1. SALAM BAMIDELE
2. PEOPLES DEMOCRATIC PARTY (PDP)

V.

1. RAFIU ADEJARE BELLO

2. ALL PROGRESSIVES CONGRESS (APC)

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

COURT OF APPEAL

(*AKURE DIVISION*)

CA/AK/EPT/HR/333/2019

OYEBISI FOLAYEMI OMOLEYE, J.C.A. (Presided)
MOHAMMED AMBI-USI DANJUMA, J.C.A. (Read the Leading Judgment)
PATRICIA AJUMA MAHMOUD, J.C.A.

THURSDAY, 31ST OCTOBER 2019

ACTION - Parties to an action - Whether can approbate and reprobate on an issue.

ACTION - Parties to an action When will not be penalized for mistake or error in court process.

APPEAL- Grounds of appeal - Formulation of- Need to arise from and challenge decision or finding of court.

APPEAL - Record of appeal - Accuracy of - How challenged.

APPEAL- Record of appeal - Binding effect of on parties and court

CONSTITUTIONAL LAW - Right to fair hearing Fundamental nature of- What it entails.

COURT- Court process - Mistake or error in court process – When party to an action will not be penalized therefore

ELECTION PETITION - Amendment - Amendment of petition - Application for - When will not be granted.

ELECTION PETITION - Date of election- Minor discrepancy on in election petition – Whether can be amended.

ELECTION PETITION - Judicial notice - Date of election Whether tribunal can take judicial notice of.

ELECTION PETITION - Witnesses - Witness statement on oath - Adoption of as evidence of witness at hearing of case What amounts to.

EVIDENCE - Judicial notice - Date of election- Whether tribunal can take judicial notice of.

EVIDENCE - Presumptions- Official or judicial acts – Presumption of regularity of – When applicable.

FAIR HEARING - Right to fair hearing - Fundamental nature of - What it entails.

FUNDAMENTAL RIGHTS - Right to fair hearing – Fundamental nature of- What it entails.

JUDGMENT AND ORDER - Reliefs - Relief not proved by claimant - Whether court can grant.

PRACTICE AND PROCEDURE Appeal Record of appeal Binding effect of on parties and court.

PRACTICE AND PROCEDURE - Parties to an action - Whether can approbate and reprobate on an issue.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal - Formulation of- Need to arise from and challenge decision or appeal finding of court.

PRACTICE AND PROCEDURE - Appeal - Record of appeal - Accuracy of- How challenged.

PRACTICE AND PROCEDURE - Court process Mistake or error in court process - When party to an action will not be penalized therefor.

PRACTICE AND PROCEDURE - Pleadings - Where not supported by evidence - Effect of.

PRACTICE AND PROCEDURE - Reliefs - Relief not proved by claimant - Whether court cangrant.

PRACTICE AND PROCEDURE - Witnesses - Witness statement on oath - Adoption of as evidence of witness at hearing of case - What amounts to.

Issues:

1. Whether the tribunal rightly found for the 1st and 2nd respondents by nullifying the results of the elections in some polling units and ordering rerun therein on ground that over voting was established.
2. Whether from the record of proceedings as well as the facts and circumstances of the case, the tribunal was at any time not properly constituted throughout the proceedings when the witnesses were called who adopted their statements on oath before the tribunal.
3. Whether the tribunal was right when it took judicial notice of the date of the conduct of the election as 23rd February 2019 in dismissing the objection of ta appellants.

Facts:

The 1st appellant was the 2nd appellant's candidate in the election into the House of Representatives for the Ede North, Ede South, Egbedore and Ejigbo Federal constituency election held in Osun State on 23 February 2019. The 1st respondent also contested in the election as the candidate of the 2nd respondent. At the conclusion of the election, the 1st appellant was declared the winner of the election by the 3d respondent.

The respondents were aggrieved with the return of the 1st appellant as the winner of the election. They filed a petition. Principally, they sought a declaration that the 1st appellant was not duly elected by a majority of lawful votes cast in the election; and that the 1st respondent won the election. In the alternative, they sought the conduct of a bye-election.

The parties called witnesses. And the tribunal recorded after the introduction of each witness that the witness adopted the written statement on oath signed by the witness before the secretary of the tribunal as evidence-in-chief and tendered the statement as an exhibit.

The 1st and 2nd respondents called 32 witnesses, and tendered documents from the bar, by consent of counsel, and on subpoena to produce and tender. The 1st and 2nd respondents, however, did not tender evidence in support of their pleadings relating to some documents and their witnesses did not or could not orally relate documents they tendered to facts pleaded. On their part, the appellants and the 3rd respondent called 19 witnesses in defence of the petition.

In course of hearing, a witness for the 1st and 2nd respondents sought to amend the date of the election and the name of a polling unit stated in his written statement on oath in line with documents that were already tendered in evidence before adopting the statement as evidence. The appellants and the 3rd respondent objected to the request. But the tribunal permitted the amendment on grounds inter alia that it was not barred by the First Schedule to the Electoral Act; that it was in accordance with documentary evidence on its record; and that the date stated was a minor discrepancy, which did not mislead the appellants and could be corrected.

After hearing the petition, the tribunal nullified the election in some stated electoral wards on ground of excess of votes or Over Voting, and ordered the 3rd respondent to conduct fresh bye election in those wards. The tribunal, however, found the 1st appellant had 1,710 votes more than the 1st respondent even after deducting the Votes adjudged as over voting.

The appellants appealed to the Court of Appeal on 38 grounds of appeal from which the y formulated 10 1SSues for determination. The 1st and 2nd respondents and the 3rd respondent also cross appealed.

Two records of appeal were transmitted to the Court of Appeal sequentially, and the latter was titled as a supplementary record, but it was not certified as a true copy by the secretary or the registrar of the tribunal. In addition, the name of the secretary or registrar of the tribunal, their signatures, stamp and fact of certification were not embossed on it. Though the genuineness of the supplementary record was contested by the parties, the appellants relied on it in their brief of argument to challenge the constitution of the tribunal during some days of its sitting. On the other hand, the first record of appeal, which is the certified true copy of the record

of appeal, showe the tribunal was properly constituted at its sitting on all dates its constitution was challenged by the appellants.

The appellants also argued that the 1st and 2nd respondents witnesses statements on oath were not adopted by the witnesses before they were admitted in evidence as exhibits.

Held *(Unanimously allowing the appeal):*

1. *On Whether court can grant relief not proved by claimant -*
A court or tribunal cannot award to a claimant a relief, which the claimant did not prove in open court by admissible evidence. In this case, the 1st and 2nd respondents did not prove their allegation of over voting in the election against the appellants in open court. Further, the tribunal found that the 1st appellant had the higher number of votes cast after making deductions on ground of over voting. The tribunal therefore erred when it ordered a bye election on ground of over voting at the election. [*Ogboja v. Access Bank Plc* **(2016) 2 NWLR (Pt. 1496) 291 referred to.]** (P. 534, paras. B-D).

2. *On Effect of pleadings not supported by evidence –*
Pleadings not supported by evidence are deemed abandoned and unproved. In this case, no evidence was tendered in support of pleadings on exhibit P63A. So the pleadings were deemed abandoned and unproved. *(P. 532, paras. C-D)*

3. *On When amendment of election petition will not be allowed -*
An application for amendment in an election petition will not be granted where it is made outside the limited period of 21 days after the filing of the petition and for the purpose of introducing any of the requirements stated in paragraph 14(1) of the first schedule of the Electoral Act, 2010 relating to: (a) the parties in the petition; (b) right of the petitioners to present the petition; (c) holding of the election and scores; and (d) the facts of the election and the reliefs sought. In this case, the tribunal rightly held that the respondents' application for amendment did not relate to any of the matters that could not be amended after 21 days of filing of the petition. Further, no amendment of the petition was ordered let alone an invalid one. In the circumstances, the tribunal did not violate the principle of stare decisis because it did not overrule itself or sit on appeal over its decision. (*Pp.* 526-527, *paras.* H-C)

4. *On Whether minor discrepancy on date of election in election petition can be amended -*

Minor discrepancy on date of election stated in an election petition can be corrected. And the tribunal rightly so held in this case. [*Karmame v. Dan-Azumi* **(2011) LEPLR 9192 referred to.]** (P. 525, *paras*. C-D)

5. *On Whether election tribunal can take judicial notice of election date –*
An election tribunal can take judicial notice of the date of the election that is subject of the petition as the tribunal did in this case. [*Yusuf v. Obasanjo* **(2003) 16 NWLR (Pt. 847) 554 referred to.]** (P. 525, para. G)

6. *On When party to an action will not be penalized for mistake or error in court process-*
Where there is no miscarriage of justice by a mistake or error in a court process, as in this case, such mistake should not be visited on that party. [*Kakih v. P.D.P.* **(2014) 15 NWLR (Pt. 1430) 374;** *Jeric Nigeria Ltd v. UBN Plc* **(2000) 15 NWLR (Pt. 691) 447 referred to.]** (P. 526, paras. A-B)**.**

7. *On Fundamental nature of right to fair hearing and what it entails -*
The principle of fair hearing is fundamental to all courts and tribunals in their procedure and proceedings. It envisages that every party should be given the opportunity to present his case to the adjudicating authority without let or hindrance from the beginning to the end. It envisages that the court or tribunal should be fair, impartial and without showing any degree of bias against any of the parties. [*O.O M.F. Ltd v. NACB Ltd*. **(2008) 12 NWLR (Pt. 1098) 412 referred to.]** (P. 527, paras. D-F)

8. *On What amounts to effective adoption of witness statement on oath as evidence at hearing of case -*
There is effective adoption of a witness statement on oath where the deponent identifies the statement and confirms ownership of it. In this case, the witnesses effectively adopted their witness statement on oath. In the circumstances, the witnesses' statements on oath were not adopted for the witnesses/makers by the tribunal as argued by the appellants. Consequently, the appellants' allegation of bias on that basis is baseless. (P. 529, paras. A-C)

9. *On Whether witness statement on oath adopted as evidence by witness need be tendered in evidence as exhibit -*
Tendering of a witness statement on oath in evidence as an exhibit after it has been adopted as evidence by the witness, as was done in this case, is a mere surplusage and an irregularity only intended to keep a clear

identification of the statements in the proceedings. Further, such irregularity does not cause any miscarriage of justice. (P. 526, paras. D-F)

10. *On Whether parties to an action can approbate and reprobate on an issue* -
Parties to an action cannot approbate and reprobate. They must be consistent in the prosecution and defense of their case both at the trial court and before the Court of Appeal. [*Ajide v. Kelani* **(1985) 3 NWLR (Pt.12) 248 referred to.]** (P. 529, para. F)

11. *On Presumption of regularity of official or judicial acts* -
Section 168(1) of the Evidence Act 2011 provides that when any official or judicial act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. In this case, the supplementary record of appeal was not certified as a true copy by the secretary of the tribunal. In the circumstance, be contrary to the complaint of the appellants, the tribunal was properly constituted at its sitting on all dates as stated in the certified true copy of the record of appeal transmitted to the Court of Appeal. (Pp.530, *paras*. B-C)

12. *On Binding effect of record of appeal on parties and court* -
Parties to an action and the court are bound by the record of the court which, in this case, does not contain any evidence of the grant of any order for the impeachment of the record of appeal. (P. 530, para. E)

13. *On How to challenge accuracy of record of appeal*-
Any person who is contending that the record of proceedings before an appellate court is not a fair record of what happened at the trial court must first formally impeach the record of proceedings by filing an application to that effect. In this case, the appellants did not file an application to formally impeach the record of appeal and it was not proved that the tribunal's proceedings were conducted on any of the dates alleged in the absence of the two members of the tribunal. [*O.O.MF. Ltd v. NACB Ltd*. **(2008) 12 NWLR (Pt. 1098) 412 referred to.]** (P 530, paras. E-G)

14. *On Need for ground of appeal to arise from and challenge decision or finding of court*-
A ground of appeal is a challenge to the decision or finding of a court, and must arise as such. In other words, an appeal should relate to the ratio and life issue in the decision appealed against. In this case, apart from the grounds of appeal and issues bordering on the decision of the tribunal that there was over voting, the other grounds of appeal were otiose and

immaterial as the appellants were not prejudiced by any other finding and order beyond the over voting adjudged and the bye-election ordered. [*Orianzi v. A.-G., Rivers State* **(2017) 6 NWLR (Pt. 1561) 224;** *Oloruntunba-Oju v. Abdul-**Raheem*** **(2009) 13 NWLR (Pt. 1157) 83;** *Govt. of Akwa lbom State v. Power Com. (Nig.) Ltd* **(2004) 6 NWLR (Pt. 868) 202;** *Babalola v. State* **(1989) 4 NWLR (Pt. 115) 264;** *Azaatse v. Zegeor* **(1994) 5 NWLR (Pt. 342) 76 referred to.]** (P. 535, *paras*. D-G)

Nigerian Cases Referred to in the Judgment:

Ajide v. Kelani (1985) 3 NWLR (Pt. 12) 248

Akporue v. Okei (1973) 12 SC 137

Azaatse v. Zegeor (1994) 5 NWLR (Pt. 342) 76

Babalola v. State (1989) 4 NWLR (Pt. 115) 264

Engineering Enterprises v. A. G. Kaduna State (1987) 2 NWLR (Pt. 57) 381

Goar v. Dasun (2009) LPELR 4205

Government of Akwa Ibom State v. Power Com. (Nig) Ltd (2004) 6 NWLR (Pt. 868) 202

Jeric Nigeria Ltd v. UBN. Plc (2000) 15 NWLR (Pt. 691) 447

Kakih v. PDP (2014) 15 NWLR (Pt.1430) 374

Karmame v. Dan Azumi (2011) LRECN

Koden v. Shidon (1998) 10 NWLR (Pt. 571) 662

Mark v. Abubakar (2009) 2 NWLR (Pt. 1124) 79

NDIC v. SBN Plc (2003) 1 NWILR (Pt. 801) 311

O.O.M.F. Ltd v. NACB Ltd (2008) 12 NWLR (Pt. 1098) 412

Offodile v. Egwuatu (2006) 1 NWLR (Pt. 961) 421

Ogboja v. Access Bank Plc (2016) 2 NWLR (Pt. 1496) 291

Okereke v. Yar Adua (2008) 12 NWLR (Pt. 1100) 95

Okpa v. Irek (2012) LPELR 8033

Oloruntunba-Oju v. Abdul Raheem (2009) 13 NWLR (Pt. 1157) 83

Onwuchekwa v. C.C.B. (Nig,) Ltd (1999) 5 NWLR (Pt. 603) 409

Orianzi v. A. G. Rivers State (2017) 6 NWLR (Pt. 1561) 224

Sken Consult (Nig.) Ltd v. Ukey (1981) 1 SC6

Sokoto v. State (2006) LPELR 11746

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

Waghoreghor v. Agenghen (1974) 1 SC 1

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999 (as amended)
Electoral Act 2010 (as amended para.) 14 subpara 10 1st schedule
Evidence Act 2015, Ss. 111; 112, 168(i)
Evidence Act, 2004, S. 150

Appeal and Cross Appeals:

These were an appeal and cross appeals against the judgment of the National and State Assembly Election Tribunal, Osun State. The Court of Appeal, in a unanimous decision, allowed the appeal and dismissed the cross appeals.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Akure
Names of Justices that sat on the appeal: Folayemi Oyebisi Omoyele, J.C.A. (Presided); Mohammed Ambi- Usi Danjuma, J.C.A. (Read the Leading Judgment);
Patricia Ajuma Mahmoud, J.C.A.
Appeal No.: CA/AK/EPT/HR/333/2019
Date of Judgment: Thursday, 31st October 2019
Names of Counsel: Nathaniel O.O. Oke, Esq., SAN (with him, Edmund Z. Biriomoni, Esq., Wole Jimi Bada, Esq.; Akintayo Jimoh; A. O. Oladele, Esq.; Akin Odumosu, Esq)-for the Appellants
Yakubu Dauda, Esq. (with him, Wahab Ismail, Esq;
Oloyede Oyediran, Esq. Ibukun Adeniran, Esq.; and
Kolapo Alimi, Esq.) - for the 1st and 2nd Respondents
M. O. Olanipekun, Esq. (with him, Vilba Kintai, Esq.) - for the 3rd Respondent

Election Tribunal:

Name of the Tribunal: National and State Assembly
Election Petitions Tribunal, Osun State
Petition No.: EPT/HR/OSS/02/2019
Date of Judgment: Sunday, 1s September 2019

Counsel:

Nathaniel O. 0. Oke, Esq., SAN (with him, Wole Jimi, Esq.
Akintayo Jimoh; A. O. Oladele, Esq.; Akin Odumosu, Esq) for the Appellants

Yakubu Dauda, Esq. (with him, Wahab Ismail, Esq.; Oloyede Oyediran, Esq. Ibukun Adeniran, Esq.; and Kolapo Alimi, Esq.) - for the 1st and 2nd Respondent

M. O. Olanipekun, Esq. (with him, Vilba Kintai, Esq.) -for the 3rd Respondent

DANJUMA, J.C.A. (Delivering the Leading Judgment): This appeal appertains the election into the membership of the House of Representatives of the National Assembly of Nigeria. It is a challenge against part of the judgment of the National and State Assembly Election Petitions Tribunal, Osun State holden at Osogbo delivered on the 1st day of September 2019 wherein the Learned Tribunal had ordered the 3 respondent to conduct a fresh election at the Ward 3, Unit 10, Ward 7 Unit 2, of Ede South Local Government Area, Ward 5 Unit 4, Ward 7 Unit 8, Ward 7 Unit 10 (V.P. No. FC/OS/140016 & V. P. No FC/OS/140017, Ward 10 Unit 3 of Ede North Local Government Area, Ward4 Unit 4, Ward 10, Unit 2 of Egbedero Local Government Area and Ward 11 Unit 9 of Ejigbo Local Government Area.

The trial tribunal had, however, found that the 1st appellant led with 1,710 votes even after the deductions of votes adjudged as over voting.

Before I proceed in this judgment, it is pertinent even in the face of the narrow confine of this appeal to state the facts of this appeal and thus;

The 1st appellant was a candidate who was sponsored by the 2nd appellant in respect of the Ede North, Ede South, Egbedore and Ejigbo Federal Constituency Election that took place in Osun State on 23d February, 2019, for the membership of the National Assembly.

The 1st respondent was the candidate of the 2nd respondent in the said election and was sponsored by her to contest the said election. At the conclusion of the election, the 1st appellant was declared the winner of the election by the 3rd respondent.

The 1st and 2nd respondents were aggrieved by the return of the 1st appellant as the winner of the election and therefore presented a petition on the 16th day of March 2019 in the National/State Houses of Assembly Election Tribunal by which they sought the reliefs from the Tribunal at paragraph 45 of the petition and thus;

i. Whereof the petitioners pray that it be determined and he declared that the 1st respondent, Salam Bamidele was not duly elected by a majority of lawful votes cast in the National Assembly election for Ede North, Ede South, Egbedore and Ejigbo Federal Constituency election held on the 23d of March, 2019 and therefore his election is null and void.

ii. That it be declared that Adejare Bello was duly elected and ought to have been returned as duly elected member for the Ede North, Ede South, Egbedore and Ejigbo Federal House of representatives election having scored the highest number of lawful votes cast at the election held on the 23d March, 2019 and satisfied the provisions of the 1999 Constitution of the Federal Republic of Nigeria, the Electoral Act, 2010 (As Amended), the Guidelines and the Manual to be so declared.

iii. In addition, that Rafiu Adejare Bello be declared as the winner of the Ede North, Ede South, Egbedore and Ejigbo Federal House of Representatives election held on the 23rd March, 2019, based on the results obtained at the physical recount and reexamination by and before the Tribunal or otherwise of the votes from the affected or aforementioned Local Government, Wards and Units

Or in the Alternative:

i. A declaration that the election held on 23rd March, 2019 in respect of Ede North, Ede South, Egbedore and Ejigbo Federal Consistency was inconclusive on the ground that the margin of win between the petitioner and the respondent is less than the total number of registered voters of the units cancelled.

ii. An order, nullifying the certificate of return issued by the 3rd respondent to the 1st respondent on account of the inconclusiveness of the election held in Ede North, Ede South, Egbedore and Ejigbo Federal Constituency.

iii. An order directing the 3rd respondent to forthwith conduct a bye election in the entire Ede North, Ede South, Egbedore and Ejigbo Federal Constituency within 90 days from date of judgment by this Honourable Tribunal.

iv. And cost of the petition.

After the pre hearing session and the issuance of a preliminary report, the 18 and 2nd petitioners called thirty two (32) witnesses, relied on documents tendered either from the Bar, by consent of counsel and on subpoena to produce and tender. On their part the respondents called nineteen (19) witnesses in defence of the petition and closed their case.

It is upon the evidence as led, that the challenged polling units and voting points results in some stated wards of 4 local government areas had the elections conducted thereat nullified on the ground thereat only. As indicated, the 1st and 2nd respondents and the third of excess of votes or over voting and a bye election was ordered 3rd) respondent, the INEC also filed cross appeals. Upon the transmission or the record of appeal as volume 1 and the supplementary record volume 2, which genuineness turned out to be hotly contested by the respective counsel for the parties, parties filed their respective briefs of argument thus;

Appellants' brief was filed on 11-10-2019. 1st and 2nd respondents brief was filed on 11 - 10 - 2019.
The 3rd respondent filed no brief of argument.

The appellants filed their reply to the 1st and 2nd respondents brief on 15 - 10-2019.

On their part, the 1st and 2nd respondents cross appealed and filed their cross - appellants' brief of argument on 4 - 10-2019.

Cross appellants reply on points of law to the appellants 1st and 2nd cross - respondents brief was filed on 15 - 10 - 2019.

The 3rd respondent, the INEC, also filed the 3rd respondent cross appellant's brief of argument of 4 – 10 - 2019, whilst the 1st and 2nd respondents brief of argument to the cross appeal of this cross appellant (INEC) was filed on 11 – 10 - 2019.

It suffices to state that the respective notices of appeal are as contained in the record of appeal and shall only be referred to as and if necessary in the course of the consideration of each appeal.

The Main Appeal

The notice of appeal is contained on pages 1043 - 1078 of Volume one of the record of appeal upon 38 grounds of appeal and filed on 19-9-2019.

The Main Appeal

The notice of appeal and their issues thereof settled by the appellants' learned senior counsel, Nathaniel O. O. Oke SAN.

The learned senior counsel for the appellants formulated the ten (10) issues thus:

1. Whether the lower tribunal is vested the requisite Jurisdiction to amend the reliefs of the 1st and 2nd respondents under the disguise of taking judicial notice of the time that the election took place. (Ground 1, 2, 3, 4, 22, 28, 31).
2. Whether the lower tribunal can rely on inadmissible evidence and wrong conclusion to nullify election and order fresh elections at Ward 3 Unit 10, Ward 5 Unit 2. Ward 7 Unit 2 of Ede South Local Government Area, Ward 5 Unit 4, Ward 7 Unit 8, Ward 7 Unit 10 (VP No. FC/OS/140016), LD & VP No. FC/05/14001.7 Ward 10 Unite 3 of Ede North Local Government Area, Ward 4 Unit 4, Ward 10 Unit 2 of Egbedore Local Government Area and Ward 11 Unit 9 of Ejigbo Local Government Area. (Grounds 7, 11, 12, 13, 14, 15, 16, 32, 34).
3. Whether the lower tribunal in the recess of their chambers can do for the 1st and 2nd respondents what the 1st and 2nd respondents failed to do in open court to enhance their case. (Grounds 17, 23).
4. Whether the lower court can lawfully favour the case of the 1st and 2nd respondents even against the weight of evidence (Grounds 18, 33).
5. Having regard to the fact that judgment of the lower tribunal was written and or delivered by Kadi Danladi Yakubu (Member 1), Chief Magistrate Ibrahim Isyaku Mashi (Member II), who did not participate in all the proceedings in

particular, were absent 7/5/2019, 16/5/2019, 24/5/2019, 27/5/2019, 11/6/2019, 19/6/2019, 20/6/2019, 21/6/2019, 24/5/2019 & 1/7/2019 of the lower tribunal, to listen, see, watch the witnesses and asses their demeanor, but who, in his judgment, reviewed assessed and applied the evidence of witnesses who testified in their absence, to give judgment against the appellants, whether the judgment of the lower tribunal is not altogether a nullity (Ground 19 of the notice of appeal).

6. Whether the trial tribunal can adopt the written deposition of PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW11,PW12, PW13, PW14, PW16, PW17, PW18, PW19, PW20, PW21, PW22, PW23, PW26, PW28, PW30 and PW31 for them without the witnesses adopting same themselves (Ground 20).
7. Whether the lower tribunal is vested with the requisite jurisdiction to amend ground 3 of the 1st and 2nd respondents' grounds of the petition (grounds 5, 21, 26 and 30).
8. Whether it could be held that the 1st and 2nd respondents proved their allegation of over voting before the trial tribunal. (Grounds 8, 9, 10, 35, 36 and 37).
9. Considering the facts and circumstances of this case, the doctrine of stare decisis and the decided authorities cited to the trial tribunal, wither the said trial tribunal was not wrong in its failure to be bound by the appellate cases. (Ground 6).
10. Whether the trial tribunal that the appellant led with 1,710 votes, even after the wrong deduction. (Grounds 24, 25, 27, 29 and 38).

The 1st and 2nd respondents, in their own brief of argument raised 3 issues for determination thus;

Issue I

Whether the honourable tribunal was not right in finding for the 1st and 2nd respondents by nullifying the results of the elections in polling units where over voting was established and ordered rerun therein.

Issue 2

Whether from the record of proceedings as well as the facts and circumstances of the case, the trial tribunal was at any time not properly constituted throughout the proceedings when the witnesses were called who adopted their statement on oath before the trial tribunal. (Grounds 19 and 20 of the grounds of appeal)

Issue 3

Whether the trial tribunal was not right when it took judicial notice of the date of the conduct of the election as 23rd February, 2019 in dismissing the objection of the appellants

It is the appellants appeal, and I shall therefore, treat the appeal on their issues formulated notwithstanding that the respondents three (3) issues are more succinct and all embracing; but nonetheless are covered by the appellants prolix issues. The strain at

determining the appeal on those issues would answer all the respondents' issues. However, I wonder why 38 grounds of appeal can be filed on a Judgment that was determined upon a defined narrow issue only, against an appellant.

Be that as it may, the prolix 10 issues framed shall be considered in the following manner. Issues one and seven (l&7) together. Issues 2, 8, 9 and 10 together, issues and 4 together, Issues 5 and 6 distinctly.

Issues One and Seven

Arguing these issues, the appellants had contended that a court of law cannot sit on appeal over its own decision. It was argued that the trial tribunal had put to rest the position of the law that reliefs in a petition cannot be amended after the expiration of 21 days of filing through its ruling of 21st June, 2019 see pages 937 -938 of volume 2 of the record of appeal. Relies on Akporue v. Okei (1973) 12 SC C 137, Waghoreghor v. Agenghen (1974) 1 SC 1 and Koden v. Shidon (1998) 10 NWLR (Pt. 571) 662; Sokoto v. State (2006) LPELR 11746 CA, per Salami, JCA referring to Engineering Enterprises of Niger Contractors & Co. v. A. G. Kaduna State (1987) 5 SCNJ 13; (1987) 2 NWLR (Pt. 57) 381; Sken Consult (Nig.) Ltd v. Ukey D (1981) 1 SC, 6, 33 - 35; Onwuchekwa v. CCB (1999) 5 NWLR (Pt. 603) 409.

That the tribunal was not vested with the jurisdiction to review or set aside its earlier decisions of 21 6 - 2019. NDIC v. SBN Plc (2003) 1 NWLR (Pt. 801) 311 and *Offodile v. Egwuatu* (2006) NWLR (Pt. 961) 421. That a court becomes *functus officio* upon delivering its judgment and the only remedy left for an aggrieved person is to appeal against it. That judicial review is primarily the function of an appellate court as a court of coordinate jurisdiction cannot sit on appeal over the decision of a brother judge.

That the tribunal wrongfully sat on appeal over its ruling by overruling same, when it took judicial notice of the date of the conduct of the election in dispute as being 23rd February, 2019 and not 23rd March, 2019 as pleaded by the respondent and replied to by the appellant as respondent.

In response, the 1st and 2nd respondents had contended in this regard by their own issue No. 3 that the trial tribunal acted properly and legitimately when in its judgment, it took judicial notice the fact that the election in question was held on the 23rd February, 2019 and not on the 23rd March, 2019.

The learned counsel argued further that it was a minor and in Significant alteration that the tribunal could correct more so that the appellants had in their replies to the petition and their written addresses at the tribunal agreed that the election being challenged actually took place on 23rd February, 2019. It was also contended that the appellant was in no way misled by the date misstated for the holding of the election. The case of *Karmame v. Dan Azumi* (2011) LRECN relied upon.

It was also contended that there was no amendment of the petition or its relief made as submitted, after 21 days from the date limited for the filing of the petition; that consequently there was no violation of the doctrine of stare *decisis*.

Resolution of Issue One And Seven Of The Appellant Which Is The 1st And 2nd Respondents' Issue 3

The simple answer to this issues, which I have taken jointly for their connectivity, is that the trial tribunal at no time at the trial, amended the petition as argued on appeal now.

For the avoidance of doubt, the trial tribunal specifically in its ruling of 21st day of June, 2019 as contained on pages 717 - 720
held thus:

> "PW14 was testifying on 19 06 - 2019. When the witness sought to amend his written deposition before adopting it as his evidence in chief counsel for the 1st and 2nd respondents, and counsel for the 3rd respondent objected because according to them.
>
> (a) A written deposition on oath cannot be amended in the tribunal.
>
> (b) That the amendment if allowed will amount to amending the petition after the time the petition could amended had lapsed. And
>
> (c) That the respondents would be shut out having already joined issues on the petition as it stands.
>
> A complete answer to the first ground of objection is provided in the case of *Lambert v. Okujagu* (2015) ALL FWLR (Pt. 808) 652/666. In that case the court of appeal sanctioned and upheld an amendment of a written statement on oath made by the trial court before the statement was adopted.
>
> On the 2nd objection, a community reading of section 285(4) of the CFRN and para 14(2) of the 1st schedule to the Electoral Act leads to the conclusion that, a petition may not be amended after the 21 days limited for filing a petition to introduce any of the requirements stated in sub para (1) of para 4 of the 1st schedule not contained in the original petition filed. The requirements stated at sub para 1 of para 4 are as follows:
>
> - Parties in the petition
>
> - Right of petitioner to present the petition
>
> - Holding of the election and scores
>
> - The facts of the petition and the ground(s) and relief sought.

Those are the matters that cannot be amended after the 21 days limited for filing a petition in the instance case, the witness seeks to amend the name of his poling unit from "Oni Jagun" to "Orita Akala". We find and hold what is sought to be amended is not any of the requirements listed above.

The 3rd ground of objection is that the respondents will be taken by surprise and shut out if the application is granted. At para 30(a) of the petition it is pleaded that there was over voting at Unit 10 Ward 3.At para 28 of their reply, the 1s and 2nd respondents joined issues with the para 30 of the petition and pleaded that there was no over voting in Unit 10 Ward 3. At para 17 of her own reply, the 3rd respondent pleaded that they put the petitioners to be strictest proof of the

allegation at para 30 of the petition. As to the pleadings, therefore all parties are at one that the issue at stake is the allegation of over voting at Unit 10 Ward 3. There is no misgiving at all as to that.

Before seeking to amend his statement, the following were already admitted in evidence and were before the tribunal:

- Exhibits P64 and P64A (Voters Register for Unit 10 Ward 3).

- Exhibits P63A and P63B (Results of VPs in Unit 10 Ward 3).

- Examining exhibit P63B we find stated thereon that it is result for VP at No. 16 Orita Akala and on exhibit 63B is written Unit 10 Ward 3 (Jagun Jagun Ward).

Where the above leads us is that the name Orita Akala was not being sought to be introduced by the witness for the first time in these proceedings. The name had earlier been furnished in exhibits that had earlier been admitted.

> On the statement of the witness, that specified Unit 10 Ward 3 was wrongly referred to as 16 Oni Jagun rather than 16 Orita Akala at paras 2 and 3 thereof. The witness now seeks to amend that name to bring it in line with the name on exhibits P63A, P53B, P64 and P64A which are already in evidence. It is for the above reasons that the objections fail in their entirety and are hereby overruled.
>
> The nae "Oni Jagun" at paras 2 and 3 of the written deposition of the witness, which was admitted as exhibit P160, is hereby amended to read "Orita Akala".

It is therefore obvious that the tribunal did not amend the petition nor the reliefs sought and in particular in any manner prohibited by the Electoral Act. The appellant was not misled by the minor alteration in the date in the petition as they had themselves pleaded, denied the wrong date of election stated and pleaded the correct date of 23rd February, 2019 in their replies and written addresses. In *Karmame v. Dan Azumi* (2011) LRECN cited by the learned respondents' counsel, the Supreme Court had held that minor discrepancy in the name of the parties appellant who had in his pleadings misstated the names could be altered to reflect the correct name as stated in the certificate of return issued in his favour and that it did not amount to an amendment of the petition outside the period of 21 days limited for the amendment of a petition. Indeed, it was held not to amount to a prohibited alteration in the petition.

The application to amend the error in the spelling of 1st respondent's first name in the petition to bring it from Mohammed Dan Azumi instead of Mahmud Dan Azumi was held by the Supreme Court to be in order and the Court of Appeal was Wrong to have overruled the trial tribunal in granting the application. From the aforesaid.

I agree with the trial tribunal that the minor discrepancy in date was such that could be corrected. I also agree with the appellants that the tribunal did not sit on appeal over its decision, as it did not amend the petition at any time. therefore, speculative and have no basis.

Indeed the tribunal rightly too, only took judicial notice of the date of the election as the apex court did in *Yusuf v. Obasanjo*. page 983 of the volume 1 of the record of appeal, RW 19 in cross examination referred to the appellants reply as pleaded at paragraphs 2, 3, 4, 5, 6, 7 and 9 of the petition that the date of the election was 23rd February, 2019 and not 23rd March, 2019 as there was no election on that date.

There is no gain saying the obvious that it is an attempt at holding on to the straw of technicality. Justice is not a game of hide and seek. It is not a gamble to be embarked upon to see who outsmarts the other; were it so, then wisdom and truth would have been subjudicated to craftiness. Where there is no miscarriage of justice by a mistake or error in a court process, such as in this case on appeal such mistake should not be visited on that party. The cases of *Kakih v. PDP* (2015) ALL FWLR (Pt. 764) 20 (2014) 15 NWLR (Pt.1430) 374 and *Jeric Nigeria Ltd v. Union Bank* (2001) FWLR (Pt. 31) 2913; (2000) 15 NWLR (Pt. 691) 447 cited by the 1st and 2nd respondents learned counsel are apt and applicable.

In Kakih v. PDP, (supra) the Supreme Court held as follows:-

> "I also entirely agree with the submissions of the learned counsel for the respondent that the mis - stating of the actual year of judgment in the circumstances of the case is a mere irregularity which did not vitiate the appeal or cause any miscarriage of justice I am therefore satisfied and hereby find that the putting in the year 1996' instead of '1997'. He is quite right according to the record but this must be the result of human error. I also entirely agree with the submission of the learned counsel for the respondent that misstating of actual year of judgment in the circumstances of this case a mere irregularity, which did not vitiate the appeal or cause any miscarriage of justice. The error was in my respectful view not fatal as to render the appeal incompetent and the reference by the court of appeal in its judgment to the judgment of Naron, J delivered on 24-2-1996 does not amount to miscarriage of justice. It is also true as submitted by the learned counsel for the respondent that this court has long moved away from sticking to technicalities as opposed to the determination of parties' rights on the merits and substantial justice.

To have even held that it cannot be amended was an orbiter as it was indeed a situation, where, even on the merit an amendment could even have been granted as it was not one that was made outside the limited period of 21 days after the filing of the petition and for the purpose of introducing any of the requirements stated in subparagraph (10 of paragraph 14 of the 1st schedule of the Electoral Act, 2010 relating to: (a) the parties in the petition (b) Right of the petitioners to present the petition (c) Holding of the election and scores (d) The facts of the election and the reliefs sought.

The motion and its grant never related to any of the afore stated grounds and the tribunal was right to have held that it is those matters that cannot be amended after the 21 days limited for the filing of the petition.

Accordingly, there was no amendment ordered let alone an invalid one; in consequence, the trial tribunal was not in violation of the principle of stare decisis in that it did not overrule itself or sit on appeal over its decision.

The issues 3 and 7 argued compositely are both resolved against the appellants and in favour of the respondents.

Issues 3, 4, raise the question of bias. By the combined effect of the 2 issues supra, the appellant had argued that. It is settled law that the principle of fair hearing is fundamental to all courts and tribunals in their procedure and proceedings.

It envisages that every party be allowed his opportunity to present his case to the adjudicating authority without let or hindrance from the beginning to the end.

It envisages that the court or tribunal should be fair, impartial and without showing any degree of bias against any of the parties.

Every party must be given every opportunity of presenting his case. See OOMF Ltd v. NACB Ltd (5upra). However, in this case I find no bias in the face of the record.

Issue 6

> On whether the tribunal can adopt the written depositions of PW1 - PW31 for them without the witnesses adopting same themselves.

It was argued that the statements on oath ought to have been adopted first before admitting them as exhibits, else they were not evidence before the court.

Sundry decisions including *Adebowale v. Robinson* (2018) LPELR 444 24(CA) (2008) 12 NWLR (Pt. 1098) 412 at Pp 54 – 55 para C were relied upon.

Reproducing part of the proceedings of 22nd July 2019, wherein the tribunal had held thus: "since we started this tribunal in every case that has come before us we record thus after the introduction of the witness; I adopt the written statement that I signed before the secretary of the tribunal as my evidence in chief to this tribunal. Seeks to tender.' Then the tribunal admits and marks the statement..."

That a reference to page 978 of the record of appeal shows that the tribunal adopted the statement on oath of PW1 PW9, PW11, PW14, PW16 PW31 i.e. petitioners list and 2nd respondents witnesses without the witnesses so adopting the said statements on oath themselves.

The learned counsel argued referring paragraphs 4(1) and (3) of the Practice Direction that witnesses were to adopt their statements on oath or depositions during the trial and are to be cross examined on what it contains, that it was akin to examination in chief; and that it is this evidence, the cross examination and the exhibits tendered that will be the materials upon which the Election Petitions Tribunal would determine the petition. That the non-compliance with this procedure means the abandonment of the petition in the manner of abandoned pleadings and the case will be one not supported by evidence.

The learned counsel submitted that the stipulation of the Practice Direction by the President of the Court of Appeal must be complied with as they are made for expedition's determination of election petitions. Counsel relies on *Mark v. Abubakar* (2009) 2 NWLR (Pt. 1124) 79 at 150; *Okereke v. Yar Adua* (2008) 12 NWLR (Pt. 1100) 95 at 127 E; *Goar v. Dasun & Ors* (2009) LPELR 4205 CA Pp 26 -27 par A-C.

It was on the authority of the cases of *Kalugu Uduma v. Prince Ama Arunsi* & 14 *Ors* (2010) LPELR 9133 (CA) (2012) 7 NWLR (Pt. 1298) 55 per Ogunwumiju, JCA and *Hon Fabian Okpa v. Chief Alex Irek & Anr* (2012) LPELR 8033 (CA) submitted that a witnesses' statement on oath or deposition was his evidence in chief which needed to be adopted in the court to properly be evidence and for it to be cross-examined upon.

A distinction was made between same and affidavit evidence which was admissible per se as evidence unless controverted.

The respondents contended otherwise and that the depositions were adopted by the respective witnesses as their evidence before their tender and admission.

I agree and find that the statements of the said witnesses were all identified as their statements. The tender in evidence was a mere surplus sage and irregularity, which was only intended to keep a clear identification of the said statements in the proceedings. An irregularity that had not occasioned any miscarriage of justice.

The ultimate fact is that the statements were identified and ownership thereof owned up by each deponent of same. That was an effective adoption of the statements; they constituted, in the circumstances, the said witnesses statement on oath. The statements were not adopted for the witnesses/makers by the tribunal, as argued. The allegation of bias, on this score, cannot fly, therefore.

Issue 6 is resolved against the appellants.

Issue 5

This issue raises a challenge to the record of the appeal transmitted to this court; it seeks to challenge the record of the Tribunal as not being correct; as not all the members of the tribunal were shown to be present at the tribunal at the hearing on the dates itemized on the issue raised.

The respondents contend to the contrary that, it cannot be correct and therefore the proceedings and resultant judgment of the tribunal cannot be rendered invalid or void for want of jurisdiction or competence.

I think that this simplistic issue seeks in the main to challenge the record of appeal transmitted to this court, which is the basis of the respective briefs filed by the parties including the appellants herein.

These appellants cannot approbate and reprobate, as they must be consistent in the prosecution and defence of their case both at the trial and before this court. See *Ajide v. Kelani* (1985) LPELR (1985) 3 NWLR (Pt. 12) 248. What is more, the challenge to the record of appeal by the seeming introduction of a new record of appeal was not properly ignited by a motion for

leave to compile and transmit additional record of appeal; neither was such leave sought nor extension of time to so bring an application made within 15days since the statutorily limited duration of time for transmission of record of appeal had expired.

What is also intriguing here, is the fact that the so called void record of appeal was neither certified as a true copy by the secretary of the tribunal as no name of the Registrar nor indication as the Registrar or secretary of same is expressed; no signature, stamp and fact of certification as such is embossed! To the contrary, there is a complete noncompliance with the requirement of sections 111 and 112 of the Evidence Act, 2015 regarding secondary evidence of public/official documents.

This culpable defect deflates the challenge or attack raised and the seeming reliance on a document or record that cannot enjoy the presumption of regularity even under section 150 Evidence Act, 2004.

Now, section 168 (1) Evidence Act 2015 provides that when any official or judicial act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. The document of supplementary record of appeal is not so shown.

Accordingly, I find, as thereon contained, that the certified true copy of the record of appeal transmitted in this appeal has all the members and Chairman of the tribunal sitting and forming the quorum on all the dates challenged in the issue No.6 herein. The 1st, 2nd and 3rd respondents' learned counsel are right in arguing that there was no amendment of the petition nor any change or variation in the quorum of the tribunal.

What is more, it is settled that parties and the court are bound by the record of the court, which, in the instant case, does not contain any evidence of the grant of any order for the impeachment of the record of appeal. Any person who is contending that the record of proceedings before an appellate court is not a fair record of what happened at the court of first instance must first formally impeach the record of proceedings. See O. O.M. F. Ltd v. NACB Ltd (2008) 165 LRCN 91 at 106: (2008) 12 NWLR (Pt. 1098) 412.

There was no formal impeachment of the record in this appeal and nothing proved that the proceedings were conducted on any of the dates alleged in the absence of the two members of the tribunal.

This court has no jurisdiction to determine otherwise, as our Jurisdiction can only be invoked upon the filing of an application to that effect; none was filed.

This issue is resolved against the appellant and in favour of the 1st and 2nd respondents only.

Issues 2, 8, 9 and 10: These issues considered together simply ask the question whether the trial tribunal was right to have nullified the election in the wards stated in the issue 2, earlier reproduced and if wrong, then whether the doctrine of stare decisis had not been violated?

As relating to the ordering of a fresh election in the indicated units, of the wards, the appellants contended by those related issues shown (supra) that the tribunal was wrong in

nullifying the results of the indicated polling units and polling points complained of on the ground of alleged over voting. The order for a fresh election in those units and polling points of the wards was said to be wrongful.

The respondents had argued to the contrary. A perusal of the ward 3 unit 10 result clearly shows that there was no over voting proved. The exhibit relied upon to come to that conclusion was only dumped on the tribunal as it was tendered from the Bar, without more. Indeed the PW14 who identified same was not an agent of the petitioner; the document was inadmissible and reliance on same to hold for over voting was wrong.

Ward 4 Unit 3 had its reliance on a duplicate and certified copy; the document was not unbundled and spoken or testified to by a witness who was either its maker or who was given or had custody of same and who could testify to its authenticity.

As relating ward 7 unit 2 of Ede South Local Government Area, I observe that a party agent testified in respect thereto; he was a competent witness in respect of that ward unit result.

The finding of the tribunal on this ward and unit however related only to 2 voting points results with serial forms numbers relating exhibits P77, 77B and P78.

Therein I observe that spoilt ballot papers were reckoned in the computation of votes.

There are also 5 voting points, but only one was considered without a word as to the state of the votes in the consideration and conclusion on over voting as made.

In Unit 7 Ward 8, I find from the exhibit P21B and exhibit P21C which are for different voting points which were not proved by any identified witness and yet relied upon by the tribunal to hold that there was over voting.

Indeed there are no witnesses on record that authenticated exhibits Pw21, PW21A, PW21B and PW21C. At least none was disclosed. The PW21 who testified was not identified nor shown to be qualified to identify the documents or even unbundle them.

For the avoidance of any doubt, I shall x - ray the content of the documentary evidence as tendered even if it is thought (not conceded though) that they-were not dumped on the tribunal so as to show that they had not constituted such evidence of any magnitude and quality to attract the orders there upon founded.

In Ward 3, Unit 10 of Ede South Local Government Area, Ward 3 Unit 10 has 2 voting points as seen on exhibits P63A and P63B1, It was testified there to by PW14 as contained on page 1011 of the record of appeal. Only P63B1 which has over voting was considered and a finding of over voting made thereon. See page 1011-1012.

Nothing was said of the other voting point covered by exhibit 63A. PWI4 was not qualified to unbundle the document and therefore rendered inadmissible evidence in that respect. There was no evidence in support of the pleadings on exhibit P63A. The pleadings was deemed abandoned and unproved.

In respect of Ward 5 Units 2, the PW12 testified in that regard.

Spoilt Ballot papers were added to the figures in the computation of the votes by the tribunal. Exhibits not unbundled and also inadmissible evidence and indeed inconsistent.

In respect of Ward 7 Unit 2, PW31 testified as party agent, but there are 2 (two) voting points, but only 1 voting point was considered (see page 1015 of the record) as one voting point alone 'cannot be conclusive of the fact of over voting in that polling unit leading to the nullification of the result of that entire unit as done.

In Ward 5 Unit 4, PW24 testified. There are 5 voting points and finding was only in respect of one voting point.

That outcome was not conclusive of the result of one polling unit. What is also strange is that spoilt ballot papers were computed and wrongly too, otherwise, there would not have been any over voting.

The inconsistent application of and reckoning of all voting points and at times not all voting points in a unit is not the standard for the consideration and evaluation of evidence.

In respect of Ward7 Unit 8, the tribunal found that there are more than two voting points and were reckoned by the tribunal; there was, however, no witness to unbundle the exhibit, other than the unqualified PW21 see page 1022 of the record.

In respect of Ward 7 Unit 10, as seen on p. 1023 per PW23 testimony, 2 voting points were considered and the unit result as in exhibit p. 22 is bad PW23 said the said exhibit p22 was doctored as well as p. 22 Al of his own voting unit. Indeed even the voting point had no admissible evidence in proof of same.

As relating Ede North Local Government Area, Ward 10 Unit 3 testified to by PW18, Agent testified as shown in exhibit 111 for the 2 voting points. P27 and p27A for the entire unit result and yet the Tribunal chose and picked only P27AI.

Egbedore Local Government Area, Ward 4 Unit 4, testified to by PW27, (see page 1029 - 1030); spoilt ballot papers were reckoned wrongly, though. Reliance on P5IC was not justified.

In respect of Ward 10 Unit 2, as testified to at pages 1031 - 1032, by PW26 who was not qualified to so do as he was neither a voter nor an Agent, so could not testify thereon. The unbundled or dumped exhibits remained unsubstantiated. Indeed, spoilt ballot papers were also taken into consideration in the computation.

Ejigbo Local Government Area, the Ward complained of is Ward 9 Unit 9 where in PW 25 testified in respect of alleged over voting. We have observed that there was over voting thereat by only one vote. We also observe that there was no complaint in the petition about that Ward and Unit of Ward 3, Unit 5 nor even a cross petition. There was no relief sought by the petitioner in respect of that ward.

There was also no complaint in respect of Egbedore Ward 9 Unit 1; the findings and order relating to that Unit was perverse, therefore.

It is noted that in respect of Ede South Local Government Area, as relating to Ward 3, Unit 10 - see page 1012, the (exhibit P63B) in respect thereof, which was made use of by the tribunal after the alteration, was given only to the petitioners agents and over voting then alleged. There was no notice given to the respondents particularly INEC to produce any original copy. In this scenario and also as in Ward 5 Unit 2, and Ward 7 Unit 2; there were no over voting as also in Ward 8 Unit 1 (see pages 1015 - 1017).
Ede North Local Government Area, Ward 5 Unit 4, page 1021 is as in Ward 8 Unit 1 above. Over voting in Ward 7 unit 8 (see page 102) Ward 7 Unit 10 and Ward 10 Unit 3, indicates over voting
that were not proved as by law ordained, however.

As relating Egbedore Local Government Area, we noted over voting in Ward 4 Unit 4, Ward 10 Unit 2 (see pages 1031 1032) and no over voting in Ward 9 Unit 1 and finally for Ejigbo Local Government Area, we have observed that there are over voting in Ward 1 Unit 9 and Ward 3 Unit 5.

There is no doubt that the tribunal started the journey on sound legal postulations and apt recant of the applicable law, but turned somersault by its non-adherence to its legal sermons, to hold as it did. This ambivalence and inconsistency is anachronistic to justice.
There was no legal proof of the over voting as adjudged.

Indeed, the tribunal had found that the appellant was leading by the margin of 1,710 votes against the 1 respondent even after the deductions it embarked upon and which as, I have found was not proved as over voting per the admissible evidence of competent witnesses.

To say that the 1st and 2"d respondents had not proved their allegation of over voting against the appellant in the said election on appeal as the tribunal could not, in the confines of its "cosy" chambers award to the 1t and 2nd respondents what they had not proved in the open court by admissible evidence. In *Ogboja v. Access Bank Plc* (2016) 2 NWLR (Pt. 1496) 291 at 321 Danjuma, JCA speaking for this court at page 321 of the report had in reiterating this golden and trite principle of proof stated thus:

> "Merely tendering exhibit 12, without evidence in elucidation to show demonstratively how the sum indicated as debit and claimed was arrived at was not such an act that could be relied upon as proof of the counter claim.
> Indeed as held in *First Bank of Nigeria Plc v. Mamman Nigeria Ltd* (2201) FWLR (Pt. 31) page 289 at 290 par D-F also referred to by me in *Ogboja v. Access Bank*
> (*supra*), it was held thus:
>
> "Investigation is not the functions of a court. Therefore, it is not the duty of the court to embark on a voyage of discovery.
> It was not sufficient for DWI to dump the ledger card on the court without explaining clearly the entries therein".

It is on the basis of this settled position of the law that I have made my evaluation of the dumped documents and found as I did that there were no over voting proved and more strange that spoilt

ballot papers were reckoned as such an integral part of votes in the computation leading to the voidance of the results.
If the trial tribunal had observed the law relating to the procedure and burden of proof, it would not have come to the conclusion it did on the results of the voting points and unit results voided in the respective wards as it did.
The decision was perverse and had occasioned a miscarriage of justice. Accordingly, I resolve this composite issues in favour of the appellants.

Having resolved as above, being the determinate issues springing from the kernel of the decision and this appeal, the conclusion does not need any conjecture as the decision nullifying the election in the stated units is unsupported by evidence; indeed by the finding of the tribunal, a deduction of the votes purported to be over voting still left the appellant in the lead in an election that did not require a geographical spread as a legal imperative.

Before I sign off on the main appeal, I ponder but find no justification in the raising of grounds of appeal and issues that even if resolved are not the reasons or ratio for the decision complained of.

It is trite that a ground of appeal is a challenge to the decision finding of a court and must arise as such. See *Orianzi v. A. G. Rivers State* (2017) 6 NWLR (Pt. 1561) 224 at 261!

The apex court had also held in *Oloruntunba-Oju v. Abdul Raheem* (2009) 13 NWLR (Pt. 1157) 83 at 121 paras B - C that an appeal should relate to the ratio and life issue in the decision
appealed against; see also Government of *Akwa Ibom State v. Power Com. (Nig.) Ltd* (2004) 6 NWLR (Pt. 868) 202; *Babalola v. The State* (1989) 4 NWLR (Pt. 115) 264 and *Azaatse v. Zegeor*

(1994) 5 NWLR (Pt. 342) 76.

The grounds of appeal and issues thereon raised, beside that bordering on the over voting raised and determined solely against the appellants, are in my view, otiose and immaterial as appellants had not been prejudiced by any other finding and order beyond the over voting adjudged and the bye election ordered.

If appellants' counsel had bothered to reckon this principle of time and energy would have been saved for other *sui generis* election appeals also begging for urgent attention to avoid possible abatement on ground of time effluxion.

With the aforesaid resolution and findings, this appeal succeeds and is allowed.

Accordingly, the decision of the Osun State National and State Houses of Assembly Election Petition Tribunal holden at Osogbo and delivered on 2nd day of September, 2019 is set aside only as relating to the consequential order for a fresh election in the adjudged units and voting point of the impugned wards which I vacate and quash, hereby.

The declaration and return by INEC of the 1st appellant is affirmed.

OMOLEYE, J.C.A.: I participated fully in the conferences that produced the judgment just delivered by my learned brother, Mohammed A. Danjuma, J.C.A.

I therefore adopt the judgment as mine. I have nothing more to add.

MAHMOUD, J.C.A.: We had a robust conference in respect of this case. The lead judgment just delivered by my learned friend, Mohammed A. Danjuma, JCA is a correct reflection of our decisions at the said conference. I adopt the reasoning's and conclusions as mine. I have nothing to add.

I allow the appeal. I dismiss the cross appeal of the 1st and 2nd respondents/cross appellants. I however allow the cross appeal of the 3rd respondent/cross appellant.

I too make no order as to costs in this appeal.

Appeal allowed.