

**INDEPENDENT NATIONAL ELECTORAL COMMISSION
(INEC)**

V.

- 1. HON. DR. DAKUKU ADOL PETERSIDE**
- 2. ALL PROGRESSIVE CONGRESS (APC)**
- 3. WIKE EZENWO NYESOM**
- 4. PEOPLES DEMOCRATIC PARTY**

SUPREME COURT OF NIGERIA

SC. 1003/2015

MAHMUD MOHAMMED, C.J.N. (*Presided*)

IBRAHIM TANKO MUHAMMAD J.S.C.

NWALI SYLVESTER NGWUTA, J.S.C.

KUMAI BAYANG AKA'AIIS, J.S.C.

KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN.J.S.C.

(*Read the Leading Judgment*)

JOHN INYANG OKORO. J.S.C.

AMIRU SANUSI. J.S.C.

FRIDAY, 12th FEBRUARY 2016

*ELECTION - Conduct of election - Accreditation of voters -
Procedure for - Use of smart card readers - Purpose of.*

*ELECTION - Election - Grounds on which election may be
questioned - Non-compliance with instruction or directive of*

*INEC or its official - When not a ground for questioning election
- Section 138, Electoral Act, 2010 (as amended).*

*ELECTION - Independent National Electoral Commission - Power
of to make regulations - Source of - Regulations made thereby
- Whether can supercede provisions of Electoral Act - Section
153, Electoral Act, 2010 (as amended).*

*ELECTION - Smart card readers – Use of in accreditation of
voters at election - Purpose of*

*ELECTION - Voters - Accreditation of - Procedure Jim - Use
of smart card readers - Purpose of*

*ELECTION PETITION - Election - Grounds on which election
may be questioned - Non-compliance with instruction or
directive of INEC or its official - When not a ground for
questioning election - Section 153, Electoral Act, 2010 (as
amended).*

*ELECTION -PETITION - Independent National Electoral
Commission - Power of to make regulations - Source of
Regulations made thereby - Whether can supercede provisions
of Electoral Act - Section 153, Electoral Act, 2010 (as amended).*

*JUDICIAL PRECEDENT - Supreme Court - Previous decision
of - When Supreme Court will follow and apply in
subsequent case.*

*STARE DECISIS - Previous decision of Supreme Court - When
Supreme Court will follow and apply in subsequent case.*

Issue:

Whether the appellant's appeal ought, to be allowed having regard to the decision of the Supreme Court in *Nyesom v. Peterside and others* (2010) 7 NWLR (Pt. 1512) 452 which was based on the same facts and issues as in this case.

Facts:

The appellant conducted Governorship election for Rivers State on 11th and 12th April 2015. At the end of the election, the appellant declared the 3rd respondent as the winner of the election and the candidate duly elected as Governor of Rivers State at the election.

The 1st respondent, a candidate at the election, and the 2nd respondent, the party that sponsored the 3rd respondent, were both aggrieved with the return of the 3rd respondent as the Governor of Rivers State.

Consequently, they filed a petition at the election tribunal on the following grounds that:

- (a) the 3rd respondent was not duly elected by majority or highest number of lawful votes cast at the election;
- (b) the election of the 3rd respondent was invalid and unlawful by reason of substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) the manual for Election Officials 2015, and the appellant's (INEC) 2015 General Elections approved guidelines and regulations; and
- (c) the election was invalid by reason of corrupt practices the 1st and 2nd respondents sought among other reliefs, the nullification of the results of the election declared and announced by the appellant and the conduct of fresh election in Rivers State.

At the conclusion of hearing, the tribunal allowed the petition and nullified the election and return of the 3rd respondent on the ground of substantial non-compliance with the Electoral Act.

The 3rd respondent appealed to the Court of Appeal, which dismissed his appeal and affirmed the judgment of the tribunal.

The 3rd respondent appealed further to the Supreme Court. The 4th respondent, the political party that sponsored the 3rd respondent, and the appellant also appealed to the Supreme Court.

The Supreme Court, in a unanimous decision, allowed the 3rd respondent's appeal, set aside the judgment of the Court of Appeal, dismissed the 1st and 2nd respondents' petition, and restored the return of the 3rd respondent as the duly elected Governor of River; State. That judgment of the Supreme Court is reported as *Nyesom v. Peterside* (2016) 7 NWLR (Ft. 15 12) 452. And the Supreme Court adopted the reason for its decision in the 3rd respondent's appeal as the basis for deciding the appellant's appeal in this case.

Held (*Unanimously allowing the appeal*):

1. *On When Supreme Court will follow and apply its previous decision -*

Per KEKERE-EKUN, J.S.C. at page 566, paras. G-H

This is a sister appeal to appeals No. SC.1001/2015 and SC.1002/2015. The issues raised in this appeal, which is between the same parties and against the same judgment are substantially similar to those raised in SC.1001/2015 and SC.1002/2015.

Having just given exhaustive reasons for allowing Appeal No. SC.1002/2015, I do not believe it would serve any useful purpose to embark on another exercise. I adopt my reasoning in SC.1002/2015 in the instant appeal and accordingly allow the appeal.

Per AKA'AHS, J.S.C. at page 570, paras. B-D:

This appeal has the same substratum with appeal No. SC.1002/2015 namely whether the failure by officials of INEC to abide by the instruction issued by the Commission on the use of the Electronic Smart Card Readers in the accreditation of voters for the Governorship election in

Rivers State and resort to manual voters register where the Smart Card Readers failed to function for accreditation amounted to substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended) as to affect the result of the election to justify its nullification. The said issue was adequately addressed in the leading judgment of my learned brother, Kekere-Ekun, JSC. I adopt the reasons advanced as mine and I hereby allow the appeal.

2. *On Grounds for questioning an election -*

By virtue of section 138(1) of the Electoral Act, 2010 (as amended), the ground on which an election may be questioned are

- (a) that the person whose election was questioned was, at the time of the election, not qualified to contest the election;**
- (b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act;**
- (c) that the respondent was not duly elected by majority of lawful votes cast at the election; or**
- (d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.**

In this case, the 1st and 2nd respondents challenged the election and return of the 3rd respondent mainly on grounds (b) and (c) above. However, the 1st and 2nd respondents made no attempt to prove their case on the ground that the 3rd respondent was duly elected by majority of lawful votes cast at the election. Instead, the 1st and 2nd respondents relied on the ground that the election was invalid because the appellant's officials failed to comply with the appellant's order to them to use smart card readers for accreditation of

voters for the election. But the 1st and 2nd respondents failed to relate the ground for their petition to any provision of the Electoral Act to show that the ground qualifies as non-compliance with the provisions of the Act. In the circumstance, the 1st and 2nd respondents failed to prove their case at the tribunal that the failure to use Smart Card Readers for accreditation of voters at the election had the effect of nullifying the entire election in Rivers State. (*P. 568, paras. A-H*)

3. *On When election cannot be questioned on ground of non-compliance with instruction of INEC or its official -*

By virtue of section 138(2) of the Electoral Act, 2010 (as amended), an act or omission which may be contrary to an instruction or directive of the Independent National Electoral Commission or of an official appointed for the purpose of the election but which is not contrary to the provision of the Act shall not of itself be a ground for questioning the election. In effect, an infraction of a directive of the commission which itself is not contrary to the provisions of the Electoral Act is not a ground for questioning an election. In (his case, the appellant's officials complied with section 49(1) of the Electoral Act on the accreditation of voters for the election, but may have breached the directive of the appellant on the use of Smart Card Readers, In the circumstance, the act of the appellants officials did not amount to noncompliance with the provisions of the Electoral Act, 2010 (as amended! that rendered the election invalid as asserted by the Is1 and 2'''' respondents. (*Pp. 569, paras. A-C; 571-572. paras. G-A*)

4. *On Whether regulations made by INEC can supercede provisions of Electoral Act –*

Section 153 of the Electoral Act, 2010 (as amended) gives the Independent National Electoral Commission the power to issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of the Act and for its administration. However, any directive by the commission cannot supercede the provisions of the Act. So, where a party has complied with the provisions of the Act but is in breach of any directive of the commission, the party is not in breach of the provisions of the Act. In this case, the appellant's officials resorted to accreditation of voters in accordance with the provisions of section 49 of the Act when the Smart Card Readers failed. In the circumstance, their decision did not amount to non-compliance with the provisions of the Electoral Act as envisaged under section 138(1) of the Act. (P. 571. paras. D-F)

Per SANUSJ, J.S.C. at page 572, paras. G-H:

"It needs be stressed here that the provisions or regulations contained in I NEC's Manual and Guidelines, should not by any means meant, to have replaced amended provisions of the Electoral Act or to override the provisions of the latter. Breach of the regulation or provisions do not mean breach of those Electoral Act, 2010 (as amended) and such breach could not amount to non-compliance with the provisions of the Act."

5. *On Procedure for accreditation of voters –*

By virtue of section 49(1) and (2) of the Electoral Act, 2010 (as amended), any person intending to vote with his voters card

shall present himself to a presiding officer at the polling unit in the constituency in which his name is registered with his voters card. And the presiding officer shall on being satisfied that the name of the person is on the register of voters, issue him a ballot paper and indicate on the register that the person has voted. That was the procedure for accreditation and voting in elections in this country before the Smart Card Readers were introduced by the Independent National Electoral Commission to complement the procedure stated in the Act. (Pp. 570-571, paras. H-C)

6. *On Purpose of use of smart card readers in accreditation of voters-*
The purpose of introducing the use of Smart Card Readers as part of the procedure for accreditation of voters in an election is to authenticate the owners of voter's cards and prevent multi-voting by a voter. In other words, the Smart Card Readers were meant to compliment and facilitate the method of accreditation as provided in section 49 of the Electoral Act 2012 (as amended). Accordingly, any wrong or non-use of the Smart Card Readers during election would not deter the presiding officer from resorting to the usual or traditional manual accreditation of voters for the election. [*Shinkafi v. Yari* (2016) 7 NWLR (Pt. 1511) 340 referred to.] (P. 571, paras. B-C)

Nigerian Case Referred to in the Judgment:

Shinkafi v. Yari (2016) 7 NWLR (Pt.1511) 340

Nigerian Statute Referred to in the Judgment:

Electoral Act, 2010 (as amended), Ss.49, 49(1)(2), 138,138(1)(2), 139(1), 149. 152. 153

Appeal

This was an appeal against the decision of the Court of Appeal, which affirmed the judgment of the Rivers State Governorship Election Tribunal which nullified the election and return of the 3rd respondent as Governor of Rivers State and ordered the conduct of a fresh election. The Supreme Court, in a unanimous decision, allowed the appeal.

History of the case:

Supreme Court:

Names of Justices that sat on the appeal: Mahmud Mohammed, C.J.N. (Presided); Ibrahim Tanko Muhammad, J.S.C.; Nwali Sylvester Ngvuta, J.S.C.; Kumai Bayqng Aka'ahs, J.S.C.; Kudirat Motonmori Olatokunbo Kekcre-Ekun, J.S.C. (*Read the Leading Judgment*); John Inyang Okoro, J.S.C.; Amin Sanusi, J.S.C. Appeal No.: SC. 1003/2015

Date of Judgment: Friday, 12th February 2016

Names of Counsel: Dr. Onyechi Ikpcazu, SAN, (*with him*, Ighodalo Imadegbelo SAN, Ken Njemanze SAN, Alex Ejesieme Esq., Obumneme Ezeonu Esq., Onyinye Anumonye Esq., Emeka NrCEzedi Esq., Nkiru Frank Mmegwa. Tobcchukwu Nweke Esq., Martin Nwokeocha Esq., Nwachukwu Ibegbu Esq., Obinna Onya Esq., Obiora Aduba Esq., Nwamaka Ofoegbu (Miss). Ogechi Ogbonna Esq., Julius Mba Esq.) - for the Appellant Chief Akin Olujinmi, CON, SAN, (*with him*, Chief Adeniyi Akinlola SAN, Alhaji Lasun Sanusi SAN. Funke Aboyade SAN, Ifeanyi Egwasi Esq., Olumide Olujinmi Esq., Akinsola Olujinmi Esq., Akinyemi Olujinmi Esq., Olufemi Atetedaiye Esq., Anne Achu |Mrs.j, Ayodele Akisanya

Esq., Yusuf Anikulapo Esq., Kemi Odegbami-Fatogbe [Mrs.], Oluwole Uori Esq., Oluseyi Adetanmi Esq., Olajide Loye Esq., Abayomi Abdulwahab Esq., Olukayode Ariwoola (Jnr.) Esq., Christian Okoh Esq., Anthonia Omoyemi Balogun [Mrs.], Ricardo Ebikade Esq., Ifeoluwa Ajani [Miss], Ifcdolapo Yejide Esan (Ms), Ademola O. Owolabi Esq., Tolulope Adebayo [Miss], Oladele Oyelami Esq., Levi Nwoye Esq., Henry Odili, II. A. Belio, E. N. Ebete. Saheed Smart Akingbadc) *-for the 1st Respondent* Yusuf Ali SAN, (*with him*, Emeka Ngigc SAN, Alhaji A. K. Adcy Esq., Prof. Wahab Egbcwole, Ayo Olanrewaju Esq., M. I. Hanafi Esq., Mas'ud Alabelewe Esq., Lawrence John Esq., S. A. Oke Esq., Alex Akoja Esq., Onyeka Obiajulu Esq., P. I. Ipkegbu | Mrs.], K. O. Lawal Esq., U. O. Sulaiman [Miss], Emeka Okeakpu Esq., A. O. Usman Esq., A. B. Eleburuike Esq., Tejumola Opcjin [Miss], Musa Ahmed Esq.) *-for the 2nd Respondent* Emmanuel C. Ukala SAN. (*with him*, Prof. Epiphany C. Azingc SAN, D. C. DeNwigwc SAN, Dr. Z. Adango Esq., Emeka Ichokwu Esq., Nelson Worgu Esq., Edmund Mark Esq., Mark S. Agwu Esq., Erastus Awortu Esq., Yitalis Ajoku Esq., Osima Ginah Esq., O.J. Iheko [Miss], Dike Udenna Esq., Yunusa Akabi Esq., William Atanbi Esq., Somoni Daopu Esq., Afam Okeke Esq., Emmanuel Mark Esq.) *- for the 3rd Respondent* Chief W'ole Olanipekun SAN, (*with him*, Chief Chris Uche SAN, Chief Ifedayo Adedipe SAN, Joe Agi. Gordy Uche SAN, Usman O. Side Esq., Raymond Anyaw.ita Esq., Aderemi A. Abimbola, Olabode Olanipekun, Kanayo Okafor, Aisha Aliyu [Mrs.] Uchenna Ugonabo [Miss], Bolarinwa Awujoola, 1. E. Briggs [Miss], Vanessa Onyemauwa [Miss], Adebayo

Majekolagbe, Olakunle Lawal, Blessing Akinsehinwa, James Ebbe, Chukwudifu Mbamali, Francis Nsiegbunam, Naecmah Goji. Emmanuel Rukari, Uzoma Nwosu-Iheme, Ibiso Elimira Briggs, and J. Obla.) - *for the 4th Respondent*

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Abuja

Names of Justices that sat on the appeal: Abubakar ' D. Yahaya. J.C.A. (*Presided and Read the leading Judgment*); Yam Y. Hassan, J.C.A.; Musiapha, J.C.A.

Appeal No: CA/A/EPT/413^B /2015

Date of Judgment: Saturday, 5th September 2015

Names of Counsel: E. C. Ukala SAN (*with him*, J. O. Iheko (Miss I, D. Udenna and D. Samru) - *for the Appellant*

Chief Olujinmi SAN {with him. Chief Akulo SAN, E. Nsise SAN, O. Olubinmi, A. Olujinmi. O. Atetedenye, A. Abdulwahab, E. Sam Ibrahim [Miss], O. Obiajulu, A. O. Usman and O. Onyele) -*for the 1st and 2nd Respondents* T. A. Adcdiji SAN (*with him*, I. E. Biggs (Miss) and J. Sya) - *for the 4th Respondent*

Tribunal:

Name of the Tribunal: Rivers State Governorship Election Tribunal

Suit No: EFT/RV/GOV/04/2015

Date of Judgment: Wednesday, 29th July 2015

Counsel:

Dr. Onyechi Ikpcazu OON. SAN. (*with him*, Ighodalo Imadegbelo SAN, Ken Njemanze SAN, Alex Ejesticme Esq., Obumneme Ezconu Esq., Onyinye Anumonye

Esq., Emeka Nri-Ezedi Esq., Nkiru I Yank Mmegwa, Tobechukwu Nweke Esq., Martin Nvvokeocha Esq., Nwachukwu Ibegbu Esq., Obinna Onya Esq.. Obiora Aduba Esq., Nwamaka Ofoegbu [Miss], Ogechi Ogbonna Esq., Julius Mba Esq.) - *for the Appellant*

Chief Akin Olujinmi, CON. SAN, (*with him* Chief Adeniyi Akintola SAN, Alhaji Lasun Sanusi SAN, Eunke Aboyade SAN, Ifeanyi Egvvasi Esq., Olumide Olujinmi Esq., Akinsola Olujinmi Esq., Akinyemi Olujinmi Esq., Olufemi Atetedaiyc Esq., Anne Achu [Mrs.], Ayodele Akisanya Esq.. Yusuf Anikulapo Esq., Kcmi Odegbami-Fatogbe jMrs.j, Oluwole Ilori Esq., Oluseyi Adetanmi Esq., O1ajide Eoye Esq., Abayomi Abdulwahab Esq., Olukayode Ariwoola (Jnr.) Esq.. Christian Okoh Esq., Anlhonia Omoyemi Balogun [Mrs.], Ricardo Ebikade Esq., Ifeoluwa Ajani [Miss], Ifedolapo Yejidc Esan (Ms), Ademola O. Owolabi Esq., Tolulope Adebayo (Miss), Oladele Oyelami Esq., Levi Nwoye Esq., Henry Odili, 11. A. Bello, E. N. Ebetc, Saheed Smart Akingbade) - *for the 1st Respondent*

Yusuf Ali SAN, (*with him*, Emeka Ngige SAN. Alhaji A. K. Adey Esq., Prof. Wahab Egbewole. Ayo Olanrewaju Esq., M. I. Hanafi Esq., Mas'ud Alabeicwe Esq., Lawrence John Esq., S. A. Oke Esq.. Alex Akoja Esq., Onyeka Obiajulu Esq., P. I. Ipkegbu [Mrs.], K..O. Eavval Escp, H. O. Sulaiman [Miss 1, Emeka Okeakpu Esq., A. O. Usman Esq.. A. B. Eleburuike Esq.. Tejutuola Opejin [Miss]. Musa Ahmed Esq) - *for the 2nd Respondent*

Emmanuel C. Ukala SAN (*with him*, Prof. Epiphany C. Azinge SAN, D. C. DcNwigwe SAN. Dr. Z. Adango Esq.. Emeka Ichokvuu Esq., Nelson Worgu Esq., Edmund Mark Esq.. Mark S. Agwu Esq., Erastus Awortu Esq., Vitalis Ajoku Esq.. Osima Ginah Esq., O.J. Iheko [Miss), Dike Udenna Esq., Yunusa Akabi Esq., William Atanbi Esq., Somoni Daopu Esq., Afam Okekc Esq., Emmanuel Mark Esq.) - *for the 3rd Respondent*

Chief Wole Olanipekun SAN, (*with him*, Chief Chris Uche SAN, Chief Ifedayo Adedipe SAN. Joe Agi, Gordy Uche SAN. Usman O. Stile Esq., Raymond Anyawata Esq.,Aderemi A. Abimbola, Olabode Olanipekun, Kanayo Okafor, Aisha Aliyu [Mrs.] Uchenna Ugonabo [Miss]. Bolarinwa Awujoola, I. E. Briggs [Miss], Vanessa Onyemauwa [Miss], Adebayo Majckolagbe, Olakunle Lawal, Blessing Akinsehinwa, James Ebbi, Chukwndifn Mbamali, Francis Nsiegbunam, Naeemah Goji, Emmanuel Rukari, Uzoma Nwosu-Iheme, Ibisio Elinura Briggs, and J. Obla.) - *For the 4th Respondent*

KEKERE-EKUN, J.S.C. (Delivering the Leading Judgment):

We heard this appeal on 27th January 2016. After the adoption of their respective briefs by learned senior counsel to the respective parties and oral submissions therein, I pronounced my judgment allowing the appeal and undertook to give my reasons today.

This appeal is against the judgment of the Court of Appeal, Abuja Division delivered on 10th December 2015 affirming the judgment of the Rivers State Governorship Election Tribunal delivered on 24th October. 2015, which nullified the election and return of the 3rd

respondent as Governor of Rivers State and order the conduct of a fresh election.

The 1st and 2nd respondents were dissatisfied with the return of 3rd respondent and filed a petition before the Tribunal on the following grounds:

- (i) That the 2nd respondent was not duly elected by majority or highest number of lawful votes cast at the election;
- (ii) That the election of the 2nd respondent was invalid and unlawful by reason of substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended). Manual for Election Officials 2015 as well as the 1st respondent's 2015 General Elections approved guidelines and regulations.
- (iii) The election was invalid by reason of corrupt practices."

They sought among other reliefs a declaration that the results of the Governorship election for Rivers State held on 11th and 12th April 2015 for the entire River State save Eleme Eocal Government Area, Wards 1,2,3,8,9, 11 and 19 of Port Harcourt Area as declared and announced by the 3rd respondent be nullified and a fresh election be conducted in all the polling units and wards of Rivers State by the 3rd respondent.

At the conclusion of hearing, the Tribunal allowed the petition and nullified the election and return of the appellant on grounds of substantial non-compliance with the Electoral Act.

On appeal to the court below by the 3rd respondent, the appeal was dismissed on 16/12/2015 and the judgment of the Tribunal was affirmed.

This is a sister appeal to appeals No. SC.1001/2015 and SC.1002/2015. The issues raised in this appeal, which is between the same parties and against the same judgment are substantially similar to those raised in SC.1001/2015 and SC. 1002/2015.

Having just given exhaustive reasons for allowing Appeal No. SC.1002/2015, I do not believe it would serve any useful purpose to embark on another exercise. I adopt my reasoning in SC.1002/2015 in the instant appeal and accordingly allow the appeal.

The judgment of the Court of Appeal, Abuja Division delivered on 16/12/2015 which affirmed the judgment of the Rivers State Governorship Election Tribunal delivered on 24/10/2015 is hereby set aside. The petition of the 1st and 2nd respondents is hereby dismissed.

The return of the 3rd respondent as the duly elected Governor of Rivers State by the 3rd respondent is hereby restored. The parties shall bear their costs.

MOHAMMED, C.J.N.: This appeal was heard on Wednesday, 27th January 2016. On that day, I delivered my own concurring Judgment, allowing the appeal and agreeing with the lead Judgment of my learned brother, Kekere-Ekun, JSC. My undertaking to give my own reasons for the judgment today Friday, 12th February, 2016 is being fulfilled now. This appeal like the appeals numbers SC.1001/2015 and f SC. 1002/2015, arose from the same decisions or judgments of the Governorship Election Petition Tribunal for Governorship Election of 11th and 12th April 2015 conducted in Rivers State, sitting at Abuja, delivered on 24th October 2015, nullifying the election and return of the 3rd respondent as Governor of Rivers State. The appeal like those in SC.1001/2015 and SC. 1002/2015, revolved mainly on the question of the failure of the officials of the appellant (Independent National Electoral Commission (INEC)) to comply with the directive of the appellant to use Electronic Smart Card Readers in the accreditation of voters for the Governorship Election in Rivers State. The use of manual voters registers where the Smart Card Readers failed to function for accreditation by the appellant's

officials during the elections, was regarded by the Election Tribunal and the Court of Appeal as vital ingredients of substantial non-compliance with the provisions of the Electoral Act, 2010 as amended and which also affected substantially, the result of the election to justify its nullification. This interpretation as to the status of the Smart Card Readers by the Election Tribunal and the Court of Appeal in their respective judgments, was certainly wrong in law as no part of the provisions of the Electoral Act, 2010 (as amended), gave that status to the Smart Card Readers used in the conduct of the April 11, 2015 elections.

Section 138(1) of the Electoral Act has clearly prescribed \ the grounds on which an election may be questioned. The section reads -

"138(1) an election may be questioned on any of the following grounds that is to say:

- (a) that a person whose election was questioned was, at the time of the election, not qualified to contest the election;
- (b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;
- (c) that the respondent was not duly elected by majority of lawful votes cast at the election; or
- (d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election."

From the petition filed by the 1st and 2nd respondents/petitioners contained in the record of appeal, it is plain that the petitioners challenged the election and return of the 3rd respondent mainly on grounds (b) and (c) quoted above, that the election in Rivers State was invalid by reason of corrupt practices and non-compliance with

the provisions of the Electoral Act and, that the 3rd respondent was not duly elected by majority of lawful votes cast at the election. It is quite clear from the record of this appeal the 1st and 2nd respondents/petitioners made no attempt whatsoever to prove their case on the ground that the 3rd respondent was not duly elected by majority of lawful votes cast at the election.

However, in the present case the 1st and 2nd respondents/petitioners only relied on the second leg of paragraph (b) of section 138(1) of the Electoral Act, 2010 (as amended) to claim that the election in Rivers State was invalid only for failure of the officials of the appellant to comply with the appellant's order on them to use Smart Card Readers for accreditation of voters for the election which the 1st and 2nd respondents/petitioners failed to relate to any provision of the Electoral Act to qualify as non-compliance with the provisions of the Act. In this regard, I am of the view that the 1st and 2nd respondents/petitioners failed to prove their case at the Election Tribunal that the failure to use Smart Card Readers for accreditation of voters at the election had the effect of nullifying the entire election in Rivers State.

In any case, subsection (2) of section 138 of the Electoral Act seem to have given full answer to the stand of the 1st and 2nd respondents/petitioners in their claim that the election was invalid for failure to use Smart Card Readers for accreditation of voters at the election.

The Subsection reads -

"138(2)An Act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of the election but which is not contrary to the provisions of this Act shall not of itself be a ground for questioning the election."

It is for the above reasons and fuller reasons outlined in the lead reasons for allowing this appeal by my learned brother, Kekere-Ekun, JSC, that I also allowed this appeal and abide by the orders made in the lead judgment including the order on costs.

I.T. MUHAMMAD, J.S.C.: This appeal was heard and judgment delivered on 27th January, 2016. Reasons for judgment are to be delivered today.

I have had the privilege of reading the lead reasoning of my learned brother, Kekere-Ekun, JSC, just delivered. My learned brother dwelt comprehensively in his reasoning process. I do not need to add anything. I adopt the reasons proffered as mine. I abide by all consequential orders made therein.

NGWUTA, J.S.C.: This appeal was heard, and judgment delivered on Wednesday, the 27th day of January, 2016. I delivered my judgment concurring with the lead judgment of my learned brother. Kekere-Ekun, JSC.

I indicated that I would give my reasons for allowing the appeal, setting aside the judgment of the Court of Appeal which affirmed the judgment of the Governorship Election Petition Tribunal today, 12th February, 2016.

I read in draft the reasons given by my learned brother, Kekere-Ekun, JSC for allowing the appeal and I entirely agree with, and adopt as mine, the reasons leading to the conclusion that the appeal has merit.

AKA' AHS, J.S.C.: This appeal was heard on Wednesday, 27th January, 2016 and the leading judgment was delivered by my learned brother, Kekere-Ekun JSC allowing the appeal. I too allowed the appeal and

adjourned the matter to Friday, 12th February, 2016 to give my reasons allowing the appeal.

This appeal has the same substratum with appeal No. SC. 1002/2015 namely whether the failure by officials of INEC to abide by the instruction issued by the Commission on the use of the Electronic Smart Card Readers in the accreditation of voters for the Governorship election in Rivers State and resort to manual voters register where the Smart Card Readers failed to function for accreditation amounted to substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended) as to affect the result of the election to justify its nullification. The said issue was adequately addressed in the leading judgment of my learned brother, Kekere-Ekun, JSC. I adopt the reasons advanced as mine and I hereby allow the appeal. No order on costs is made.

OKORO, J.S.C.: In this appeal. I delivered judgment on Wednesday, the 27th day of January, 2016 the same day the appeal was heard and promised to give reasons for the decision today. 12th February, 2016.

In the said judgment I agreed with the lead judgment of my learned brother, Kekere-Ekun, JSC who had also allowed the appeal and set aside the judgment of the Court of Appeal which affirmed the decision of the Rivers State Governorship Election Tribunal, sitting in Abuja.

I had earlier given my reasons in the sister appeal Nos. SC. 1001/2015 and SC. 1002/2015 which all arose from the same decision of the Court of Appeal which upheld the nullification of the election of the 3rd respondent herein as Governor of Rivers State by the Election Petition Tribunal. I do not intend to say much in the instant appeal except to emphasize one issue relating to the directive of the appellant to its officials on the use of Electronic Smart Card Readers in the accreditation of voters.

It was argued that the directive by INEC that only Smart Card Readers should be used for purposes of accreditation was breached when the

officials of INEC resorted to manual accreditation when the Card Readers failed. For the avoidance of doubt, section 49(1) & (2) of the Electoral Act, 2010 (as amended) provides:

"49(1) a person intending to vote with his voter's card, shall present himself to a Presiding Officer at the polling unit in the constituency in which his name is registered with his voter's card.

(2) The Presiding Officer shall, on being satisfied that the name of the person is on the register of voters, issue him a ballot paper and indicate on the Register that the person has voted."

The above provision was the procedure for accreditation and voting in elections in this country until the introduction of the Smart Card Readers by INEC which in my opinion was to complement the procedure already stated in the Electoral Act. The innovation, I guess, was to authenticate the owners of voter's cards and prevent multi-voting by a voter. I made this point in *MahmudAliyu Shinkafi & Anor. v. Abduluzeez Abubakar Yari & 2 Ors.* (2016) 7 NWLR (Pt. 1511) 340. Section 153 of the Electoral Act gives INEC the power to issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of the Act and for its administration. That notwithstanding, it is a serious error for anybody to elevate any directive of INEC far above the provisions of the Electoral Act. Where a party has complied with the provisions of the Electoral Act but is in breach of any directive of INEC, he cannot be said to have breached the provisions of the Electoral Act. In this case, the staff of the appellant herein, resorted to accreditation as contained in section 49 of the Electoral Act when the Card Reader Machine failed. I do not think that such decision can be elevated to the level of non-compliance envisaged in section 138(1) of the Electoral Act, 2010 (as amended).

I have taken the above position because of the provision in section 138(2) of the Electoral Act (*supra*) which slates:

"138(2)An act or omission which may be contrary to an instruction or directive of the Commission or of an officer

appointed for the purpose of the election but which is not contrary to the provisions of this Act shall not of itself be a ground for questioning the election."

That is the position today. That is to say, an infraction of a directive of INEC which itself is not contrary to the provisions of the Electoral Act, is not a ground for questioning an election. The end result is that INEC officials who complied with section 49(1) of the body, cannot be said to have been in non-compliance with the provisions of the Electoral Act, 2010 (as amended).

With these few comments, and the fuller reasons adumbrated in the lead reasons for allowing this appeal by my learned brother, Kekere-Ekun. JSC. I also allow this appeal and abide by all consequential orders made therein, that relating to costs, inclusive.

SANUSI, J.S.C.: I delivered my judgment in this appeal dismissing it on Wednesday, 27th of January 2016 after hearing the appeal. I then undertook to give my reason dismissing the appeal on Friday, 12th February 2016 which I will proceed to do now.

My noble lord Kudirat Motonmori Olatokunbo Kekere-Ekun, JSC made available to me before now, the lead reasons for her judgment which after reading same, I find myself in entire agreement with such reasons and the conclusion reached therein. While adopting them as mine, I also wish to emphasise on the vex issue of use of Card Reader or Smart Card.

The use of Card Reader is an innovation introduced by INEC, the appellant herein during the recent general elections held in April 2015. The use of Card Reader was also entrenched in the Manual and Guidelines for Election Officers which INEC had the power so to issue or promulgate and did issue vide section 152 of the Electoral Act, 2010 (as amended). The new innovation of the Card Reader or Smart Card is therefore not contained in the Electoral Act, 2010. as amended. The innovation made by INEC for use of Card Reader or Smart Card though commendable; is however

misconstrued by some learned counsel arguing petitions before various Election Tribunals or even in some courts in the course of proceedings in determination of election petitions or election appeals.

It needs be stressed here that the provisions or regulations contained in INEC's Manual and Guidelines, should not by any means meant to have replaced amended provisions of the Electoral Act or to override the provisions of the latter. Breach of the regulations or provisions do not mean breach of the Electoral Act, 2010 (as amended) and such breach could not amount to non-compliance with the provisions of the Act. As I stated supra, the use of Card Reader is an innovation meant only to compliment and facilitate the method of accreditation as provided in section 49 of the Electoral Act. Any wrong or non-use of the Card Reader which even usually fails during election process would not deter the presiding officer to resort to the usual or traditional manual accreditation. The new innovation of Card Reader/Smart Card should be retained at that as complimentary to accreditation process only and no more.

Thus, for these and the fuller and more detailed reasons for judgment contained in the lead reasons for judgment of my learned brother Kudirat Motonmori Olatokunbo Kekere-Ekun. JSC, I also see no merit in this appeal and I accordingly dismiss it. I abide by the consequential orders made including one on costs.

Appeal allowed.