses, which were duly issued by the lower court. The subpoenas were tendered before the witnesses adopted their respective witness statements on oath. However, the lower court in its judgment expunged from the records the witnesses' statements on oath of the subpoenaed witnesses and the exhibits tendered by them.

The case of the 2nd respondent contrariwise at pages 23 - 24 of paragraphs 7.2 is that PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24 and PW25, is that these witnesses or misnomered as subpoenaed witnesses, were contracted, paid by the appellants, invited in their personal capacities, served with the subpoenas and were available

to the petitioners at the time of filing the petition. In fact, that PW21 was a member of the 2nd appellant's situation room during the election while PW26 worked for them. That the appellants only chose to hoard their statements and surprise the respondents. They respondents stated that the said witnesses were not adversaries or official witnesses and did not need to be subpoenaed.

If the lower court was not abreast nor understood the status and capacities of the appellants' witnesses when they applied to be subpoenaed but later got to understand, it is right that their witnesses' statements on oath were expunged together with their evidences. Although applications in election petitions are taken together till judgment, if the lower court had known the status and capacities of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24 and PW25 when the application was made, it would have refused it ab initio. Every case must be treated on its peculiar circumstances. Surely, the witnesses subpoenaed by the court cannot be the same as witnesses the parties have subpoenaed by themselves, although all are subpoenaed witnesses. I unreservedly agree with the balanced and settled decision of Per Theresa Ngolika Orji-Abadua, JCA, in *P.D.P. v. Okogbuo & Ors* (2019) LPELR-48989(CA) (pp. 11-28, paras. D-B), which is in all fours with the instant case and circumstances:

> "It is clear by the records before this court that PW1 and PW6 were subpoenaed to appear before the Tribunal based on the applications of the Petitioners. They were not summoned by the Tribunal *suo motu* as envisaged by the provisions of paragraph 41(5) and (6) of the First Schedule. Then sub-paragraph (8) unequivocally stipulated that except with the leave of the tribunal or court after an applicant has shown exceptional circumstances, no document, etc, shall be received in evidence at the hearing of a petition unless it has been listed or filed along with the petition in the case of a petitioner or filed along with the reply in the case of the respondent. What this postulates is that for any document not filed along with the petition or reply as the case may be, to be used during hearing of a petition, the leave of the tribunal must be obtained. PWl and PW6 were summoned to give evidence before the tribunal on the applications of the petitioners i.e. the appellants. They were not summoned by the tribunal *suo motu*. Therefore, the petitioners had the duty to file their depositions at the time of filing the petition. It follows that once a witness was summoned via a subpoena based on the application of a party to the petition, the provisions of paragraph 4(5) of the 1st Schedule to the Electoral Act, 2010 (as amended) shall be complied with."

I am *in tandem* with the learned SANs for the 1st and 2nd respondents in their submissions that the ground upon which the petitioners wanted to bring in facts that were not available to them at the time of filing the petition, is an admission by the petitioners that it was an attempt by them to introduce new facts which were not available at the time of filing the petition. This clearly offends the provision of paragraph 14(2)(a) and (b) of the Act referred to earlier.

I am firmly of the view that where a witness deposition is sought to be filed after the expiration of time for the filing of a petition, that deposition cannot be made part of the facts upon which a petition can be proved. The purpose of front-loading of documents is to acquaint the other side in advance with the evidence of the parties so as to enable them put their case or defend their position appropriately. See Per Aka'ahs, JSC, in *I.N.E.C. v. Yusuf G & Ors* (2019) LPELR- 48890(SC) (pp. 5-15 paras. F); (2020) 4 NWLR (Pt. 1714) 374.

The appellants having failed to include the names of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27, who are not official or adverse witnesses cannot be allowed to do so. The time for filing witness statements on oath having, elapsed, they are also foreclosed.

This issue is hereby resolved against the appellants.

Resolution of Issue Four:

> Whether the lower court was not in error in its review of the evidence of PW1, PW2, PW3, PWS, PW7 and PW22, classifying them as inadmissible hearsay evidence and in discountenancing the various exhibits tendered by the appellants? (Distilled from grounds 25, 27, 28 and 29).

It is clear, undisputed and admitted by the appellants that PW1, PW2, PW3, PWS, PW7 and PW22, were *"collation officers of the appellants that would give direct evidence of the issues raised as to whether or not) the ward collation officers Or returning officers confirmed and verified the electronically transmitted result with the physically delivered result before collation and announcement",* and not polling unit agents that witnessed and saw all that transpired when the presidential election took place. This court, per Niki Tobi, JSC, in *Buhari v. INEC & Ors* (2008) LPELR-814(SC) at 171-172; (2008) 4 NWLR (Pt. 1078) 546, held:

> "Learned Senior Advocate for the 4th and 5th respondents pointed out that no agent of the petitioner from any of the States in respect of which he made allegations bordering on non-compliance with the Electoral Act, 2006, deposed to any witnesses' statements. Learned Senior Advocate for the appellant did not provide any answer. An agent is the representative of the candidate in the polling station. He sees all the activities. He hears every talk in the station. He also sees an actions and in-actions in the station. Any evidence given by a person who was not present at the polling units or polling booth like the appellant is certainly hearsay. And here, I so regard paragraph 16 of the witness statement or deposition of the appellant. After all, he was not there. He was given the information by the agents. The million-naira question is why did these agents not make statements as witnesses? In my view, agents are in the most vantage point to give evidence of wrong doing in a polling unit or polling booth. Can the appellant say in reality that he proved his case without calling any agent?"

Whether PW1, PW2, PW3, PWS, PW7 and PW22 were collation officers as experts or not in their capacities, they are to give direct evidence pursuant to sections 37 and 38 of the Evidence Act, 2011, and not to rely on what they got from the polling unit agents. That is definitely hearsay evidence and cannot be allowed to stand.

Aside the fact that I have earlier held that the appellants could not prove substantial non-compliance by the non-electronic transmission of the results and how it affected their results, they have no basis for not calling the right and vital witnesses in proving their case. Even where there is need for the mandatory electronic transmission of results, the collation officers will not suffice to prove their petition since electronic evidence must come to play.

This issue is resolved against the appellants.

Resolution of Issue Five:

> Whether the lower court was not in error in striking out several paragraphs of the petition and the replies of the appellants on the grounds of vagueness and lack D of specificity, and for being new issues, mere denials or being repetitive (Distilled from grounds 17, 18, 19, 20, 21, 22, 23, 24 and 31).

As contended by the appellants, it is the provision of paragraph 4(1)(b) of the First Schedule to the Electoral Act, 2022, that an election petition "*shall specify the right of the petitioner to present the election petition*", and that the appellants have the right to present election petition. There is no doubt that they have the right to present an election petition as they did but the right is limited and within the bounds of facts, pleadings and the law. It is not an open cheque right! The applicable principle of pleadings is clearly provided in paragraph 4(1)(d) and (2), of the First Schedule to the Electoral Act, 2022, which states that the petition shall "*state clearly the facts of the election petition".* Although the appellants have the right to present their petition, it must be within the confines of pleaded facts and not on surmise, conjecture, vagueness, prolixity or generality.

The right is not for the appellants to go on the frolic of their own or into forum shopping for facts. The right of the appellants to present their petition is limited only to the facts in the petition and they cannot be allowed to go off course and contrary to the rules of pleadings. Specificity is a hallmark of pleadings.

Paragraphs 23, 82 - 86, 88 - 92, 95, 98, 121, 124, 126, 129, 133, 135, 136, 143, 144 and 146 out of the 150 paragraphs of appellants' petition are shrouded in vagueness and imprecision. I have gone through the said paragraphs and discovered that they are without specificity and precision. They made references to general facts without trace or allegations without proof or were facts without specific particulars and details where required, etc.

The facts pleaded must be concise and not rigmarole. See Per Niki Tobi, JSC in *Abubakar & Ors v. Yar'adua & Ors* (2008) LPELR-51(SC) (Pp. 131-132, paras. G-A); (2008) 4 NWLR (Pt. 1078) 465. In an election petition, general averments on material facts would not meet the requirements of the law. See *Belgore v. Ahmed* (2013) 8 NWLR (Pt.1355) Page 60 at 95-96 (G-C). 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 answer from the opponent. See *Ashiru Noibi v. Fikolati & Others* (1987) 3 SC at 119; (1987) 1 NWLR (Pt. 52) 619.

Furthermore, the appellants in their reply, introduced new issues and things that were not contained in their petition contrary to paragraph 16(1) of the First Schedule to the Electoral Act, 2022. In fact, paragraphs 1(vii) (a)(b)(viii) 2, 3(i)(ii) (iii) 8, 11(i), 24 and 25 of the appellants' reply to 2nd respondent's reply, paragraph 12(i) (ii)(iv)(v), 2.1(b)(c)(d) of the appellants' reply to 1s respondent, paragraphs 4, 7, 8, 9, 10, 11, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of part 'B' of the appellant reply to 3rd respondent's reply at pages 1695-1716, 1732-1777, 1717-1731 Vol.3 of the record manifestly reveal that the averments contained therein are new facts introduced for the first time in the reply and are additional facts to those contained in the petition. The sundry averments relate to the allegation that the 2nd respondent is an ex-convict having forfeited to USA the sum of $460,000 and that he had a dual citizenship having acquired the citizenship of Republic of Guinea with Guinean Passport No. 00001551, which are conspicuously absent in the petition originally.

On whether the reply of a petitioner can introduce new facts not contained in the petition or repeat the argument in the petition, Per Peter-Odili, JSC, in *Ogboru & Anor v. Okowa & Ors* (2016) LPELR-48350(SC) (PP. 63-71 paras. B); (2016) 11 NWLR (Pt. 1522) 84 held:

> "I think that I should repeat it that proceedings in election petitions are sui generis. They are in a class of their own. They are made to fast-track the hearing of petitions. They are, however, not designed to spring surprise on parties .. 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 ..."

The lower court was perfectly right to strike out the affected paragraphs. This issue is therefore resolved against the appellants.

Resolution of Issue Six:

> Whether the lower court was not in error in its evaluation of the evidence of the appellants' witnesses on the burden of proof and clear admission against interest made by the 1st respondent. (Distilled from grounds 26, 30, 32, 33 and 35)

The appellants in stating the concise facts of their appeal revealed especially in paragraph 2.2 that the said election was conducted under the new legal framework of the Electoral Act, 2022, which introduced, amongst others, the use of technology in the transmission and collation of the results. It is on this basis that their whole case has been fought and centered on.

They did not bother to fish after facts and figures that would have helped them to overturn the figures of the election results. After relying on the figures gotten through the manually collated results, the appellants are still busy and bent on electronic transmission of results, which by their petition and pleadings, could not be proved or substantiated. Out of all the vital witnesses to use in proving areas of corrupt practices and non-compliance, the appellants fielded witnesses that gave hearsay evidence, not based on what transpired at the polling or ward levels, and neither could the documents tendered scale through. As held in other issues above, the appellants could not make their case to have the presidential election overturned to their favour. On this, Per Rhodes-Vivour, JSC, in *Emmanuel v. Umana & Ors* (2016) LPELR-40037(SC) (PP. 84-85 paras. F); reported as *Udom v. Umana* (No.1) (2016) 12 NWLR (Pt. 1526) 179, held:

> The results declared by INEC are prima facie correct and the onus is on the petitioner to prove the contrary. Where a petitioner complains of non-compliance with provisions of the Electoral Act, 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 ... He must establish that the non-compliance was substantial, that it affected the election result.

I have not discovered traces of error in the evaluation of evidence by the lower court. I must state again that in election petition, your case, whether on evaluation of evidence or not, must point and pursue toward s substantial non-compliance that will affect the result and outcome of the election, otherwise you go empty handed, whether there is error in the evaluation of evidence or not, since error in evaluation of evidence cannot be enough to give judgment to the other party.

I resolve this issue also against the appellants.

In sum, this appeal fails and is hereby dismissed. Parties are to bear their costs.

GARBA, J.S.C.: I have read the lead judgment written by my learned brother, Hon. Justice John Inyang Okoro, JSC in this appeal against the decision of the Court of Appeal contained in the judgment delivered on the 6th September, 2023 by which the appellant's election petition filed on the 21st of March, 2023 against the declaration and return of the 2d respondent as the

winner of the Nigerian Presidential Election conducted by the 1st respondent on the 25th of February, 2023, was dismissal for failure to prove same as required by the law. The petition was premised on four (4) grounds that: -

(i) The election of the 2nd respondent is invalid by reason of non-compliance with the provisions of the Electoral Act, 2022.
(ii) The election of the 2nd respondent is invalid by reason of corrupt practices;
(iii) The 2nd respondent was not duly elected by majority of lawful votes cast at the election; and
(iv) The 2nd respondent was, at the time of the election, not qualified to contest the election.

In proof of these grounds, the appellants, in all, called twenty-seven, (27) witnesses and tendered several documents during the trial at the end of which the petition was dismissed, as mentioned above. Aggrieved by the dismissal of the petition, the appellants brought this appeal vide the notice of appeal filed on the 18th September, 2023 containing thirty-five (35) grounds of complaints.

Details of the facts leading to the petition, the appeal as well as the issues identified by the appellants for determination in the appellants' brief, have been succinctly set out in the lead judgment and I adopt same.

The lead judgment has fully presented the views I expressed on the issues for determination at the conference of the Hon. Justices over the appeal and I totally agree with the conclusions on each of the issues as contained therein.

I would, in support, add a few words on some of the issues; beginning with the motion filed on the 6th October, 2023 by the appellants wherein they sought from this court, the following reliefs:-

"(a) *An order of this honourable court granting leave to the appellants/applicants to produce and for the honourable court to receive fresh and or additional evidence by way of deposition on Oath from the Chicago State University for use in this appeal, to wit: the certified discovery deposition made by Caleb Westberg on behalf of Chicago State university on October 03, 2023, disclaiming the certificate presented by the 2nd respondent, Bola Ahmed Tinubu, to the Independent National Electoral Commission.*

(b) And upon leave being granted, an order of this honourable court receiving the said deposition in evidence as exhibit in the resolution of this appeal."

It is expedient to produce the grounds upon which the reliefs are premised and the facts deposed to in the initial affidavit in support of, the motion and they are as follows: -

"*Further Take Notice* that the grounds for the said application are as follows:

(1) One of the grounds of the appellants/applicants' petition before the court below is that the 2nd respondent was not qualified at the time of the election to contest the election as required by section 137(1)(i) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
(2) Based on facts available to the appellants/applicants at the time of filing their petition, the 1 appellant/ applicant through his United State of American Lawyers, Alexander de Gramont and Angela M. Liu of the law firm of Dechert LLP of 1900 K Street, NW, Washington DC 20006-1110, unsuccessfully applied to Chicago State University for the release of copies of the academic records of the 2nd respondent.

(3) Given the strict privacy laws in the jurisdiction of Chicago State University, the request for the release of the academic records and certificate issued to the 2nd respondent could not be granted without an order of court and for the purpose of use in pending court proceedings.

(4) The 1st applicant through his said US-based Attorneys thereupon brought an action in the U.S. District Court for the Northern District of Illinois - In Re: Application of Atiku Abubakar for an Order Directing Discovery from Chicago State University Case No. 23-CV-05099 for an order for the production of documents and testimony for use in a proceeding in the foreign court, seeking documents and testimony from Chicago State University concerning the authenticity and origin of documents purporting to be the educational records of the 2nd respondent, Bola A. Tinubu.

(5) The 2nd respondent applied and was joined in the matter as an intervenor, vehemently opposing the application.

(6) On September 19, 2023, the court issued an order granting the application.

(7) Thereafter, the 2nd respondent applied for an emergency stay of the court order, claiming that he would suffer, irreparable damage and injury if his educational records were released; which order of stay was granted.

(8) On September 30, 2023, the court overruled the 2nd respondent's objections and ordered Chicago State University to produce the documents on October 2, 2023, and to produce a witness for deposition on October 3, 2023.

(9) On October 2, 2023, Chicago State University produced the documents pursuant to the court's order.

(10) On October 3, 2023, also pursuant to the Court's Order, Chicago State University provided a witness to give deposition testimony, in which deposition, Chicago State University disclaimed ownership and authorship of the document that the 2nd respondent presented to, INEC, purporting to be "Chicago State University certificate" and also disclaimed issuing and replacement certificate to him.

(11) The deposition was not in existence or available at the time of filing the petition or at the hearing of the petition.

(12) The deposition sought to be adduced is, along with its accompanying documents, such as would have important effect in the resolution of this appeal.

(13) The deposition is relevant to this matter, having confirmed that the certificate presented by the 2nd respondent to the Independent National Electoral Commission (INEC) did not emanate from Chicago State University, and that whoever issued the certificate presented by the 2nd respondent, did not have the authority of the Chicago State University and that the 2nd respondent never applied for any replacement certificate nor was he issued any replacement certificate by the Chicago State University.

(14) The deposition which is on oath and deposed to in the presence of the 2nd respondent's Attorney is credible and believable, and ought to be believed.

(15) The deposition is clear and unambiguous, and no further evidence is needed to be adduced on it.

(16) The evidence is such that could not have been obtained with reasonable diligence for use at the trial, as the deposition required the commencement of

the suit in the United State of America before receiving same. It was not possible to obtain the said evidence before the trial at the court below.

(17) The deposition was made on October 03, 2023 after the conclusion of trial at the court below, and was not available to be tendered at the trial.

(18) Presentation of a forged, certificate to the Independent National Electoral Commission by a candidate for election to the office of President of the Federal Republic of Nigeria is a weighty constitutional matter, requiring consideration by the courts as custodians of the Constitution.

(19) The original certified deposition has been forwarded to the honourable court by a letter addressed to the Chief Registrar of the Supreme Court.

(20) It is in the interest of justice for the honourable court to exercise it discretion in favour of the appellants/ applicants."

The averments on the affidavit filed in support of the motion are thus:-

"I Uyi Giwa-Osagie, Nigeria citizen, adult, male, Muslim and legal practitioner of Plot 120, Adetokunbo Ademola Crescent, Wuse II, Abuja Nigeria, do hereby make oath and state as follows:

1. That I am a legal adviser to the 1st appellant/ applicant, and I depose to this affidavit with the knowledge and consent of the appellants/ applicants and on their behalf.
2. That by virtue thereof, I am conversant with the facts of this matter.
3. That the 1st appellant/applicant contested the election to the office of the President of the Federal Republic of Nigeria on the platform of the 2nd appellant/applicant, which election was conducted by the 1st respondent on the 25th day, of February, 2023.
4. That the 1st respondent returned the 2nd respondent as the winner of the said election, and hence the appellants, being dissatisfied with the return, filed a petition on the 21st day of March, 2023 before the Court of Appeal sitting as the Presidential Election Petition Court.
5. That the court below had by a judgment delivered on 6th September 2023 dismissed the said petition, whereupon the appellants/applicants appealed against the said judgment to this honourable court on 18th September for 2023
6. That the record of appeal has been transmitted to this honourable court and the appeal duly entered, and the said record of appeal is not before this honourable court, running into over 9,000 pages in 11 Volumes, upon which the appellants/applicants are relying in this application.
7. That the petition is contained on pages 1-225 of the record of appeal - Vol. 1), While the appellants/applicants' three replies to the replies of the respondents are at pages 1695 to C 1764 of the record of appeal (Vol. 3).
8. That the judgment of the court below is contained at pages 7503 to 8298 of the record of appeal (Vol. 10), while the notice and grounds of appeal are contained at pages 8299 - 8340 of D the record of appeal (Vol. 10).
9. That I know that one of the grounds of the appellants/applicants' petition before the court below is that the 2nd respondent was not qualified at the time of the election to contest the election and did not meet the constitutional threshold to contest.

10. That at a meeting with 1st appellant/applicant at his office at No. 120 Adetokunbo Ademola Crescent, Wuse II, Abuja on 5th October, 2023 at about 1:00pm, I was informed by him, and I verily believe him, as follows:-(a)

(a) That he instructed his United State lawyers, the law firm of Dechert LLP, to apply to the Chicago State University for the release of copies of the academic records and certificates of the 2nd respondent for use in the presentation and prosecution of their petition which challenged the return of the 2nd respondent.

(b) That given the strict privacy laws in the jurisdiction of Chicago State University, the request for the release of the academic records and certificate issued to the 2nd respondent could not be granted without an order of court and for use in pending court proceedings.

(c) That the need to obtain the academic records and the certificate of the 2nd respondent for the purpose of presentation and prosecution of the election petition, prompted him through his US-based Attorneys, Alexander de Gramont and Angela M Liu of the law firm of Dechert LLP of 1900 K Street, NW, Washington DC 20006-1110 to commence an action in the U.S. District Court for the Northern District of Illinois - In Re: Application of Atiku Abubakar for an Order Directing Discovery from Chicago State University Case No. 23-CV-05099 for an order for the production of documents and testimony for use in a proceeding in a foreign court, seeking documents and testimony from Chicago State University concerning the authenticity and origin of documents purporting to be the educational records and certificate of the 2nd respondent, Bola A. Tinubu.

(d) That despite the fact that the 2nd respondent submitted to INEC his "certificate" which he claimed to have obtained from Chicago State University, he vehemently opposed the release of his academic records and the certificate he claimed to have obtained from Chicago State University in support of his qualification to contest the Presidential election of 25th February, 2023

(e) On September 19, 2023, the Court issued an order granting the application, and a copy of the judgment of the United States Magistrate Judge is annexed herewith as exhibit "A".

(f) Thereafter, the 2nd respondent applied for an emergency stay of the court order, claiming that he would suffer irreparable damage and injury if his educational records were released, which order of stay was granted.

(g) On September 30, 2023, the court overruled the 2nd respondent's objections and ordered Chicago State University to produce the documents on October 2, 2023, and to produce a witness for

deposition on October 3, 2023, which judgment is annexed herewith as exhibit "B".

(h) On October 2, 2023, Chicago State University produced the documents pursuant to the court order.

(i) On October 3, 2023, pursuant to the Court's Order, Chicago State University provided a witness to give deposition testimony, in which deposition, Chicago State University disclaimed, ownership and authorship of the document that the 2nd respondent presented to INEC, purporting to be "Chicago State University Certificate", and the deposition is annexed herewith as exhibit "C".

(j) That the relevant pages of the transcript are pages 36, 37, 39, 40, 41, 43 and 69, and are extracted and annexed herewith as exhibit "D".

(k) That the deposition was not in existence or available at the time of filing the petition.

(l) That deposition sought to be adduced is such as would have important effect in the resolution of this appeal.

(m) The deposition which is on oath and deposed in the presence of the 2nd respondent's Attorney is credible and believable, and ought to be believed.

(n) The deposition is clear and unambiguous and no further evidence is needed to be adduced on it.

(o) That he could not obtain the deposition at the time of filing the petition or during the trial in order to make same available to his lawyers handling the petition to present same at the trial.

11. That I was informed by Ahmed T. Uwais Esq., a counsel in the appellants/applicants' Legal Team, at a meeting at No. 121 Adetokunbo, Ademola Crescent, Wuse 2, Abuja on 5 October 2023 at about 1:30 pm, and I verily believe him, that the certificate presented by the 2nd respondent to INEC in support of his qualification to contest election, was tendered in evidence at the trial and marked as exhibit PBDIB and a copy of same is annexed herein as exhibit "E".

12. That the same document was tendered at the aforesaid deposition in the United States of America as exhibit PBE4, and a copy hereof as exhibit "F".

13. That at the trial, a certificate obtained from Chicago State University was also tendered in evidence as exhibit PBE4, and a copy thereof is annexed herewith as exhibit "G".

14. That the deposition is a relevant piece of fresh evidence explaining the status of the certificate the 2nd respondent presented to INEC in support of his qualification to contest the election.

15. That the evidence is such that could not have been obtained with reasonable diligence for use at the trial, as the deposition required the commencement of the suit in the United State of America before receiving same.

16. That the deposition was made on, October 03, 2023 after the conclusion of trial at the court below, and was not available to be tendered at the trial.
17. That it was not possible to obtain the said evidence before the trial at the court below.
18. That a certified true copy of the deposition has been received, and we have written a letter forwarding the original deposition to the Chief Registrar of this honourable court, which letter is annexed herewith as exhibit "H".
19. That is in the interest of justice to grant this application to allow the reception of this evidence.
20. That I swear to this Affidavit in good faith conscientiously believing same to be true and correct and in accordance with the Oath Act."

All the respondents opposed the motion and each filed a separate counter affidavit to that effect, but the counter affidavit filed for the 2nd respondent on the 12 October, 2023, who is directly affected by the fresh/further evidence sought to be produced and be admitted in the appeal, would suffice for the purpose of this. contribution.

The relevant averments in the 2nd respondent's counter affidavit are in the following paragraphs: -

"8. I know as a fact that:
i. The 3rd respondent conducted the primary election for the nomination of its candidate into the office of President of the Federal Republic of Nigeria on 8th June, 2022, whereat, the 2nd respondent emerged as the 3rd respondent's presidential candidate for the 2023 presidential election.
ii. On 17th June, 2023, the 3rd respondent forwarded the 2nd respondent's Form EC9 (Affidavit in Support of Personal Particulars) to the Independent National Election Commission (INEC/1st respondent), as part of the processes for the general election.
iii. By a notice dated 19th September, 2022, the Independent National Election Commission (INEC/1st respondent) published the names and particulars of all presidential candidates for the then anticipated 25th February, 2023 presidential election now shown to me, attached hereto and marked as exhibit 1, is a certified true copy of the said notice.
iv. The names particulars of both the 1st appellant and 2nd respondent herein, were, duly published and it was obvious, who contestants for the presidential election were.
v. On 10th November, 2022, shortly after the release of the said INEC list of candidates, one Enahoro-Ebah, instituted action against the 2nd respondent at the Chief Magistrate Court, Abuja, alleging the 2nd respondent of forgery of Chicago State University Certificate. Now shown to me, attached hereto and marked as exhibit 2, is a copy of the Direct Criminal Complaint filed 10th November, 2022.
vi. The said action received very wide publicity both in print and social media across the county. Now shown to me, attached hereto and marked as exhibit 3, is a copies of the newspaper reports. The said Mike Enahoro-Ebah testified as PW27 for the appellant at the trial court.

9. I further know as a fact that:
   i. The Presidential election was conducted on 25th February, 2023, whereat, the 2nd respondent emerged winner, ahead of the appellants.
   ii. While the result of the Presidential election was announced on 1st March, 2023, the appellants who came a distant second, filed their petition against election the election at the lower court on 21s March, 2023. Now shown to me, attached hereto and marked as exhibit 4, is a certified true copy of the petition.
   iii. The appellants predicated their petition on four grounds to wit:
      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 1st respondent is invalidly 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.

   iv. The only fact pleaded in support of ground (d) of the petition was:
   Qualification:
   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.
   v. "Deposition on Oath from the Chicago State University" is not one of the documents listed by the appellants as petitioners, in their petition and list of document accompanying the petition now shown to me, attached hereto and marked as exhibit 5, is a certified true copy of the appellant's list of documents before the lower court."
10. I also know as a fact that:
   i. The respondents vehemently objected to the introduction by the petitioners of fresh allegations of forgery of academic certificates and dual citizenship through their reply on diverse grounds, including the fact that they were not pleaded; that there was no ground in the petition to connect them; that they could not bring in those fresh allegations through reply; that the time for them to introduce new facts had elapsed by statutory and constitutional imperatives.
   ii. The respondent's application/motion was moved and argued before the lower, court, after which the adjourned ruling till the time of its final judgment.
   iii. While delivering its judgment on 5th September, 2023, the lower court agreed with the respondent's counsel and struck out all allegations relating to forgery of academic certificates, dual citizenship against the respondent, as well as the evidence of Mike Enohoro-Ebah (PW27)
11. By virtue of my afore-stated position, I further know as a fact that:
   i. At the pre-hearing session before the lower court, the appellants were given three weeks within which to present their case, while each of the respondent were given 2, 5 and 5 days, respectively.

ii. The appellants closed their case on 23rd June, 2023, the 2nd respondent on 3rd July, 2023, the 2nd and 3rd respondent on 5th July, 2023, while the lower court adjourned for judgment on 1st August, 2023 after adoption of the respective final written addresses. The lower court delivered its judgment on 6th September, 2023. The record of the respective proceedings already form part of the records this honourable court, as transmitted from the lower court. The proceeding for 23rd June, 2023, 3rd July, 2023, 5th July 2023 and 6th September, 2023 are hereby annexed as exhibits 4a, 5b, 5c and 5d, respectively.

iii. It was only on 1st August, 2023 that the 1st appellant commenced his action against the Chicago State University at the U.S. District Court for the Northern District of Illinois; In Re: Application of Atiku Abubakar for an Order Directing Discovery from Chicago University State Case No. 23-C-05099. Now shown to me, attached hereto and marked as exhibit 6 is a copy of the application dated 2nd August, 2023 filed at the U.S. District Court for the Northern District of Illinois.

iv. 2nd August, 2023, when the appellants commenced their application as per exhibit 6 above, is period of 155 days from the date the 2nd respondent was announced as winner of the presidential election on 1st March, 2023; 134 days from the date the appellants filed their petition on 21st March, 2023; 40 days from the date the appellants closed their case before the lower court on 23 June, 2023 and 24 hours after parties adopted their addresses before the lower court on 1st August, 2023.

v. 180 days from 21st March, 2023, when the appellants filed their petition, expired on 17th September, 2023.

vi. Dissatisfied with the judgment of the lower court delivered on 6th September, 2023, the appellant filed a notice of appeal at the Registry of the lower court, containing 35 grounds. Now shown to me, attached hereto and marked as exhibit 7, is a copy said notice of appeal.

vii. The appellants have suppressed the material dates referred to in (iii) supra, for obvious reasons.

viii. Throughout the supporting affidavit to the appellant's motion, they deliberately omitted/ left out the day they commenced their against the Chicago State University at the US District Court. On 7th September, 2023, a day after the lower court delivered its judgment, the 1st appellant held a press conference, whereat he described the decision of the lower court as being "bereft of substantial justice." Now shown to me, attached hereto and marked as exhibit 8, are certified true copies of the newspaper reports.

12. I have read exhibit C attached to the appellant's affidavit and I know that it reads thus on its first page:

> "This is the discovery deposition of Caleb Westberg in the above titled cause before Gwendolyn Bedford, a Certified Shorthand Reporter within and for the County of Cook, State of Illinois, taken at the offices of Dechert LLP, 35 West Wacker, Suite 3400, Chicago, Illinois held on the 3rd day of October, 2023 at 10:30 am.

Pursuant to notice."

13. I know, as a fact that:
    i. Neither Gwendolyn Bedford nor any other person present at the deposition is a judicial officer.
    ii. Dechert LLP referenced as the venue of the deposition, is the law office where Angela Liu, Esq., counsel to the 1st appellant herein, serves, as partner.
    iii. Contrary to paragraph 10(j) of the affidavit of Uyi Giwa-Osagie, it is not true that the deposition from the Chicago State University disclaimed the authorship of the certificate of the 2nd respondent.
    iv. There is nothing in, the said exhibit C which remotely or proximately suggests a disclaimer of the 2nd respondent's certificate nor that the 2nd respondent presented a forged certificate to the 1st respondent. Rather, Chicago State University has repeatedly confirmed that it provided a diploma to the respondent and subsequently provided certified (or official) copy of the diploma, while stating that both are valid and authentic diplomas of Chicago State University"

15. I was informed by Akintola Makinde, counsel in the low office of Wole Olanipekun & Co., lead counsel to the respondent, on 11th October, 2023 at about 4:00pm, at the office premises of Wole Olanipekun & Co., God's Grace House, No. 6 Oshakati Close, off Constantine Street, Wuse Zone 4, Abuja, and I verily believe the information to the, true that:
    i. *There is no singular ground of appeal against the decision of the lower court, touching on its resolution of the issue of forgery, which the appellants attempted to introduce at the lower court, despite not being part of their petition.*
    ii. *The appellants have also have consequently, not formulated any issue in respect of any subject bordering on forgery in their brief of argument filed on 2nd October, 2023.*
    iii. *The appellants are not praying this honourable court* for leave to raise new issue on appeal, either in their notice of appeal on brief of argument.
    iv. The appellants are also not urging this honourable court through any application to raise fresh issues for the first time on appeal.
    v. 21 days from the date of declaration of result, prescribed by the Constitution for the filing of a petition expired since 21st March, 2023.
    vi. 180 days allotted to the trial court for the consideration of the petition, including the tendering of all documents and evidence, the calling of all witnesses, the filling of written addresses anti the delivery of judgment expired on 11th September, 2023.
    vii. The jurisdiction of this honourable court is appellate and not original, in respect of the determination of the validity of the election of a person into the office of President of the Federal Republic of Nigeria and matters ancillary thereto.

16. I was further their informed by the same Akintola Makinde, under the same circumstances as stated above, that contrary to paragraphs 14, 15, 16, 17, 18 and 19 of the affidavit of Uyi Giwa-Osagie:

i. On 23th June, 2023, the appellants' counsel announced thus, before lower court:
"At this point in time, we wish to inform the court that this our last witness. We therefore pursuant to paragraph 46(5) of the First Schedule to the Electoral Act apply to close the case for the petitioners." (See exhibit 5a).

ii. At no point in time did the appellants as petitioners before the lower court make any representation to the said court of their intention to commence an application for discovery in the United States of America.

iii. Caleb Wesberg whose out-of-court deposition in the United States is sought to be introduced as additional evidence was not listed as a witness before the lower court and, he did not also give evidence at the lower court.

iv. No witness statement of Caleb Westerberg was frontloaded along with the petition filed at the lower court.

v. Caleb Westerberg, whose out of court testimony is sought to be introduced as additional evidence was not available at the lower court to give oral testimony.

vi. The transcript of the deposition (exhibits C and D) sought to be tendered before this honourable court for the first time by the appellants, are of no relevance to the appellants' case and their appeal, as same no allegation of forgery against, the respondent or anyone at all.

vii. Had the appellants been diligent in their, quest, they would not have waited till after the lower court adjourned, before commencing the action against the Chicago State University at the U.S District Court for the Northern District Illinois - In Re: Application of Atiku Abubakar for on Order Directing Discovery from Chicago State University Case No. 23-CV-05099.

viii. Contrary paragraph 17 of the appellants' affidavit, the appellants could have obtained the deposition at the US court before the filing of petition, if they had timeously commenced the election in the US. As it took the 1st appellant only about two months from commencement of the proceedings to obtain exhibits C and D.

ix. Contrary to paragraph 10(1) and (n) as well as paragraphs 14, 15, 16 and 17 of the affidavit of Uyi Giwa-Osagie, the appellants have indolently left undone the foundation factual background required for their application.

x. There is no material fact of a witness testimony exhibiting the alleged fresh evidence, placed before this honourable court, upon which this honourable court may come to a determination in the admission or otherwise of the alleged fresh evidence sought.

xi. Further to paragraph 19 of the appellants' affidavit, it is improper for the appellants to maintain any form of *ex-parte* correspondence with this honourable court as they confess to have done, without putting other parties, including the 2nd respondent in copy/notice of same.

xii. The 1st and 3rd respondents were not present at the proceedings in the US and they. never had the opportunity of examining or cross-examining the witness whose deposition and record of proceeding, the appellants seek to tender herein."

I would say that in ordinary judicial proceedings (civil or criminal) in, the appellate courts in Nigeria, wherein applications for leave to adduce or produce and place further or fresh evidence before the court for use in the determination of an appeal, the law is fairly settled that such fresh or further evidence which was not adduced or produced and placed before a trial or lower court, which has the primary duty to receive, consider and evaluate or assess it in the determination of the cases presented by the parties, would not be allowed and admitted, as a matter of course, by the appellate court.

Over the years, the attitude of the appellate courts in such cases has been consistently that applications for leave to produce or adduce fresh or further evidence in appeals must show and demonstrate the existence of some circumstances and satisfy some conditions that justify and warrant the reception and use of such evidence in the determination of an appeal. Recently, this court, in the case of Oboh v. Nigerian Football League Ltd. & 2 Ors. (2021) 4 NWLR (Pt. 1766) 305 at 318, restated the position that:-

> "In the previous cases: *Asaboro v. Aruwaji* (1974) 4 SC 119 and *Obasi & Anr. v. Onwuka & Ors.* (1987) 3 NWLR (Pt. 61) 364 cited with approval in Madam *Jaruwa Adeleke v. Liadi Ajani Aserifa* (1990) 3 NWLR (Pt. 136) 94, the principles for permitting fresh evidence in civil cases are underscored by the need to further the course of justice in the following circumstances:
>
> (1) Where the evidence sought to be added is such as could not have been obtained within a reasonable care and diligence for use at trial;
>
> (2) Where the fresh evidence is such that. if admitted would have an important, but necessarily crucial, effect on the whole case;
>
> (3) The evidence sought to be tendered on appeal is apparently credible and capable of it being believed."

And at page 320, that:-

> "The discretion to allow a party to call new evidence on appeal should be sparingly exercised and only for the furtherance of justice. *On no account should a party who called insufficient evidence or lethargic at trial, benefit from this discretion.*"

The law is also that all the afore-named conditions must be satisfied or met together by an applicant in order for the application to produce or adduce fresh or further evidence on appeal, to be granted. See *Owata v. Anyigor* (1993) 1 NWLR (Pt. 276) 380, *U.B.A. Plc v. BTL Ind. Ltd.* (2005) 10 NWLR (Pt. 933) 356, A.-G., *Oyo State v. Fairlakes Hotels Ltd.* (1988) 5 NWLR (Pt. 92) 1, *Statoil (Nig.) Ltd. v. Inducon (Nig.) Ltd.* (2018) 1 NWLR (Pt. 1704) 45.

All the above restatements of the law on the principle for the admission of fresh/new or further evidence in an appeal are in respect of ordinary civil proceedings in respect of which there is no constraint of time within which all courts on the judicial ladder, are to mandatorily conduct and conclude the proceedings in the case and enjoy the requisite power and authority to commence and conclude the proceedings as the circumstances of each case may warrant or allow.

However, though election matters and proceedings are considered as a specie of civil matters; in the case of *Orubu v. N.E.C.* (1988) 5 NWLR (Pt. 94) 323 at 347, Uwais, JSC (later CJN) pointed out that:-

> "All election petition is not the same as the ordinary civil proceedings, it is a special proceeding because of the peculiar nature of elections, which by reason of their importance to the well-being of a democratic society, are regarded with an aura that places them over and above the normal day to day transactions between individuals which give rise to ordinary or general claims in court. As a matter of deliberate policy to enhance urgency, election petitions are expected to he devoid of procedural clogs that cause delay in the disposition of the substantive dispute."

Subsequently, in the above premises, election matters and proceedings have been recognized and held to be *"sui generis",* on the ground that they are specifically and specially provided for, regulated and governed by different set of statutes as well as Rules and Regulations of practice and procedure specifically enacted for them in order to avoid and obviate the delay in ordinary civil proceedings. Special and specific provisions are made for procedural steps to be taken in and time limits prescribed within which the steps must be taken, proceedings conducted and concluded by all the courts/tribunals handling such election matters. These, Statutes (including the Constitution), Rules and Regulations are couched in mandatory terms and tenor such that discretion on the part of parties and the court/tribunals in the conduct of the proceedings, is very rarely, if at all, envisaged in their compliance and application, See *Balogun v. Dosunmu* (1999) 2 NWLR (Pt. 592) 590 (SC), *Hassan v. Aliyu* (2010) 17 NWLR (Pt. 1223) 547 (SC), *Akpamgbo-Okadigbo v. Chidi* (No.2) (2015) 10 NWLR (Pt. 1466) 124, *Orubu v. N.E.C.* (supra), *Lokpobiri v. A.P.C.* (2021) 3 NWLR (Pt. 1764) 538 (SC), *Abubakar v. Yar'Adua* (2008) 2 MJSC 1; (2008) 4 NWLR (Pt.1078) 465, *Ohakim v. Agbaso* (2010) 19 NWLR (Pt. 1226) 172 (SC).

In this appeal, the appellants filed their election petition before the Court of Appeal, pursuant to the provisions of section 239(1)(a) of the 1999 Constitution (as altered) which provide thus:

> "239. Original Jurisdiction
>
> (1) Subject to, the provisions of this Constitution, the Court of Appeal shall, to the exclusion of any court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether-
>
> (a) any person has been validly elected, to the Office of President or Vice-President under this Constitution;"

As can easily be seen, the original jurisdiction vested in or conferred on the Court of Appeal to entertain, adjudicate over and determine the question as to whether the 2nd respondent, as the person declared and returned as the President, was validly elected, makes that court one of first instance or the trial court before which the person/s challenging the validity of the election should or shall initiate or commence the legal action in which the question can properly and validly be raised for determination.

The Constitution did not provide how such a legal action challenging the validity of the election of any person to the Office of President shall be initiated or commenced before the Court of Appeal, but in section 248 provides for the practice and procedure for that court, which, "subject to the provisions any Act of the National Assembly" the President of the Court of Appeal, may make to govern proceedings in the court, generally.

The National Assembly, in exercise of its constitutional powers and authority, specifically and specially, enacted the Electoral Act, 2022 regulate elections and related matters generally; including the settlement of disputes arising from such elections and related matters in order to complement the constitutional provisions on the resolutions/ determination of questions arising from the elections and related matters. The Electoral Act gives life and practical effect to the constitutional provisions on disputes and questions that arise from elections and related matters.

In section 130(1) and (2), the Act provides for the manner, mode or method for challenging or questioning the validity of elections conducted pursuant to the provisions of the Constitution and the Art. The provisions, headed "proceedings to question an election" are thus:-

"130(1) No election or return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition", presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.

(2) In this part "tribunal or court" means –

(a) in the case of Presidential election, the Court of Appeal; and

(b) in the case of any other elections under this Act, the election tribunal established under the Constitution or by this Act."

It was in compliance with these and other relevant provisions of the Electoral Act, 2022, that the appellant (as petitioners) presented *"the petition"* in and before the Court of Appeal, to challenge and raise the question as to the validity of the election of the 2nd respondent to the office of the President of the Federal Republic of Nigeria for determination by that court as the court of first instance or trial court in line with the provisions of section 239(1)(a) of the Constitution. As stipulated in section 130(2)(a) of the Act, above, for the purpose of the determination of the Presidential election presented before it by the appellants, the Court of Appeal sits as a "*tribunal or court*" of first instance and so reference in the Act to a tribunal or court in that context, refers to the Court of Appeal exercising the original jurisdiction vested or conferred on it under the provision of section 239(1)(a) of the Constitution.

In that regard, the Constitution in section 285 makes specific provisions to provide for the time for determination of election petitions generally; including the Presidential election, in addition to establishment of Election Tribunals for each State in the Federation and the FCT in sub-section (1) and (2), vested with exclusive original jurisdiction to hear and determine petitions on the validity of the election to National and State Houses of Assembly, as well as to the office of the Governor of a State, respectively.

The time limit prescribed within which all election petitions (including Presidential election petition) are to be heard and determined by the Election Tribunals mid Court of Appeal, in exercise of their original jurisdiction conferred on or vested in them by the provisions in section 285(1)(a) and 239(1) and (2) of the, Constitution, is as set out in section 285(6), which says:-

"285(6) An election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petitions;"

The fact that these provisions are applicable and apply to the election petition filed before the Court of Appeal, as a first instance or trial court in exercise of its original jurisdiction, just like the tribunals established for petitions in respect of other elections, is clearly brought out by the subsequent provisions of section 285(7) which deals with the time within which appeals from the decisions/ judgments "of an election tribunal or Court of Appeal in an election matter" shall be disposed of.

It provides that:-

"285(7) An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days the date of the delivery of the judgment of the tribunal or Court of Appeal".

Invoking the cardinal principle of the interpretation of the provisions of the Constitution that the provisions in the sub-sections of a particular section and indeed the entire provisions of the constitution, shall be looked at, considered and taken holistically, harmoniously and one in relation to the other, for the purpose of determination the real intention and objective of the provisions in question. In other words, courts are to adopt a purposeful polylithic and not monolithic approach in the interpretation of the provisions of the Constitution and statutes in order to give real and reasonable effect to the provisions and to avoid absurdity. See A.-G., Bendel State v. A.-G., Federation (81) 10 SC 1, (81) 1 FNLR 179; (1982) 3 NCLR 1, *Ishola v. Ajiboye* (1994) 7-8 SCNJ (Pt. 1) 1 and 34; (1994) 6 NWLR (Pt. 352) 506, *Obasanjo v. Yusuf* (2004) 5 SC (Pt. 1) 27; (2004) 9 NWLR (Pt. 877) 144; *Owners of the "Arabella" v. N.A.I.C.* (2008) 8 MJSC 145; (2008) 11 NWLR (Pt. 1097) 182, P.D.P. v. C.P.C. (2011) 10 MJSC 1 *Dangana v. Usman* (2012) 2 MJSC (Pt. III) 146; (2013) 6 NWLR (Pt. 1349) 50; *Lafia L.G. v. The Ex. Governor, Nasarawa State* (2012) 5-7 MJSC 167; (2012) 17 NWLR (Pt. 1328) 94, *Abubakar v. INEC* (2020) 12 NWLR (Pt. 1737) 37 (SC), *Gbenga v. A.P.C.* (2020) 14 NWLR (Pt. 1744) 248, *Crestar Int. Nat. Resources Ltd. v. S.P.D.C.N. Ltd.* (2021) 16 NWLR (Pt. 1800) 453 (SC). Calmly looked at and closely considered, the provisions of sections 239(1)(a) and section 285(1) and (2) of the Constitution along with the provisions of section 130(1) and (2)(a) of the Electoral Act, 2022 as well as Paragraph, 1 of First Schedule to the Act, the purposeful and reasonable intention of the drafters of the Constitution becomes manifest that the provisions of section 285(6) of the Constitution apply to Presidential Election petition filed before the Court of Appeal in exercise of its original jurisdiction as a trial court or tribunal of first instance under the provisions of section 239(1)(a). Being an election petition for which special and specific provisions are made or enacted in the Constitution and the Electoral Act because of the peculiar nature of electoral offices to which they relate that have limited terms or tenure, the Presidential election petition cannot be, and has not specifically been, exempted from the time limit prescribed in section 285(6) of the Constitution within which trial or proceedings therein shall be concluded by the trial court (Court of Appeal) from the date of filing of the petition.

The First Schedule to the Electoral Act, provides for-

"Rules of Procedure for Election Petition; interpretation."

In Paragraph 1, "Tribunal" used in the Act for the purposes of and in relation to Election Petitions, is defined to mean "an Election Tribunal established under this Act or the Court of Appeal".

This definition along with that ins 130(2)(a) of the Act, puts it beyond argument that the Rules of procedure for all election petitions provided for in the First Schedule to the Electoral Act are applicable and apply in all proceedings in election petitions filed before the

Election Tribunals specially established under section 285(1) and (2) of the Constitution and vested with original exclusive jurisdiction to adjudicate over election petitions, as well as the Court of Appeal, an already established appellate court under 237(1) of the Constitution, but as stated and restated earlier, which is vested and conferred with the exclusive original jurisdiction to adjudicate over the Presidential election petition as court of first instance or trial court under section 239(1)(a) of the same Constitution; like the Election Tribunals specially established for the States.

It was because the Presidential election petition is subject to the Rules of Procedure for Election Petitions provided for in the 1st Schedule to the Electoral Act, that the appellants' petition was filed before the Court of Appeal, heard and determined in line with procedure outlined therein.

In addition, to further illustrate that section 286(6) applies to an election petition filed before the Court of Appeal, just like election petitions filed before Election Tribunals, the provision of section 285 (5) Constitution provides thus: -

> "285(5) An election petition shall be filed within 21 days after the date of the declaration of result of the elections."

The salient point to be noted in the provisions is that no distinction is made between election petitions' to be filed before Election Tribunals and that to be filed before the Court of Appeal and so the provisions apply to all election petitions to be filed before both the Election Tribunals and the Court of Appeal; the "election petition shall be filed within 21 days after the date of the declaration of result of the elections" in question. Then, as pointed out before now, section 285(7) provides that an appeal from a decision of an Election Tribunal or the Court of Appeal shall be heard and disposed of within 60 days from the date of delivery of judgment of the tribunal or the Court of Appeal. Since all election petitions before the Election Tribunals and the Court of Appeal are to be filed within 21 days after the date of the declaration of results of the respective elections and appeals from a decision of the Election Tribunal or the Court of Appeal in such an election petition shall be heard and disposed of within sixty (60) days from the date of delivery of the judgment of the Tribunal or the Court of Appeal, the provisions of section 285 (6) apply to the election petitions filed before both the Tribunals and Court of Appeal. Judgment in respect of which an appeal shall be disposed of within 60 days from the date of delivery of the judgment of the Tribunal or the Court Appeal, must be delivered in writing within 180 days from the date of filing the of the petition before both the Tribunal and Court of Appeal.

Inspite and despite the apparent omission to specifically name the Court of Appeal in addition to an election tribunal in the provisions of section 285(6), the indisputable intention of the drafters of the provisions of section 285(5), (6) and (7) is that the community purport of the provisions apply to all election petitions to be filed before the election tribunals and the Court of Appeal, both of which are conferred or vested with exclusive original jurisdiction to adjudicate over such petitions under the relevant provision set out earlier.

It would clearly be turning the specific provisions of sections 239(1)(a), 248 and 285 (1) and (2) of the Constitution as well as section 130 (1) and (2)(a) of the Election Act, 2022 on their head to suggest that the provisions in section 285(6) of the Constitution do not apply to Presidential election petition merely because the Court of Appeal was not named therein as that would create an absurdity of such a, nature that would defeat the reasonable intention of the Constitution to prescribe and stipulate time limit within which election petitions (which are *sui generis*) shall be heard and disposed off by the Court of Appeal or tribunals vested with the

special original and exclusive jurisdiction to entertain and adjudication on such petitions. To argue that the provisions of section 285 (6) only apply to petitions filed before election tribunals established for States in Nigeria under section 285(1) and (2) of the Constitution is to say that the Presidential election petition over which the Court of Appeal was conferred with original and exclusive jurisdiction to hear and determine, is an ordinary and usual civil matter to which special constitutional provisions on election petitions do not apply.
It is not.

In fact, such an argument would create the monumental absurdity of relegating and subjecting the election petition in respect of the highest and most important elective office in Nigeria to uncertainty, the whims and vagaries of the parties and the courts such that the limited term of office of the President may/will expire before the petition was eventually and finally disposed by the trial Court of Appeal. That was the mischief all Nigerians would easily remember, the introduction of the provisions in section 285(5), (6), (7) and (8) of the 1999 Constitution (as altered) was meant and intended to cure and, has indeed, cured. See *Ikenya v. P.D.P.* (2012) 12 NWLR (Pt. 1315) 493 (SC). Any argument to the contrary on the interpretation of the provisions would clearly be implausible because it defies discernment and perspicacity of the real purport and intendment of the provisions, which are specifically and specially enacted to govern all election petitions proceedings in Nigeria from the time of their introduction.

In these premises, since the petition was filed by the appellants before the Court of Appeal on the 21st March, 2023, the 180 days stipulated in section 285 (6) for it to deliver its judgment in writing, lapsed, expired or ended on or about the 14th September; 2023.

After the 14th September, 2023, the Court of Appeal, as the trial or first instance court for the hearing and determination of the appellants' petition, had ceased to have, had lost and so lacked. the specific and special exclusive jurisdiction to adjudicate and conduct valid judicial proceedings in the petition, by effluxion of the time limited and mandatorily prescribed in the provisions of section 285 (6) of the Constitution. See *Ikweki v. Ebele* (2005) 11 NWLR (Pt. 936) 397 (SC), *Madukolu v. Nkemdilim* (1962) 1 All NR 587, (1962) SCNLR 341, *Williams v. Adold/Stamm Int'l (Nig.) Ltd*. (2017) 6 NWLR (Pt. 1560) 1 (SC), *Statoil (Nig.) Ltd v. Inducon* (Nig.) Ltd. (2018) 9 NWLR (Pt. 1625) 586 (SC), Enilolobo v. N.P.D.C. Ltd. (2019) 18 NWLR (Pt. 1703) 168 (SC), *Ajomale v. Yarduat* (No.1) (1991) 5 NWLR (Pt. 191) 257 (SC), *Sha'aban v. Sambo* (2010) 10 NWLR (Pt. 1226) 353 (SC), *Ohakim v. Agbaso* (*supra*), *Akpamgbo-Okadigbo v. Chidi* (No. 1) (2015) 10 NWLR (Pt. 1466) 171. Because the Court of Appeal has lost the jurisdiction to conduct valid judicial proceedings in the appellants' election petition on ground of effluxion of the constitutionally prescribed time within which the jurisdiction could be exercised, it lacks the jurisdiction, to entertain and adjudicate over the appellants' motion seeking to produce, fresh, additional or further evidence in support of the said petition which was, apparently, filed after the effluxion of the time for the exercise of the jurisdiction over the petition, on the 06/10/2023. The ominous and legally fatal consequence of this position is that there is no jurisdiction to assume by this court in stepping in to the “shoes” or place of the trial Court of Appeal, to validly, exercise to consider and adjudicate over the motion, as an appellate court. This is premised on the firmly established position of the law repeatedly stated by this court, that an appellate court lacks the requisite jurisdiction to consider any issue over which the trial/lower court lacks or lost jurisdiction over the said issue at the time it was raised in an appeal before the court. Pronouncements on the principle by this court galore in decisions which include *Ehuwa v. Ondo State I.E.C*. (2006) 11-12 SC 102, (2006) LPELR-1056(SC);

(2006) 18 NWLR (Pt. 1012) 544, *Shettima v. Goni* (2011) 18 NWLR (Pt. 1279) 413 (SC), *kenya v. PDP* (2012) 12 NWLR (Pt. 1315) 493; *Bello v. Damisa* (2017) 2 NWLR (Pt. 1550) 455, *Ecobank (Nig.) Ltd. v. Anchorage Leisures Ltd*. (2018) 8 NWLR (Pt. 1650) 116, *B.O.I. Ltd v. Awojugbagbe Light Ind. Ltd* (2018) 6 NWLR (Pt. 1615) 220, *Ezenwankwo v. A.P.G.A.* (2022) LPELR-57884 (SC); (2022) 18 NWLR (Pt. 1863) 537, *Danladi v. Udi* (2022) 9 NWLR (Pt. 1834) 185 at 200.

For the forenamed reasons, this court lacks the requisite constitutional judicial power and authority or jurisdiction to entertain the appellants' motion to produce or adduce fresh or additional evidence to be used in the determination of the appeal.

The law, stated and restated by this court in several decisions is that the proper order to make by a court where it finds that it lacks the requisite jurisdiction to entertain a matter or process filed before it, is to strike out such a matter or process. See *Obi v. INEC* (2017) 7 SC 208; (2007) 11 NWLR (Pt. 1046) 560; *Oloriode v. Oyebi* (1984) SCLR 390, *Adesokan v. Adetunji* (1994) 5 NWLR (Pt. 346) 540, *Gombe v. P.W. (Nig.) Ltd.* (1995) 6 NWLR (Pt. 402) 402, *B.L.L.S. Co. Ltd. v. M.V. Western Star* (2019) 9 NWLR (Pt. 1678) 489, *A.-G., Lagos State v. Eko Hotels Ltd.* (2018) 7 NWLR (Pt. 1619) 518, *C.B.N. v. Okojie* (2015) 14 NWLR (Pt. 1479) 231.

In consequence wherefore, the motion is struck out for want of jurisdiction on the part of the court to entertain same. Enjoying finality in the judicial hierarchy by dint of the provision of section 235 of the Constitution, the duty to consider the merit of the motion abates. However, notwithstanding, I endorse the lead judgment on the merit of the motion that the conditions for the admission of the fresh or additional evidence sought to be adduced by the appellants have not been met or satisfied since the appellants have not been reasonably diligent to have obtained it during the trial or their petition, even though available.

Furthermore, the deposition sought be adduced as evidence for use in the determination of this appeal is legally inadmissible in evidence for lack of authenticity and relevance to the case presented by the appellants in their petition.

But even on the merit, the fresh/additional evidence sought to be produced by the appellants and to be received and used by the court in this appeal is not supported by any of the paragraphs of the appellants' petition before the court.

The only relevant paragraph of the appellants' One Hundred and Fifty (150) paragraphs petition relied on by them for seeking to produce the fresh/additional evidence is paragraph 146 of the petition.

The paragraph reads thus:-

> "146. 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".

This averment is to and in support of the ground 4 of the petition which was set out in paragraph 16 of the petition that:

> "16(d) The 1st respondent was at the time of the Election not qualified to contest the Election."

As can easily be observed and clearly seen, the paragraph 146 of the petition sought to provide the fact/s on and show reason for the ground 16 (d) of the petition asserting that the 2nd respondent was not, at the time of the Presidential election on 25th February, 2023, qualified to have contested the election as a candidate.

The only fact or reason given in paragraph 146 in support of and for the allegation/assertion in paragraph 16 (d) is that the 2nd respondent "not having the constitutional threshold".

The appellants, did not even attempt to provide the facts, details or explanations of "the constitutional threshold" the 2nd respondent did not have or possess for him not to have been "qualified to contest the election" at the time of the election.

However, the averment in paragraph 146 of the petition, *prima facie*, means what it says and that is; that the 2nd respondent, at the time of the election, did not have or possess the requirements prescribed by the Constitution for a candidate to be qualified to contest the Presidential election in Nigeria. "Constitutional threshold" employed and used by the appellants in paragraph 146 of the petition, for qualification for a candidate to qualify to contest the Presidential election, simply means the primary, mandatory, and foundational conditions and basic requirements prescribed and stipulated in the Constitution which are to be satisfied, fulfilled or 3 met by a candidate to enable him to properly, lawfully and validly contest the election.

If and when a candidate did not satisfy, fulfill or meet the said mandatory requirements or conditions, which are precedent to qualification, then he could be said not to possess or have the constitutional threshold to contest the election and would not be constitutionally qualified to contest the election.

Although the appellants did not proffer what the constitutional threshold to qualify a candidate to contest the Presidential election is in their petition, the constitution did not leave it to any guess, doubt or argument. In section 131, the grund norm and fountain of all laws in Nigeria; the 1999 Constitution of the Federal Republic of Nigeria (as altered) expressly provides that:-

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

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

(b) he has attained the age of thirty-five years;

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

(d) he has been educated lip to at least the school certificate level or its equivalent."

I should state right-away that it is not the appellants' case in the petition presented before the Court of Appeal that the 2nd respondent did not satisfy, fulfill or meet any of these requirements or conditions for qualification or for a person to be qualified for election to the office of President, which form and constitute the constitutional threshold for qualification to contest the presidential election.

In the absence of facts to dispute or challenge to the averments of the 1st respondent in paragraphs 16 and 153 of the 1st respondent's reply to the petition, the averments in paragraph 120 of the 2nd respondent's reply to the petition and paragraph 136 of the 3rd respondent's reply to the petition, that the 2nd respondent has satisfied, fulfilled and met the above constitutional requirements or conditions for qualification to contest the Presidential election and so possess or have the constitutional threshold to contest the election in question, the appellants are deemed in law to have admitted that the 2nd respondent was at the time of the election, qualified to contest the election having met the constitutional threshold.

What is admitted, requires no further proof; a principle of law that is now common knowledge. See section 123 of the Evidence Act, 2011, *Owosho v. Dada* (1984) 7 SC 149, *Efet*

v. I.N.E.C. (2011) All FWLR (Pt. 565) 203; (2011) 7 NWLR (Pt. 1247) 423, *Nzeribe v. Dave Engr. Co. Ltd.* (1994) 8 NWLR (Pt. 361) 124, *Abacha v. Fawehinmi* (2000) FWLR (Pt. 4) 533; (2000) 6 NWLR (Pt. 660) 228; *Temile v. Awani* (2001) 12 NWLR (Pt. 728) 726, *Igwe v. A.C.B. Ltd.* (1999) 6 NWLR (Pt. 605) 1. With the deemed or presumed admission by the appellants in law, that the 2nd respondent has satisfied and fulfilled the constitutional requirements for a person to qualify to contest the office of President, the general averment paragraph 146 of the appellants' petition remains at large, empty and barren on the issue of the 2nd respondent's qualification to contest the presidential election of 25th February, 2023.

In that regard, the appellants' reply to the 1st respondent's reply to the petition in paragraphs 2.1. (b), on alleged compromise agreement entered into by the 2nd respondent on proceeds of crime. (narcotics) and proof of dual citizenship are irrelevant, completely, to the fresh/additional evidence sought to be produced by them.

The same position applies to the appellants' reply to the 2nd respondent's reply to the petition in paragraph 41 as well as the paragraphs 32 and 33 of the reply to the and respondent's reply to the petition.

Overall, therefore, the fresh/additional evidence sought to be introduced and produced by the appellants in this appeal, in addition to the other reasons for its inadmissibility in law, goes to no live issue joined by the appellants on the 2nd respondent's having the constitutional threshold to contest the election in question and so, once more, irrelevant to the case presented by the appellants before the Court of Appeal.

In that regard, the motion by the appellant is a surreptitious attempt to amend and change the character of the case presented before the Court of Appeal on the constitutional, threshold on qualification of the 2nd respondent to contest the presidential election.

The learned senior and other counsel for the appellants all' know that the law does not allow any such amendment of an election petition, long after the expiration of the limited and prescribed time by the Electoral Act and Practice Directions, specifically enacted to regulate and govern election petition proceedings. *P.D.P. v. Otu* (2017) 5 NWLR (Pt. 1558) 265, *Bello v. Yusuf* (2019) 15 NWLR (Pt. 1695) 250, *Buhari v. INEC* (2008) 4 NWLR (Pt. 1078) 540, *Odon v. Barigha-Amange* (No. 1) (2010) 12 NWLR (Pt. 1207) 1, *Mato v. Hember* (2018) 5 NWLR (Pt. 1612) 258.

From any angle of the law it is considered, the motion is doomed to fail on the ground of being belatedly brought, thereby robbing the court of the requisite jurisdiction to grant same.

I join in dismissing the motion in terms of the lead judgment.

I would also, just for emphasis, state that the provisions of section 134(2)(b) of the Constitution on the conditions to be met or satisfied by a candidate in a Presidential election in order to be declared or be deemed to have been duly elected, are clear, plain, in simple and straight forward words and language, to be devoid of any reasonable ambiguity. The provisions therefore, do not required or need interpretation or construction by the court for the purpose of ascertaining their purport or intention of the drafters thereof since the words themselves, best show and reveal the real and genuine meaning and *"reason d'etre"* of the provisions. See *Awolowo v. Shagari* (1979) All NLR 120; (1979) 6-9 SC 51, *Ishola v. Ajiboye* (1994) 6 NWLR (Pt. 352) 506 (SC), *Magbagbeola v. Sanni* (2005) 11 NWLR (Pt. 936) 239, *Gafar v. Govt. of Kwara State* (2007) 1-2 SC 189; (2007) 4 NWLR (Pt. 1024) 375, *Dickson v. Sylva* (2017) 8 NWLR (Pt. 1567) 167. These provisions simply say that a candidate for election to the office of the President of the Federal Republic of Nigeria shall be/is deemed to have been duly elected

to the office, where and when, there being two or more candidates at the election, he meets and satisfies the twin conditions thus: -

(a) he has scored the highest votes cast at the election, and

(b) has scored not less than one-quarter of the votes cast in each of at least two-thirds (⅔) of all the States and the Federal Capital Territory, Abuja."

In this appeal, there is no dispute between the parties from the cases they presented before the Court of Appeal and in this appeal, that the 2nd respondent was the candidate, among the other candidates that included the 1st appellant, who scored the highest number of votes cast at the election conducted by the 1st respondent for the office of the President of the Federal Republic of Nigeria on the 25th February, 2023.

The appellants do not also dispute that the 2nd respondent has scored, one-quarter (1/4) of the all votes cast in at least two thirds (⅔) of each of all the States in Nigeria. The only quarrel the appellants have with the decision of the Court of Appeal on the requirements of section 134(2)(b) is that the word "and" used after the mention of the word "of all the States in the Federation" is one which means that the Federal Capital Territory, Abuja" is a separate and an independent requirement of one-quarter (1/4) votes in each of at least two thirds (⅔) of all the States in the Federation, in addition, such that a candidate is mandatorily required to score one quarter (1/4) of the votes in the Federal Capital Territory, Abuja, as a further separate and independent requirement before he shall be deemed to have been duly elected to the office of President.

The argument cannot be correct in view of the provisions of section 132(4) of the Constitution which provides that:-

"132(4)For the purpose of an election to the office of President, the whole of the Federation shall be regarded as one constituency."

These provisions present no doubt about what they say and intend on their subject, i.e., "an election to the office of President", since the words are plain, clear, simple and grammatically straightforward so do not need any interpretation, as stated in the decisions cited earlier on the point/principle of law. They provide bluntly that in an election for the office of President, the whole and the entire Federation of Nigeria comprising of the thirty-six (36) States and the FCT, Abuja, shall be regarded as and is one single constituency. The Federation "is defined in section 318; the interpretation section of the Constitution, as follows:-

"Federation" means the Federal Republic of Nigeria;" Then, in section 2 of the same Constitution, "The Federal Republic of Nigeria" is described and proclaimed in the following terms:-

"2(1) Nigeria is one indivisible and indissoluble sovereign State to be known by the name of the Federal Republic of Nigeria.

(3) Nigeria shall be a Federation consisting of States and a Federal Capital Territory:"

From these provisions, it is beyond reasonable argument that the Federation of Nigeria is the Federal Republic of Nigeria which is made up, consists of and is constituted by the thirty-six (36) States and a (the) Federal Capital Territory, Abuja which are specifically provided for and defined by the relevant provisions of the Constitution. It is the States, and the Federal Capital Territory, as the Federation or Federal Republic of Nigeria that, for the purpose of election to the office of President, as "the whole of the Federation", is regarded as one, a single and sole constituency under section 132(4) above. It becomes "clear as crystal" therefore, that all the States and the Federal Capital Territory, put together, constitute and are the one or single

constituency for which the provisions of section 134(2) are made or enacted; as requirements to be met or satisfied by a candidate at the election in order to be deemed to have been duly elected to the office of President. In that context, the word "and" in the provisions of section 134(2) was inserted, after all the States in the Federation were specifically mentioned to make the Federal Capital Territory, Abuja part of the one, single or sole constituency for which a candidate is required to score at least one-quarter (1/4) of the votes cast in the election.

The word "and" is not meant and does not mean to make the Federal Capital Territory, Abuja as a part and constituent of a sole single or one constituency, to be a separate, distinct, different from and independent of the other components of the constituency for the purpose of an election to the office of President. The Federal Capital Territory, Abuja, mentioned after all the States in the Federation in section 134(2)(b) was, named because it was not created and named as a State in the Federation under the Constitution, even though it is named as a constituent or integral part of the Federation or the Federal Republic of Nigeria as one or single constituency.

I should point out that the word "of all the States in the Federation and Federal Capital Territory, Abuja" in section 134(2)(a) are used in and the definition of the one constituency provided for in section 132(4) for the purpose of an election to the office of President and the requirement therein is that a candidate who has scored not less than one-quarter (1/4) of the votes cast at the election each of two-thirds of the single Constituency; that is, all the States in the Federation and the Federal Capital Territory, Abuja, shall be deemed to have been duly elected to the office of President.

The Federal Capital Territory, Abuja, is merely the capital city of the Federation where the seat of the Government of the Federation is cited and situate. Section 298 of the Constitution provides that:

> "298. Capital of the Federation.
>
> The Federal Capital Territory, Abuja shall he the Capital of the Government of the Federation."

It follows therefore, being simply the capital city of the Federation, which is an integral part of the Federation or Federal Republic of Nigeria; a single, one and sole constituency for the purpose of election to the office of President, there is no independent, separate and distinct requirement by the use of the word "and" in section 134(2) (b) that a candidate in an election to the office of President must score at least one-quarter (¼) of the votes cast in the Federal Capital Territory, Abuja in addition to scoring one-quarter (¼) of the votes cast each in at least two-thirds (⅔) of all the States in the federation.

The Federal Capital Territory, Abuja, for the purpose of an election to the office of President, as provided for in sections 132(4), 134(2)(b) and other relevant provisions of the Constitution, is regarded and deemed as one "of all the States in the Federation", by dint of the provisions of section 297(1); which establishes the Federal Capital Territory with named boundaries, section 298 which, once more, names the Federal Capital Territory, Abuja as the Capital of the Federation and seat of the Government of Federation, and section 299 which prescribes that the provisions of the constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation. The provisions of the three (3) sections or the Constitution are in the following terms:-

> "297(1)There shall be a Federal Capital Territory, Abuja the boundaries of which are as defined in Part II of the First Schedule to this Constitutions."

"298. The Federal Capital Territory, Abuja shall be the Capital of the Federation and seat of the Government of the Federation."

"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".

Then in section 301(a), the Constitution states that:-

"301. Without prejudice to the generality of the provisions of section 299 of this Constitution, in its application to the Federal Capital Territory, Abuja, this Constitution shall he construed as if-

(a) references to the Governor, Deputy Governor and the Executive council of a State (howsoever called) were references to the, President, Vice President and the executive council of the Federation (howsoever called) respectively."

The Court of Appeal was therefore on the firm terrain of the law in its judgment when it held in respect of the issue, at page 8234-8235 of Vol. 10 of the record of appeal, *inter alia* that:-

> "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 State in the calculation of two-third of the States of the Federation. Such that if the candidates 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 pre-condition for a candidate to be deemed as duly elected under section 134 of the-Constitution."

and further that:-

> "if the framers had wanted to make the scoring of one-quarter of votes cast in Federal Capital Territory 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."

I endorse the above interpretation of the provisions of sections 134(2)(b) and 299 (1) of the Constitution on the use of the word "and" after "all the State in the Federation" in section 134(2)(b) as the correct, proper and appropriate construction in law. I should emphasis that the use of the word "and" in the section does not and cannot plausibly be said to have elevated the position of the FCT, Abuja from being a mere capital city of the Federation or Federal Republic of Nigeria and an integral part of one and single constituency to one which is separate and distinct from the other components or parts of the constituency so as to require different, separate and independent satisfaction for the purpose of an election to the office of the President.

For the above and more elaborate reasons set out in the lead judgment, I join in resolving the issue against the appellants.

Over all, I also totally agree with the comprehensive views and conclusions on the other issues in the appeal as contained in the lead judgment, all demonstrating that the appeal, is bereft of merit and deserved to be dismissed.

The appeal is dismissed by me in terms of the lead judgment.

SAULAWA, J.S.C.: The instant appeal is consequent upon the judgment of the Court of Appeal, sitting as a Presidential Election Tribunal, delivered on September 6, 2023 in petition No. CA/PEPC/05/2023. By the decision in question, the court below coram Haruna Simon Tsammani, J.A. Adah, M.O. Bolaji-Yusuf, B. Ugo, and A.B. Mohammed, JJCA, dismissed the appellants' petition challenging the declaration and return of the 2nd respondent as the duly elected president of the Federal Republic of Nigeria.

Background Facts

It's trite, that on February 25,2023, the 1st respondent conducted election nationwide to the office of the President of Nigeria. The 1st appellant and the 2nd respondent had keenly contested that election under the platforms of the 2nd appellant and 3rd respondent, respectively. Various candidates equally contested the said election under the platforms of their respective political parties.

On March 1, 2023, the 1st respondent declared and returned the 2nd respondent as the winner of the election. The 2nd respondent allegedly scored a total of 8,794,726 votes as against 6,984,520 votes credited to the 1st appellant.

On March 21, 2023, the appellants deemed it expedient to file in the court below their petition which was predicated upon a total of four grounds:

(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 dully 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 appellants thereby sought the following reliefs: -

(a) That it may be determined that the 2nd respondent was not dully 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, undue, null, void and of no effect.
(b) That it may be determined that the return of the 2nd respondent by the by the 1st respondent was wrongful, unlawful, undue, null and void having not satisfied the re-equipment 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 one-quarter of the lawful votes cast at the Election in each of at least two-third of all the States in the Federation AND the Federal Capital Territory, Abuja.
(c) That it may be determined that the 1st petitioner having scored the majority of lawful votes 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.

(d) That the election of the 2nd respondent to the office of the President of Nigeria held on 25th February 2023 be nullified and a fresh election (re-run) ordered.

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

In the course of the hearing of the petition, the appellants fielded a total of 27 witnesses and tendered several documentary evidence. Contrariwise, the 2nd respondent called only witness and tendered exhibit PBF 1.

At the close of trial, the court below delivered the vexed judgment on September 6, thereby dismissing the appellants' petition for being unmeritorious.

On October 23, When the appeal ultimately came up for hearing, the learned senior counsel were duly accorded the opportunity of. addressing the court and adopting the submissions contained in their respective briefs of argument, thereby warranting the court to reserve judgment to today.

Appellants' Motion On Notice Filed On 06/10/2023

On October 23, 2023, when the appeal ultimately came for hearing, the appellants' moved the said motion on notice brought pursuant to Order 2 rule 12(1) of the Supreme Court Rules, 1985, sections 6(6)(a), 13 & (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and under the inherent powers of this court.

Specifically, the appellants pray for the following orders:

(a) An order of this honourable court granting leave to the appellants/applicants to produce and for the honourable court to receive fresh and/or additional evidence by way of deposition on oath from the Chicago State University for use in this appeal, to wit: the certified discovery deposition made by Caleb Westberg on behalf of Chicago State university on October 03, 2023, disclaiming the Certificate presented by the 2nd respondent, Bola Ahmed Tinubu, to the Independent National Electoral Commission.

(b) And upon leave being granted, an order of this honourable court receiving the said Deposition in evidence as exhibit in the resolution of this appeal."

The application is predicated upon a total of 20 grounds. It's supported by a 20 paragraphed affidavit deposed to by Uyi Giwa-Osagie, 1st appellants' Legal Adviser. Various exhibits have equally been attached to the Affidavit as exhibits A-H, respectively.

On October 12, 2023, the 2nd respondent filed counter affidavits in reaction to the appellants' motion. The appellants equally filed further affidavits in support of the motion.

On the said October 23, 2023 the learned senior counsel addressed the court and adopted the submissions contained in their respective written addresses, thus warranting the court to reserve its ruling thereupon.

Ruling

By the written address thereof, the appellants have canvassed a sole issue for determination of the application, viz:

"whether this honorable court ought to exercise its discretion in favour of the appellants/applicants by granting the prayers sought."

Appellants submitted in the main, that this court has the power, the jurisdiction and discretion to grant an application for adducing fresh or additional evidence on appeal. For that proposition, reliance is placed on the provisions of Order 2 rule 12(1) (2) & (3) of the Supreme

Court Rules (supra), as well as various decisions of the court: *Uzodinma v. Izunaso* (2011) 17 NWLR (Pt. 1275) 30 @ 5-3 paragraphs G-H, N.C.S. *Board v. Innoson Nigeria Ltd. & ors* (2022), 6 NWLR. (Pt. 1825) 82 @ 98; (2022) LPELR - 56659 (SC) *et al.*

Further submitted, that the grant of the application would certainly be in furtherance of the course of justice in the matter; as the evidence required to establish that the certificate presented by the 2nd respondent to the 1st respondent in support of his qualification to contest the election was not available until after the determination of the case by the court below.

See section 137(1) (7) of the 1999 Constitution (supra); *Saleh v. Abah* (2017) LPELR - 419 (SC) 1 @ 98; (2017) 12 NWLR (Pt.1578) 100.

The court is urged to resolve the sole issue in favour of the appellants/applicants, and accordingly grant the application.

Contrariwise, a sole issue has equally been canvassed by the 2nd respondent at page 2 of the written address in support of the counter affidavit thereof, viz:

> "Considering the background of this case, as well as the applicable constitutional and statutory provisions relevant to election appeal and proceedings whether this honourable court will grant this application."

The 2nd respondent's vehement objection to the application inquestion is predicated upon the propositions that -

(i) A written deposition cannot be activated without oral examination (of the deponent): paragraph 41(1) of the First Schedule to the Electoral Act, 2022; section 130(2) of the Electoral Act, 2022; *Abegunde v. Ondo State House of Assembly* (2015) 8 NWLR (Pt. 1461) 314@353, 364, 371 - 372; *Obiajulu Nwalutu v. N.B.A.* (2019) 2 SC (Pt. 1) 125 @151; (2019) 8 NWLR (Pt. 1673) 174.

(ii) The apex court cannot exercise jurisdiction at the expiration of the 180 days allowed by the constitution for the trial court or tribunal to conclude the trial of the petition. See section 285 of the 1999 Constitution, as amended: Section 22 Supreme Court Act; *Tofowomo v. Ajayi* Appeal No. SC/CV/1526/2022 delivered on 27/01/2022, *et al*.

(iii) The application does not satisfy the condition for receipt of fresh evidence. *Onwubuariri v. Igboasoyi* (2011) 3 NWLR (Pt. 1234) 357; *Adegbite v. Amosun* (2016) 15 NWLR (Pt. 1536) 405 @ 422, *et al.*

(iv) Appellants' reliance on unapplication authorities: *Okafor v. Nnaife* (1987) 4 NWLR (Pt. 64) 129 @ 137; *Adegoke Motors v. Adesanya* (1989) 3 NWLR (Pt. 109) 250 @ 266 *et al.*

(v) Appellants' deliberate misrepresentation to the Supreme Court: Oilfield Supply *Centre v. Johnson* (1987) 2 NWLR (Pt. 58) 625 @ 640; *Dongtoe v. C.S.C., Plateau State* (2001) 9 NWLR R (Pt. 717) 132 @ 161, *et al.*

(vi) Inadmissibility of exhibits C and D ab initio: "Section 83 of the Evidence Act" *P.D.P. v. I.N.E.C.* (2022) 18 NWLR (Pt. 1863) 653 @ 683; *South Atlantic Pet. Ltd. v. Min. of Pet. Res.* (2014) 4 NWLR (Pt. 1396) 24 @ 40; *B.M. Ltd. v. Woermann-Line* (2009) 13 NWLR (Pt. 1157) 149 @ 176, *et al.*

(vii) There is no nexus between the appeal and the exhibits: *Ladoja v. Ajimobi* (2016) 10 NWLR (Pt. 1519) 87 @ 175-176; *Orianzi v. A.-G., Rivers State* (2017) 6 NWLR (Pt. 1561) 224 @ 268, et al.

(viii) The allegation can not be proved at all or beyond reasonable doubt before the court: section 135 of the Evidence Act; *A.C.N. v. Nyako* (2015) 18 NWLR (Pt. 1491) 352 @ 3388 - 389, et al.

(ix) The application is acrass abuse of the judicial process: *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264) 156 @188.

Accordingly, the 2nd respondent has urged the court to resolve the sole issue in favour thereof, and dismiss the application.

I have accorded a critical, albeit dispassionate, consideration upon the nature and circumstances surrounding the instant application vis-à-vis the counter affidavit of the 2nd respondent and the robust submissions of the learned senior counsel there upon. As copiously alluded to above, by the very nature thereof, the instant application seeks the leave of the court to produce the Certified Discovery Deposition made by one Caleb Westerberg, on behalf of Chicago State University (USA) on 03/10/2023, thereby disclaiming the certificate presented by the 2nd respondent (Bola Ahmed Tinubu), to the 1st respondent. In the event of the application being granted, the court is urged upon to utilise the said deposition, and exhibits A, B, C, D, E, F, G & H in determining the appeal.

As aptly submitted by the 2nd respondent in the written Address thereof, granting the application at this interlocutory stage would most certainly constitute a significant finding prejudicial to the determination of the appeal on the merits. See *Eze v. Unijos* (2017) 17 NWLR (Pt. 1593) 1 @ 23; *F.B.N. Plc v. Agbara* (2020) 15 NWLR (Pt. 1748) 537 @ 554.

Secondly, the fundamental principles guiding the procurement and tendering of fresh (additional) evidence in election proceedings are not at large. Indeed, by virtue of the provision of paragraph 41(1) of the First Schedule to the Electoral Act, 2022:

> "any facts required to be at the hearing of a petition shall be proved by a written deposition and oral examination of witnesses in open court."

In the instant case, "the court" referred to in paragraph 41(1) of the Electoral Act, 2022 (supra), undoubtedly means the Court of Appeal. See section 130(2) of the Electoral Act, 2022 (supra); *Abegunde v. Ondo State House of Assembly* (2015) 8 NWLR (Pt.1461) 314 @ 353, 371-372; *Obiajulu Nwalatu v. N.B.A. & anor* (2019) 2 SC (Pt. 1) 125 @ 151; (2019) 8 NWLR (Pt. 1673) 174. Thus, in the light of the foregoing authorities, the fate befalling the written deposition that is not activated by an oral examination of the deponent before the court is ominous; as same ought not to be acted upon by the court.

Thirdly, there's no doubt that this court is devoid of jurisdictional competence to consider the said deposition either as oral or documentary evidence; most especially having regard to the fact that the issue was not considered by the court below as a court of first instance, within the mandatory 180 days' time frame required by the 1999 Constitution (as amended). See: *Ezenwankwo v. A.P.G.A.* (2020) LPELR 57884 (SC); (2022) 18 NWLR (Pt. 1863) 537. In essence, since the 180 days' time frame stipulated under section 285(6) of the 1999 Constitution (as amended) has elapsed, neither the trial court below nor the apex court has the jurisdictional competence to consider the exhibit in question.

The appellants have the onerous duty under the Electoral Act to file the petition along with written statements on oath of the witnesses thereof, and copies or list of every document to be relied on at the hearing of the petition. Thus, the case of the appellants (petitioners) was deemed closed, the very moment they concluded their evidence at the trial court below on 23/6/2023. Undoubtedly, the appellants cannot at this eleventh hour nay crucial stage of the

appeal, seek to amend either the list of documents or petition to plead the document as a foundation for admissibility. See *Ugba v. Suswan* (2013) 4 NWLR (Pt. 1345) 427 @ 473.

Fourthly, as vehemently submitted by the 2nd respondent, exhibits C & D cannot, by any stretch of imagination be admissible in their current form. The reason being that the purported deposition was not made before a court of law, but before a shorthand reporter (one Gwendolyn Bedford) taken at the offices of Dechert LLP, of 1s appellant's counsel. Ironically, the purported shorthand reporter was never called to testify as a witness before the court below. In essence, exhibits C & D constitute a bunch of hearsay evidence, which has no evidential value whatsoever in the absence of the deponent inquestion Caleb Inesterberg: section 83(1) (b) of the Evidence Act (supra). *P.D.P. v. I.N.E.C.* (2022) 18 NWLR (Pt. 1863) 653 @ 683.

I agree with the 2nd respondent's submission, that the Federal Rules of procedure of the USA (28 USCSS.1782) do not have any extra territorial application in Nigeria, thus cannot bind this court. This point has been reiterated in a plethora of cases. In *South Atlantic Petroleum Ltd. v. Minister of Petroleum Resources* (2014) 4 NWLR (Pt. 1396) 24 @ 40, this court aptly held:

> [T]he point must be made that rules of practice in other climes, no matter how convenient the seem may only be drawn from if they are similar and/or same with the rules applicable... that courts this one excepted, are, bound by their rules acquit themselves only by conducting proceeding in the manner that rules stipulate they should.

See also *B.M. Ltd v. Woermann-Line* (2009) 13 NWLR (Pt.1157) 149 @ 176.

Most interestingly, the foregoing authorities touch on the profound doctrine of 'comity'. Invariably, the term 'comity' is a principle or practice among independent political entities (as Countries, States or courts of different jurisdictions), whereby legislative exercise, and judicial acts are naturally recognized.

Equally termed *Comius Pantium; Courtoisie Internationale.*

The US Supreme Court aptly stipulated regarding the doctrine of comity in the case of *Hilton v. Guyot* over four decades ago:

> 'Comity', in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it's the recognition which one nation allows within its to the legislative, executive, or judicial acts of another nation having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

See *Hilton v. Guyot,* 454 US 100, 102 Sct. 177 (1981). See Black's Law Dictionary (supra) @ 336.

Regrettably, the term 'comity' is often erroneously regarded as synonym for international law. However, according to Macalister Smith:

> "[T]he Anglo-American jurisprudence ... the term (comity) is also misleadingly found to be used as a synonym for international law."

See Peter Macalister-Smith: "*Comity in Encyclopedia of Public Law* (1992) @ 672; *Black's Law Dictionary (supra)* @ 335.

Thus, the term 'comity' is sometimes employed not merely in the sense of courtesy to foreign nations or States (often called comity of nations) and their courts, but also in the sense of rules of Public International Law which establish the appropriate limits of national

legislative jurisdictions regarding cases involving foreign elements (nationals). See *Akintoye-Agbaje v. Agbaje* (2010) UK SC 13, wherein the court postulated:

> "in that sense, it will be contrary to Comity for United Kingdom legislation to apply in a situation involving a foreign country when the united Kingdom has no reasonable relationship with the situation ..."
>
> The second relevant sense in which comity is used, is that a court in one country should not lightly characterise the law or judicial decisions of another as unjust. But in the present context, it is hardly necessary to resort to comity to establish that elementary principle... The third sense in which comity may be relevant is that it is to be the basis for the enforcement and recognition of foreign judgments.

In the instant case, the requirement for authenticating an affidavit procured from any country other than Nigeria is provided for under section 110 of the Evidence Act, 2011, viz:

"110 Any affidavit sworn in any country other than Nigeria before

(a) A Judge or magistrate, being authenticated by the official seal of the court to which he is attached, or by a notary public; or

(b) The duly authorized in the Nigerian embassy, High Commission or Consulate in that country may be used in the court in all cases where affidavits are admissible."

Undoubtedly, both exhibits C and D having been procured in wanton breach of the provisions of section 110 of the Evidence Act, 2011 (supra), they are not worthy of being admitted or credited with any value by this court. And I so hold.

In the light of the foregoing, I uphold the 2nd respondent's vehement objection, to the effect that the instant application seeking to adduce fresh/additional evidence is grossly unmeritorious, thus ought to be refused, and same is hereby dismissed.

Application is dismissed.

Determination of the Appeal on the Merits

As alluded here-to-fore, on October 23, when this appeal ultimately came up for hearing, the learned senior counsel were duly accorded the opportunity of addressing the court and adopting the eloquent submissions contained in their respective briefs of argument. Most particularly, the appellants' brief settled by Chief Christ Uche, SAN on 02/10/2023, spans a total of 40 pages. At pages 6-7 thereof, seven issues have been couched, viz:

(1) Whether the tower court was right in refusing to hold that failure of the 1st respondent to electronically transmit results from polling units nationwide for the collation of results of elections introduced by the Electoral Act, 2022 and specified in the Regulations and Guidelines for the Conduct of Elections, 2022 and Manual for Election Officials 2023 does not amount to non-compliance which substantially affect the outcome of the election. (Distilled from grounds 1, 2, 3, 4, 5, 6 and 7)

(2) Whether the lower court was right in its interpretation of the provisions of section 134(2)(b) and section 299 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in holding that securing one-quarter of the total votes cast in the Federal Capital Territory, Abuja is not a constitutional requirement For the return of the 2nd respondent as duly elected President of the Federal Republic of Nigeria. (Distilled from grounds 8, 9, 10, 11 and 12)

(3) Whether the lower court was right in error to have expunged the witnesses' statements on oaths of appellants' subpoenaed witnesses, namely, PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW24 PW25 PW26 and PW27, and the exhibits tendered by them on the ground that the witnesses' statements on oath were not filed along with the petition and that Order 3 rules 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019 is not applicable in election matters. (Distilled from grounds 13, 14, 15 and 16)

(4) Whether the lower court was right in error in its review of the evidence of PW1, PW2, PW3, PWS, PW7 and PW22, classifying them as inadmissibly hearsay evidence and in discountenancing the various exhibits tendered by the appellants? (Distilled from grounds 25, 27, 28 and 29)

(5) Whether the lower court was not in error in striking out several paragraphs of the petition and the replies of the appellants on the grounds of vagueness and lack of specificity, and for being new issues, mere denials or being repetitive. (Distilled from grounds 17, 18, 19, 20, 21, 22, 23, 24 and 31)

(6) Whether the lower court was in error in its evaluation of the evidence of the appellants' witnesses on the burden of proof and clear admission against interest made by the 1s respondent. (Distilled from grounds 26, 30, 32, 33 and 35)

(7) Whether the lower court was right in its use of disparaging words against the appellants in it judgment evincing hostility and bias against the appellants, thereby violating their right to fair hearing, and occasioning grave miscarriage of justice. (Distilled from ground 33)

Contrariwise, the 1st respondent's brief, settled by A.B. Mahmoud, SAN on 07/10/2023, equally spans a total of 40 pages.

At pages 5-6, a total of seven issues have been formulated for determination:

i. Whether the court below was right in holding that the appellants failed to establish that the transmission of the polling unit results through the BVAS to an Electronic Collation System for collation and verification was a mandatory requirement of the Electoral Act, 2022 and failed to prove that the Presidential Election conducted on the 25th of February, 2023 was invalid by reason of non-compliance with the provisions of the Electoral Act. (Grounds 1, 2, 3, 4, 5 and 7 of the notice of appeal)

ii. Whether the court below was right in its interpretation of section 134(2)(b) of the Constitution of the Federal Republic of Nigeria and in holding that the 2nd respondent who secured one-quarter of the votes cast-in two thirds (⅔) of 37 States (FCT Abuja inclusive) is deemed to have been duly elected even if he failed to secure 25% of the votes cast in the Federal Capital Territory, Abuja. (Grounds 8, 9, 10, 11 and 12 of the notice of appeal)

iii. Whether the court below was right in discountenancing the written statements on oath of P W12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27 as well as the documentary evidence tendered through them. (Grounds 13, 14, 15, 16 & 28 of the notice of appeal)

iv. Whether the court below was right in striking out paragraphs 92, 95, 98, 121, 126, 129, 133, 143 and 146 of the petition along with paragraphs 1 (vii), (a), (b), (c) and (viii) as well as paragraphs 1.2 (i), (ii), (iii), (xi), (i), (24) and (25) of the petitioners' reply having found that the paragraphs in the petition were vague

and imprecise while the paragraphs in the petitioners' reply introduced new facts in violation of the provisions of the First Schedule to the Electoral Act. (Grounds 17, 18, 19, 20, 21, 22, 23, 24 and 31 of the notice of appeal)

v. Whether the use of innocuous words by the court below in its evaluation of the evidence adduced before which words the appellants consider to be harsh, could amount to a breach of the appellant' right to fair hearing. (Ground 34 of the notice of appeal)

vi. Whether the court below was right in its decision that the evidence of PW1, PW2, PW3, PWS, PW7, P.W21, PW22 and PW26 were hearsay and therefore inadmissible in evidence. (Grounds 25, 27, 28 and 29 of the notice of appeal)

vii. Whether the court below was right in its evaluation of the evidence of the appellants' witnesses, arrived at a correct decision and properly ignored the purported admission in paragraphs 18 of the 1st respondent's reply when the alleged admission was not material for the determination of the case before it. (Grounds 26, 30, 32 and 33 of the notice of appeal)

The 2nd respondent's brief, settled by Chief Wole Olanipekun, SAN on 07/10/2023, spans a total of 40 pages. At page 4 of that brief, a total of seven issues have equally been canvassed for determination:

(1) Considering the combined provision of paragraph 15 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended); sections 47(2), 60 and 64 of the Electoral Act, 2022; paragraphs 38,48, 50, 51, 53, 54, 55, 91, 92, 93 of the Regulations and Guidelines for the Conduct of Election, 2022; the judgment of Federal High Court in FHC/ABJ/ CS/1454/022 - *Labour Party v. INEC* admitted by the lower court as Exhibit XI; the judgment of the Court of Appeal in appeal No. CA/LAG/CV/332/2023 - *All Progressive Congress v. Labour Party & 42 Ors.*, and the preponderance of evidence before the lower court, whether the lower court did not come to a right decision in its interpretation and conclusion regarding the position of the law, *vis-à-vis* petitioners/appellant's complaints. (Ground 1, 2, 3, 4, 5, 6, 7, 26 and 29)

(2) Upon combined reading of the preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), sections 17(1), 134(2)(b), 299(1), therefore, section 66 of the Electoral Act, 2022 and other relevant statutes, whether the lower court was not right in coming to the conclusion that the 2nd respondent satisfied all constitutional and statutory requirements to be declared winner of the Presidential election held on 25th February, 2023, and returned as President of the Federal Republic of Nigeria. (Grounds 8, 9, 10, 11 and 12)

(3) Having regard to the appellants' pleading before the lower court, vis-à-vis the provisions of paragraphs 4(1)(d)(2) and 16(1)(a) of the First Schedule to the Electoral Act; 2022 and Order 13 rule 4 of the Federal High Court (Civil Procedure) Rules, 2019, coupled with consistent judicial authorities on the fundamental nature of pleadings, whether the lower court did not rightly strike out offensive paragraphs of the petition and petitioners' reply to the respondents' respective replies. (Grounds 17, 18, 19, 20, 21, 22, 23 and 24)

(4) In view of the clear provisions of section 285(5) of the, Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 132(7) of the Electoral Act, 2022 paragraph 4(5) of the First Schedule to the Electoral Act, 2022 and

the settled line of judicial authorities on the subject, whether the lower court did not rightly strike out the witness statements on oath and expunge the evidence of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW19, PW21, PW23, PW24, PW25, PW26 and PW27. (Grounds 13 and 14)

(5) Was the lower court not right when it upheld the respondents' objection to the admissibility of the documents tendered by the appellants and struck out the said documents. (Ground 15, 16 and 28)

(6) Considering the clear provision of section 135 of the Electoral Act, the pleadings and the reliefs sought by the petitioners/appellants as well as the admissible evidence before the lower court, whether the lower court was not right in dismissing the appellants' petition. (Grounds 25, 27, 30, 31, 32, 33 and 35)

(7) In view of the circumstances of the petition before the lower court, the terse evidence adduced by appellants and the State of the law on the respective subjects, whether the lower court could rightly be accused of bias by the appellants. (Ground 34)

Lastly but not the least, the 3rd respondent's brief, settled by Chief Akin Olujumi, SAN on 07/10/2023 spans a total of 41 pages.

At pages 4-5 of the brief, a total of six issues have been distilled from the various grounds of appeal for determination, viz:

(1) Whether the Court of Appeal was not right in striking out the paragraph 4(1)(d) of the 1st Schedule to the Electoral Act, 2022 together with the associated witness statements on oath and the documents in support therefore. (Grounds 18, 19, 20, 21, 22, 23, and 24)

(2) Whether the court of appeal rightfully struck out the offensive replies and/or paragraphs of the replies of the petitioners and the associated witness statements on oath as well as the documents in support thereof, filed in violation of paragraph 16(1) of the 1s Schedule to the Electoral Act, 2022. (Ground 17)

(3) Whether the Court of Appeal was right to strike out the witness statements on oaths not filed along with the petition within the mandatory 21 days' time frame for filing of petition with the associated documents relating to the depositions as well as the evidence of expert witnesses who were also interest in the petition. (Grounds 13, 14, 15, 16 and 28)

(4) Whether having regard to the prescription of the law on allegations of non-compliance, failure of the petitioners to (i) plead with specificity particulars of the polling units complained of; (ii) tender and demonstrate relevant documents; and (iii) call necessary witnesses who can give direct evidence on the allegations, the Court of Appeal was not justified in concluding that petitioners did not prove the allegations of noncompliance and how it substantially affected the out come of the election. (Grounds 1, 2, 3, 4, 5, 6, 7, 25, 26, 27, 29, 30, 33 and 35)

(5) Whether were the decision of a court is supported by the law, the mere use of alleged strong words in the judgment against the appellant by the court can without more invalidate the judgment of the court. (Ground 34)

(6) Whether having regard to the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Court of Appeal rightly

concluded that 25% of votes cast in the Federal Capital Territory need not be met before a candidate can be declared winner of the Presidential election. (Grounds 8, 9, 10, 11 and 12)

In reaction to the three respondents' briefs aforesaid, the appellants deemed it rather expedient, to file three distinct reply briefs on 12/10/2023, respectively.

Having accorded critical, albeit very dispassionate, consideration upon the nature and circumstances surrounding the appeal, the eloquent submissions of the learned senior counsel contained in the respective briefs of argument thereof vis-à-vis the records of appeal as a whole. I am of the paramount view that the issues canvassed by the parties in their respective briefs are not at all mutually exclusive. Thus, it's my view, that the appellants' seven issues are germane to the grounds of the notice of appeal.

Accordingly, I hereby adopt them for the determination of the appeal, anon.

Issue No. I

The first issue, as copiously alluded here-to-fore, raises the very crucial question of whether or not the court below was right in refusing to hold, that the failure of the Is respondent to electronically transmit results from polling units nationwide for the collation of results of elections, introduced by the Electoral Act 2022 and specified in the Regulations and Guidelines for the Conduct of Elections, 2022 and the Manual for Election Officials 2023, does not amount to non-compliance which substantially affected the outcome of the election. The first issue is distilled from grounds 1, 2, 3, 4, 5, 6 and 7 of the notice of appeal.

The appellants' argument regarding the first issue has extensively been canvassed at pages 7 - 18 of the said brief. Interestingly, from the outset of the submission thereof, the appellants have urged upon the court to depart from its previous decisions regarding the manner of proof of non-compliance with the provisions of the Electoral Acts in election petitions; in the light of the novel provisions of the Electoral Act, 2022, thereby introducing section 137 of the Electoral Act, 2022 and paragraph 46(4) of the First Schedule thereto. Further submitted, that until the extant Electoral Act, 2022 was enacted, collation of results in Nigeria was carried out manually. After voting, figures were usually changed at collation level! However, under the extant Electoral Act, 2022, the introduction of the electronic collation system is to address these hydra-headed complaint of rigging of election at the point of collation. This was the mischief the Electoral Act, 2022 sought to cure, by the introduction of technology in the collation process. See exhibit PAE 2a.

In the main, the submission of the appellants, is to the effect that section 64(4) & (5) of the Electoral Act, 2022 made the use of the BVAS Machines mandatory for collation, verification and confirmation of results, before announcement. That, section 60(5) of the Electoral Act, 2022 gives effect to same. That, the INEC Regulations and Guidelines for the conduct of Election (exhibit PAEI) and INEC Manual for Election Officials (exhibit PAE2) are mandatory provisions for the results from the Polling Units to be transmitted real-time to the collation system and to the IReV. See paragraph 3k exhibit PAE 2; paragraph 60(5) Electoral Act, 2022; exhibits PAF 1 (a) - (c) and PAF 2 (a)-(2).

Reliance is placed on the evidence of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW24 and PW25, to the conclusive effect that the BAS of the polling units on the election day the non-transmission of results of the Presidential election electronically from the BVAS machines. Whereas, the results of the National Assembly held simultaneously, were electronically transmitted without difficulty.

Likewise, the PW26, (appellant's Forensic Expert) confirmed that there was nothing inherently or intrinsically wrong with the BVAS Machines, and that any failure to transmit electronically was man-made. Allegedly, the 1st respondent's sole witness (RW 1), admitted under cross-examination that the deployment of BVAS and IReV was to guarantee the transparency of the electoral process and the integrity of the results, but claimed that there was a technical glitch that made the system fail to work on the election day, which said technical glitch was not explained by the 1st respondent.

It was argued, that the burden of proof of the fact of verification and confirmation in compliance with section 64(4) of the Electoral Act, 2022 lies upon the 1» respondent, or shifted thereto given this special circumstance and its possession of peculiar knowledge of the said facts and of documents. See section 140 Evidence Act, 2011.

In the circumstances, the court is urged to so hold, and resolve the first issue in appellants' favour.

Contrariwise, the 1st respondent's submission relative to the issue No. 1 is contained at pages 6-17 of the brief thereof.

In a nutshell, it's submitted on the issue, that the conditions for the court to depart from or over-rule it's previous decisions, do not exist in this appeal. That, it's not contended that the previous decisions of this court were given per incuriam or erroneous in law, and that there is no radical change between the previous Electoral Acts and the current one to warrant a departure from the previous decisions of technology for accreditation has always become in-existence through card readers which has only been strengthened by the Electoral Act, 2022.

Allegedly, the uncontroverted evidence of 1st respondent's witnesses and borne out by appellants' witnesses (PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW 24 and PW25), is that, no such Electronic Collation System exists, contrary to the, appellants' arguments.

Further submitted, that the appellants failed to provide the originals or certified true copies of such documents that manifestly disclosed the alleged non-compliance. As the said documents were merely dumped before the court, neither do they disclose non-compliance as alleged. See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 a 325, paragraphs C - H& G - H.

Further argued to the conclusive effect, that there was absolutely no evidence from the appellants on the alleged corrupt practices. The court is urged to so hold, and resolve the issue in favour of the 1st respondent.

The 2nd respondent's issue No.1 is argued at pages 4-11 of the brief thereof. From the outset, the judgment of the trial Federal High Court in suit No. FHC/ABJ/CS/1454/2022; *Labour Party v. INEC* delivered on 23/01/2023 (exhibit XI) was alluded to by the 2nd respondent. Further submitted, that the trial Federal High Court had held in that case that INEC is only mandated to collate and transfer election results and number of accredited voters in a way and manner deemed fit by it in accordance with sections 50(2) and v 60(5) of the Electoral Act, 2022.

It's argued, that a similar case was filed at the trial Federal High Court Abuja - FHC/ABJ/CS/399/2011: *Labour Party v. INEC*, where the trial court, per Kolawole, J. (as then was) nullified section 14 of the Electoral Act, 2010.

Further argued, that the two judgments were not appealed by any of the parties thereof, and that in the case of *Wada v. Bello* (2016) 17 NWLR (Pt. 1542) 374 @ 433, the apex court invoked that decision and held, that even the Supreme Court was bound by that decision, until

its set aside on appeal. See *Rossek v. A.C.B. Ltd.* (1993) 8 NWLR (Pt. 312) 382 @ 434 - 435, *et al.*

It's postulated, to the conclusive effect, that for this court to hold in favour of a compulsory electronic transmission of results notwithstanding the express provision of the law, the appellants would have proved before the court below that there were incidents of "rigging" of elections at the point of collation. And this could only be done through the tendering of result sheets from the polling units which had inconsistent results with the collated results. This was not done, as the appellants did not tender the pink copies of the results given to their agents. Allegedly, it is not the appellants' case that the election was rigged while the results were 'airborne' or 'cloud bound'.

The court is urged to so hold, and resolve the issue I in favour of the 2nd respondent.

The 3rd respondent's issue I is argued at pages 5 - 8 of the said brief. In the main, its submitted that a close perusal of the appellants' petition would reveal that paragraphs 92, 95, 98, 121, 126, 129, 133, 143, 144 and 146 (pages 32 - 49 of volume I of the records of appeal) are allegations of non - compliance and corrupt practices. However, the appellants are in flagrant disobedience of the established principle, that such allegations must be made distinctly and proved on polling unit basis, otherwise the allegations would be struck out.

Further submitted, that ground (d) upon which the petition was based (paragraph 16 (d) of the petition) and the supposed fact in support, are both incompetent and court below rightly struck them out.

Therefore, the appellants' failure to supply the particulars foreclosed them from giving on them and the offending paragraphs were rightly struck out by the court below. See *Nwachukwu v. Eneogwe* (1999) 4 NWLR (Pt. 600) 629, *I.N.E.C. v. P.D.P.* (2012) 7 NWLR (Pt. 1300) 538 @ 564.

The court is urged to so hold and accordingly resolve the issue I in favour of the 3rd respondent.

The appellants have filed three separate reply briefs in reaction to the 1st, 2nd and 3rd respondents' respective briefs of arguments.

The appellants thereby urged upon the court to discountenance the respondents' argument, and accordingly resolve all the seven issues in favour thereof.

Essentially, the appellants' argument in the main, is that the results of the Presidential election (the subject of the instant appeal were not electronically transmitted to the IReV in real time in *simpliciter* not that it was not transmitted at all). That's to say, the 1st respondent had failed in its onerous duty to ensure that the presidential elections results inquestion were duly transmitted and collated electronically on the IReV. Thus, having failed or omitted to do this, automatically nullified the results of the election inquestion.

The findings of the court below regarding the issue at stake could be found at page 8192 (line 5-16 of volume 10 of the records of appeal:

> A community reading of the relevant provisions of the Electoral Act, 2022, the Regulations and Guidelines for the conduct of Elections 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 hard copies 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.

In my considered view, the foregoing findings of the court below are cogent, unassailable and duly supported by the pleadings, and evidence on record. By virtue of the provisions of section 135(1) of the Evidence Act, 2011, the burden of proving the allegation that the Presidential election must be invalidated merely because the election results were not electronically collated and transmitted lies squarely upon the appellant who so alleged. See section 135(1) of the Evidence Act, 2011 (supra):

> Whoever desires any court to give judgment as to any legal right or disability dependent on the evidence of facts he asserts must prove that those facts exist.

In the instant case, all the witnesses called by the appellants, most especially PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW22, PW23, PW24 and PW25, had admitted under cross examination, that not only did they conduct the accreditation process as required by law, but that the voting went on successfully, the votes cast were sorted and entered into the appropriate Forms EC8A, presiding officers duly signed the results along with the party agents, the results were announced at the respective polling units, party agents and police officers (on ad hoc duty) were given their copies, while the presiding officers submitted their respective copies to the ward collation centers in the company of party agents.

What's more, all the witnesses inquestion equally agreed that they had taken photographs of the election results with the BVAS, and that the offline transmission function was later activated. (See pages 7360, 7364, 7370 - 7377, 7422 - 7433 volume 101 of the records).

Remarkably, the 1st respondent's sole witness, the RW1 (a Deputy Director in ICT Department of the 1st respondent) reiterated the foregoing salient points, and equally identified the technological issues (challenges) surrounding the 1st respondents inability to electronically upload the election results to the IReV immediately.

See pages 7479 - 7482 of volume 10 of the records:

(RW1: Cross examination by Olanipekun, SAN)

> I am aware that Form EC8A from (sic) the basis for election results. For images of the Form in the BVAS required date services to be up loaded. The images uploaded or transmitted from the BVAS whether manually or electronically will not affect the integrity of the results. The election conducted by the 1st respondent was in substantial compliance with the provisions of the Electoral Act.
>
> (Cross examination by Fagbemi, SAN)
>
> The glitches experienced at on the day of the lection did not affect the actual scores of the candidates of the election as the results scored by each candidates remained intact.
>
> There was no electronic collation of results as the collation, was done manually" INEC does not have electronic collation system ... the cloud Trail log I mentioned was downloaded from INEC Aws account. It is used to monitor the activities of their customer in the Aws.
>
> (Cross examination by chief Uche, SAN)
>
> INEC was to guarantee the integrity and transparency of the results. It is true that the National Assembly Elections and the Presidential Election were

> conducted the same day and with the same BVAS machine. It is not true that on that day our system failed on the e-transmission system. Some of the results were not uploaded on the 01/03/2023 when the results were announced no all the results had been uploaded to the IReV ... there was technical glitch on the day of the election. I can tell offhead what the 2nd respondent' scored in FCT.

Regrettably, the appellants adduced no cogent evidence to establish that the election results collated at the Local Government Collation Centers were different from the results submitted from the respective Wards; or that the results collated at the respective State collation centers were different from the ones submitted from the respective Local Government collation centers; or that the results collated at the National Collation centers were different from the results submitted from the respective State Collation Centers.

As aptly stated by the court below (page 8192 volume 10 of the records), the Regulations and Guidelines and the INEC Manual have stipulated, to the effect that hard copies of election results shall be used for collation exercise. Thus, it's only when no such hardcopies of the election results are in existence, that electronically transmitted results or results from the IREV should be used to collate results. That's absolutely so, because by virtue of paragraph 91(1) of the Regulations, the Forms EC8A and EC 60E constitute the bed rock nay *"the building blocks for any collation of results."*

This much has been attested to by the appellants' star witness, the PW22 who admitted under cross-examination (at pages 7412-7413 of the record) thus:

> 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 EC 8A that is supposed to be transmitted to the IREV portal The Result in the Form EC8A is taken to the Ward Collation Center. The failure to transmit the result into the IREV portal will not change the result already recorded in the Form EC8A; 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.

As copiously alluded here-to-fore, the Is respondent, in the course of the trial of the petition, had a cause to testify vide its sole witness (RW1) regarding the operational challenges of temporal failure of communication between the e-transmission system vis-à-vis the IReV Portal for the Presidential election. This was due to the return of an HTTP 500 error by the e-transmission system. The statement on oath of Dr. Lawrence Bayode (RW1) is contained at pages 309-333 of volume I of the record of appeal.

According to the RW1, the 1st respondent's accreditation date and the polling results sheets generated with the BVAS, are all hosted in the cloud using the Amazon Web Service (AWS) cloud service. Which is recognized and patronised by corporations and governments worldwide for its security and reliability.

> The e-transmission system and the INEC result viewing (IReV) portal are designed to receive the images. captured from the BVAS device while the computer application on the IReV Portal is programmed to receive and sort the result sheets according to each election type conducted on the 25th February, 2023 i.e., House of Representatives, Senate and Presidential elections. See page 319 of the record.

The RW1 further stated, it was observed that while the result sheets were being successfully uploaded through the e-transmission system to the IReV portal regarding the Senatorial and House of Representatives elections to their respective modules, the e-transmission system was not processing and uploading the result sheets to the IReV portal in respect of the Presidential election. Allegedly, the system encountered "glitches and was extremely slow." Thus, necessitating the 1st respondent's technical personnel to mobilise along with the 1st respondent's vendors to investigate the cause of the glitches. According to the PW1 (pages 320 - 321 volume 1 of the record):

> The investigations by the 1st respondent's experts showed that the system was returning error codes specifically HTTP 500 error. HTTP (Hyper Text Transfer Protocol) 500 error is a coding massage which indicates that a computer or server has encountered an expected error which has prevented it from carrying out or fulfilling a specific request or executing a command.
>
> The 1st respondents' technical team took every step to restore the application to functionality including creation and deployment of patches and updates to resolve the glitches. The down time encountered on the application lasted 4 hours 50 minutes until it was resolved and the first Presidential election result was successfully up loaded at 8:55pm on the 25th February, 2023.
>
> The delay encountered in uploading the polling unit results through the e-transmission system was an unforeseen glitch which did not affect the outcome of the election as the polling unit results scanned using the BVAS device were all uploaded to the IReV once jai the functionality was restored. Besides agents of the political parties at the polling unit and the collation centers had hither to been issue duplicate copies of the polling unit election results sheets manually used for collation."

Thus, exhibit RAS, the AWS cloud trail logs on the 1st respondent's e-Transmission system/IReV Portal was tendered vide the RW1 in proof thereof.

In the instant case, its obvious that the appellants have failed in the course of the trial to creditably prove, that there were incidents of rigging the election at the point of collation (of the results). As aptly postulated by the respondents, proof of rigging of election could only have been done vide the tendering of election result sheets from the polling units which inconsistent results with the collated results.

In the circumstances, the issue I ought to be and same is hereby resolved against the appellants.

Issue No. 2

The second issue raises the very vexed question of whether or not the court below was right in its interpretation of the provisions of section 134(2)(b) and 299 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), in holding that securing one quarter of the total votes cast in the Federal Capital Territory, Abuja is not a constitutional requirement for the return of the 2nd respondent as duly elected President of Nigeria. The second issue is predicated upon grounds 8, 9, 10, 11 and 12 of the notice of appeal.

The 2nd issue is canvassed at pages 18-23 of the appellants' brief. In a nutshell, it's submitted without much ado, that the court below was wrong in its interpretation of section 134(2)(3) of the Electoral Act, 2023 and application of section 299 of the 1999 Constitution (as amended).

Further submitted, that there are two words and scenarios in section 134(2) of the Constitution, which are conjunctive and not disjunctive. That's (a) the candidate must have the highest number of voters cast at the election in each of at least two-thirds of all States of the Federation and the Federal Capital Territory, Abuja.

It's argued, that the provisions of section 134(2) of the Constitution (supra) are clear and unambiguous, thus a literal and ordinary construction would define the intention of the framers of the Constitution. The special status of Abuja in the architecture and composition of the Federation of Nigeria cannot be disputed. See sections 2(2), 3(1), 134(2) of the 1999 Constitution (which is in *pari materia* with section 34(2)(c)(ii) of the Electoral Decree, 1977); *Ojokolobo v. Alamo* (1987) 3 NWLR (Pt.61) 377, *et al.*

Further argued, that the Federal Capital Territory (FCT) is not a State: section 299 of the 1999 Constitution; *Buhari v. Yusuf* (2003) LPELR 812 (SC) @ 20 paragraphs B; (2003) 14 NWLR (Pt. 841) 446; *Obi v. INEC* (2007) LPELR-24347 (SC) @ 126 paragraphs D; (2007) 11 NWLR (Pt. 1046) 565.

In the circumstances, the court is urged to so hold, and resolve the second issue in favour of the appellants.

Contrariwise, the respondents equally submitted that wording of the provisions of sections 134 and 299 of the 1999 Constitution (supra) are very clear. That while section 3(1) of the Constitution (supra) lists the 36 of the States of the Federation, the side nots there to reads "States of the Federation and the Federal Capital Territory, Abuja."

Further submitted, that by virtue of section 299 of the Constitution, the FCT Abuja should be considered "as if it were one of the States of the Federation". See *Corpus Juris Secondus* @ 298. Thus, the court is urged upon to adopt the purposeful approach to interpretation of the Constitution. See *Nafiu Rabiu v. The State* (1980) 12 NSCC 291 @ 300-301; 1980) 8 - 11 SC 130; *Awolowo v. Shagari* (supra); *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1 (SC) per Uwais, CJN).

Instructively, the court in discountenancing the appellants' contention on this issue stated (at pages 8234-8235 of volume 10 of the records):

> "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 can be implied or inferable from section 134(2)(b) of the Constitution ...
>
> It is also my considered view that if the framers had wanted to make the scoring of one-quarter of votes cast in the Federal Capital Territory a specific requirement for the return of a Presidential candidate, they would have made that intention plan 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 purpose of fulfilling the requirements of section 134(2)(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 State 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 as duly elected under section 134 of the Constitution. In consequence, issue 4 (sic) is also resolved against the petitioners and in favour of the respondents.

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 pre-condition For a candidate deemed as duly elected leader section 134 of the Constitution. In consequence, issue 4 is also resolved against the petitioners and in favour of the respondents."

Invariably, the provisions of the controversial section 134(1) of the 1999 Constitution (as amended) are to the effect:

"134(1)A candidate for an election to the office of President shall be deemed to have been duly elected where, there being only two candidates for the election –

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

(b) he has not less than at least two-thirds of all the States and the Federal Capital Territory, Abuja.

(3) 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 numbers of votes cast at the elections and each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

(3) In default of a candidate duly elected in accordance with sub-section (2) of this section, there shall be a second election in accordance with subsection (4) of this, section at which the only candidates shall be –

(a) the candidate who scored the highest number of votes any election held in accordance with the said subsection (2) of this section; and

(b) one among the remaining candidates who has a majority of votes in the highest number of States so however that where there are more than one candidate with a majority of votes in the highest number of States, the candidate among them with the highest total number of votes cast at the election shall be the second candidate for the election.

(4) In default of a candidate duly elected under the foregoing subsections the Independent National Electoral Commission shall within 7 days of the result of the election hold under the said subsections, arrange for an election between the two candidates and a candidate at such election shall be deemed to have been duly elected to the office of President if:

(a) he has a majority of the 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 un the Federation and the Federal Capital Territory, Abuja.

(5) In default of a candidate duly elected under subsection (4) of this section, the Independent National Electoral Commission shall within 7 days of the result of the election held under the aforesaid subsection (4) arriving for another election between the two candidates to which the subsection relates and a candidate at such election shall be deemed to have been duly elected to the office of the President if he has a majority of the election."

It is trite, that by a notice published on August 9, 1975, the erstwhile Federal Military Government of Nigeria appointed a 7-Man Panel to study the question of the Federal Capital of Nigeria.

The terms of reference of the committee were as follows:

(i) to examine the dual role of Lagos as Federal and State Capital, and advice on the desirability or otherwise of Lagos retaining that role.
(ii) in the event of committee finding that Lagos is unsuitable for such a role to recommend which of the two Governments (Federal or State) should to a new capital.
(iii) in the event of the committee finding that the Federal Capital should move out of Lagos to recommend, suitable alternative locations having regard the need for easy accessibility to and from every part of the Federation.
(iv) to examine all other relevant factors which will assist the Federal Military Government in arriving at the right decision.
(v) to submit its recommendations to the Federal Military Government not later than the 31st of December, 1975.

It's equally trite, that consequent upon a careful study of the Federal Capital of Nigeria, the committee reached unanimous conclusions and submitted its report to the Federal Military Government on December 10, 1975, to the conclusive effect:

The New Federal Capital

9.35 After careful consideration of all the possible locations for the Federal Capital in the light of the criteria we have mentioned above, and giving each criterion the rating indicated we have recommended a particular area to be declared as the Capital Territory. The area is as carefully set out at paragraphs 7.6 to 8 of chapter making use of the resources available to us.

See also Appendices V and VI which show the area recommended.

In essence, the aggregate of the area so recommended by the committee turned out to be the present Federal Capital Territory, Abuja!

As copiously reproduced here-to-fore, the provisions of section 134 of the 1999 Constitution have to do with the election criteria of President of the Federation where there are two or more presidential candidates. While section 3(1) of the Constitution specifically deals with the lists of the 36 States of the Federation vis-à-vis the Federal Capital Territory. The section 299 of the Constitution invariably provides:

"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 courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja.
(b) All powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and
(c) The provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this Constitution."

Interestingly, by the side note to section 3(1) of the 1999 (regarding the names of the 36 States of the Federation), the Federal Capital Territory, Abuja shall be reckoned with as the 37th State of, the Federation. For the avoidance of any lingering doubt, the side note to section 3(1) of 1999 Constitution (supra) provides:

"States of the Federation and the Federal Capital Territory, Abuja."

The term side note denotes an explanatory note, a note at the side of a statutory provision or text. Literally, a side note is a marginal note in a text, that's to say a secondary or supplementary note to the main text or section of a statute.

It is a settled doctrine, that although side notes (explanatory notes) to statutes are generally not considered as veritable aids to interpretation of statutes, nevertheless, it's permissible for the courts to regard the general purpose and mischief at which the statute is aimed; bearing in mind the side (explanatory) note in question. See *Chandler v. A.P.P.* (1964) AC 763 @ 789 per Lord Reid; *Stephen v. Cruckhel Rural District Council* (1960) 2 QB 373 @ 383 Per UpJohn LJ; *Uwaifo v. A. -G., Bendel State* (1982) NSCC 221 per Idigbe, JSC @ 242; (1983) 4 NCLR 1. Rupert Cross: Statutory Interpretation, 1st Edition (1981) e-print @ 113; *Patrick Fernandez v. F.R.C.N.*: CA/L/692/2011, judgment delivered on 02/07/2013 per Saulawa, JCA (as then was) @ 43.

As copiously alluded to above, section 299 of the Constitution provides thus:

"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 …."

Thus, the phrase – *"as if it were one of the States"*, as couched in section 299 of the 1999 Constitution (supra) denotes "in the same and same extent as other States of the Federation". See Corpus Juris Secundum, a veritable Encyclopedia collection of Laws, 2021, Edition. In my considered view, the provisions of sections 3(1) and 299 of the 1999 Constitution (supra) are to the combined effect that the Federal Capital Territory, Abuja ought to be regarded as if it constitutes the 37th State of the Federation in relation to section 134(2) of the Constitution. That, in my considered view, is the most logical and purposeful interpretation that should be accorded to the provisions in question. See *Nafiu Rabiu v. State* (1980) 12 NSC 291 @ 300-301; (1980) 8 - 11 SC 130; *Awolowo v. Shagari* (1979); *Adesanya v. President, F.R.N.* (1981) 12 NSCC 146 @ 167. 168 paragraphs A-G; (1981) 2 NCLR 358; *A.-G., Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt. 763) 264 @ 365; *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1 @ 105.

The crucial question regarding the proper interpretation of section 134(1)(2)(b) of 1999 Constitution (supra) was amply dealt with by this court in a number of cases, including *Buhari v. Obasanjo* (supra), wherein it was aptly reiterated:

> "It is settled law that where the wordings of a statute are clear and unambiguous, the court must give them their plain and ordinary meaning... in my view, the words of section 134 (2)(b) of the 1999 Constitution are clear, precise and unambiguous. The invalidation of election in any number of States does not effect the basis of the calculation in the Federation and the Federal Capital Territory, Abuja. The contention of the learned senior counsel for the appellants to the contrary is with respect erroneous."
>
> Per Uwais, on @ 270 paragraphs D-B.

Most certainly, I cannot agree more with the foregoing apt finding and proposition of law by this court. In my considered opinion, the provisions of section 134(1) & (2)(b) of the 1999 Constitution (supra) are precise, clear and unambiguous, thus they ought to be accorded the literal interpretation they deserve. Otherwise, it would lead to absurdity and sheer injustice to nullify the entire election in the Country or nullify the declaration and return of the 2nd Respondent on the erroneous basis that he did not score the one quarter of the total votes cast

in the Federal Capital Territory (FCT), Abuja. See Buhari v. Obasanjo (supra) per Uwais, CJN @ 270 paragraphs D-B.

In the circumstances, the issue 2 ought to be, and same is resolved against the appellants.

Issue no 3

The third issue raises the question of whether or not the court below was in error to have expunged the appellants' witnesses statements on oath (PW12 - PW18, PW24 - PW27 and the exhibits tendered), on the ground that the said witnesses' statements on oath were not filed along with the petition, and that Order 3 rules 2 & 3 of the Federal High Court (Civil Procedure) Rules, 2019 are not applicable in election matters. The issue 3 is distilled from grounds 13, 14, 15 and 16 of the notice of appeal and argued at pages 23-29 of the said brief.

The appellants have pleaded in paragraphs 19-70 of the petition, that the 1st respondent and its agents had failed to transmit the polling unit results from the different polling units across the country to both the collation system of the 1st respondent and the IReV Portal for public viewing. The alleged failure to do so slams against the specific provisions of the Electoral Act, election officials, including its chairman.

It was submitted by the appellants, that the subpoenaed witnesses would not avail the petitioners with their written statements at the presentation of the petition. Thus, paragraph 4(5) (b) of the First Schedule to the Electoral Act, 2022, cannot govern issues relating to such witnesses. To allow such, would automatically shut the door of the court against the genuine grievances of the appellants in their case. That, due to the wrong in the paragraph 4(5)(b) of the First Schedule of the Electoral Act 2022, a resort is had to paragraph 5 of the First Schedule (supra) to place reliance on Order 3 rules 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019:

> 2. Where a statement on oath of the witness requires a subpoena from court, it need not be filed at the commencement of the suit.
> 3. A witness who requires a subpoena or summons shall at the instance of the party calling them, be served with, Civil Form 1(a) in Appendix 6 to these Rules before the filing of the statement of such witness.

The court below, however, rejected the applicability of the above provisions of Order 3 rules 2 and 3 of the Federal High Court Civil Procedure) Rules, 2019 (supra), and thereby relied upon the decisions of the apex court in *Ararume v. INEC*; *Oke v. Mimiko* (2013) LPELR - 20645 (SC); (No.1) (2014) 1 NWLR (Pt. 1388) 225; *Ogba v. Vincent* (supra).

The appellants' petition is composed of a total of 150 paragraphs, out of which paragraphs 23, 82 - 86, 88 - 92, 95, 98, 121, 124, 129, 133, 135, 136, 143, 144 and 146 allegedly left more to be desired, with the material vagueness and impression inherent therein.

It's trite, that the essence of pleadings is to compel the respective parties to accurately and precisely state the issues upon which the case ought to be contested, thereby avoiding any event of surprise by either party. Thus, parties are precluded from adducing evidence which goes outside the facts pleaded. Once the rules of pleadings are breached upon, the proceedings cannot be seen to be free and fair within the imperative contemplation of section 36(1) of the 1999 Constitution, which provides:

> "36(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hear within a reasonable time by a court or other tribunal

> established by law and constituted in such manner as to secure its independence and impartiality."

See *Ugbodume v. Abiegbe* (1991) 8 NWLR (Pt. 209) 261 @ 272, wherein this court aptly stated:

> "With very great respect to the learned counsel to the respondent, ha has missed the essence of pleadings; to compel the parties to define accurately and precisely the issues upon which the case is to be contested to avoid element of surprise by either party: not to adduce evidence which goes outside the fact pleaded ... Once the rules of pleadings are infringed or brushed aside, the trial cannot be free and fair, consequently there will be no fair hearing. It is also for this that reliance must not be placed on facts not pleaded.
> Per Olatawura, JSC @ 16 paragraphs B-A. See also *Total Nig. Ltd. v. Nwankwo* (1978) 5 SC 1; *Emegokwue v. Okadigbo* (1973) 4 SC 113; *Orizu v. Anyegbunam* (1978) 5 SC 21.

A critical, albeit dispassionate, consideration of the paragraphs of the petition would reveal, that the appellants, (as petitioners) were to say the least, not diligent enough in presenting their case at the court below. As aptly posited by the respondents, the said paragraphs of the petition were clearly couched to overreach the respondents. The appellants' brief of argument (paragraph 6.45) further exposes the appellants' overreaching' attitudinal disposition to the petition at the court below and even up to the point of appeal before this court. In the instant case, by the respondents' preliminary objections, the appellants had been put on notice regarding the defect inherent in their petition. Thus, where the petitioners' pleadings are insufficient, or grossly devoid of basic particulars, as in the instant case, such a petition is liable to be dismissed by the court. The failure by the appellants to provide specific particulars of polling units, wards, or local governments where malpractices allegedly occurred in the States, and the failure to provide such basic particulars on allegations of commission of crime were bound to have taken the respondents by surprise.

In the circumstances, the issue 3 ought to be and same is hereby resolved against the appellants.

Issue No. 4

The fourth issue raises the question of whether or not the court below was in error in reviewing the evidence of PW3, PW5, PW7 and PW22 classifying them as inadmissible hearsay evidence and discounting the various exhibits tendered by the appellants. The issue 4 is distilled from grounds 25, 27, 28 and 29 of the notice of appeal and canvassed at pages 29-32 of the said appellants brief.

In the main, it's submitted that the court below demonstrated a complete misunderstanding of the case put across by the appellants in their petition. Particularly, paragraphs 19, 20, 21, 22, 24, 25, 26, 27,28, 29, 30, 31, 32, 33, 34, 37, 38, 43 and 49 of the petition were allegedly specific on the mandatoriness of electronic transmission of results to the collation system and IReV Portal.

Further submitted that the thrust of the appellants' case was circumscribed by the manner of electronic transmission of result collation, and the mandatory requirement of verification and confirmation of the election results before declaration. As such, the court below was manifestly in error, when it held that the evidence of PW1, PW2, PW3, PW5, PW7 and P22 amount to inadmissible hearsay and should be discountenanced. However, the court is

urged upon to hold that the evidence of the said witnesses were not hearsay, and ought not to have been expunged by the court below.

See section 137 of the Electoral Act, 2022; *F.R.N. v. Mohammed Usman* (Alias Yaro-Yaro) (2012) LPELR - 7818 (SC) @ 17-20 paragraphs E-F; (2012) 8 NWLR (Pt. 1301) 141.

Contrariwise, the respondents submitted, inter alia, that the decision of the court below, thereby striking out the witness statements on oath of PW12 - PW18, PW21, PW23 - PW27 and also expunging their evidence, is absolutely unassailable, and in conformity with the laid down principles on the subject.

Instructively, this issue touches on the trite doctrine of *audi alteram partem* (hear the other party) the very basis of the fundamental right to fair hearing cherishingly enshrined in section 36(1) of the 1999 Constitution (as amended) (supra). The provision of section 285(12) of the Constitution (supra) prescribes the time limit for filing of election petition to be strictly within 21 days after the declaration of results of election. What's more, paragraph 4 of the First Schedule to the Electoral Act, 2022 (supra) provides for the contents of election petition, viz:

"4(1) An election petition under this Act shall –
- (a) specify the parties interested in the election petition.
- (b) specify the right of the petitioner to present the election petition.
- (c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and
- (d) state clearly the facts of the election petition and the grounds on which the petition is based and the relief sought by the petitioner.

(2) The election petition shall be divided into paragraph's each of which shall be confined to a distinct issue or major facts of the election petition and every paragraph shall be numbered "Consecutively.

(3) The election petition shall: -
- (a) conclude with a prayer or prayers as for instance, that the petitioner, or one of the petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast at the election or that the election may be declared nullified as the case maybe; and
- (b) be sign by the petitioner, or all petitioners or by the solicitor if any named at the foot of the election petition.

(4) At the foot of the lection petition there shall also be stated an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier.

(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."

Further Particulars

> 5 Evidence need not to be stated in the election petition, but the tribunal or court may order such further particular/particulars as may be necessary:
> (a) to prevent surprise and unnecessary expense;
> (b) to ensure fair and proper hearing in the same way as in a civil action in the Federal High Court and
> (c) on such terms as to costs or otherwise as may be ordered by the tribunal or court."

Now, as copiously alluded to above, by virtue of section 285 (12) of the 1999 Constitution (supra), the time within which the election petition ought to be filed was limited to only 21 days after the declaration of results. Paragraph 4(5)(a) and (b) of the First Schedule to the Electoral Act, 2022 equally provides that for the petition to be competent, the same must be accompanied by a list of witnesses that the petitioner intends to call in proof of the petition and written statements on oath of the said witnesses. The essence of these requirements is to accord the respondents foreknowledge of the nature and circumstances surrounding the case against them, there by affording them an ample opportunity to put up appropriate defence to the petition by way of a reply. Thus, failure to file a list of witnesses and written statements on oath of the witnesses along with the petition, would render the petition incompetent and liable to be struck out; as the tribunal or court would be devoid of jurisdiction to entertain same. See *Gundiri v. Nyako* (2014) 2 NWLR (Pt. 1391) 211 @ 242, *Ararume v. INEC* (2019) LPELR - 48397 @ 33; *P.D.P. v. Okogbuo* (2019) LPELR - 489989 @22 - 28.

In the instant case, there's every urgent reason to believe that the witnesses inquestion were available to the appellants as at the material time of filing the petition. As a matter of fact, it's evident on the record that the PW21 was a member of the appellants' Situation Room during the election process. And that exhibits PAH1 - PAH4 tendered vide by the p 21 were indeed compiled between March 1-20, 2023 while the petition was filed on March 21, 2023. As admitted by the PW19 under cross examination:

> "I know Samuel Oduntan he was in our situation room.
> I know that the polling unit is the primary Source of votes cast in the election. It is in the units that Forms EC 8As are issued."

See page 7387 of volume 10 of the records. The PW21 (Samuel Oduntan) himself corroborates the testimony of the PW19 aforesaid, thus:

> I am aware that the PDP won the election in Adamawa by my report we are not satisfied by the votes returned by INEC in Adamawa State including the votes scored by the 1st petitioners.
> 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 PAH 2.

See page 7403 of volume 10 of the records.

In the light of the foregoing obvious evidence, there's every cogent reason for me to uphold the 2nd respondents' view point, to the conclusive effect that:

> It was very obvious that the appellants, as petitioners before the lower court, deliberately chose to hoard the statements of these witnesses in order to cause a surprise on the respondents, thus turning all exercise as serious as litigation to a hide and seek about. They then attempted to circumvent the mandatory provisions of section 285 (5) of the constitution and paragraph 4(5) of the First Schedule to the Electoral Act by cloaking the witnesses in the garb of subpoenaed.

Undoubtedly, the foregoing submission is cogent, unassailable, and duly credited by the pleadings and evidence on record. And I so hold.

In the circumstances, the issue 4 ought to be, and same is hereby resolved against the appellants.

Issue No. 5

The fifth issue raises the very vexed question of whether or not the court below was in error, when it struck out several paragraphs of the petition and the replies of the appellants, on the grounds of vagueness, lack of specificity, for being new issues, mere denials or repetitive, respectively. The issue 5 is distilled from grounds 17, 18, 19,20, 21, 22, 23, 24 and 31 of the notice of appeal:

The issue 5 is argued at pages 32 - 34 of the said appellants'® brief, to the effect that the court below was in error in labelling the, said paragraphs of the petition as vague, imprecise, and lacking in particulars. Further submitted, that the appellants fully complied with the provisions of paragraph 4(1)(b) of the first schedule of the Electoral Act, 2022.

According to the appellants, exhibits "PBD1, PBD1(A), PBD1 (B), PBD1(C), PBE1, PBE2, PBE, PBE, PBES, and PBE6 and those documents are in support of the non-qualification, including the academic records of the 2nd respondent from the Chicago State University. The court is urged to accordingly restore those paragraphs struck out, as well as the exhibits tendered in support of the pleadings.

In the circumstances, the court is urged to resolve 5 in favour of the appellants.

Contrariwise, the respondents submitted to the conclusive effect, that the court below was absolutely correct in its decision to strike out the appellants' itemised paragraphs of the pleadings, and the documents tendered before it. The reason being, that evidence without pleadings goes to naught. See *Dabo v. Abdullahi* (2005) 7 NWLR (Pt. 923) 181 @ 207; *Adenle v. Olude* (2002) 18 NWLR (Pt. 799) 413 @434.

The court is urged to so hold and resolve issue 5 against the appellants.

In the instant case, the court below deemed it expedient in its wisdom to strike out the said itemised paragraphs of the appellants' pleadings as well as the statements on oath of the subpoenaed witnesses derived therefrom. The documents concerned relate to exhibits PAH1, PAH2, PAH3, and PAH4 (tendered through the PW21) and exhibits PAR1 (A - F) tendered through the PW26, respectively. The appellants' pleadings and the evidence of the subpoenaed witnesses were struck out by the court below, on the ground that they were in violation of the provisions of section 83 (3) of the Evidence Act, same having been given by a party interested during the pendency or in anticipation of litigation

As copiously alluded under the issue 4, it was in evidence, that the PW 19 has admitted that the documents inquestion had been made while the proceedings were anticipated i.e., from March 1 - 20, 2023) before the petition was filed on March 21, 2023. And that the PW 21, the maker of the statement was right there with them at the 2nd appellants' Situation Room, while the Presidential election was in progress. See page 7387 of volume 10 of the records:

> PW19: I know Samuel P-61A Oduntan (PW 21). 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.

The PW21 (Samuel Oduntan) corroborated the evidence of the PW19 (page 7403 of volume 10 of the records):

> I am aware that PDP won the election in Adamawa State - By my report, we are all satisfied by the votes returned by INEC in Adamawa State including the

> votes scored by the 1st petitioner ... I was in the situation room of the PDP on the day of the elections. I have seen, the Report for Kano State in exhibits PAH2:

What's more, the PW21 himself keenly admitted under cross examination, that he was handsomely rewarded for the production of the report by the appellants. *See page 7400 of volume 109 of the record. The court below was therefore right in its decision, that the PW 21 was "the person interested" in accordance with section 83 (3) of the Evidence Act (supra). See Oyetola v. INEC (2023) 11 NWLR (Pt. 1894) 125 @ 176.*

The PW26 was equally engaged by the appellants for the purpose of procuring the reports he produced, which were delivered during the pendency of the petition at the court below. Thus, those witnesses were not only interested in the outcome of the litigation, but the documents were equally produced during the pendency of the action. See *Oyetola v. INEC* (supra), *Ladoja v. Ajumobi* (supra) @ 170; *Holton v. Holton* (1946) 2 AER 534 @ 535, *et al.*

In the circumstances, the issue 5 ought to be, and same is hereby resolved against the appellants.

Issue No. 6

The sixth issue raises the question of whether or not the court below was in error in its evaluation of the appellants' witnesses on the burden of proof and clear admission against interest made by the 1st respondent. The sixth issue is distilled from grounds 26, 30, 32, 33 and 35 of the notice of appeal and argued at pages 34 - 36 of the appellants' brief.

It's submitted in the main, that the court below came to an erroneous conclusion that the testimonies of the witnesses of the appellants were to the effect that the election went well (pages 8-27 of volume 10 of the records). That, the said erroneous conclusion was informed by the non-consideration of the appellants' pleadings (paragraphs 17-70 of the petition, pages 8 - 27 of volume I of the records).

It was argued, that there was no admission on the part of the appellants' witnesses, that "the election went well". The court is urged to resolve issue 6 in favour of the appellants.

Contrariwise, the respondents submitted on the issue to the effect, that the court below rightly held that the appellants failed to prove their allegation of non-compliance and corrupt practices as required by law. The court is urged to resolve issue 6 against the appellants.

In the instant case, the appellants' witnesses most especially PW12, PW13, PW14, PW15, PW16, PW17, PW18 and PW23, have admitted that the election was primarily concluded at the polling unit level, when after the presiding officer had sorted the ballots in the full glare of the party agents and the public, counted the votes, announced the results to the hearing of everyone present, recorded the scores of each party in Form EC8A, signed one himself and called on the agents as well as the security officer present to sign Form EC 8A forms: the very basis and foundation of election results. See *Agagu v. Mimiko* (2009) 7 NWLR (Pt. 1140) 342 @ 488; *Ukpo v. Imoke* (2009) 1 NWLR (Pt. 1121) 90 @ 168.

What's more, paragraph 91(1) of the Regulations and Guidelines for the Conduct of Elections, 2022 duly provides that:

> "Voting takes place at polling units. Therefore, Forms EC 8A and EC 60E are the building blocks for any collation of results."

The evidence of the aforesaid PW12, PW13, PW14, PW15, PW16, PW17, PW18 and PW23 is instructive, in that they are ad idem in their testimonies under the crucible cross examination, that the voting and counting went well, and that the Forms EC 8A were duly signed by the presiding officers and the party agents present.

Thus, the evidence of the said witnesses is tantamount to an admission against the interest of the appellant, and accordingly binding thereupon. See *Nwabuba v. Enenwuo* (1988) SCNJ 154 @ 286-287; (reported as *Nwawuba v. Enemuo* (1988) 2 NWLR (Pt.78) 581), *Adegboye v. Ajiboye* (1987) 3 NWLR (Pt. 61) 432 @ 444, *Ojukwu v. Onwudinwe* (1984) 1 SCNLR 284.

Pertaining to the appellants' allegation of non-compliance, the law is trite, that the election shall not be liable to be invalidated by the mere allegation of non-compliance with the electoral Act, if it appears to the court or tribunal that the election was conducted substantially in accordance with Electoral Act, 2022 and that the non-compliance does not substantially affect the result of the election. See section 135(1) of the Electoral Act, 2022:

Undoubtedly, the word "shall" as couched in the phrase – "shall not be liable to be invalidated" in section 135 (1) of the Electoral Act, 2022, denotes mandatory; imperative; obligatory; that which is required by law. The term mandatory equally denotes relating to, or constituting a command, required; peremptory. According to Campbell:

> "A provision in a statute is said to be mandatory when disobedience to it, or want of exact compliance with it will made the act done under the statute absolutely void"

See: Henry Campbell Black: Handbook on the Constitution and Interpretation of the Laws (1896) @ 334. Copiously alluded, thereto @ 1151 Black's Law Dictionary, 11th Edition, 2019; *Ugwu v. Ararume* (2007) 12 NWLR (Pt. 1048) 365 @ 441 - 442; *Onochie v. Odogwu* (2006) 6 NWLR (Pt. 975) 65 @ 89.

It's a fundamental doctrine of interpretation, that statute must be construed literally, where the words contained therein are apparently clear and unambiguous. Thus, words in a-statute should be accorded their ordinary and literal meaning, where they so appear to be clear and unambiguous. See *N.B.N. Ltd. v. Opeola* (1994) 1 NWLR (Pt. 319) 126; *Akinfosile v. Ljose* (1960) SCNLR 447; *Macaulay v. R.Z.B. Austria* (2003) 18 NWLR (Pt. 852) 286.

In the circumstances, the issue 6 ought to be, and same is hereby resolved against the appellants.

Issue No. 7

The issue 7 raises the vexed question of whether or not the court below was right, in its use of disparaging words against the appellants, in its judgment evincing hostile and bias against the appellants' there by violating their right to fair hearing and occasioning grave miscarriage of justice. The issue is predicated upon ground 34 of the notice of appeal, and canvassed at pages 36 - 38 of the appellants' brief.

In the main, the appellants' grouse is essentially regarding the choice of words and expressions by the court below in the vexed judgment, thereby demonstrating contempt and disdain for the appellants nay the counsel thereof. Allegedly, the court below failed to use modest, moderate and temperate language in line with the Revised Code for Judicial officers promulgated by the National Judicial Council. Thus, the words were used to demonise the appellants, counsel and the case thereof. See Ashiru v. INEC (2020) 16 NWLR (Pt. 1751) 416 @ 436 paragraph F; *Lateef O. Fagbemi, SAN v. A.P.C*. (2023) LPELR - 61089 (CA).

It's contended, that the use of the words inquestion has substantially affected the lower court's consideration of the appellants' case, resulting in peremptorily striking out the pleadings of witnesses' statements on oath, exhibits, thereby occasioning a grave miscarriage of justice thereto.

The court is urged to so hold, and resolve the issue 7 in favour of the appellants.

Conclusively, the court is urged upon to allow the appeal and grant the reliefs sought by the appellants.

Contrariwise, the respondents submit on issue 7, that the words used by the court in the judgment were not aimed at the character or personality of the appellants, or the counsel thereof. And that the words and expressions inquestion had no impact whatsoever on the judgment of the court below. See *Ajide v. Kelani* (1985) 3 NWLR (Pt. 12) 248 @ 269.

The court is urged to so hold, and resolve issue 7 against the appellant.

Conclusively, the court is urged upon to accordingly dismiss the appeal.

Undoubtedly the extant issue touches on allegation of bias levelled against the court below.

Invariably, the term bias is a mental inclination or tendency; prejudice towards one or more of the parties to a case, over which the judge presides. See Black's Law Dictionary (supra) @ 198.

An allegation of bias against a judicial officer is not merely as a matter of course! Indeed, an allegation of bias, or likelihood of bias, against a judge is usually a very serious matter which must not be taken lightly. It must be supported by clear, cogent, direct and unequivocal evidence from which real likelihood of bias could be inferred as against mere suspicion. See *Nwalatu v. Anibire* (2010)10 NWLR (Pt. 1203) 545 per Adekeye, JSC @ 32 paragraphs A-G; *Abalaka v. Akinsete* (2023) 13 NWLR (Pt. 1901) 343 @ 377; *Osuji v. Ogualaji* (2020) 9 NWLR (Pt. 1728) 134 @ 145.

Instructively, the case of *W.R. v. Camberne Justices* (1955) 1 QB 41 is often cited as a veritable locus classicus on the subject bias. Indeed, it was in that case Slade, J. reiterated the doctrine in these words:

> [T]hat to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of bias must be (other than pecuniary or proprietary) in the subject a real likelihood of bias must be shown. This court is further of opinion that a real likelihood of bias must be made to appear not only from the materials in fact ascertaining, but from such facts as he might readily have ascertained and easily verified in the course, of his inquiries.

See also *The Secretary, Iwo Central L.G. v. Talatu Adio* (2000) LPELR-32101 (SC); (2000) 8 NWLR (Pt. 661) 115, Per Ogundare, JSC @ 26-21 paragraphs G-B; *Obadara v. The President West District Grade B Customary Court* (1964) ANLR 331 @ 339.

The term likelihood of bias denotes a substantial possibility of bias. Essentially, the test applied is based on the perception of a reasonable man who is knowledgeable of the facts and circumstances, and not that of a capricious and unreasonable man. In Obadara v. The President, Ibadan West, District Grade B customary Court (supra) Brett. Ag. CJN, aptly laid down the principle:

> The principle that a Judge must be impartial is accepted in the jurisprudence of any civilized country and there are no grounds for holding that in this respect the law of Nigeria differs from the law of England or for hesitating to follow the English decisions. The English decisions were reviewed by the divisional court of in *Regina v. Camberne Justice* (1955) 1 QB 41, and we would adopt the following passage from page of the judgment as setting out the law to be applied in Nigeria.

In the instant case, the appellants' grouse under the extant issue, is that the court below used certain expressions to wit:

(i) Indecorous;
(ii) Dishonourable practice;
(iii) Clever by half
(iv) fallacious;
(v) Foul play;
(vi) Smuggle;
(vii) Cross the line of misconception;
(viii) Correct evidence from the market;
(ix) Those who are not used to reading preambles;
(x) Those who should know better and
(xi) Hollowness in the argument of the petition.

Allegedly, the choice of words and expressions in question demonstrates the court's contempt and disdain for the appellants and counsel. What's more, the court below: -

> Regrettably failed to use modest, moderate and temperate language in line with the Revised Code for Judicial officers of the Federal Republic of Nigeria promulgated by National Council. The words were used to demonise the appellants, their counsel and their case.

First and foremost, the adjective "completely fallacious", featured under issue 2 at pages 8224-8225 of volume 10 of the records. Those adjuctives were employed in the context of the determination of the appellants' claim that the 25% of the total votes cast in the FCT is a condition precedent for scaling the hurdle of being elected as President of the Federal Republic of Nigeria by virtue of section 134(2)(b) of 1999 Constitution (supra). It was in context that the court below was constrained to describe such claim thus:

> In finding appropriate answers to this issue, I wish to observed, First, 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 he has not less than 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 Territory, Abuja" is completely fallacious if not out rightly indecorous. Even their recourse to the case of *Abubakar v. Yar'adua* (2008) 19 NWLR (Pt. 1120) 7, does not help their argument because Tobi, JSC made it clear a purposive rule of interpretation will not be appropriate where the intention of the law maker is clear, precise and unequivocal, so much so that a person can say "Yes this is what the lawmaker has in mind".

Secondly, the expression "foul play" arose from the court's bewilderment by appellants' contention in respect of the 2nd respondent's alleged certificate forgery, fine, et al. According to the court below (pages 8064 - 8065 of volume 10 of the records):

> 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/forgery of documents and dual citizenship. That is foul play which paragraph (a) to the First Schedule of the Electoral Act, 2022 expressly prohibits.

By virtue of paragraph 16(1)(a) of the First Schedule to the Electoral Act, 2022, respondent to a petition is entitled to file in the Registry of the court or Tribunal, within 5 days from the receipt of the respondents' reply, a petitioner's reply in answer to the new issues of fact. However, 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. The petitioner's reply must not run counter to the provisions of paragraph 14(1). The time limited by subparagraph (1) shall not be extended; and that the petitioner in providing his case shall have the time limit as prescribed under paragraph 41(10). In essence, election petitions are *sui generis* (i.e. belonging to their own exclusive class).

It is trite, that treating someone with condescension is tantamount to being utterly rude, disrespectful and patronizing to that person. However, in the instant case, the scenario as depicted by the records, there is no cogent or reasonable ground for me to believe that the words and expressions employed by the court below were meant, in any way to disparage or belittle the appellants or the learned counsel thereof. Contrary to the appellants' allegation, the attitudinal disposition of the court below towards the appellants, nay the learned counsel thereof, was manifestly cordial and respectful throughout the trial of the petition.

In the circumstances, the issue 7 ought to be, and same is hereby resolved against the appellants.

Hence, against the backdrop of resolving all the seven issues raised by the appellants against them the appeal resultantly fails, and same is hereby dismissed by me.

Consequently, the judgment of the Court of Appeal, delivered on October 23, 2023 in Election Petition No. CA/PEPC/OS/2023 is hereby affirmed by me.

Parties shall bear their respective costs of litigation.

Appeal dismissed.

Postscript

Not too long ago, I had a cause to postulate on the fundamental concept of justice vis-à-vis the due process of law. Arguably, inherent in the concept of justice is the judge's capacity to discern right from wrong, the courage to uphold and compensate right, to condemn and punish wrong:

> "A Judge without conscience is an odious and pernicious character, the greatest curse ever to afflict any nation. Judicial ethics demand that all Judges are men (and women) of conscience."

See I.M.M. Saulawa, JCA (as then was): The Legal Profession: Historical Perspectives, Principles, Practice, Challenges and Prospects (a paper presented at the Faculty of Law, Bayero University, Kano on July 15, 2018; Oputa, JSC: Judicial Ethics, Law, Justice and the Judiciary, 1990.

By 'due process of law', I mean much the same as the British Parliament meant when it first employed the immutable phrase in the 14th Century in the Statute of 28,1354 Cap. 3 (in the reign of Edward III):

> "That no man of what estate or condition that he be, shall be put out of land or tenement, nor taken nor imprisoned, nor disinherited, nor put to death with exit being brought in answer by the due process."

What's more, the phrase is employed much the same as the legendary US President James Madison (1809-1817) meant when the proposed an amendment to the US Constitution (accepted in the 1791, 5th Amendment):

> "No person... shall be deprived of life, liability, or property, without due process of law."

Thus, essentially, by due process of law is meant:

> [T]he measures authorised by the law so as to keep the streams of justice pure: to see that trials and inquiries are fairly conducted; that arrests and searches are properly made; that lawful remedies are readily available and that unnecessary delays are eliminated.

See: Lord Denning, M.R: The Due Process of Law Reprinted 2012 @ V; The Closing Chapter 2008 a V.

Against the backdrop of the mandatory judicial oath enshrined in the 1999 Constitution, the Code of Conduct for Judicial officers and the Professional Ethics, it would be apt to reiterate that, no profession demands for higher standard of conscience, honesty and integrity, albeit offers the greatest temptation to resist them than the legal profession. Yet, without these supreme virtues, every advocate (no matter how eminent) would be devoid of honour, and a sheer disgrace to the nation and mankind.

Undoubtedly, the pre and post 2023 elections' challenges that bedevilled Nigeria have been very traumatic. Thus, the judiciary, more than ever before, has a duty to weather the storm and salvage the nation from the looming catastrophe. I cannot but re-echo the immutable words of Lord Atkin in the notorious case of *Liversidge v. Anderson* (1941) 3 All ER 338; (1942) AC 207:

> In England amidst the clash of arms the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the pinnacles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons, and stand between the subject and any attempted encroachment on his liberty by the executive, alert to see that any coercive action is justified in law.

Interestingly, Lord Atkin's immutable dictum (dissent) in *Liversidge v. Anderson* (supra) has been regarded as one of the foremost decisions in recent legal history. See *George v. Rocketi* (1990) 170 CLR 104; *A. v. Secretary for the Home Department* (2005) 2 AC 68. Indeed, the period alluded to by Lord Atkin in *Liversidge v. Anderson* (supra) was the most horrific in the annul of the UK history. That was the period aptly characterised by Lord Denning as "TIME OF THE FLYING BOMBS"

> On one occasion in the basement after lunch, two witnesses turned up to give evidence-their faces cut by splinters from the bombs. One morning I got to my room in the courts and found the windows blasted and broken glass everywhere. At home back in Cuckfield we were in the flight path of enemy bombers. They dropped their unused bombs on to us. One afternoon we had a grandstand view of the first flying bomb shot down by a spitfire. We carried on as usual of course. As Lord Atkin said in *Liversidge v. Anderson.*
>
> In this country amid the clash of arms, the laws are silent: they may be changed, but they speak the same language in war as in peace.

See Lord Denning: the Due Process of Law (Reprinted 2012) @, 188-189.

The circumstances surrounding the annulment of the June 12, 1993 presidential election by the erstwhile Military Government are undoubtedly still fresh in the minds of many Nigerians. Recall, on June 22, 1993 when the Military Government annulled the Presidential election held on June 12, 1993 (which was acclaimed to have been won by Chief M.K.O. Abiola on the grounds that the action was necessitated by a genuine desire to save the judiciary from ridicule, and self-destruction. As declared by the head of State (self styled President) and Commander-in-Chief of the Nigeria Armed Forces (General Ibrahim Badamasi Babangida):

> [T]he Judiciary has been the bastion of the hopes and liberties of our Citizens. Therefore, when it became clear that the courts have become intimidated and subject to the manipulation of the process, then the entire political system was clear danger ... it is in the supreme interest of law and order political stability and peace that the Presidential election be annulled.

See: Decree No. 39 of 1999; Dakas C.J. Dakas: 'The Judiciary and Nation Building'. The June 12 Experience (Current Themes in Nigeria Law @ 276- 277).

The magnitude of the challenges that bedevilled the Nigerian judiciary nay the nation should rather be appreciated when viewed from the perspective of the circumstances surrounding the annulment of the said Presidential election:

> [T]he annulment of June 12 Presidential election plunged the country in to what was indisputably one of the gravest political crises in its ... life as an independent nation. Never before, except during the murderous confrontations of 1966 - 1970, had the survival of Nigeria as one political entity been in more serious danger. The impasse created was certainly unequalled by any thing the country had experienced before. Such was the enormity of the impasse that for a considerable period of time:
>
> We merely lived day-to-day, uncertain what would happen in the morrow, whether our dear country, sucked dry and vandalized by buccaneering corruption, battered by mismanagement and chocked by three (or "four) digit inflation, would survive or smoulder in flames.

See: Ben Nwabueze: Nigeria 93: The Political Crisis and Solutions (Ibadan Spectrum Books Ltd, 1994 @ 39-40); Dakas C.J., Dakas @276-277.

At this point in time, I have deemed it expedient to reiterate the trite axiom, that the Nigerian democracy is fundamentally predicated upon the rule of law. And its a valid aphorism, that where the veritable rule of law reigns supreme, political expediency ought to be sacrificed on the alter of the rule of law, in order to protect, sustain and guarantee the continued existence of democratic institutions vis-à-vis the fundamental values of liberty, peace, security and development through out the country. See Gadi v. Male (2010) 7 NWLR (Pt. 1193) 225 per Saulawa, JCA (as then was);. *Abia State v. A.-G., Federation* (2006) 1 NWLR (Pt. 1005) 265 per Niki Tobi, JSC @ 421, paragraphs A-H; *Anaekwe v. Mashahsha* (2001) 12 NWLR (Pt. 720) 70 @ 90; *Abubakar Ibrahim Yantaba & 120 ors. v. Governor of Katsina State & 2 ors*. (Appeals No. 244/20/8; SC.735/2018 & SC.958/2018) judgment delivered on 07/05/2021; (reported in (2020) 1 NWLR (Pt. 1811) 259), per Saulawa, JSC @ 22-23.

Most cherishingly, the 1999 Constitution (supra) in its pure and pristine model has provided for three separate and distinct branches (Arms) of Government - (i) The Legislature; (ii) The Executive; and (iii) The Judiciary). See sections 4, 5, and 6 of the
1999 Constitution.

To each of the three formidable Arms of Government has been accorded district and well defined duties and responsibilities:

> To the legislature, both National and States, the onerous responsibility to enact laws for the peace, order, security, prosperity and good government of the people. To the Executive, the responsibilities of implementing and executing all laws enacted by the Legislature and orders by the courts. While to the judiciary, the Constitution has cherishingly assigned the noble responsibilities of and powers to adjudicate and settle disputes or conflicts, consequent upon the inter-

> play of powers and forces between the Federal and State, or Local Governments, between one State and another, between the Citizens and Governments, Between Individuals and/or Institutions and other feuding parties. See sections 4, 5, and 6 of the 1999 Constitution.

See *Gadi v. Male* (supra); *Yantaba v. Governor of Katsina State* (supra).

Thus, considering the complex nature of the fundamental duties and responsibilities assigned thereto, the formidable three arms of government are individually, jointly and collectively under onerous obligation to assiduously, work with one another in a harmonious and serene atmosphere, for the purpose of achieving the laudable objectives of promoting good government and welfare of all persons in our dear country based on principles of freedom, Equality and Justice.

What's more, it's trite that the separation of powers provided in sections 4, 5 and 6 of the 1999 Constitution (supra) was not deliberately designed to place the three Arms of Government in to separate water compartments. Far from it! Indeed, there ought to be a semblance of synergy and harmonious cooperation with one another in the best interest of our dear country. See *Gadi v. Male* (supra), wherein it was aptly echoed:

> Paradoxically, for this great Nigerian Nation, the popularly acclaimed 'Giant of Africa' to 'move forward' and achieve the laudable objectives contained in the preamble of the 1999 Constitution, the Three Arms of Government must work assiduously and harmoniously in accordance with the dictates of the provisions of the Constitution and the laws. Otherwise, it would remain stagnant, underdeveloped and a pariah nation! And the future of any nation whose three Arms of Government fail to strictly be guided by the provisions and the well cherished tenets of the Constitution and the laws thereof, could aptly be likened to the fate that had befallen the SWAN, the PIKE and the CRAYFISH who failed to draw a cart due to lack of cooperation.
>
> According to a Russian (Proverbial) poem:
>
> The Swan makes upward for a cloud. The Crayfish falls behind.
>
> The Pike, the river uses.
>
> To judge of each one's merits lies beyond my will.
>
> I know the cart remains there, still!

Per Saulawa, JCA (as then was) @ 288 paragraphs C-E; *Yantaba & 120 Ors v. Governor of Katsina State & 2 Ors* (supra) per Saulawa, JSC @ 23-24.

JAURO, J.S.C.: I have had the privilege of reading before now the lead judgment delivered by my learned brother, John Inyang Okoro, JSC. His Lordship has ably considered and resolved all the issues in contention in the appeal. I agree with the reasoning and conclusion reached therein, to the effect that the appeal is bereft of merit and deserves a dismissal. I however wish to add a word or two in support of the judgment.

This appeal is against the judgment of the Court of Appeal delivered on 6th September, 2023 which dismissed the appellants' petition and affirmed the Is respondent's declaration of the 2nd respondent as the winner of the Presidential election conducted on 25th February, 2023 and the duly elected President of the Federal Republic of Nigeria. The election was contested by 18 candidates sponsored by their respective political parties. From the results declared by the 1st respondent (INEC), the 2nd respondent who was sponsored by the 3rd respondent won

the election by polling 8,794,726 votes; the 1st appellant, sponsored by the 2nd appellant finished as runner-up with 6,984,520 votes; while Mr. Peter Gregory Obi sponsored by Labour Party finished third with 6,101,533 votes.

The appellants felt disgruntled by the outcome of the election, hence they filed a petition challenging same before the lower court., The grounds of the petition as well as the reliefs sought therein have been set out in the lead judgment.

At the conclusion of trial and after the addresses of counsel, the lower court dismissed the petition. It is against the dismissal that the petitioners instituted the instant appeal via a notice of appeal founded on 35 grounds.

Appellants' Application Seeking Leave to Produce Fresh Evidence

On 6th October, 2023, the appellants filed an application seeking for leave of court to produce fresh evidence and for the court to rely on same. I have carefully perused all the processes filed by all the parties in respect of the application.

The appropriate starting point with respect to this application is the issue of the jurisdiction to entertain same as raised by the respective learned senior counsel for each of the respondents. It is their contention that since the time within which the lower court can exercise jurisdiction over the appellants' petition has lapsed, this court cannot entertain the application.

I entertain no doubt that by bringing this application, the appellants are calling upon us to exercise the powers of the lower court by admitting additional or fresh evidence. This court has consistently held that a higher court can only step into the shoes of a lower court to do things that the lower court is empowered to do, when the jurisdiction of the lower court subsists. Once the jurisdiction of the lower court lapses, a higher court will have no basis for stepping into the shoes of the lower court. In other words, to invoke section 22 of the Supreme Court Act, it is only when this court can do what the lower court is empowered to do. Once the lower court can no longer do a particular thing or exercise jurisdiction to take a certain step, this court will in turn lack the power to do so.

The instant appeal is one emanating. from the decision in respect of an election petition. There is no gainsaying that election petitions are *sui generis*, guided by a distinct set of rules and procedure. Perhaps the most distinct feature of election petitions under Nigerian law is that it is time bound. By virtue of section 285(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), an election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition.

The time limit imposed by the Constitution has been held by this court in a legion of decisions to be like the Rock of Gibraltar. It is immutable, it cannot be expanded, extended or enlarged. The implication of this is that once the 180 days elapse, the trial court can no longer entertain the petition or aspects of it and this court will in turn lack the jurisdiction to do anything that the trial court (in this instance, the Court of Appeal) could have done. See *Samuel v. A.P.C. & Ors*. (2023) LPELR-59831 (SC); (2013) 10 NWLR (Pt. 1892) 195; *Ezenwankwo v. A.P.G.A. & Ors* (2022) LPELR-57884 (SC); (2022) 18 NWLR (Pt. 1863) 537; *Ihedioha & Anor v. Okorocha & Ors.* (2015) LPELR-40837 (SC); (2016) 1 NWLR (Pt. 1492) 147; *Shettima v. Goni* (2011) 18 NWLR (Pt. 1279) 413.

In essence, the period within which the lower court could have considered the fresh evidence sought to be adduced by the appellants having elapsed, this court lacks the jurisdiction to entertain the instant application, let alone grant same.

I am not unaware of the contention of learned senior counsel for the appellants to the effect that the section 285(6) of the constitution is inapplicable to the Court of Appeal

entertaining presidential election petitions. The less said about that argument the better. It however suffices to say that I agree with and endorse the decision in the lead judgment, that the position maintained by the appellants counsel is not tenable and does not represent the position of the law. Section 285(6) of the Constitution applies to the Court of Appeal exercising original jurisdiction in respect of Presidential election petitions, just as it applies to Election Tribunals established by the Constitution.

Notwithstanding the foregoing, I will briefly consider the application on its merits and see whether it deserves to be granted.

It is the law that parties are expected to prove their case before the court of trial. It is settled that an appeal is a rehearing of the suit based on the record, by an appellate court. It is generally expected to be heard and contested on the same set of facts and evidence as the hearing before the trial court was conducted.

See *Sapo & Anor v. Sunmonu* (2010) LPELR-3015 (SC); (2010) 11 NWLR (Pt. 1205) 274; *Obineche & Ors v. Akusobi & Ors*. (2010) LPELR-2178 (SC); (2010) 12 NWLR (Pt. 1208) 383; A.G. *Leventis (Nig.) Plc v. Akpu* (2007) LPELR - 5 (SC); (2007) 17 NLWR (Pt. 1063) 416.

For the above reasons, appellate courts are generally not disposed to permitting or allowing parties to adduce fresh or additional evidence on appeal. Parties are expected to get hold of all material evidence by which they seek to prove t heir case and present same to the trial court, rather than attempt to prove their case in piecemeal or installments. That notwithstanding, appellate courts have powers to, in limited circumstances, receive - and allow further evidence on appeal. For instance, Order 2 rule 12 of the Supreme Court Rules provide for the procedure to be followed by a party who wishes to adduce fresh evidence on appeal. It provides thus:

> "(1) A party who wishes the court to receive the evidence of witnesses (whether they were or were not called at the trial) or to order the production of any document, exhibit or other thing connected with the proceedings in accordance with the provisions of section 33 of the act, shall apply for leave on notice of motion prior to the date set down for the hearing of the appeal.
>
> (2) The application shall be supported by affidavit of the facts on which the party relies for making it and of the nature of the evidence or the document concerned.
>
> (3) It shall not be necessary for the other party to answer the additional evidence intended to be called but if leave is granted the other party shall be entitled to a reasonable opportunity to give his own evidence in reply if he so wishes."

The conditions to be satisfied by a party who wishes to adduce additional evidence on appeal have been exhaustively considered by this court in a plethora of decisions. In *Statoil (Nig.) Ltd. v. Inducon (Nig.) & Anor* (2018) LPELR-44387 (SC); (2018) 1 NWLR (Pt. 1704) 45, this court set out the following as the guiding principles for the grant of an application to adduce further evidence on appeal and or rely on same:

i. The evidence sought to be adduced should be such that it could not have been obtained with reasonable care and diligence for use at the trial.
ii. If the fresh evidence is admitted, it would have an important but not necessarily crucial effect on the whole case.
iii. The evidence sought to be adduced is such that is apparently credible in the sense that is capable of being believed even if it may not be incontrovertible.

iv. Additional evidence may be admitted if the evidence sought to be adduced could have influenced the judgment at the lower court in favour of the applicant if it had been available at the trial court.

v. The evidence must be material and weighty even if not conclusive. Where the evidence sought to be adduced is immaterial and irrelevant, it will be rejected.

It was held that the above conditions/principles must be conjunctively complied with an applicant. Where any of them is not satisfied, the application will be refused. See also *Subaya Metalware (Nig.) Ltd. v. Toyota Motor Corp. & Anor* (2021) LPELR- 57346 (SC); (2022) 8 NWLR (Pt. 1833) 497; *Oboh & Anor v. N.F.L. Ltd. & Ors*. (2020) LPELR-5520 (SC); (2022) 5 NWLR (Pt. 1823) 283; *Williams & Anor v. Adold/Stamm Int'l (Nig.) Ltd. & Anor* (2017) LPELR-41559 (SC); (2017) 6 NWLR (Pt. 1560) 1.

Considering the requirements in the context of this appeal, it appears patently clear to me that the appellants did not meet the threshold for the grant of the application. The undisputed evidence on record is that the 1st respondent had, since 24th June, 2022, published the details of all the candidates, including the 2nd respondent's Form EC9 containing his educational qualifications, while the result of the election under context was declared on 1st March, 2023, yet the appellants chose to belatedly commence the process of securing the documents now sought to be tendered. Hence, there is no gainsaying that the appellants did not exercise reasonable care and diligence in obtaining the evidence sought to be adduced on appeal. They cannot use the opportunity of an appeal to bring forth a document that could have been placed before the lower court had they been diligent.

In *Dike-Ogu & Ors. v. Amadi & Ors*. (2019) LPELR-47847 (SC) at p.27, paras. A-B; (2020) 1 NWLR (Pt. 1704) 45, this court held:

> "The procedure for admitting further evidence on appeal is not at the disposal of an indolent or not diligent litigant. The procedure cannot be used for the repair of a case at the end of the trial. It is not designed to overreach the other party or spring surprise at the other party when the appeal is heard."

Furthermore, it is to be noted that the appellants did not plead any fact relating to the 2nd respondent's alleged non-qualification in their petition, yet they seek to place before this court documents to prove same. Then I ask, to what end? That being the case, it is clear that the said evidence could not have had any effect, let alone an important effect on the whole case; it could not have influenced the decision of the lower court; and it is not weighty at all.

Flowing from the foregoing, it is crystal clear that the application has no chance of success as it fails on many fronts. In my final analysis of the application, I hereby refuse and dismiss same.

Merits of the Appeal

The appellants have insisted before the lower court and in this appeal, that the 1st respondent's failure to transmit results electronically amounted to substantial non-compliance of such a nature as to vitiate the election being challenged.

Clause 38 of the INEC Regulations and Guidelines for the Conduct of Elections, 2022 provides thus:

> "On completion of all the polling unit 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."

From the above, it is evident that the regulations make provisions for electronic transmission of results and uploading of scanned copies of Form EC8As to IReV. However, it is trite that, provisions of an enactment are not to be read in isolation, but jointly. See Sifax (Nig.) Ltd. v. Migfo (Nig.) Ltd. (2018) 9 NWLR (Pt. 1623) 138; Ojukwu v. Obasanjo (2004) 12 NWLR (Pt. 886) 169; *A.C.B. Plc v. Losada (Nig.) Ltd.* (1995) 7 NWLR (Pt. 405) 26; *Oyeyemi v. Comm. for Local Govt.* (1992) 2 NWLR (Pt. 226) 661.

Bearing the foregoing in mind, I will consider Clause 38 of the INEC Regulations vis-à-vis Clause 48(b), (c) and Clause 93 to ascertain the true position of the Regulations on the issue of electronic transmission. The provisions are set out hereunder.

Clause 48(b) and (c):

"48(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 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."

Clause 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 combined provisions of the INEC Regulations set out above, it is clearly deducible that while Clause 38 thereof provides for electronic transmission, results so transmitted (if at all) are only meant to be resorted to where the INEC hardcopy of collated results from the immediate lower level of collation does not exist even in such a situation, failure to carry out electronic transmission or to upload scanned copies of Form EC8As is not fatal. This is evident from the fact that the Regulations provided for alternatives as it empowers INEC to make use of duplicate hard copies issued to the Nigeria Police Force or that issued to agents of political parties. Hence, electronic transmission is not mandatory, neither does failure to transmit results electronically vitiate the result of an election.

In similar vein, it should be noted that the function of IReV is to enable the public to view scanned copies of Form EC8As that are uploaded thereon. IReV is not a collation system. That much was made clear by this court in *Oyetola & Anor v. INEC & Ors*. (2023) LPELR - 60392 (SC); (2023) NWLR (Pt. 1894) 125. The collation system is made up of the centres where results are collated at various stages of the election. As can be gleaned from sections 60, 62(1) and 64(4) of the Electoral Act, 2022, transmission and collation of results of elections from the polling units as well collation of results, are primarily to be carried out manually.

Section 135(1) of the Electoral Act provides 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 accordance with the principles of this Act and that the noncompliance did hot affect substantially the result of the election."

The wisdom behind the enactment of above provision is that an election which correctly reflects the wishes of the electorate, ought not to be invalidated over acts of non-compliance that are not substantial enough to affect the result. On the premise of the provision, an election tribunal or court will not invalidate an election as long as the acts of non-compliance complained of did not affect the wishes of the voting public as reflected in the votes cast and result declared. The appellants herein failed to show that the failure to upload scanned copies of Form EC8As to IReV portal or to electronically transmit results constituted non-compliance that substantially affected the result of the election or that it affected the result at all.

The sum total of all I have been saying is that at the lower court, the appellants were unable to make out a case of substantial non compliance with the provisions of the Electoral Act, of such a nature that affected the outcome of the election, and they have not shown why this court should interfere with the finding of the lower court to that effect.

The appellants also contended that the 2nd respondent ought not to have been declared as the winner of the election owing to his failure to score at least 25% of the votes cast in the Federal Capital Territory (FCT). It is their contention that by virtue of section 134(2)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); to be declared the winner of a Presidential election, it is mandatory that a candidate scores at least 25% of the votes cast in the FCT, irrespective of the votes he scored in other States of the Federation.

Section 134(2) of the Constitution provides as follows:

> "A candidate for an election to the office of 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."

In interpreting the Constitution, cannons of interpretation which apply to ordinary statutes do not sometimes apply. In *Rabiu v. Kano State* (1980) 8 - 11 SC 85, it was held that mere technical rules of interpretation of statutes are to some extent inadmissible in a way to defeat the principles of government enshrined in a constitution. In the words of Sir Udo Udoma, JSC:

> "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 accord and consistent with the Words and sense of such provisions will serve to enforce and protect such ends."

See also *F.R.N. v. Nganjiwa* (2022) LPELR-58066 (SC); (2022) 17 NWLR (Pt. 1860) 407; *Skye Bank Plc v. Iwu* (2017) LPELR - 42695 (SC); (2017) 16 NWLR (Pt. 1590) 24; *Abegunde v. Ondo State House of Assembly & Ors*. (2015) LPELR - 24588 (SC); (2015) 8 NWLR (Pt. 1461) 314; A.-G., *Federation & Ors v. Abubakar & Ors*. (2007) LPELR-3 (SC); (2007) 10 NWLR

(Pt. 1041) 1; *Director of SSS & Anor v. Agbakoba* 1999) LPELR - 954 (SC);, (1999) 3 NWLR (Pt. 595) 314.

I do not intend to dwell on this issue much further. However, it suffices to say that this most ridiculous and strange interpretation being pitched to us by the appellants is not only against the intention of the drafters of the Constitution, it does violence to the spirit, soul and all the principles enshrined in the Constitution of the Federal Republic of Nigeria. If the lawmakers intended to bestow a special status on the FCT or votes cast therein, they would expressly have stated so in the Constitution.

Similarly, if it was the intention of the lawmakers to make it a mandatory requirement for a candidate to score at least one-quarter of the votes cast in the FCT before being declared the winner of a Presidential election, they would have stated so unequivocally.

The 2nd respondent who scored the highest number of votes cast in the election and who had 25% (one-quarter) of the votes cast in 29 States of the Federation met the requirements to be declared winner as stipulated in section 134(2) of the Constitution.

In view of the foregoing and the more detailed reasons in the lead judgment, which I am in concurrence with, I too see no: merit in the appeal and I hereby dismiss same. I affirm the decision contained in the judgment of the court below delivered on 6th September, 2023. I abide by the orders made in the lead judgment.

ABUBAKAR, J.S.C.: My Lord and learned brother, Okoro JSC, granted me the privilege of having a preview of the lucid and illuminating leading judgment prepared and rendered in this appeal. The judgment captured and resolved all the essential issues submitted for determination. I just wish to lend my support while adopting the reasoning and conclusion in the leading judgment as my own.

On 25th day of February 2023, election into the office of the President of the Federal Republic of Nigeria, was conducted by the 1st respondent. The 1st appellant and the 2nd respondent were the flagbearers of the 2nd appellant and 3rd respondent, respectively.

At the end of the election, the 1st respondent declared the 2nd respondent as winner of the election and was duly returned elected, with 8,794,726 votes. The appellants, who were aggrieved by the outcome of the said election presented a joint petition before the Presidential Election Petition Tribunal, siting in Abuja on the following grounds:

> "(a) The election of the 2nd respondent is invalid by reason of non-compliance with the provisions of the Electoral Act, 2022.
> (c) The election of the 2nd respondent is invalid by reason of corrupt practices.
> (d) The 2nd respondent was not duly elected by majority of lawful votes cast at the election.
> (e) The 2nd respondent was at the time of the election not qualified to contest the election."

In a well-considered judgment delivered on the 6th day of September 2023 the Presidential Election Petition Tribunal dismissed the appellants petition, holding that the appellants were unable to establish their entitlement to the reliefs sought. Dissatisfied with the judgment of the Presidential Election Petition Tribunal, the appellants therefore approached this court on appeal to ventilate their grievance against the judgment. The appellants filed a motion on notice praying this court to receive fresh evidence on appeal and or additional evidence by way of depositions on oath. The second respondent filed a motion on notice

challenging the competence of some identified grounds of appeal in the appellants notice of appeal.

I will take the appellant's motion first.

Appellants/Applicants Motion On Notice

This is an application filed on the 6th day of October 2023, brought pursuant to Order 21 rule 12(1) of the Supreme Court Rules, 1985, section 137(1)(j) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), under the inherent jurisdiction of the Court and section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). In the application, the appellants/ applicants are praying this court for the following orders:

"1. An order of this court granting leave to the appellants/ applicants, to produce and for the honourable court to receive fresh evidence and/or additional evidence by way of depositions on oath from the Chicago State University for use in this appeal, to wit: The certified discovery depositions made by Caleb Westberg on behalf of Chicago University on October 03 2023, disclaiming the certificate presented by the 2nd respondent, Bola Ahmed Tinubu, to the Independent National Electoral Commission.

2. And upon leave being granted, an order of this court receiving the said deposition in evidence as exhibit in the resolution of this appeal."

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

1. One of the grounds of the appellants/applicants petition before the court below is that the 2nd respondent was not qualified at the time of the election as required by section 137(1)(i) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. Based on facts available to the appellants/applicants at the time of filing their petition, the 1st appellant/ applicant through his United States of America lawyers, Alexander de Gramont and Angela M. Liu of the law firm of Dechert LLP of 1900 K Street NW, Washington DC 20006-1110, unsuccessfully applied to Chicago State University for the release of copies of the academic records of the 2nd respondent.
3. Given the strict privacy laws in the jurisdiction of Chicago State University, the request for the release of the academic records and certificate issued to the 2nd respondent could not be granted without an order of court and for the purpose of use in pending proceedings.
4. The 1st applicant through his said US-based Attorneys thereupon brought an action in the US District court for the Northern District of Illinois - In Re: Application of Atiku Abubakar for an Order Directing Discovery from Chicago State University Case No. 23-CV-05099 for an order for production of documents and testimony for use in a proceeding in a foreign court, seeking documents and testimony from Chicago State University concerning the authenticity and origin of documents purporting to be the educational records of the 2nd respondent, Bola A. Tinubu.
5. The 2nd respondent applied and was joined in the matter as an intervener vehemently opposing the application.
6. On September 19th 2023 the court issued and order granting the application.

7. Thereafter, the 2nd respondent applied for an emergency stay of the court order, claiming that he would suffer irreparable damage and injury if his educational records were released, which order of stay was granted.
8. On September 30, 2023, the court overruled the 2nd respondent's objections and ordered Chicago State University to produce the documents on October 2, 2023, and produce a witness for deposition on 3rd October 3, 2023.
9. On October 2023, Chicago State University produced the documents pursuant to the court's order.
10. On October 3, 2023, also pursuant to the courts order, Chicago State University provided a witness to give deposition testimony, in which deposition, Chicago State University disclaimed ownership and authorship of the document that the 2nd respondent presented to INEC, purporting to be "Chicago State University certificate" and disclaimed issuing any replacement certificate to him.
11. The deposition was not in existence or available at, the time of filing the petition or at the hearing of the petition.
12. The deposition sought to be adduced is, along with its accompanying documents, such as would have effect in the resolution of this appeal.
13. The deposition is relevant to this matter, having confirmed that the certificate presented by the 2nd respondent to the Independent National Electoral commission (INEC) did not emanate from Chicago State University, and that the 2nd respondent never applied for any replacement certificate nor was he issued any replacement certificate by the Chicago State University.
14. The deposition which is on oath and deposed to in the presence of the 2nd respondent's Attorney is credible and believable and ought to be believed.
15. The deposition is clear and unambiguous, and no further evidence is needed to be adduced on it.
16. The evidence is such that could not have been obtained with reasonable diligence for use at the trial as the deposition required the commencement of the suit in the United States of America before receiving same. It was not possible to obtain the said evidence before the trial at the court below.
17. The deposition was made on October 03, 2023 after the conclusion of trial at the court below and was not available to be tendered at the trial.
18. Presentation of a forged certificate to the Independent National Electoral Commission by a candidate for election to the office of President of the Federal Republic of Nigeria is a weighty constitutional matter, requiring consideration by the courts as custodians of the Constitution.
19. The original certified deposition has been forwarded to the honourable court by a letter addressed to the Chief Registrar of the Supreme Court.
20. It is in the interest of justice for the honourable court to exercise its discretion in favour of the appellants/ applicants."

Appellants/applicants application is supported by 20 paragraph affidavits sworn to by Uyi Giwa-Osagie, there are exhibits annexed to the affidavit and marked exhibits A to H. The learned counsel for the appellants/applicants Chief Chris Uche SAN also filed written address in support of the application, the address representing the argument of learned Counsel.

The 1st respondent through learned senior counsel A.B. Mahmoud SAN filed counter affidavit on the nth day of October 2023 sworn to by Gift Nwadike, Legal Secretary, in the law

firm of Dikko & Mahmoud counsel for the 1s respondent, the counter affidavit often paragraphs is supported by a written address representing the submissions of learned senior counsel.

The 2nd respondent through learned senior counsel, Olanipekun SAN, filed the 2nd respondents counter affidavit on the nth day of October 2023, the counter-affidavit sworn to by Micheal Opeyemi Bamidele Senator of the Federal Republic of Nigeria contains twenty paragraphs and several exhibits. The learned senior counsel filed written address along with the counter affidavit. The 2nd respondents address represents the argument of counsel in opposition to the application.

The 3rd respondent also filed counter affidavit sworn to by Peter Emaikwu Legal Executive in the law firm of Olujinmi and Akeredolu, the counter-affidavit contains 9 paragraphs and written address in opposition to the application.

The appellant/applicant also filed further affidavit in support of the motion for fresh evidence on the 16th day of October 2023. The appellants/applicants finally filed reply on points of law on the 20th appeal, he further submitted that the requirements for the grant of day of October 2023.

Submissions of Counsel for the Applicants

Arguing this application on behalf of the appellants/applicants, learned senior counsel Uche SAN said the appellants/applicants would rely on the records already compiled and transmitted in this the application to adduce fresh or additional evidence on appeal is already settled in a number of decisions, he said the applicant must show that the evidence sought to be adduced could not have been obtained with reasonable diligence for use at the trial, that the fresh evidence must be such that if given would probably have an important effect on the result of the case although it needs not be decisive, and that the evidence must be such as is presumed to be believed, in other words it must be apparently credible.

Learned senior counsel for the applicant cited several decisions including *Uzodinma v. Izunaso* (No.2) (2011) 17 NWLR (Pt. 1275) 30 at 53; *Nigeria Customs Service Board v. Innoson Nigeria Limited & Ors* (2022) 6 NWLR (Pt. 1825) Pg. 82 at 98, and *Dike-Ogu v. Amadi* (2020) 1 NWLR (Pt. 1704) Pg. 45 at 65 to submit that the application will be granted in order to do justice fairly, equitably and justly. Learned Senior counsel also said the evidence required to establish that the certificate presented by the 2nd respondent to the 1st respondent in support of his qualification to contest the election is the deposition from the Chicago State University, that the depositions were not available until after the determination of the matter at the lower court, he further submitted that the appellants/applicants have successfully explained reasons for the delay and difficulties in obtaining the evidence, that upon establishing the allegation successfully, the 2nd respondent would be disqualified for presentation of forged certificate to the 1st respondent, learned counsel further relied on the decision of this court in *Saleh v. Abah & Ors* (2017) LPELR-41914 (SC) Pg. 3, at 28; (2017) 12 NWLR (Pt. 1578) 100. Learned senior counsel finally submitted that weighty constitutional issue as the one raised in this application is like issue of jurisdiction which can be raised at anytime and in any manner during proceedings or on appeal, urged this court to grant the application as prayed.

Submissions of Counsel for the 1st Respondent

In the 1st respondents address filed by learned senior counsel Mahmoud SAN, Counsel submitted one issue for determination, the issue reads as follows:

> *"Whether in view of the peculiar facts of this case this honourable court can proceed to grant the instant application".*

In discussing the sole issue for determination learned Senior counsel submitted that election petitions are sui generis, this court must therefore in the determination of this application take into consideration the peculiarity of the appeal, which is an appeal against the judgment of the court of appeal sitting as the Presidential Election Petition Court, and based on the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2022.

Learned senior counsel also set out the conditions for allowing fresh evidence on appeal citing *Adeleke v. Aserifa* (1990) LPELR-116 (SC); (1990) 3 NWLR (Pt. 136) 94, *Owata v. Anyigor* (1993) 2 NWLR (Pt. 276) 380, *U.B.A. Plc v. BTL Industries Ltd.* (2005) 10 NWLR (Pt. 933) 356, *Ehinlanwo v. Oke* (2008) 16 NWLR (Pt. 1113) 357 and *Oboh & Anor v. NFL Ltd. & Ors* (2020) LPELR-55520(SC); (2022) 5 NWLR (Pt. 1823) 283. Learned senior counsel also submitted that the evidence sought to be adduced must be relevant to the suit, he said the appellants/applicants failed to place sufficient materials before the court to show that they were diligent, they only obtained the evidence on the 19th day of September 2023 after the lower court had already delivered its judgment on the 6th of September, 2023. Counsel added that there was failure on the part of the appellants/applicants to show when the appellants briefed Dechert LLP, their solicitors in the United States.

Counsel for the 1st respondent said the appellants did not show what efforts they made between the publication of 2nd respondents form EC9 in June 2022 and the date of filing the petition on the 21st of March 2023, counsel said the appellants had ample time to apply for and obtain the document from Chicago State University, counsel also said, the appellants should have obtained the documents from the time of filing the petition to the date of judgment, counsel submitted that the appellants could have obtained the evidence sought to be adduced with reasonable diligence for use at the trial, that the appellants have been tardy and not reasonably diligent in their attempt to obtain the documents, counsel submitted that appellants failed to meet this condition and the application must be refused, relying on *Adeleke v. Aserifa* (1990) LPELR-116 (SC); (1990) 3 NWLR (Pt. 136) 94.

On the important influence the fresh evidence is supposed to have on the result of the matter, learned senior counsel said the appellants did not raise the issue of qualification of the 2nd respondent in their petition at the lower court, referring to the judgment of the lower court at page 8236 in volume 10 of the records of appeal, that having failed to challenge the qualification of the 2nd respondent at the lower court, the decision of the lower court remains binding and conclusive against the appellants, relying on *Opara v. Dowel Schlumberger (Nig.) Ltd. & Anor* (2006) LPELR-2746 (SC); (2006) 15 NWLR (Pt. 1002) 342, *Alakija v. Abdulai* (1998) 6 NWLR (Pt. 552) 1.

Learned senior counsel for the 1s respondent also said the deposition of the witness Caleb Westberg sought to be relied on as fresh evidence is irrelevant because the appellants did not raise the issue of forgery at the lower court, they did not challenge the aspect of the decision of the lower court that says they did not plead relevant facts, counsel said evidence not supported by pleadings goes to no issue relying on the decision in *Okwuokenye & Anor v. Registered Trustees of St. Jude Anglican Church & Anor* (2017) LPELR-50735 (CA). Learned senior counsel for the 1st respondent again contended that there was no pleaded fact on disqualification of the 2nd respondent in the appellants petition, this therefore makes the evidence of Caleb Westberg irrelevant, that the evidence of Caleb Westberg is a pre-election issue since it seeks to disclaim the certificate presented by the 2nd respondent to the 1st respondent as far back as the 24th day of June 2022, the action is therefore statute barred having

regard to the provisions of section 285(9) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which requires that the action be filed within 14 days from the date of publication of the EC9 and publication of the 2nd respondent as a candidate. Coursel therefore submitted that the appellants/, applicants failed to satisfy the second condition that the evidence is such that would probably influence the result of the matter.

On whether the evidence sought to be tendered needs to be credible.

Learned senior counsel for the 1s respondent said the essence of the fresh evidence is to establish the offence of forgery against the 2nd respondent he said offence of forgery is a serious allegation of presentation of fake documents is rooted in criminal offence of forgery which requires proof beyond reasonable doubt, relying on the decision in *Abubakar & Anor v. INEC & Ors* (2020) 12 NWLR (Pt. 1737) 37 at 110. Counsel therefore submitted that since the appellants by the deposition of Caleb Westberg seek to establish a case of forgery against the 2d respondent, this cannot be established by affidavit evidence, citing the case of *Agi v. P.D.P.* (2017) 17 NWLR (Pt. 1595) 386 at 470.

Learned senior counsel also submitted that it was never the intention of the draftsmen of the Constitution to allow the receipt of evidence in an election matter, when the trial court, the court vested with the powers to receive evidence has lost jurisdiction over the matter, especially in view of the fact that the Constitution prescribed 180 days for the delivery of judgment after the filing of the petition and this has already elapsed. It is also noted that parties have since filed their respective briefs of argument and no arguments were canvassed in respect of the additional evidence the appellants seek to adduce in this appeal; there is also no prayer for leave to file an amended brief of argument by the appellants because the time for filing of briefs of argument has also elapsed.

Submissions of Counsel for the 2nd Respondent

Learned counsel for the 2nd respondent submitted that this honourable court cannot at this interlocutory stage grant the pre-emptive and prejudicial orders that the fresh evidence sought to be brought in has disclaimed the certificate presented by the 2nd respondent to INEC, relying on the decision in *Eze v. Unijos* (2017) 17 NWLR (Pt. 1593) 1 at 23; *F.B.N. Plc v. Agbara* (2020) 15 NWLR (Pt. 1748) 537 at 550, 554. It is the also submission of learned Senior Counsel that a written deposition cannot be activated by oral examination, relying on the decision in *Abegunde v. Ondo State House of Assembly* (2015) 8 NWLR (Pt. 14461) 314 at 353; 34, 371-372 *Obialuju Nwalatu v. Nigerian Bar Association & Anor* (2019) 2 SC (Pt. 1) 125 at 151; (2019) 8 NWLR (Pt. 1673) 174; Paragraph 41(1) of the First Schedule to the Electoral Act, 2022. The 2nd respondent's counsel also argued that this honourable court is without the vires to consider the said deposition since same was not considered by the court of first instance within the 180-timeline provided by the Constitution; citing the decision in *Tofowomo v. Ajayi* (Unreported) Appeal No. SC/CV/1526/2022 delivered on 27th January, 2023, per Ogunwumiju, JSC at page 16); *Ezenwankwo v. A.P.G.A. & Ors* (2022) LPELR-57884 (SC); (2022) 18 NWLR (Pt.1863) 537. He further relied on Paragraphs 4(5) and 46(5) of the First Schedule to the Electoral Act, 2022; the decision in *Ebebi v. Ozobo* (2022) 1 NWLR (Pt. 1810) 165 at 185 - 186; *Danladi v. Udi* (2022) 2 NWLR (Pt. 1834) 185 at 200 - 201, to submit that admission of fresh evidence can only proceed from the combined provisions of sections 22 and 33 of the Supreme Court Act.

Noting that the application does not satisfy the condition for receipt for receipt of fresh evidence, learned senior counsel relied on the decision in *Onwubuariri & Ors. v. Igboasoyi & Ors* (2011) 3 NWLR (Pt. 1234) 357 at 381; *Adegbite v. Amosun* (2016) 15 NWLR (Pt. 1536)

405 at 422 to submit that there are five conditions for the grant of the application brought by the appellants. Other decisions were also relied upon. After arguing that the appellants relied on inapplicable authorities; Learned counsel said exhibits C and D are not admissible in their current form because exhibit C was not made before a court, but before a shorthand reporter, in the law office of the 1s appellant's counsel; and both exhibits C and D were not elicited under cognisable judicial proceedings, relying on section 83 of the Evidence Act; the decision in *P.D.P. v. I.N.E.C.* (2022) 18 NWLR (Pt. 1863) 653 at 653; *South Atlantic Pet. Ltd. v. Min. of Pet. Res.* (2014) 4 NWLR (Pt. 1396) 24 at 40; *B.M. Ltd. v. Woermann-Line* (2009) 13 NWLR (Pt. 1157) 149 at 176.

Learned senior counsel also submitted that there is no nexus between the appeal and the exhibits annexed to the application; relying on the decision in *Ladoja v. Ajimobi* (2016) 10 NWLR (Pt. 1519) 87 at 175 - 176; *Orianzi v. A.-G., Rivers State* (2017) 6 NWLR (Pt. 1561) 224 at 268; Husseni v. Mohammed (2015) 3 NWLR (Pt.1445) 100, 124 - 125; *Governor of Kogi State v. Yakubu & Anor* (2001) LPELR - 3177 (SC) 1 at 10 - 11; (2001) 6 NWLR (Pt. 710) 521. He further contended that none of the seven issues presented by the appellants has any proximity to the disqualification of the respondents on the ground of forgery of any certificate whatsoever.

Counsel said the allegation of forgery against the 2nd respondent, cannot be proved at all or beyond reasonable doubt before this court, citing *A.C.N. v. Nyako* (2015) 18 NWLR (Pt. 1491) 352 at 388 - 389; *Kakih v. P.D.P.* (2014) 15 NWLR (Pt. 1430) 374 at 421 - 422. Learned Senior Counsel cited the decision in *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264) 156 at 188 to finally submit that the application is a crass abuse of the judicial process.

At this stage let me state that the arguments canvassed by the learned senior counsel for the 3rd respondent in the written address filed, mirrors the submissions made by the learned senior counsel for the 1st and 2nd respondents' respectively. Where submissions are substantially similar, the court must conserve scarce judicial time by acknowledging the submissions without the necessity to repeat same. I have taken the option to acknowledge the comprehensive submissions of learned senior counsel Chief Akin Olujinmi SAN, and then proceed to resolution of the application.

Resolution

No doubt, the appellants are by the present application seeking for the intervention of this court, to accept in evidence by way of the certified discovery depositions made by Caleb Westberg on behalf of Chicago University on October 03, 2023, disclaiming the certificate presented by the 2nd respondent, to the 1st respondent.

The appellate adjudicatory process in this court is primarily focused the contending parties in the dispute - this is akin to placing their on ascertaining whether the trial court had an adequate basis in the form of evidence to underpin its factual determination of issues nominated for discourse. It delves into scrutinizing whether the trial court erroneously accepted or rejected any presented evidence during the proceedings. Furthermore, it involves a careful examination of how the trial court treated the evidence introduced by evidence on opposite sides of an imaginary scale and assessing their relative weight. In simpler terms, the essence of this appellate review is to gauge whether the trial court conducted a thorough, critical and judicious evaluation of the evidence and whether it adopted the correct approach in its assessment.

In summary therefore, the role of the appellate court hinges on these fundamental inquiries: Did the trial court make its factual determinations based on sufficient evidence? Did

it commit errors in the acceptance or rejection of evidence? Did it diligently weigh the evidence provided by the contending parties? Moreover, it encompasses the assessment of whether the evidence lawfully admitted in the proceedings was substantial enough to substantiate the conclusions and inferences drawn by the trial court. It is vital to recognize that this framework represents the sole and prescribed method available to an appellate court while deliberating on an appeal brought before it.

It is noteworthy of note, that the traditional function of an appellate court generally does not extend to admission of fresh or new evidence, so doing falls within the province of the trial court." The instant application seeks for exercise of judicial discretion which, as we have said in a litany of authorities seemingly endless, should be exercised only in furtherance of the court doing substantial justice to the parties judicially and judiciously. However, before any court including this court can proceed to determine if it should exercise its discretion in a particular way, it must by law, have the necessary competence: and one issue that agitates the mind, especially in view of the arguments canvassed by the learned senior counsel for respondents, in their written addresses, is whether the general powers of this court under section 22 of the Supreme Court Act can be invoked in the instant case.

Section 22 of the Supreme Court Act reads as follows:

> "The Supreme Court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Supreme Court thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorised to make or grant and may direct any necessary inquiries or accounts to be made or taken and *generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Supreme Court as a court of first instance and may rehear the case in whole or in part or may remit it to the court below for the purpose at such rehearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court.*"

I have no slightest doubt that this court is vested with inherent statutory jurisdiction, as recognized in endless judicial precedents, to admit fresh evidence where it is imperative for the purpose of serving the ends of justice. However, the exercise of this jurisdiction is not boundless, or illimitable, it must be exercised judiciously. While the provision of section 22 of the Supreme Court Act is clear and unambiguous, it must be reconciled with the specific provisions and requirements of election appeals, which are governed by a distinct set of rules and timelines.

The provision of section 22 of the Supreme Court Act presupposes that the court below, the Court of Appeal, must have the necessary competence to entertain the suit as constituted before this court. The said provision does not grant this court the authority to issue an order or grant a relief in connection with the matter before it, which exceeds the jurisdiction of the court below in resolving the dispute between the contending parties in *Obi v. INEC & Ors,* (2007) LPELR-2166 (SC); (2007) 11 NWLR (Pt. 1046) 560, while noting that the objective of section 22 of the Supreme Act (and similar provision under section 16 of the extent Court of Appeal Act) is to prevent undue delay in the administration of justice, this court, per my Lord Aderemi, JSC held as follows:

"It follows from what I have been saying above, that certain conditionalities must be present before the provisions of this section can be invoked; and they are:-

"(1) *the lower court or trial court must have the legal power to adjudicate in the matter before the appellate court can entertain it;*

(2) the real issue raised up by the claim of the appellant at the lower court or trial court must be seen to be capable of being distilled from the grounds of appeal;

(3) all necessary materials must be available to the court for consideration,

(4) the need for expeditions disposal of the case or suit to meet the ends of justice must be apparent on the face of the materials presented; and

(5) the injustice or hardship that will follow if the case is remitted to the court below, must clearly manifest itself."

See *Faleye & Ors v. Otapo & Ors* (1995) 3 NWLR (Pt. 381) 1; *Inakoju v. Adeleke* (2007) 1 SC (Pt. 1) 1; (2007) 4 NWLR (Pt. 1025) 423 and *Dapianlong & Ors v. Dariye* (2007) 4 SC (Pt. I) 118; (2007) 8 NWLR (Pt. 1036) 239."

This application to adduce fresh evidence originates from an election appeal. It is essential to emphasize that section 285(6) of the Constitution prescribes a strict timeline for the presentation and delivery of judgment in an election petition proceeding before a Tribunal, that *"on election Tribunal shall deliver its judgment in writing within 180 days from the date of the filling of the petition."* This timeline, just like every other timeline in connection with election petition proceedings, operates as a critical element of the legal framework for the resolution of disputes arising from elections. The constitutional timeline under section 285(6) is not merely procedural but fundamental to the integrity of the electoral process in Nigeria. The purpose of this timeline is to ensure that election disputes are resolved expeditiously and within a defined timeframe, promoting legal certainty and the sanctity of the electoral system.

Since the draftsman thought it right and for good reasons too, to introduce the provisions of section 285(6) of the Constitution to limit the period in which election dispute can be entertained and dispensed with, this court, even though the apex court in the land, does not possess the authority to extend this time or the power to activate the jurisdiction of the tribunal/court below to entertain the dispute or any matter connected thereto, (including the present application) at the expiration of this constitutionally prescribed time limit. By implication therefore, the time frame within which the present application would be entertained by the court below or even this court, is within 180 days from the presentation of the petition, upon the expiration of the said 180 days, the tribunal/ court below has no jurisdiction to hear the petition, or any matter connected therewith in any form or manner whatsoever. By necessary implication therefore to the extent that by the time the application was presented by the appellants before this court, the 180 days prescribed under section 285(6) of the Constitution had expired, it follows that this court cannot entertain the application as presently constituted. The law is well settled on seemingly endless judicial decisions that where the time frame is imposed or limited by a statute or the Constitution unless the said statute or Constitution makes provision for extension of time, the court cannot extend time. See *Akinnuoye v. Mil. Ad., Ondo State* (1997) 1 NWLR (Pt. 483) 564.

The only conclusion I am bound to reach here is that the expiration of the 80 day timeline for proceedings at the court below while sitting in its capacity as the Presidential Election Petition Tribunal, serves as an absolute bar to the admission of fresh evidence before

this court. In a nutshell therefore, since the 180 days limited by the Constitution for the hearing and determination of the petition by the lower court has elapsed, this court has no jurisdiction to hear and determine the applicants application. In the circumstance therefore the appellants' application to adduce fresh evidence lacks merit, it deserves to be and is hereby dismissed.

Motion to Strike Out Some Grounds of Appeal

As I stated earlier, the learned senior counsel for the for the 2nd respondent filed a motion challenging the competence of grounds of appeal, 1, 2, 3, 4, 5, 7, 25, 35. I also agree that in view of the nature of this appeal it will be unnecessary to expend precious judicial time on this application, more so since the determination of the motion cannot in anyway relieve this court of the duty to hear and determine the appeal on the surviving grounds of appeal, the law is fairly settled on a legion of authorities that an appeal can be heard and determined on sole surviving ground of appeal where all other grounds are held to be incompetent by the court. I find the application to strike out some grounds in this appeal unnecessary, the application is therefore struck out. I will now proceed to determine the substantive appeal.

The Substantive Appeal

In the appellants brief of argument settled by learned senior counsel Chief Chris Uche, SAN leading other counsel, and filed on 2nd October 2023, seven (7) issues were nominated for discourse, the issues are reproduced as follows:

"1. Whether the lower court was right in refusing to hold that failure of the 1st respondent to electronically transmit results from polling units nationwide for the collation of results of elections introduced by the Electoral Act, 2022 and specified in the Regulations and Guidelines for the Conduct of Elections 2022 and Manual for Election Officials, 2023 does not amount to non-compliance which substantially affected the outcome of the election?

2. Whether the lower court was right in its interpretation of the provisions of section 134(2)(b) and section 299 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in holding that securing one-quarter of the total votes cast in the Federal Capital Territory, Abuja is not a constitutional requirement for the return of the 2nd respondent as duly elected President of the Federal Republic of Nigeria?

3. Whether the lower court was in error to have expunged the witness' statements on oath of the appellants' subpoenaed witnesses, namely PW12, PW13, P14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27 and the exhibits tendered by them on the ground that the witnesses' statements on oath were not filed along with the petition and that Order 3, rules 2 and 3 of the Federal High Court (Civil Procedure) Rules, 2019 is not applicable in election matters?

4. Whether the lower court was not in error in its review of the evidence of PW1, PW2, PW3, PWS, PW7 and PW22, classifying them, as inadmissible hearsay evidence and in discountenancing the various exhibits tendered by the appellants?

5. Whether the lower court was not in error in striking out several paragraphs of the petition and the replies of the appellants on the grounds of vagueness and lack of specificity and for being new issues, mere denials or being repetitive?

6. Whether the lower court was not in error in its evaluation of the evidence of the appellants' witnesses on the burden of proof and clear admission against interest made by the 1st respondent?
7. Whether the lower court was right in its use of disparaging words against the appellants in its judgment: evincing hostility and bias against the appellants, thereby violating their right to fair hearing and occasioning grave miscarriage of justice?

In the 1st respondent's brief of argument filed on 7th October, 2023 and settled by learned senior counsel A.B. Mahmoud, OON, SAN, FCIArb., leading other counsel, seven (7) corresponding issues for determination were distilled, the issues are also set out as follows:

"1. Whether the court below was right in holding that the appellants failed to establish that the transmission of the polling units results through the BVAS to an Electronic Collation System for collation and verification was a mandatory requirement of the Electoral Act, 2022 and failed to prove that the Presidential Election conducted on the 25th of February, 2023 was invalid by reason of non-compliance with the provisions of the Electoral Act?
2. Whether the court below was right in its interpretation of section 134(2)(b) of the Constitution of the Federal Republic of Nigeria, and in, holding that the 2nd respondent who secured one-quarter of the votes case in two-thirds (2/3) of 37 States (FCT Abuja inclusive) is deemed to have been duly elected even if he Jailed to secure 25% of the votes cast in the Federal Capital Territory, Abuja?
3. Whether the court below was right in discountenancing the written statements on oath of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27 as well as the documentary evidence tendered through them?
4. Whether the court below was right in striking out paragraphs 92, 95, 98, 121, 126, 129, 133, 143, and 146 of the petition along with paragraphs 1.2 (i), (ii), (iii), (viii), (xi), (i), (24) and (25) of the petitioners' reply having found that the paragraphs in the petition were vague and imprecise while the paragraphs in the petitioners' reply introduced new facts in violation of the provisions of the first schedule to the Electoral Act?
5. Whether the use of innocuous words by the court below in its evaluation of the evidence adduced before it, which words the appellants consider to be harsh, could amount to breach of appellants' right to fair hearing?
6. Whether the court below was right in its decision that the evidence of PW1, PW2, PW3, PWS, PW7, PW21, PW22, and PW26 were hearsay and therefore inadmissible in evidence?
7. Whether the court below was right in its evaluation of the evidence of the appellants' witnesses, arrived at a correct decision and properly ignored the purported admission in paragraph 18 of the 1st respondent's reply when the alleged admission was not material for the determination of the case before it?"

Learned senior counsel, Chief Wole Olanipekun, CFR, SAN, FCIArb. alongside other senior counsel settled the 2nd respondent's brief of argument filed on 7th October, 2023, wherein counsel also submitted another seven (7) issues for determination reproduced as follows:

"1 Considering the combined provisions of paragraph 15 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended); sections

47(2), 60 and 64 of the Electoral Act, 2022, paragraphs 38, 48, 50, 51, 53, 54, 55, 91, 92, 93 of the Regulations and Guidelines for the Conduct of Election, 2022; the judgment of the Federal High Court in FHC/ABJ/CS/1454/2022 - *Labour Party v. INEC*, admitted as exhibit XI the judgment of the Court of Appeal in Appeal No. CA/LAG/CV/332/2023 - *All Progressives Congress v. Labour Party & 42 Ors*.; and the preponderance of evidence before the lower court, whether the lower court did not come to a right decision in its interpretation and conclusion regarding the position of law, vis-a-vis petitioners/appellants' complaints?

2. Upon a combined reading of the preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), sections 17(1), 134(2)(b), 299(1) thereof, section 66 of the Electoral Act, 2022, and other relevant statutes, whether the lower court was not right in coming to the conclusion that the 2nd respondent satisfied all constitutional and statutory requirements to be declared winner of the presidential election held on 25th February, 2023, and returned as President of the Federal Republic of Nigeria?

3. Having regard to the appellants' pleadings before the lower court, vis-å-vis the provisions of paragraphs) (d)(2) and 16(a) of the First Schedule to the Electoral Act, 2022 and Order 13 rule 4 of the Federal High Court (Civil Procedure) Rules, 2019, coupled with consistent judicial authorities on the fundamental nature of pleadings, whether the lower court did not rightly strike out offensive paragraphs of the petition and petitioners' reply to the respondents' respective replies?

4. In view of the clear provisions of section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 132(7) of the Electoral Act, 2022, paragraph 4(5) of the First Schedule to the Electoral Act, 2022 and the settled line of judicial authorities on the subject, whether the lower court did not rightly strike out the witness statements on oath and expunge the evidence of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW19, PW21, PW23, PW24, PW25, PW26, PW27?

5. Was the lower court right then it upheld the respondents' objection to the admissibility of the documents tendered by the appellants and struck out the said documents?

6. Considering the clear provision of section 135 of the Electoral Act, the pleadings and the reliefs sought by the petitioners/appellants a well as the

admissible evidence the lower court, whether the lower court was not right in dismissing the appellants' petition.

7. In view of the circumstances of the petition before the lower court, the terse evidence adduced by the appellants and the state of the law on the respective subjects, whether the lower court could rightly be accused of bias by the appellants?"

On the part of the 3rd respondent, whose brief of argument was led on the 7th day of October 2023 settled by Chief Akin Olujinmi,

SAN, leading Other counsel, six (6) issues were formulated for determination, they are also reproduced as follows;

1. Whether the Court of Appeal was not right in striking out the paragraphs of the petition filed in violation of paragraph 4(1)(d) of the 1st Schedule to the Electoral Act, 2022 together with the associated witness statements on oath and the documents in support thereof?
2. Whether the Court of Appeal rightfully struck out the offensive replies and/or paragraphs of the replies of the petitioners and the associated witness statements on oath as well as the documents in support thereof, filed in violation of paragraph 16(1) of the First Schedule to the Electoral Act, 2022?
3. Whether the Court of Appeal was nor right to strike out the witness statements on oaths not filed along with the petition within the mandatory 21 days' time frame for filing of petition with the associated documents relating to the depositions as well as the evidence of expert witnesses who were also interested in the petition?
4. Whether having regard to the prescription of the law on allegations of non-compliance, failure of the petitioners to (i) plead with specificity particulars of the polling units complained of (ii) tender and demonstrate relevant documents, and (iii) call necessary witnesses who can give direct evidence on the allegations, the Court of Appeal was not justified in concluding that petitioners did not prove the allegations of non-compliance and how it substantially affected the outcome of the election?
5. Whether the decision of a court is supported by the law, the mere use of alleged strong words in the judgment against the appellant by the court can without more invalidate the judgment of the court?

6. Whether having regard to the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Court of Appeal rightly concluded that 25% of votes cast in the Federal Capital Territory need not be met before a candidate can be declared winner of the presidential election?"

The appellants also filed respective reply briefs, in reaction to the briefs of argument filed by each of the respondents.

Submissions of Counsel for the Appellants

On the first issue, learned Senior Counsel for the appellants, relying on Order 6 rule 5(4) of the Supreme Court Rules, urged this court to depart from its previous decisions on the manner of proof of non-compliance with the provisions of the Electoral Act in the light Of the novel provisions of section 137 of the Electoral Act, 2022 and Paragraph 46(4) of the First Schedule to the Act. It is the contention of learned Senior Counsel referring to section 60(5), 64(4) and (5) of the Electoral Act, 2022 paragraph 38 of the First Schedule that the use of BVAS machines is mandatory for the collation, verification and confirmation of results before announcement. Counsel submitted that the expression "transmitted directly from polling units" in section 64(4)(a)(b)(c), and (6)(c) of the Act refers to election result electronically transmitted in compliance with section 60 (5) of the Act. In a nutshell, while relying on the evidence elicited through the subpoenaed witness (INEC Presiding Officers);several judicial decisions including *Adegboyega Isiaka Oyetola & Anor v. INEC & 2 Ors* (2023) LPELR - 60392 (SC); (2023) NWLR (Pt. 1894) 125; *Atiku Abubakar & Anor v. INEC & Ors* (2020) 12 NWLR (Pt. 1737) 37 at 125, paras. B - H; video recordings containing representations made by the 1st respondents Chairman and National Commissioner, Professor Mahmud Yakubu and Mr.Festus Okoye admitted as exhibits PAF2(a), PAF2(b) and PAF2(c), as well as other documents admitted as exhibits, the doctrine of legitimate expectation, to hold that the 1st respondent's failure to comply with the prescription of electronic transmission of result directly from the polling units amounts to non-compliance with the relevant provisions of sections 60 and 64 of the Electoral Act, 2022 and urged this court to depart from its previous decisions on proof of non-compliance with the Electoral Act in election petitions in view of the novel provision of section 137 of the Electoral Act.

The argument canvassed by the learned senior counsel for the appellants on the second issue is that by section 134(2) of the Constitution, a candidate in the presidential election must have the highest number of votes cast at the election and must have not less than one-quarter of the votes cast at the election in each of at least two-thirds of all States of the Federation AND the Federal Capital Territory, Abuja. Learned senior counsel for the appellants said, a

presidential candidate must have not less than one-quarter of the votes cast in the Federal Capital Territory, Abuja before he can be declared a winner by the 1st respondent.

On the third issue, learned senior counsel submitted that paragraph 4(5) of the First Schedule to the Electoral Act, 2022, which mandates the filing of witness statements on oath of the witnesses a petitioner intends to call, does not contemplate the filing of witness statements on oath for subpoenaed witnesses. According to the appellants, recourse must be had to paragraph 54 of the First Schedule, which allows reliance on the provisions of the Federal High Court (Civil Procedure) Rules, 2019, and by Order 3 rules 2 and 3 thereof, witness statement on oath of subpoenaed witnesses need not be filed at the commencement of the suit. Counsel relied on the unreported decision of the Court of Appeal in Appeal No. CA/KN/EP/ GOV/KAN/05/2023 - Abba Kabir Yusufu All Progressive Congress (APC) & 2 Ors delivered on 24th August, 2023; and CA/PH/SEN/06/2023 - *Allied Peoples Movement (APM) v. INEC & 2 Ors*. Delivered on 10th August, 2023; in support of his submission. The appellants contended that the interpretation given to paragraph 4(5)(b) of the First Schedule to the Electoral Act, 2022 by the lower court (on the compulsory filing of the witness statements on oath of subpoenaed witnesses) by disallowing the testimonies of the appellants' subpoenaed witnesses - PW 12, PW 13/ PW 14, PW15, PW'16, PW17, PW18, PW21, PW23, PW24, PW25, and PW27, will only lead to absurdity and prevent the appellants from relevant evidence in possession of an adversary. The decision in. *P.D.P. v. Senator Basheer Garba Mohammed & Ors*. (2015) LPELR - 40859 (CA) and others were relied upon in support of the submission.

On the fourth issue, learned senior counsel for the appellants maintained that the lower court demonstrated a complete misunderstanding of the case put forward by the appellants, which are specific on the mandatory electronic transmission of results to the collation system and the IReV Portal. Counsel argued that the Evidence of PWI, PW3, PW5, PW7 and PW22 who are the appellants collation agents that can properly give direct evidence of the issues raised in the pleadings as to whether the ward collation officers or returning officers confirmed and verified the electronically transmitted result with the physically delivered result before collation and announcement. Learned counsel relied on the case of *Federal Republic of Nigeria v. Mohammed Usman Alias -Yaro & Anor* (2012) LPELR-7818 (SC); (2012) 8 NWLR (Pt. 1301) 141 to urge this court to hold that the evidence of the referenced witnesses were not hearsay and ought not be expunged from the record of the lower court. It is also the contention of counsel that by section 137 of the Electoral Act, 2022 and paragraph 46(4) of the First Schedule to the Electoral Act, 2022, the need to call oral evidence where originals or certified true copies of exhibits manifestly disclose the non-compliance complained of, or where the

exhibits have been taken as read or demonstrated, has been obviated. Further, learned counsel submitted that the lower court failed to advert its mind to its own decision in the case of *Copytech Design and Print Nigeria Limited v. First Bank Plc* (2021) LPELR - 53621 (CA) when it held that the statistician reports – Exhibits PAHI - PAH4, are inadmissible under section 83(3) of Evidence Act, 2011.

Submitting on the fifth issue which borders on the error made by the lower court in striking out several paragraphs of the petition and the replies of the appellants on grounds of being vague and lacking in specificity and for being new issues, mere denials, or being repetitive. Counsel argued that the appellants duly complied with the provisions of paragraph 4(I)(b) of the First Schedule to the Electoral Act, 2022 which provides that an election petition under the Act shall the right of the petitioner to present the election petition, and which the lower court relied upon to strike out the alleged offensive paragraphs, arguing that the conclusion of vagueness and non-specificity reached by the lower court is unfounded, Learned senior counsel said that if the respondents had the need for further particulars, they should have applied for same, having regard to paragraph 5 of the First Schedule to the Electoral Act, 2022. He submitted that there is no provision in the First Schedule which requires the lower court to strike out any paragraphs as being vague or non-specific, given that election matters are *sui generis*. In relation to the striking out of the appellants' replies to the respondents' replies to the petition, touching on the disqualification of the 2nd respondent from contesting election for the office of the President, counsel submitted that the ground being a constitutional requirement embodied in sections 177 and 131 of the Constitution, the appellants need not repeat the said constitutional provisions in their petition, same being sufficiently exhaustive and comprehensive, relying on *Abubakar v INEC* (2020) 12 NWLR (Pt. 1737) 37 at 102, para. D. He finally said that the lower court erred when it held that the appellants did not give details of the non-qualification of the 2nd respondent in the various replies filed by appellants, thereby urging this court to restore the paragraphs struck out as well as the exhibits tendered in support of the said pleadings.

On the sixth issue, learned senior counsel submitted that the lower court came to the erroneous conclusion that the appellants' witnesses confirmed that the "election went well", especially considering that the appellants' witnesses including PW 12 - PW25, who were presiding officers and agents of the 1st respondent partly testified that the Presidential election results in the challenged polling units (unlike the National Assembly results) were not transmitted directly and successfully to either the collation system or the IReV for public view, before the 2nd respondent was as the winner of the election. He said that there was no

confirmation or verification of the results before declaration and return of the 2nd respondent, citing *Oyetola v. INEC' & Ors.* (supra). Learned senior counsel further submitted that the 1st respondent admitted unequivocally against its interest in paragraph 18 of its reply that the appellant won the election in 21 States out of the 36 States of the Federation, and this questions the presumption in favour of the valid conduct of the election by the 1st respondent and return of the 2nd as winner, citing *Al-Hassan v. Ishaku* (2016) 10 NWLR (Pt. 1520) 230 at 299; .Jegede INEC (2021) 14 NWLR (Pt. 1797) 409.

Addressing on the seventh issue formulated on behalf of the appellants, the case of *Ashiru & Anor v. INEC & Ors* (2020) 16 NWLR (Pt. 1751) 416 at 436, para F; *Lateef O. Fagbemi, SAN v. All Progressive Congress & Ors* (2023) LPELR - 61089 (CA) were cited by the appellants to argue that the words and expressions chosen by the lower court, while discountenancing the appellants' submissions in its judgment, demonstrates the lower court's contempt and disdain for the appellants and counsel.

According to the learned senior counsel, the lower court failed to use modest, moderate/and temperate language in line with the revised code fir judicial officers of the Federa4 Republic of Nigeria, promulgated by the National Judicial Counsel, in its judgment, thereby demonising the appellants, their counsel and their case.

Submissions of Counsel for the Respondents

I have carefully considered the arguments canvassed by the respective learned senior counsel for each of the respondents in the briefs of arguments filed in this appeal. It is clear to me that having adopted the issues formulated by the appellants, the submissions made in the respondent's brief of arguments/aptly capture the various arguments canvassed by both the and 3rd respondents in their separate briefs. In order not to squander precious judicial time, it will suffice to only provide a summary of the submissions made in the 1st respondent's brief of argument. Where necessary, and relevant for the purposes of the present appeal, reference may be made to the 2nd and 3rd respondents' briefs of arguments, after all, the briefs put together constitute one and the same argument on the issues crafted for determination by the appellants. I am sure so doing will not compromise the justice of the case. I will focus on the submissions of the 1st respondent, as sufficient representation of the submissions made by all the respondents.

In response to the appellants' contention on the first issue formulated for discourse, learned senior counsel for the 1st respondent said the appellants have not contended that the previous decisions they seek this court to depart from were given *per incuriam* and the conditions for the court to depart from or override its previous decision do not exist in this

appeal, citing and relying on *veepee Ind. Ltd. v. Cocoa Ind. Ltd.* (2008) 13 NWLR (Pt. 1105) 486 at 520, paras. D - G, 522 - 523, paras. G - A. Learned counsel submitted that the allegation of non-compliance was founded the appellants' erroneous belief that election results ought to have been transmitted to a non-existent electronic collation system of the respondent which purportedly received election results and then collated them electronically. Counsel further contended that the appellants' argument that this court should apply section 137 of the Electoral Act and paragraph 46(4) of the First Schedule to the Act is misplaced, especially as the appellants failed to provide originals or certified copies of such documents that manifestly disclosed the alleged non-compliance, citing *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) 205, at 323, paras. C - H. Section 1350) of the Electoral Act, *Ucha v Elechi* (2012) 13 NWLR (Pt. 1317) 330, and other cases were relied upon to submit that the appellants have the burden of proving the alleged non-compliance and must establish by credible evidence that same substantially affected the outcome of the election. He also submitted that the appellants, who asserted that the 1st respondent has established an Electronic Collation System, were bound to prove same by credible evidence and show the provisions of the Electoral Act or the Guidelines where the 1st respondent prescribed same. Learned counsel submitted that the appellants' witnesses, who were Presiding Officers, by their evidence confirmed that they physically transferred the results of their polling units to the ward collation centre. According to counsel, the appellants failed to discharge this burden. Sections 60, 62 and 64 of the Electoral Act were relied upon to contend that electronic collation was not provided for under the Act.

Counsel further contended that the only reference to electronic transmission of polling unit results which appears in paragraph 38 of the Regulations and Guidelines, clearly shows, with the use of the word "OR" therein, that manual transfer of results can be done, and the provision gave the Presiding Officer the discretion to choose any of the options. He said the 1st respondent's sole witness stated clearly that no election collation system was prescribed by the respondent and that collation was done manually, and this fact was admitted by the of PW 12 - PW 18, and PW23 - PW25, called by the appellants in support of their case. He also contended that the appellants did not establish by evidence the polling units out of the 176,000 polling units nationwide where results were not transmitted using the B VAS machine. He cited *Oyetola v. INEC* (supra) to submit that the IReV portal is merely a result viewing platform. Other arguments were also canvassed by the 1st respondents to the effect that failure to use the BVAS to electronically transmit polling unit results to the IReV Portal cannot in any way affect the outcome of the election. He also said that the recourse is only had to the electronically

transmitted result on the Portal where the physical copies of the result sheets do not exist, citing paragraph 93 of the regulations and guidelines.

On the second issue relating to the interpretation of section 134(2)(b) of the Electoral Act, 2022, learned counsel for the respondent said there is no condition precedent for the winner Of the Presidential election to poll 24% of the votes cast in the Federal Capital Territory in addition to polling 25% of the votes cast in each of the two-thirds of the States of the Federation. Citing section 17(1) & (2) of the Constitution; the decision in *Ukweni v. Governor of cross River state* (2008) 3 NWLR (Pt. 1073) 33, counsel submitted that all Nigerian citizens have equal rights and obligations under the law; that the interpretation urged on this court, if accepted, will lead to manifest absurdity. He argued that, by section 299 of the Constitution, the Federal Capital Territory, Abuja maintains an equal status with other States of the Federation, especially in terms of the application of the Constitution, citing *Bakari v Ogundipe* (2021) 5 NWLR (Pt. 1768) 1 at 37; *Ibori v. Ogboru* (2005) 6 NWLR (Pt. 920) 102 at 138.

The 1st respondent's argument on the third issue is that the lower court was right when it discountenanced the written statements on oath of the appellants' subpoenaed witnesses - PW 12 - PW 18, PW21, and PW23- PW27, as well as documents-tendered and admitted through them, because the said witness statements on oath were not filed alongside the petition as mandated by paragraph 4(5) of the First Schedule. It was also contended that the said witness statements on oath were filed two (2) months after the presentation of the petition and outside the twenty-one (21) days prescribed in section 285(5) of the Constitution, citing *Oke v. Mimiko* (No. l) (2014) 1 NWLR (Pt. 1388) 225 at 263, paras. A-B. Learned seniors counsel said paragraph 41 (8) of the First Schedule prohibits (except with the leave of court after showing exceptional circumstances) the use of any document (including a witness statement on oath), plan, photograph or model in evidence at the hearing of a unless same was filed alongside the petition or the respondent's reply. In response to the appellants' argument that recourse had to the provisions of the Federal High Court (Civil Procedure) Rules, 2019, 1st respondent's counsel submitted that paragraph 54 of the First Schedule qualifies, limits, and restricts the application of the Rules vis-å-vis the provisions of the Electoral Act as well as the mode and manner recourse can be had to the provisions of the said Rules. He relied on *Nwankwo v. Yar'adua* (2010) 12 NWLR (Pt. 1209) 518; *Ogba v. Vincent* (supra) 42 - 49, paras. C-D, in support of his submission.

The fourth issue borders on striking out of several paragraphs of the appellants' petition and replies. It is the contention of the respondent that a perusal of the paragraphs of the petition struck out by the lower court reveals that the appellants failed to comply with the provisions of

paragraph) of the First Schedules to the Electoral Act. He submitted that the appellants failed to provide specific details about the alleged infractions including discrepancies in and identities of the polling, units and where the purported infractions occurred. Learned senior counsel submitted that the affected paragraphs were vague, imprecise, and lacking in particulars to afford the 1st respondent the opportunity to adequately respond to them, citing *Belgore v. Ahmed* (2013) 8 NWLR (Pt. 1355) 60 at 95; *P.D.P. v. I.N.E.C.* (2012) 7 NWLR (Pt. 1300) 538. Counsel further contended that the new facts were introduced in the appellants' replies, bordering on alleged non- qualification of the 2nd respondent flowing from alleged criminal forfeiture of $460,000 (Four Hundred and Sixty Thousand United States Dollars) and alleged acquisition of citizenship of Guinea, contrary to the clear provisions of paragraph 16(1) of the First Schedule; and no particulars were pleaded by the appellants to anchor the alleged non-qualification.

On the fifth issue, counsel cited *D.T.T. Enterprises Nig. Co. Ltd. v. Busari* (2011) LPELR - 923 (SC); (2001) I NWLR (Pt. 695) 482; *Womiloju & Ors. v. Ogusanya Anibire & Ors* (2010) LPELR - 3503 (SC); (2010) 10 NWLR (Pt. 1203) 545, to submit that a serious allegation of bias must be based on cold facts. He contended that the words complained of by the appellants, used by the lower court in its judgment, though may appear harsh do not disclose any element of bias, but merely express strong disagreements by the court below with the submissions made by the appellants. Counsel cited *Emokwe v. International Merchant Bank of Nigeria Ltd. & Ors.* (2016) LPELR-1140 (SC); (Reported as *Enekwe v. I.M.B. (Nig.) Ltd.* (2006) 19 NWLR (Pt. 1013) 146), to contend that there is nothing in the words used to show that the lower court was unjustly and unfairly inclined towards any of the parties.

Arguing issue number six, learned senior counsel submitted that the evidence of PWI - PW5, PW7, PW21, PW22 and PW26, who acted as State/National Collation agents, and whose evidence centered on events and incidents at various polling units based on information related to them by polling agents, shows that they did not function as polling agents of their party, therefore; their evidence is hearsay and this is statutorily prohibited, citing *Ladoja v. Ajimobi* (2016) 10 NWLR (Pt. 1519) 87; and same was rightly discountenanced by the lower court. He relied on *Buhari v. I.N.E C* (2008) 19 NWLR (Pt. 1120) 246 at 424, paras A-F to argue that polling agents are imbued With the competence to give direct oral or written evidence of what transpired in their respective assigned polling units during the election.

On the final issue, counsel for the 1st respondent submitted that the lower court painstakingly evaluated the evidence before it. He submitted that the appellants who contended that all polling unit results ought to be transmitted to an Electronic Collation System failed to prove the existence of such system, all the witnesses merely said was that they could not upload

the polling units result to the IReV Portal, which is different from the Collation System, relying on *Oyetola v. INEC* (Supra). He also submitted that the appellants failed to call witnesses from ward or local government collation centers across the country to show that the results from the polling units forming such wards were not verified before collation. Also, counsel said the appellants failed to state what use they want this court to put on the purported admission against interest in paragraph 18 of the 1st respondent's reply. In addition, counsel said the appellants never pleaded that they won the election in 21 States, thus the alleged admission is of no consequence especially since the appellants did not score the highest number of votes cast in the election, as required by section 134(2) of the Constitution. He finally submitted, citing *Edosa v. Ogiemwanre* (2019) 8 N WLR (Pt. 1673) 1; *Ashiru v. Olukoye* (2006) 11 NWLR (Pt. 990) 1, that since the reliefs sought by the appellants are declaratory in nature, same cannot be granted based on admission. Learned senior counsel then urged that the appeal be dismissed.

Resolution

Under issue number one in this appeal, this court is again confronted with a matter of significant legal and constitutional importance concerning the contention relating to compulsory transmission of election results under the Electoral Act, 2022, and the Independent National Electoral Commission (INEC) Regulations and Guidelines for the Conduct of Elections, 2022. For the appellants as it is their stance that the failure of the 1st respondent to deploy electronic transmission of results from polling units nationwide for the collation of results of the disputed election amounts to non-compliance which substantially affected the outcome of the election.

There is certainly no doubt, the introduction of electronic transmission of election results marks a pivotal advancement in the electoral processes of many nations globally. The adoption of electronic transmission systems represents a response to the imperatives of modernity and technology, seeking to address various challenges that have historically plagued manual transmission of election results, such as errors, delays, and susceptibility to manipulation, and possibly address the notorious issue of ballot box snatching. This introduction reflects a broader global trend of harnessing technology to improve governance, accountability, and public trust in electoral outcomes. Owing to the necessity of this innovations, the Nigerian National Assembly, exercising their legislative powers under section 4 of the Constitution, repealed the extinct Electoral Act, 2010 and enacted in its stead the Electoral Act, 2022, assented to by the President on 25th February, 2022, a year before the disputed elections, the subject of this appeal. In the same vein, the 1st respondent, acting in accordance with its powers under section 160(1) of the Constitution, which section empowers

it to make its own regulations to direct its actions, in the build- up to the 2023 general elections, made the INEC Regulations and Guidelines for the Conduct of Elections, 2022.

In urging this court to accept their submissions on the mandatory transmission of election results, the appellants referred this court to the several provisions of the Electoral Act, 2022, and the guidelines, including section 60(5) and 64(4), (5) & (6) of the Electoral Act, and paragraph 38 of the guidelines. For ease of reference, section 60 provides for "counting of votes and forms", and it reads:

"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 may be.

(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 duly signed as provided under subsection (2).

(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.

(4) The presiding officer shall count and announce the results 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*. "

On the other hand, section 64(4), (5) & (6) provides as follows:

"64(4) A collation officer or returning officer at an election shall collate and announce the result of an election, subject to his or her verification and confirmation that the-

(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 this Act; and

(b) the votes stated on the collated result are correct and consistent with the votes or results recorded and transmitted directly from polling units under section 60 (4) of this Act.

(5) Subject to subsection (l), a collation officer or returning officer shall use the number of accredited voters recorded and transmitted directly from polling units under section 47(2) of this Act and the votes or results recorded and transmitted

directly from polling units under section 60 (4) of this 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.

(c) data of accreditation recorded and transmitted directly from each polling unit where the election is disputed as under section 47 (2) of this Act; and

(6) Where during collation of results, there is a dispute regarding a collated result or the result of an election any polling unit, the collation officer or returning officer shall use the following to determine the correctness of the disputed result-

(a) the original of the disputed collated result for each polling unit where the election is disputed.

(b) the smart card reader or other technology device used for accreditation of voters in each polling unit where the election is disputed for the purpose of obtaining accreditation data directly from the smart card reader or technology device;

(c) 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 this Act."

I am unable to accept the contention by learned counsel for the appellants with respect to the interpretation of the combined provisions of section 60(5), 64(4), (5) and (6) of the Electoral Act. The plain, natural, and ordinary meaning of the words in sections 60(5), 64(4), (5) and (6) cannot if read together be conceived as making electronic transmission of election results mandatory. Section 60 of the Electoral Act, 2022 outlines the process of counting votes at the polling unit. It mandates the presiding officer to enter the votes scored by each candidate in a form prescribed by the Commission.

This form is to be signed and stamped by the presiding officer, counter-signed by candidates or their polling agents (where available), and copies are to be distributed to polling agents and the police officer. Furthermore, the presiding officer is required to count and announce the result at the polling unit and transfer the results in a manner prescribed by the Commission. It is clear to me, that it is a fact conceded by the learned counsel for the appellants that the 1st respondent has been given the discretion to prescribe the manner in which results

will be transferred. On the other hand, section 64(4), (5), and (6) pertains to the duties of collation officers or returning officers. It explicitly mandates that these officers shall collate and announce the result of an election subject to verification and confirmation. The verification and confirmation include crosschecking the number of accredited voters and the votes with records transmitted directly from polling units under sections 47(2) and 60(4) of the Act, respectively. Subsection (5) allows collation officers to use the data recorded and transmitted directly from polling units to collate and announce the result if the collated result at their level of collation is incorrect. Subsection (6) provides a mechanism for resolving disputes regarding collated results, including the use of specific data and original collated results. There is nothing in sections 60 and 64 of the Electoral Act, to remotely suggest that the transmission of election results electronically is compulsory or mandatory. The provisions of sections 60 and 64 of the Electoral Act do not either expressly or implied contain any elements of compulsion to transmit election results. It is not the duty of the court to ascribe meaning other than the language of the statute in -order to evade its consequence, see: *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 SC; (2008) LPELR - 446 (SC), where this court held as follows and I quote

> "it is certainly not the duty of a Judge to interprete a statute to avoid its consequence. The consequences of a statute are those of the legislature, not the Judge. A Judge who regiments himself to the consequences of a statute is moving outside the domain of statutory interpretation. "

I share the same views with the learned Justices of the lower court that the Electoral Act, 2022 has not provided that the results of the election shall be mandatorily electronically transmitted. The legislature thought it right and proper and for good reasons to use words like "deliver", "transfer" and "transmitted directly" without qualifying same with any mode or means to describe the way collated results are to be moved from one stage in the electoral process to another, until the results are collated and declared. I believe the appellants' suggestion that electronic transmission of election results is mandatory was derived from the misconception of the provisions of paragraphs 38, 48, 50, 51 and 93 of the Regulations and Guidelines, which read as follows:

"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."

Paragraph 48 of the regulations and guidelines relates to the use of results electronically transmitted or transmitted directly from polling units for collation. It reads as follows:

"(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 the political parties on the result sheet is correct and agrees with the result electronically transmitted or transferred directly from the polling unit as prescribed by these regulations.

(b) If a collation or returning officer determines the 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 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."

Paragraph 50 contains provision for the collation of results at the ward level. It provides as follows:

"The Registration Area/ Ward Collation Officer shall:

(i) Take delivery of the original copies, Of Forms EC8A, EC8A(1), and EC8A(11) for the Presidential, Senatorial and the House of Representatives elections, respectively, including the EC40H(1) and 40G;

(ii) Take delivery Of the original copies of Forms EC8A and EC8A(1) for Governorship and the State Houses of Assembly elections, respectively;

(iii) Take delivery of Forms EC8A and EC8A(I) for the Area Council Chairmanship and Councillorship elections of the Federal Capital Territory (FCT) respectively;

(iv) Receive the B VAS from the respective Presiding Officers;

(v) Compare the of voters verified by the 8 VAS with the number of accredited voters and total votes cast for the polling unit as contained in the Form EC8A series for each Polling Unit;

(vi) Receive and consider, if any, the reports of anomalies, adverse incidents and equipment failure from. the Presiding Officers, including reports of where polls are either cancelled or not held;

(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 (RA TECHs);

(viii) Submit the BVAS to the respective Supervisory Presiding Officers (SPOs), in tamper-proof envelopes;

(ix) Collate the votes entered in Forms EC8A, EC8A(I), and EC8A(II) for Presidential, Senatorial and the House of Representatives elections, respectively;

(x) Collate the votes entered in Forms EC8A and EC8A(1) for Governorship and State Houses of Assembly elections, respectively;

(xi) Collate the votes entered in Form EC8A and EC8A(I) for Area Council Chairmen and Councillorship elections respectively;

(xii) Add up the Polling Unit results to get the RA/Ward summary.

(xiii) Enter the votes in both figures and words in the appropriate spaces in Forms EC8B, EC8B(I) and EC88(II) as the case may be;

(xiv) Complete the forms as required, date and sign same 'and request the Polling Agents to countersign.

(xv) Complete Form EC40G for Polling Units where election is cancelled or not held.

(xvi) Hand over the Electoral Operations copy (top copy) of Form EC8B to the INEC RA Supervisor.

(xvii) Distribute copies of each of the Form EC 8B or EC 8B(1) and EC 813(11) to each Polling Agent and the Police.

(xviii) Take custody of the original copies of Forms EC8B, EC8B(1) and EC8B(ll) together with other materials, equipment and reports (if any) received from Presiding Officers at the election and deliver same to the LGA Collation Centre.

(xix) Implement any other result management procedure as prescribed by the Commission with the assistance of the Collation Support and Result Verification System (CSRVS) Officer or RA TECH, where applicable; and

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

Meanwhile, Paragraph 51, deals with the procedure to be followed in resolving discrepancies in polling unit results at RA/Ward Collation. It provides as follows:

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

(i) Request explanation(s) 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."

Further, Paragraph 93 of the Regulations and Guidelines which relates to the procedure to be followed by a collation officer during collation of results and where INEC hardcopy of results do not exist and use of duplicate hardcopies from other agencies. It reads as follows:

"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."

I have taken the liberty to reproduce the relevant provisions of the Regulations and Guidelines (save for paragraph 100 thereof) wherein reference is made to the phrase "electronically transmit" which the learned senior counsel for the appellants touted as mandating the 1st respondent to electronically transmit results. A careful examination of the referenced provisions of the Regulations and Guidelines reproduced supra does not support the argument canvassed by the appellants, to the contrary, with the use of the phrase "electronically transmit or transfer directly", it is obvious that the Regulations and Guidelines contemplate the movement of the election results from -one stage of the electoral process through alternative means and not exclusively through electronic transmission, as urged on us by the appellants. No doubt, while the draftsman intended that technology will be entrenched in the election process but did not completely get rid of the process of manual transmission.

Without any hesitation, I hold the view that reference to the electronic transmission/collation of results in paragraph 38 of the INEC Regulations and Guidelines seems to me to be an exercise of the discretion conferred on the 1st respondent under section 60(5) of the Electoral Act, 2022. By the clear provisions of the regulations and the guidelines, manual transfer/transmission of results has been positioned as an alternative by 1st respondent presumably due to the unique challenges of electronic mode of transmission, and this is the only reasonable conclusion I am bound to reach in the circumstance.

It will certainly be a naked usurpation of legislative functions under the thin disguise of interpreting the words used in sections 60, 64(4) and (5) of the Electoral Act, 2022, and the relevant provisions of the regulations and guidelines to conclude that electronic transmission of results is mandatory under our laws as presently constituted.

I am not oblivious of the fact that key components of electronic transmission systems include the secure capture, encryption, and transmission of election results in real-time or near real-time, ensuring that citizens, political parties, and stakeholders have swift access to accurate election data: and that this shift not only streamlines the electoral process but also fosters greater confidence in the integrity of elections, the question as to whether the 1st respondent has, in the discharge of its statutory responsibility of midwifing the electoral process, failed to comply with the provisions of the Electoral Act, 2022 and which non-compliance substantially affected the outcome of the disputed election, must be determined in accordance with the letters and within the boundaries and contemplation of the applicable laws in Nigeria. In my humble view therefore, the question whether the appellants have discharged the burden of proving the non-compliance alleged by the 1st respondent does not arise, as we have found that neither the Electoral Act, 2022 nor the regulations and guidelines wholly and exclusively mandate the electronic transmission/collation of election results by the 1st respondents.

The point must be made clearly that, the mere fact that the 1st respondent deployed BVAS machines and the IReV portal does not change the settled position that neither the Electoral Act nor the Regulations and Guidelines make it mandatory for results to be electronically transmitted or collated. In *Oyetola & Anor v. INEC & Ors.* (2023) LPELR-60392(SC) 22, paras. A - E; (2023) 11 NWLR (Pt. 1894) 125, this court, per Lord and learned brother, Agim, JSC, provided clarification on the essence and status of the Collation System and the INEC Result Viewing (IReV) Portal and 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/or 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."

As the learned senior counsel for the respondent, rightly argued, whereas the purpose of the Collation System is meant to provide the relevant collation officer the means to confirm/verify as polling unit result, the IReV Portal was deployed to allow the public view results in real-time. With this in mind, and having regard to the •fact that the Electoral Act, 2022 and the Regulations and Guidelines, have not made it mandatory that the election results be electronically transmitted, this position therefore allows for manual transmission, it cannot then be heard that failure to upload result with the Bimodal Voter Accreditation System (BVAS) machines or device on the IReV Portal is a non-compliance of such a nature that will substantially affect the outcome of the election.

So much furore was made by way of forceful submissions by counsel regarding the special status of the votes from the Federal Capital Territory, Abuja in the determination of the winner of the Presidential election in Nigeria. It is the view of the learned senior counsel for the appellants, that with the way section 134(2)(b) is framed by the draftsman, it is mandatory that a candidate in a presidential election earns 25% of the valid votes cast in the Federal Capital Territory, Abuja. For ease of reference, section 134(2) of the Constitution provides as follows and I quote:

> "A candidate for an election to the office of 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 each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja."

By the above provision, a candidate for an election to the office of President shall be deemed duly elected where he has the highest number of votes cast at the election and has at least 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. In my humble understanding, there is no controversy regarding the first leg relating to the polling of the highest number of votes cast in the disputed election, in this case. The issue in controversy here borders on (b) above, that is, in relation to the need for a candidate to poll more than one-quarter of the votes cast at the election of at least two-thirds of all States, as well as two-thirds of the Federal Capital Territory, Abuja. Put simply, is it compulsory for a candidate to poll more than one-quarter of the votes cast in the Federal Capital Territory, Abuja, before such a candidate can be declared and returned elected as the President of Nigeria?

A perfunctory look at the above provision, and particularly with the use of the word "AND" in the phrase "all the States in the Federation and the Federal Capital Territory, Abuja"

may give the impression that having one-quarter of the votes cast at the election of at least two-thirds of all States, separately from two-thirds of the Federal Capital Territory, Abuja is necessary. In other words, having 25% of the votes cast in the Federal Capital Territory, Abuja as much as having 25% in two-third of the 36 States of the Federation. Like I said, this interpretation is based on a first glance of the above provision, and apparently guiding the misconceived views of the appellants.

In the past, this court reiterated several guidelines on the interpretation of not only statutes but also the provisions of our Constitution in a plethora of decisions including the decision in *A.-G., Bendel State v. A.-G., Fed*. (1981) 10 SC 1; (1981) 3 NCLR 1; where Obaseki, JSC (of blessed memory) outlined 12 guidelines to be spotted in the interpretation of the Constitution in the following words:

"1. Effect should be given to every word used in the Constitution.
2. A construction nullifying a specific clause in the Constitution shall not be tolerated, unless absolutely necessary.
3. A constitutional power should not be used to attain an unconstitutional result.
4. The Language of the Constitution, where clear and unambiguous must be given its plain and evident meaning.
5. The Constitution of the Federal Republic of Nigeria is an organic scheme of Government to be dealt with as an entity hence; a particular provision should not be severed from the rest of the Constitution.
6. While the language of the Constitution does not change, the changing circumstances of progressive society for which it was designed, can yield new and further import of its meaning.
7. A constitutional provision should not be construed in such a way as to defeat its evident purpose.
8. Under the Constitution granting specific power, a particular power must not be granted before it can be exercised
9. Declaration by the National Assembly of its essential legislative functions is precluded by the Constitution.
10. Words are the common signs that men, make use of to declare their intentions one to another, and when the words of a man express his intentions plainly, there is no need to have recourse to other means of interpretation of such words.
11. The principles upon which the Constitution was established rather than the direct operation or Literal meaning of the words used should measure the purpose and scope of its provisions.
12. Words of the Constitution are, therefore, not to be read with "stultifying narrowness."

It is settled law that when a court is faced with the interpretation of a constitutional provision, the entire provision must be read together as a whole to determine the object of that provision. In the same vein, where a court is faced with alternatives while interpreting the Constitution or statute, the alternative construction that is consistent with smooth running of the system. See *A.T Ltd. v. A.D.H. Ltd.* (2007) 15 NWLR (Pt. 1056) 118 at 166-167; *Tukur v. Government of Gongo1a state* (1989) 4 NWLR (Pt. 117) 517 at 579. It is the duty of every court to ascertain the intention and purpose of the law makers and give effect to it, but it should not give a statute a construction that would not read a particular provision in isolation. Rather, the whole statute should be looked at to discover its intention, even though in the process of so

doing, a different complexion from what is intended by the legislature must not be brought into the provision.

With the above in mind, I have accorded careful consideration to the provisions of section 134(2)(b) of the Constitution and I must say I am not prepared to accept that it is mandatory for a candidate to have 25% of the votes cast in the Federal Capital Territory, Abuja before he can be declared winner of the Presidential election, especially considering the purport and effect of other provisions contained in the Constitution. One of such provisions is section 299 of the Constitution, and I found it desirable and appropriate at this point to set out the said provision as follows:

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

The above provision of the Constitution in my view is very clear, explicit, and unambiguous. It is trite that where a provision of statute is clear and unambiguous, only its natural and ordinary meaning is to be given to its interpretation. See: *A.-G., Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt. 763) 264 at 485-486. The court below in the case of *Okoyode v. F.C.D.A.* (2005) LPELR- 41123 (CA), constructed the above provision and held as follows:-

> "I am of the considered view that the natural meaning to be given to section 299 of the Constitution of the Federal Republic of Nigeria, 1999 is that the Federal Capital Territory should be a separate administrative unit distinct from the Government of the Federal Republic of Nigeria. I further add, that every institution created for the Federal Capital Territory only carries the appellation Federal. In the real sense, they are State agencies because they are institutions meant for the Federal Capital Territory."

The non-separate and non-superior status of Federal Capital Territory, Abuja received judicial endorsement in *Ibori v. Ogborus* (2005) 6 NWLR (Pt. 920) pg. 102, where it was held that

> "the Federal Capital Territory is to be treated like a State, it is not superior or inferior to any State of the Federation".

Undoubtedly therefore it is clear that by virtue of section 299 of the Constitution of the Federal Republic of Nigeria; the Federal Capital Territory FCT is in law a State. By section 132(4) of the Constitution, for the purpose of an election to the office of the President, the whole of the Federation shall be regarded as one constituency. In my humble view therefore, it will be absurd to ascribe a construction to section 134(2)(b) of the Constitution in a way that

will invariably accord voters in the Federal Capital Territory privileges or special status in the election of the President of Nigeria. This will undoubtedly be discriminatory and run contrary to the provisions of section 42(1) of the Constitution which prohibits conferring advantages over citizens of Nigeria based on the communities they live in and their political opinion.
The provision is for the avoidance of doubt reproduced as follows:

> "(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-
>
> (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or
>
> (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions."

Where a statutory provision is clear, it cannot be constructed and stretched beyond its context. If its language and, legislative content are apparent, a court of law is not clothed with jurisdiction to distort its plain meaning to make it conform with its own views of sound social justice. It is clear to me that there is no confusion in the wordings of section 134(2) of the Constitution, it leaves no one in doubt that the Federal Capital Territory, Abuja is not to be treated separately from the other 36 States, but must be considered as one of the constituent units or Federating States meaning that there are 37 States for the purpose of calculating the 2/3 requirement in section 134(2)(b) of the Constitution.

The appellants' complaint under the fourth issue for determination is that the lower court misapprehended the case of the appellants' and erroneously held that the evidence of PW I, PW2, PW3, PW5, PW 7 and PW22 are inadmissible hearsay evidence. The appellants contended that since the appellants' petition is specific on the mandatory electronic transmission of results to the collation system and the IReV Portal, it is only the appellants' collation agents that are capable of giving direct evidence of the issues raised in the pleadings on whether the ward collation agents or returning officers verified the electronically transmitted result with the physically delivered result before announcement of the winner. Without doubt, this complaint relates to alleged compliance by the 1st respondent, with the Electoral Act and its Regulations and guidelines. Now, it is an established part of our electoral jurisprudence that a person who alleges non-compliance with the rules and regulations laid down for the conduct of an election and seeks to have election nullified by reason of that non-compliance, must not only prove the non-compliance but must go further to show that the non-compliance was substantial and affected the outcome of the election. See *A.P.C. v. Marafa* (2020) 6 NWLR (Pt. 1721) 383. Although, by section 137 of the Electoral Act, 2022, it shall not be necessary for a party who alleges non-compliance with the provisions of the Electoral Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged.

However, the said provision is not at large as this court, per my lord and brother Jauro, JSC pertinently settled the issue in *Oyetola & Anor v. INEC & ors.* (supra) at 58 - 59, paras D - E, where the

> "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 non-compliance 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 non-compliance 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) 35, *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."*

In any event, it will be recalled that earlier in this judgment, I have already reached a decision, having regards to the relevant provisions of the Electoral Act, 2022 and the 1st respondent's regulations and guidelines, that the question of non-compliance in relation to the alleged failure of the 1st respondent's official to electronically transmit the election results has no foundation to stand. Therefore, any evidence relating to alleged non-compliance goes to no issue, and the question as to whether the appellants ought to have called polling units agents to prove the alleged non- compliance; or whether the evidence of PW 1, PW2, PW3, PW5, PW 7 and PW22 are inadmissible hearsay evidence, for the limited purpose of establishing the said non-compliance, is not relevant. However, evidence elicited from the said witnesses transcend the issue of non-compliance contemplated-by section 137 of the Electoral Act, 2022, but also relates to the allegation of corrupt practices including suppression of votes, multiple thumb printing of ballot papers, entry of wrong figures in Form EC8A, disruption of votes.

I need to emphasize that in election petitions, where allegation of corrupt practices at the polling unit is made, as done by the appellants ground number 2 of the petition (see from pages 31 – 37 of volume I of the record of appeal), the petitioner making these allegations must lead concrete, cogent I convincing and credible evidence to prove them. By the very allegations at paragraphs 87 - 104 of the petition, the appellants alleged that the 2nd respondent's election is invalid by reason of corrupt practices, that the "*1st respondent manipulated and deliberately managed the votes emanating from the polling units in that the 1st respondent through its officials, suppressed votes of the petitioners and wrongly credited the 2nd respondent and 3rd respondents with the said votes*." I dare say that it is only a polling unit agent or a person who was present at a polling unit during poll that can give admissible evidence of what transpired during the election at each unit. In several paragraphs, the appellants alleged that *"elections were disrupted by agents of the 2nd and 3rd respondents who snatched ballot boxes and BVAS*

machines and took them to locations where they were wrongly used to generate false results in favour of the 2nd and 3rd respondents." Being allegations crime, section 135(1) of the Evidence Act, 2011 imposes strict burden on the appellants to prove the alleged crime beyond reasonable doubt. If he fails to discharge the burden, his suit/petition fails.

To my mind, this burden cannot be fully discharged without calling vital persons who witnessed the facts alleged. It is only a person who was present at the respective polling units during the poll and who was present during collation of polling units results in a ward collation centre that can give admissible evidence of what transpired at such polling units or collation centres. It is not in dispute that PWl, PW2, PW3, PW5, PW7 and PW22 who as found by the lower court, were State and National Collation agents, and who were not present in all the units and centres during poll, cannot be eye witnesses of what transpired at the said units or centres, and can only rely on evidence of what they are told took place in those units and centres. So their evidence of what took place in such polling units, ward and other collation centres, which they did not directly witness, can only be hearsay evidence which is inadmissible to establish the truth of what happened during poll or results collation. This reasoning is consistent with our decision in *Buhari INEC & ors.* (2008) 19 NWLR (Pt. 1120) 246, where Tobi, JSC (of blessed memory) said as follows:

> "An agent is the representative of the candidate in the polling station He sees all the activities. He hears every talk in the station He also sees actions and inactions in the station. Any evidence given by a person who was not present at the polling units or potting booth like the is certainly hearsay. And here, I so regard paragraph 16 of the witness statement or deposition of the appellant. After all he was not there. He was given the information by the agents. The million naira question is why did these agents not make statement as witnesses? In my view, agents are in the most vantage point to give evidence of wrong doing in a polling unit or polling booth. Can the appellant say in reality that he proved his case without calling any agent?"

PWI, PW2, PW3, PW5, PW7 and PW22 were not able to give credible eye-witness evidence of the events in all the polling units. Such evidence can only be given by those who participated in and or witnessed the poll in the polling unit or ward collation or other collation centres. Any evidence led presented by a petitioner who alleges corrupt practices in the polling unit or collation, which did not come directly from the persons who were on the field where the votes were counted and/or collated, is inadmissible hearsay and will be discountenanced as rightly done to the evidence elicited through PWI, PW2, PW3, PW5, PW7 and PW22 by the lower See *Hashidu v. Goje* (2003) 15 NWLR (Pt. 843) 352 at 386. Based on the state of the law, I see no justifiable basis for this court to reach a contrary conclusion.

The next question to be determined borders on whether the lower court was not in error in striking out several paragraphs of the petition and the replies of the appellants on grounds of vagueness and lack of specificity and for being new issues, mere denials or being repetitive? At pages 8025 - 8026, volume 6 of the record of appeal, the lower court, after evaluating the averments contained in paragraphs 92, 95, 98, 121, 126, 129, 133, 143, 145 and 146 of the petition are vague, imprecise and lack particulars, falling short of Paragraph 4(1)(b) of the First Schedule to the Electoral Act; thereby striking them out. I have examined the said offending paragraphs which were struck out by the lower court and I must say that I am in agreement that the lower court is on sound standing when the court held that the said paragraphs contained vague, imprecise averments and/or lacks particulars. A careful reading of the portion of the

lower court's judgment at pages 8010 - 8025 of Volume 10 of the records of appeal, shows that the lower court painstakingly considered the averments contained in paragraphs 92, 95, 98, 121; 126, 129, 133, 143, 145 and 246 as well as other paragraphs of the petition alleged to suffer from the vice of vagueness, lack of specificity or particulars, before reaching the conclusion that the offending paragraphs are liable to be struck out. For instance, the lower court rightly found that in paragraph 92 of the petition, where the appellants alleged wrongful cancellation of polling unit results in various Local Government Areas of Sokoto State, lacks particulars of the specific polling units affected. As a matter of fact, in the said paragraph, the appellants in one breathe alleged cancellation of elections in 241 polling units and in another breathe alleged that the cancellation affected 301,499 registered voters in 471 polling units. Meanwhile, the averments contained in paragraph 95 of the petition, wherein it is alleged that the *"infractions enabled the results of the polling units in those LGAs to be manipulated through and by the inflation of the 2nd respondent 's votes and depletion Of the petitioners 'votes"* is undoubtedly vague.

As the lower court rightly held, it is necessary, having regard to the provisions of paragraph 15 of the First Schedule to the Electoral Act, 2022 for the appellants as petitioners to plead exact figures of votes affected by the alleged manipulation. Similar fate was suffered by other paragraphs including paragraphs 98, 121, 126, 129, 133, 143, 145 and 146. Averments in an election petition must meet the degree of precision and brevity as is consistent with a clear statement otherwise the averment will be struck out for being vague. By paragraph 4(1)(d) of the First Schedule to the Electoral Act which provides that an election petition shall clearly state the facts of the election petition and the ground(s) upon which the petition is based. By this provision, the grounds are to be set out separately from the facts to be adduced in support of the grounds, and the reliefs sought by the petitioner. The provisions of paragraph 4(1) of the First Schedule to the Electoral Act which provide for the contents of an election petition are mandatory for a petitioner. A petition afflicted with a deficiency in the manner in which it sets out facts in support of the grounds of a petition will be adjudged dead on arrival. See *Okechukwu v. Obiano* (2018) 9 - 12 MJSC 1, 24, A-G, (2020) 8 NWLR (Pt. 1726) 276. The only conclusion that can be reached, as done by the lower court, is that the entirety of paragraphs 92, 95, 98, 121, 126, 129, 133, 143, 145 and 146 of the petition which are vague, nebulous, bogus, imprecise, and not supported by material facts and particulars be struck out while every piece of evidence, elating thereto documentary or oral be expunged from the records.

Meanwhile, as it relates to the offending appellants' reply which was struck out by the lower court, paragraph 16(1) of the First Schedule to the Electoral Act, 2022 provides as follows:

> "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 petitioners shall not at this stage be entitled to bring new facts, grounds, or prayers tending to amend or add to the content of the petition filed by him; and
>
> (b) The petitioner's reply does not run counter to the provisions of paragraph 14(1) ..."

Without doubt, the above provision requires that a petitioner's reply shall be limited to responding to "new facts" or issues raised in the respondent's reply to a petition. A petitioner's reply is not an avenue to introduce new issues. It is not intended to be a repair kit to put right any lacuna or error in the petition as originally conceived and constituted. See *A.P.C. v. P.D.P. & Ors* (2015) LPELR - 24567 (SC); (2015) 15 NWLR (Pt. 1481) 1.1 cannot subscribe to the argument canvassed by the appellants' counsel that the facts touching on the disqualification of the 2nd respondent from contesting election of the President, being a constitutional requirement under section 131 and 177 of the Constitution, need not be repeated in the petition. I must say that this contention has no leg to stand in so far as the issue or facts/particulars as to the alleged non-qualification of the 2nd respondent were not originally pleaded in the petition but has been surreptitiously introduced for the first time in the reply. It must be noted that the facts contained in paragraphs I .2(i), (ii), (iii), (iv), (v) and 2. 1 (b) of the appellants' reply relating to alleged criminal forfeiture of $460,000 (Four Hundred and Sixty Thousand United States Dollars) and acquisition of citizenship of Republic of Guinea by the 2nd respondent, were not originally contained in the petition but freshly introduced by the appellants in the reply.

The law is well established that a petitioner cannot introduce in his reply, new facts which are not contained in the petition because as at the time of filing his petition, those facts were within his knowledge and if he did not adequately include them in his petition, the proper thing to do will be to amend his petition within the limited time prescribed. Where a petitioner's reply is necessary, it should be limited to responding to such new issues of facts raised in the respondent's reply; the filing of a petitioner's reply does not give the petitioner an avenue to embellish his petition and provide filling the gaps and reawaken forgotten facts in his case. This is what the appellants sought to do in this case. Thankfully, the lower court was alive to its responsibilities and nipped the intended legal maneuvers in the bud by striking out the offending paragraphs in the said reply. From all I said therefore, issues 1 to 6 must be and are hereby resolved in favour of the respondents against the appellants.

On the nit-picking remarks made by the lower court, that is issue number 7 for determination. The issue is of no use to the appellants, I view issue 7 as an attempt by counsel to furtively insert their grievance in the appellants' appeal. Counsel must generally review their conduct and refrain from engaging social media to achieve what they cannot canvass and achieve in court. I totally agree with my learned brother that the time has come for all counsel to be strictly professional and desist from engaging the social media in launching assault on the dignity and integrity of the courts. Counsel must learn from this grievance that what is said in the social media and press is not as indelible as what constitutes an integral part of a judgment. Let me also say at this point that enough is enough. Appellants and counsel have nothing useful to urge this court. I will stop here.

For these reasons and the more detailed and elaborate reasons marshalled in the leading judgment I also hold that appellants appeal is lacking in a jot of merit and therefore deserves to be and is hereby dismissed. I also affirm the judgment of the lower court and abide by all consequential orders in the leading judgment.

Appeal dismissed.

AGIM, J.S.C. I had a preview of the judgment delivered by my learned brother, Lord Justice, John Inyang Okoro, J.S.C. I completely agree with the reasoning, conclusions, decisions and orders therein. Let me however contribute my views on some of the issues.

Let me start with the appellant's application for leave of this court to adduce fresh or additional evidence in this appeal.

The additional or fresh evidence sought to be adduced is an oral deposition of one Carl Westberg, Registrar of Chicago State University (CSU) as designated representative of Chicago State University, made in the law ofT1ce of Dechert LLP, Lawyers to the 1st appellant herein at No. 35 West Wacker, Suit 3400, Chicago, Illinois and recorded by Gwendolyn Bedford, a Certified Shorthand Reporter in the County of Cook, State of Illinois on 3-10-2023. The said oral deposition is exhibit C attached to the affidavit in support of the motion on notice applying to adduce fresh or additional evidence in this appeal.

It is clear from the said motion and the deposition that three days after the deposition was made on 3-10-2023, the appellants herein on 6-10-2023 filed in this court the motion applying for an order of this court to admit it as additional evidence in this case and therefore part of the evidence this court should consider in determining this appeal.

The question that readily comes to mind after reading the deposition is whether it can be admitted in evidence in a Nigerian Court as the testimony of Carl Westberg made in the Law office of the 1st appellant's Lawyer in Illinois, USA on 3-10-2023 or as the statement of Gwendolyn Bedford, the certified shorthand reporter that recorded it as evidence of the fact or truth that Carl Westberg made it. The determination of this two-pronged question is important because only legally admissible evidence can be evidence in court and can be adduced as fresh or additional evidence on appeal. Even in the USA where the procedure adopted in making the deposition is permitted by their rules of court, its admissibility as evidence is not assumed or automatic upon being made. It can be admitted as evidence in court only upon it satisfying the criteria for admissibility prescribed in their rules of court. See for example 28 U.S.C. 1782 and Fed. R. Civ. P. 32.(a)(1), (A)(B)and Fed. Evid. 602. Another example is CPLR 3116 which essentially states that if you do not produce proof that you forwarded a deposition transcript to the deponent for signing before the officer that administered the oath, the transcripts are not admissible evidence.

Let me state here that we do not have equivalent provisions in Nigeria. S. 46 of our Evidence Act, 2011 that appears to be such provision, is not in any respect. The section provides thusly -

> "(a)(l) Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is admissible for the purpose of providing in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding the truth of the facts which it states, when the witness cannot be called for any of the reasons specified in section 39, or is kept out of the way by the adverse party.
>
> Provided that -
>
> (a) the proceeding was between the same parties or their representatives in interest;
>
> (b) the adverse party in the first proceeding had the right and opportunity to cross-examine; and
>
> (c) the questions in issue were substantially the same in the first as in the second proceeding.
>
> (2) A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the defendant within the meaning of this section."

"Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it" as used in S. 46 of the. Evidence Act, 2011 refers to evidence given by a witness in legally authorized adjudicatory proceedings. It is the evidence of a witness in such proceedings that can be admitted as evidence in subsequent judicial proceedings subject to the satisfaction of the conditions prescribed in the Proviso to subsection (I) therein. The proceedings in the law office of 1st appellant's Lawyer in Chicago in which Gwendolyn Bedford, the Certified Shorthand reporter recorded Carl Westberg's oral deposition is not an adjudicatory proceeding. Therefore, in Nigeria, the deposition does not qualify as evidence given by a witness in a judicial proceeding or before any person authorized by law to take it.

In the USA, a deposition is a device available to parties in a civil suit to obtain testimony from a witness under oath prior to trial. It is part of the discovery process by which parties gather facts and information to enable them be better prepared at trial to present or prosecute their case. It involves the taking of sworn, out of court, oral testimony of a witness that may be reduced into a written transcript for later use in court or for discovery purposes. They are almost always conducted outside court by the lawyers themselves, with no judge present to supervise the examination. Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness or for any other purpose allowed by the US Federal Rules of Evidence.

A witness deposition made in another count0' cannot be automatically received as evidence in the Nigerian Courts. Beings a deposition from another country, it can be received as evidence in Nigerian courts only if it satisfies the requirements for use of foreign affidavits in Nigeria prescribed by S. 110 of the Evidence Act, 2011 and the general requirements for admission of all forms of evidence in Nigeria prescribed in other provisions of the Evidence Act and other laws of Nigeria. The rules of procedure of courts in other countries do not apply in Nigeria. However, Nigerian courts in applying their own rules of procedure can choose to be guided by the principles of application of equivalent provisions in foreign rules of court. This restatement follows our decisions on the same point in South Atlantic Petroleum Ltd v. Minister of Petroleum Resources (2014) 4 NWLR (Pt. 1396) 24 at 40 and *B.M. Ltd. v. Woermann-Line* (2009) 13 NWLR (Pt. 1157) 149 at 176.

S. 110 of the Evidence Act, 2022 provides as follows: -

> "Any affidavit sworn in any country other than Nigeria before -
>
> (a) a Judge or Magistrate, being authenticated by the official seal of the court to which he is attached, or by a notary public; or
>
> (b) the duly 'authorized officer in the Nigerian Embassy, High Commission or Consulate in that Country, may be used in the court in a cases where affidavits are admissible".

It is glaring from this provision that a deposition or affidavit sworn in another country must be authenticated as prescribed by law before it can be used in a court in Nigeria. A reading of the deposition sought to be adduced as fresh evidence, exposes that it is not authenticated by the seal of the authority before whom it was sworn. The Certified Shorthand Reporter before whom the deposition was made did not authenticate the deposition with her seal. She merely signed her Certificate of Reporter bearing her name and number at page 126 of exhibit C. Being a deposition from another country to be used in Nigeria, authentication by the oath administrator is mandatory.

A deposition from another country to be used in a court in Nigeria should *prima facie* bear features of authentication such as the official seal of the court where it is sworn and the

signature of the officer of the court that administered the oath or if it is sworn before a notary public, his seal and signature or if sworn in the Nigeria Embassy, High Commission or consulate in that country, the signature of the officer authorized to do so and the seal of the Embassy, High Commission or Consulate. Such authentication is an assurance of the origin and authenticity of the foreign deposition. The bare deposition as it is without authentication by the seal of the oath administrator is spurious and not admissible for use as evidence in a Nigerian court.

The deposition is not signed by the deponent. In Nigeria, a witness statement on oath, in any form, made before a person authorized to administer oath, can be made extrajudicially or outside judicial proceedings for the purpose of using same as evidence in a judicial proceedings. Such witness deposition must be signed by the witness as deponent before it can be admitted and adopted as his evidence in a proceeding in court. An affidavit or deposition not signed by the deponent is useless. Without the deponent's signature, it is not his affidavit or deposition. Carl Westberg who made the oral deposition in exhibit C did not sign the deposition as the deponent. Gwendolyn Bedford who recorded it did not indicate why the deponent did not sign the deposition. Even in the USA, the law requires the deposition to be signed by the deponent unless he waives his signature or refuses to sign it.

As it is, the oral deposition sought to be introduced as evidence in this appeal is a documentary record by Gwendolyn Bedford of what Carl Westberg said on 3-10-2023 in the Law office of 1st appellant's Lawyers. Carl Westberg is not a witness in this case. It is therefore hearsay evidence by virtue of S.37 of the Evidence Act 2011 which provides that -

> "Hearsay means a statement -
>
> (a) oral or written made otherwise than by a witness in a proceeding; or
>
> (b) contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of providing the truth of the matter stated in it."

S. 38 of the same Act provides that hearsay evidence is not admissible except as provided in the Act or any other Act. There is no provision in the Evidence Act or any other law in Nigeria that makes a recorded oral deposition admissible as evidence in a proceeding in which the deponent is not a witness.

I wonder why the deposition said to be made pursuant to the 3rd October 2023 order of the United States District Court for the Northern District of Illinois in Case No. 23/CV/05099 for use in a foreign country was not made before the court in the said proceedings and if made elsewhere, in the law office of the 1st appellant's Attorney, why was it not filed in the above mentioned court and adopted as the deposition ordered to be made by it, so that it can form part of the record of that court, to enable the court issue it as part of its record and so authenticate it with the seal of the court and the signature of the relevant officer of court.

Page 1 of the deposition is headed

> "*In the United States District Court for the Northern District of Illinois*
>
> In Re-application of Atiku Abubakar, for an order Directing Discovery from Chicago State University pursuant to 28 U.S.C. 1782 No. 23 CV 05099".

This gives the impression it is a process of the said District Court or that the deposition though made outside the precincts of that court in a private law office is part of the proceedings in case No. 23 CV 05099. If it is indeed a process of the said District Court or forms part of the proceedings in case No. 23 CV 05099 before it, then it ought to have been authenticated by the

official seal of the court and the signature of the relevant officer certifying it as a true copy of the part of the record of the court in case. No. 23 CV 05099. Without such authentication, the deposition cannot be used in a Nigerian court as part of the proceedings of the said U.S. District Court. It is spurious and legally inadmissible as evidence in any court in Nigeria.

I equally wonder why the 1st appellant did not, utilize the advantage of the 3-10-2023 order of the said District Court to cause the CSU to write disclaiming the copy of CSU certificate allegedly forged and rather sought to use a deposition to show that the said copy of the certificate 2nd respondent presented to INEC is a forged copy and not the authentic one that he was yet to collect from the university. A straight forward documentary disclaimer written on the university letter headed paper, sealed with the university seal and signed by the authorized officer such as the registrar and notarized by a notary public in that country would be better evidence than the deposition sought to be adduced.

The said oral deposition was said to have been made pursuant to an order of the United States District Court for the Northern District of Illinois in case No. 23/CV/05099 that CSU produce all relevant and non-privileged documents as well as he deposition of its corporate designee concerning the authenticity of the educational qualifications and certificates of the 2nd respondent herein from CSU, particularly the authenticity of the copy of CSU degree certificate presented by 2nd respondent to Independent National Electoral Commission (INEC) as education qualification for election in Nigeria. The appellant admit that because he needed the documents and deposition to prosecute his election petition in Nigeria, he applied for and obtained an order of discovery and production of the said documents for use in the election proceedings pending in the courts in Nigeria. It is obvious that the purpose of this whole process is to prove that the CSU degree certificate presented by 2nd respondent to INEC is forged and that therefore having presented a forged certificate to INEC, he was not qualified for election as President of Nigeria by virtue of S. 137(l)(j) of the Constitution of the Federal Republic of Nigeria 1999 (the 1999 Constitution).

The appellants seek to introduce the deposition as additional or fresh evidence in this court to prove that the copy of CSU degree certificate presented by the 2nd respondent to INEC is forged and that therefore having presented a forged certificate to INEC, he was not qualified for election as president. But this is not part of their case in their petition at the Court of Appeal challenging the election of the 2nd respondent and in this appeal. This was not specifically pleaded as a ground for their petition. They did not challenge the election of the 2nd respondent on the specific around that he presented a forged certificate to INEC and is therefore not qualified for election to the office of President, a ground prescribed in S.137(1)(j) of the 1999 Constitution.

There is no ground of this appeal complaining against the decision of the Court of Appeal that "the petitioners did not plead I facts in support of non-qualification or disqualification of the 2nd respondent in their petition". By not appealing against it, the appellants accepted the decision as correct, conclusive and binding upon them and therefore cannot be heard on appeal to argue contrary to that decision it has not appealed against. See *Iyoho v. Effiongs* (2007) 4 SC (Pt. 111) 90; (2007) 11 NWLR (Pt. 1044) 31 and *Dabup v. Kolo* (1993) 12 SCNJ 1; (1993) 9 NWLR (Pt. 317) 254.

Again the presentation of a forged certificate to INEC by the 2nd respondent is not raised by the appellants in their brief as an issue for determination in this appeal. The said appellants' brief was filed on 3-10-2023 before the application to adduce fresh or additional evidence on appeal was filed on 7-10-2023. So the deposition sought to be adduced as fresh

evidence in this appeal is not relevant to the determination of any of the issues raised for determination in this appeal.

An application to adduce additional or fresh evidence on appeal can only be allowed if the fact sought to be proven by the said evidence is specifically pleaded in the pleadings at the trial or form part of the case made at the trial and is part of the issues raised for determination in the appeal. Such evidence may be allowed to support the case in the pleadings or made at the trial or for the just determination of the appeal. If the additional evidence is of facts not pleaded in the trial and is not related to the issues raised for determination in the appeal, then it is irrelevant and goes to no issue and is not admissible evidence.

Such additional evidence of facts not pleaded as part of the case at the trial, starts a new case on appeal, opening new battle fronts for a new ground of election petition, many months after the election was held on 25-2-2023 contrary to S. 285(5) of the 1999 Constitution which requires that an election petition be filed within 21 days after the date of the declaration of result of the election. It is obvious from paragraphs of 14(2) and 16(1) of the first schedule to the Electoral Act, 2022 that no addition of facts or grounds to the ones in the petition is allowed after 21 days from the declaration of I the results of the election.

The application to adduce fresh or additional evidence raise issues of jurisdiction and fair hearing. This court lacks the jurisdiction to try the question of whether the 2nd respondent presented a forged copy of CSU degree certificate to INEC and whether he should be disqualified from election of President on that ground. Such jurisdiction is vested by S. 239(1) of the 1999 Constitution on the Court of Appeal and lasts for the trial of an election petition for 180 days from the date of filing the petition by virtue of S. 285(6) of the 1999 Constitution. The petition that gave rise to this appeal was filed on 21-3-2023. This application to adduce fresh or additional evidence in the form of the deposition of Carl Westberg was filed in this court on 6-10-2023, 189 days after the petition was filed in the Court of Appeal. So, the application to adduce fresh evidence in this court to prove that the 2nd respondent forged the CSU degree certificate he presented to INEC was filed when the jurisdiction of the Court of Appeal to try the petition before it had elapsed. This court lacks the first instance jurisdiction to determine the validity of the election of 2nd respondent as President on this ground and cannot invoke its general powers ins. 22 of the Supreme Court Act, 2004 to exercise a jurisdiction not vested on it, which jurisdiction is vested by the Constitution on another court.

For the above reasons this application is refused. It is accordingly dismissed.

Let me consider the issue of electronic transmission of results.

The appellants in this appeal contend that the Court of Appeal was wrong in refusing to hold that INEC’s failure to electronically transmit polling unit results to collation systems nationwide and its failure to upload scanned copies of Form EC8A results to IReV nationwide substantially affected the result of the election.

The respondents in substance have argued that the Court of Appeal rightly held that INEC's failure to electronically transmit polling unit results to collation systems nationwide and its failure to upload scanned copies of Form EC8A results to IReV nationwide did not amount to non-compliance with the Electoral Act and that it did not substantially affect the result of the election.

Let me determine the merit of the above arguments of both sides.

It is glaring from the provisions of S.60 of the Electoral Act that after counting the votes at the polling unit, the votes Scored by each candidate are entered in Form EC8A, which 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, that the Presiding officer shall give to the poling agents and the police officer where available a copy each of the completed forms after it has been duly signed and then announce the result at the polling unit and that it is' after this announcement of result at the polling unit that the Presiding officer shall transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribe by the commission. So the polling unit result is made, signed, issued to police and party agents and then announced at the polling unit before the presiding officer of the polling unit transfers it in a manner prescribed by the Commission.

The exact text of S. 60 of the Act reads thusly -

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

(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 poling 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.

S. 50(2) of the Electoral Act provides that —

> Subject to section 63 of this Act, voting at an election and transmission of result under this Act shall be in accordance with the procedure determined by the Commission.

S. 62(1) of the said Electoral Act 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 polling agents, where available, to such person as may be prescribed by the Commission.

So the Electoral Act in S. 50(2) and S. 60(5) provide for the transfer or transmission of the polling unit result after announcement of the result at the polling unit and provides in S. 62(1) 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 polling agents, where available, to such person as may be prescribed by the commission. It is therefore clear from the above provisions that the Electoral Act requires that the polling unit results be delivered to the Ward Collation Centre, by an earlier electronic transmission of same using the B VAS to the Ward Collation System and by a subsequent physical delivery of same and all election materials to the Ward Collation officer. As it is, the Electoral Act in Ss. 50(2), 60(5) and 62(1) require the Presiding Officer to transmit the polling unit result and then physically deliver same along with election materials to the Ward Collation Officer at the Ward Collation Center. It is obvious from the wordings of the said provisions that both transmission and physical delivery must be done.

The Electoral Act made no provision for how the transfer or transmission of polling unit results should be done. In S. 50(2) of the Act, it gives INEC the power to determine the

procedure for the transmission of election results. In exercise of that power, INEC prescribed that procedure in Regulations 38 and 39 of its Regulations and Guidelines for the Conduct of Elections, 2022 as follows –

> "38. A poll shall take place in accordance with the provisions of this Act in the case of an election to -
>
> (a) The office of President or Governor of a State, whether or not only one person is validly nominated in respect of such office; and
>
> (b) Any other office, if after the expiry of the time for delivery of nomination papers there is more than one person standing nominated.
>
> 39(1) Where after the expiration of time for delivery of nomination papers, withdrawal of candidates and the extension of time as provided for in this Act there is only one person who is validly nominated in respect of an election, other than to the office of the President or Governor, that person shall be declared elected.
>
> (2) Where a person is declared elected under subsection (1), a declaration of result form as may be prescribed by the commission shall be completed and a copy issued to the person by the returning officer while the original of the form shall be returned to the commission as in the case of a contested election."
>
> Regulations 48(a) provides that -
>
> 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 B VAS 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 and Guidelines.

The implication of the provision in regulation 48(a) above is that a Ward Collation Officer shall not collate a polling unit result until he or she ascertains that the number of accredited voters agrees with the number recorded in the BVAS and that the 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 INEC Regulations and Guidelines for the Conduct of Elections 2022 state in Regulation 91(1) one of the principles that guide collation of election results is that since voting takes place at the polling units, Forms EC8A and EC60E are the building blocks for any collation of results. Regulation 92 provided that it is the INEC copy of the result that shall be adopted for collation.

It is obvious from the tenor of the Electoral Act and the INEC Regulations and guidelines for the Conduct of Elections 2022 that the purpose for the transmission and transfer of polling unit results to the ward collation systems and IReV is to use them to verify the results in the INEC top copies of the Form EC8A that is primarily used to collate results in the ward collation center. The need for this occurs when there is difference between the results in the INEC Presiding Officer's copy and the results in a party's polling agent copy for the same polling unit. Regulation 93 allows for transmitted results in the Collation System and IReV to be used for collation where INEC hardcopy of collated results do not exist for any reason and where the said INEC hardcopy and transmitted result is not available, it permits the, use of the copy given to the Nigeria Police Force or Agent of a political party.

It is not in dispute that the results of the 2023 presidential election in each polling unit nationwide were collated by the respective Ward Collation Officers in ward collation centers nationwide inspite of the fact that the polling unit results nationwide could not be electronically

transmitted or transferred to the collation systems and that scanned copies of the said results as entered in the Form EC8A for each polling unit across the country could not be uploaded to the INEC Result Viewing Portal (IReV) at the relevant or material time or at all. This is a glaring case of non-compliance with Ss. 50(2) and 60(5) of the Electoral Act, 2023.

The Court of Appeal found as facts that the election was conducted substantially in accordance with the principles of the Electoral Act and that the non-compliance did not affect substantially the result of the election. The appellants have in this appeal argued extensively against these findings. The respondents have equally argued in extenso in support of these findings.

Let me consider what the law is on this point.

The Electoral Act, 2022 states clearly the effect of non-compliance with the Electoral Act during an election on the validity of the election. It states in S. 135(1) that

> An election shall not 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.

The obvious and necessary implication of this provision is that it is not Chough for the petitioner to plead and show that there is non-compliance with the Electoral Act in the election. The petitioner must plead in the petition and prove by evidence the facts of the specific non-compliance with the Electoral Act, facts that show the election was not conducted substantially in accordance with the principles of the Act and facts that show that the said non- compliance substantially affected the result of the election. This has remained the case law established through the cases applying provisions similar to S. 135 of Electoral Act, 2022 over several decades in Nigeria. See for example *Akinfosile v. Ijose* (1960) WRNLR 60; (1960) SCNLR 447, Awolowo v. Shagari (1979) 6-9 SC 51; *Ojukwu v. Yar'Adua* (2009) LPELR-2403 (SC); (2009) 12 NWLR (Pt. 1154) 50, *C.P.C. v. I.N.E.C. & Ors*. (2011) LPELR-8257 (SC); (2011) 18 NWLR (Pt. 1279) 493; *Aliucha Anor v. Elechi & Ors.* (2012) LPELR-7823(SC); (reported as *Ucha v. Elechi* (2012) 13 NWLR (Pt. 1317) 330); *Doma & Anor v. INEC & Ors.* (2012) LPELR-7822(SC); (2012) 13 NWLR (Pt. 1317) 297.

In determining if a non-compliance has substantial effect on the result of an election, the approach the courts have adopted since 1960 is the quantitative approach that considers or calculates the numbers actually affected and not the qualitative approach which considers that even though the effect on the numbers is not visible and is incapable of numerical calculation, the non-compliance has actually undermined the integrity, fairness, transparency and democratic character of the election. This court in an unending line of cases without break has maintained the quantitative approach. There was a near break or departure in *Ojukwu v. Yaradua* (supra). But the turning point refused to turn due to a split decision of 4 to 3 in favour of the quantitative approach. In that case the non- compliance was the nationwide use of ballot papers that had no serial numbers contrary to S. 45(2) of the then applicable Electoral Act, 2006. This court by a majority decision held that the non-compliance did not substantially affect the result of the election. The minority view was that there are certain non-compliances that go to the root of an election in that they are absolute in the sense that once established the purported election cannot reasonably be treated as valid and as such there would be no valid result to be substantially affected by the non-compliance.

The Court of Appeal is bound to follow the current case law established by our decisions to determine if the non-compliance with the Electoral Act, 2022 has substantial effect on the result of the election. It correctly used the quantitative approach in keeping with our decisions. Learned SAN for the appellants has pursuant to Order 6 rule 5(4) of the Supreme Court (Amendment) Rules, 2014 invited this court to depart from its previous decisions on the manner of proof of non-compliance with the provisions of the Electoral Act in election petitions in the light of S. 137 of the 2022 Act, paragraph 46(4) of the 1st Schedule to the Act and the introduction of electronic transmission of results.

Section 137 of the Electoral Acts provides 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."

There is nothing in this provision that necessitate our departure from the established case law on proof of non-compliance with the Electoral Acts. This provision has mainly emphasized the long established case law that where the originals or certified true copies of the documents used to conduct the polls at the polling stations, *prima facie* or manifestly show the alleged non-compliance, oral evidence of such on-compliance is rendered unnecessary. The provision has not affected the established case law on how and by whom such documents can be admitted in evidence.

Let me also look at paragraph 46(4) of the First Schedule to the Electoral Act relied on by learned SAN in his application for departure. The exact text of that paragraph read thus: -

> "46(4) Documentary evidence shall be put in and may be read or taken as read by consent, such documentary evidence shall be deemed demonstrated in open court and the parties in the petition shall be entitled to address and urge argument on the content of the document and the tribunal or court shall scrutinize or investigate the content of the documents as part of the process of ascribing probative value to the documents or otherwise."

This provision recognizes the requirement of consent by the parties to documents being put in, read or taken as read. Example is bundle of documents tendered from the Bar without objection and admitted by the court as evidence before or during trial. This provision ensures that such documents would not be treated as dumped in the proceedings and that when the court decides to scrutinize their contents, take them as read and ascribe probative value to them without oral evidence explaining them, the court's use of the documents would not be treated as an infraction of the fair trial of the case. But where the adverse party objects to its admission or it being taken as read, then the court cannot use it in the case without oral evidence explaining the relationship of its content to the relevant part of the case of the party relying on it. This is the rule against dumping restated in a long line of our decision, over time.

It is clear from the expressed words of sections 50(2), 60(1-5), 62(1) of the Electoral Act and Regulation 37, 38, 39 and 48(a) of the INEC Regulation and Guidelines for the Conducts of the Elections 2022 that the electronic transmission or transfer of a polling unit results takes place after the results has been entered into Form EC8A and the Form duly sign by the presiding officer, the police and agents of the political parties. So transmission or transfer comes after a valid polling unit results has been completely made and authenticated. So whether the transmission is made or not has nothing to with the valid polling unit result. The transmission becomes relevant only for the purpose of verifying that the content of the polling

unit results that was duly signed and authenticated at the polling unit is the same as the one physically delivered by the presiding officer along with the election materials to the Ward Collation Officer at the Ward Collation Centre in keeping with section 62(1) of the Electoral Act and Regulations 38, 39 and 50(1) of the INEC Regulations and Guidelines (*supra*). By virtue of Regulations 91 and 92 of the INEC Regulations and Guidelines, the INEC physical copies of Forms EC8A and EC60E are the building blocks for any collation of results. Regulation 92 provide that it is the INEC copy of the result that shall be adopted for collation. In the event of any challenge of the result in Form EC8A at the ward Collation Center during collation of polling unit results, it is the transmitted or transferred copies of the result in the collation system or IReV of the ward that the Collation Officer would firsts look at to find out if the result physically delivered to him by the presiding officer as the polling unit result is exactly the same in content with the transmitted one. If the Collation Officer determines that the result physically delivered is not correct, then the Officer shall use the transmitted or transferred copy to collate the result. This is provided in Regulation 48(b) of the INEC Regulations & Guidelines. Where there is no electronic transmission of result, the INEC Regulations & Guidelines provide in sub-regulation (c) of regulation 48 that physical copies given to the police officer and political party agents shall be relied on to verify the correctness of the contents of the Presiding officer's copy delivered for collation or relied on to collate the result as the case may be. Since Regulations 48(b) and (c) and 93 permit the use of copies of polling unit result in Form EC8A given to Police Officers and agents of political parties to be used for verification or collation as the case may be where there is no electronic transmission or transfer of results,- the failure to electronically transmit or transfer the polling unit results could not have had any effect on the result of the election.

Let me now consider the appellate power of this court to review the trial court finding of facts that the non-compliance with the Electoral Act did not substantially affect the result of the election.

The power of this court to review or interfere with the Court of Appeal's finding of facts that the election was substantially in accordance with the principles of the Act and that the non-compliance did not affect substantially the result of the election is very limited in scope to determining if the findings of facts are perverse in that they are not justified by the evidence or do not relate to the evidence or were made in serious error of law and the error has caused serious miscarriage of justice. This court cannot interfere with the findings of facts of the Court of Appeal as the trial court to substitute its own finding with that of the trial court unless the appellants demonstrate that the said findings are not justified by the evidence in the record of this appeal or that they were made in serious error of law that has caused injustice. See *Nwobodo v. Onoh & Ors*. (1984) 1 SC 1; (1984) 1 SCNLR 1, *Ogbechie & ors. v. Onochie & Ors* (1986) 1 SC 54; (No.l) (1986) 2 NWLR (Pt. 23) 484, *Oteki v. A.-G., Bendel State* (1986) 4 SC 222; (1986) 2 NWLR (Pt. 24) 648 and *Narumal & Sons (Nig.) Ltd. v. Niger Benue Co. Ltd.* (reported in (1989) 2 NWLR (Pt. 106) 730).

The appellants have not shown that the trial court's finding of fact that the non-compliance did not affect substantially the result of the election is not justified by the evidence. Therefore this court cannot interfere with that finding.

Let me also consider the question of whether S. 134(2) of the Constitution of the Federal Republic of Nigeria, 1999 (the 1999 Constitution) requires that a candidate for a n election to the office of president who has the highest number of votes cast at the election and not less than one-quarter of the votes cast at the election in each of at least two thirds of all the 36 States

in the Federation must additionally have one-quarter of the votes cast in the election in the Federal Capital Territory, Abuja before he can be deemed to have been duly elected as President.

Section 134(1) of the 1999 Constitution provides that:

> "A candidate for an election to the office of 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 or all the States in the Federation and the Federal Capital Territory, Abuja."

It is obvious that States of the Federation and the Federal Capital Territory, Abuja were lumped together as a group by subsection (2)(b) above. What differentiates the constituents of the group is their names and nothing more. One of them is called Federal Capital Territory and the rest called States of the Federation. Subsection (2)(b) clearly refers to two-thirds of all the constituents of the group enumerated therein as the minimum number from each of which a candidate must have one-quarter of the votes cast therein. There is nothing in subsection (2)(b) that requires or suggests that it will not apply to the areas listed therein as a group. The argument of learned SAN that the provision by using the word "and" to conclude the listing of the areas to which it applies has created two groups to which it applies differently is, with due respects, a very imaginative and ingenious proposition that the wordings of that provision cannot by any stretch accommodate or reasonably bear. If S. 134(2) of the 1999 Constitution intended that the Federal Capital Territory, Abuja should be distinct from States of the Federation as a distinct group it would not have listed it together with States of the Federation in (b). Also, if S. 134(2) had intended having one-quarter of the votes cast in the Federal capital Territory Abuja as a separate requirement additional to the ones enumerated therein, it would have clearly stated so in a separate paragraph numbered (c). It is glaring that S. 134(2) prescribed two requirements that must be cumulatively satisfied by a presidential candidate in an election contested by not less than two candidates, before he or she can be deemed duly elected president. It prescribed the first requirement in (a) and the second one in (b). It did not impose a third requirement and so there is no (c) therein.

The constitutional or statutory requirements to be satisfied for a candidate to be declared elected must be the ones expressly and clearly prescribed in the Constitution or statute as the case may be. A requirement that is not expressly and clearly prescribed cannot be assumed or implied to exist under any guise. Since S. 134(2) or any other part of the 1999 Constitution did not expressly and distinctly prescribe that a Presidential candidate must have not less than one-quarter of the votes cast in the Federal Capital Territory, Abuja as a third requirement additional to the two expressly prescribed, before he or she can be deemed duly elected as President, it is not a requirement for election to that office.

The grouping of Federal Capital Territory, Abuja with States of the Federation in S. 134(2)(b) of the 1999 Constitution so that the provision can apply to them equally is consistent with the tenor and principle of the 1999 Constitution treating the Federal Capital Territory, Abuja as a State of the Federation. This is clearly stated in S. 299 of the 1999 Constitution thusly-

> "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; and

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

Even though words are most often prone to different meanings and even very simple words can be differently understood, the words of S. 134(2)(b) cannot accommodate or support or bear what learned SAN for the appellants proposed as its meaning. Such meaning would result in a situation where a presidential candidate that has the highest votes cast in the election and not less than one- quarter of the votes cast in not less than two-thirds of 36 States of the Federation or in all the States of the Federation cannot be deemed duly elected as President because he did not have one-quarter of the votes cast in the Federal Capital Territory, Abuja. This certainly violates the egalitarian principle of equality of persons, votes and the constituent territories of Nigeria, a fundamental principle and purpose of our Constitution. Such a meaning is unconstitutional. I think that his said proposition is the result of reading those provisions in isolated patches instead of reading them as a whole and in relation to other parts of the Constitution. Reading and interpreting the relevant provision as a whole and together withs other parts of the Constitution as a whole is an interpretation that best reveals the legislative intention in the relevant provision. Sir Vahe Bairamian (Former Justice of the Supreme Court of Nigeria) in his book Synopsis 2 stated thusly -

> "Any document to be rightly understood must be read as whole. According to Lord Coke" It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers ..... and this exposition is *ex visceribus actus.*" (from the bowels of the statute). Reading it through helps also in gathering its object. An effort must be made to understand it as a harmonious whole."

Courts across jurisdictions have, through the cases laid down the conceptual tools that should be used in the application of constitutional provisions and in the process evolved the principled criteria upon which the interpretation of the Constitution must proceed. Just as the criteria for the interpretation of statutes differ between statutes according to the subject matter of each statute, the criteria for the interpretation of statutes and other documents must be different from those for the interpretation of the Constitution because of its sui generis nature as the fundamental and supreme law of the land, an organic document and a predominantly political document. Therefore it must be interpreted in line with principles suitable to its spirit and character and not necessarily according to the general rules of interpretation of statutes and documents. One of the principles suitable to its sui generis nature is that it must be given a benevolent, broad, liberal and purposive interpretation and a narrow, strict, technical and legalistic interpretation must be avoided to promote its underlying policy and purpose, In interpreting the part of the Constitution providing for elections to public offices in a

constitutionally established democratic culture, the court must do so on the basis of principles that give the provision a meaning that promotes the values that underlie and are inherent characteristics of a democratic society.

For the above reasons and the more detailed ones brilliantly stated in the lead judgment, I dismiss this appeal.

Appeal dismissed.