MR. LABARAN MAKU

V.

1. **ALHAJI UMARU TANKO AL-MAKURA**
2. **ALL PROGRESSIVE CONGRESS [APC]**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION**
4. **ALL PROGRESSIVE GRAND ALLIANCE**

SUPREME COURT OF NIGERIA

SC. 982/2015

LALTER SAMUEL NKANU ONNOGHEN. J.S.C. *(Presided)*

LABODE RHODES-VIVOUR. J.S.C.

MARY UKAEGO PETER-OD1LI. J.S.C.

MUSA DATT1JO MUUAMMAD. J.S.C. *{Read the Leading Judgment)*

LARA BATA OGUNBJYL J.S.C.

CHIMA CENTUS NWEZE. .1 .S.C

AMIRU SANUSJ. J.S.C.

MONDAY. *25th JANUARY 2016*

APPEAL - Concurrent findings of fact by two lower courts - Altitude of Supreme Court thereto - When Supreme Court con interfere therewith.

APPEAL - Evaluation of evidence by trial court - Attitude of appellate court thereto - When appellate court will interfere therewith.

DOCUMENT - Documentary evidence - Admissibility of document - Probative value of document - Difference between.

DOCUMENT – Documentary evidence – Contents of document- Whether can be varied by oral evidence

DOCUMENT - Documentary evidence - Documents tendered party - Duty on party to relate to specific areas of his case

DOCUMENT - Documentary evidence - Unsigned document Probative value.

ELECTION PETITION - Frontloading procedure - Statement witnesses in election petition - Frontloading of - Essence

ELECTION PETITION - Legality of votes - Where challenged election petition - Duty on petitioner - What he must plead a prove - Documents he must tender and witnesses he must call

ELECTION PETITION – Proof - Petitioner in election petition- Onus of Proof there on

ELECTION PETITION - Return of election - Where challenged, ground of corrupt practices or non-compliance with Electoral Act - Duty on petitioner - What he must prove - Sections 138 and 139(1), Electoral Act, 2010 (as amended)

EVIDENCE - Documentary evidence - Admissibility of document- Probative value of document - Difference between.

EVIDENCE - Documentary evidence - Contents of document - Whether can be varied by oral evidence.

EVIDENCE - Documentary evidence - Documents tendered by party - Duty- on party to relate to specific areas of his case.

EVIDENCE - Documentary evidence - Unsigned document Probative value.

EVIDENCE - Proof - Legality of votes - Where challenged election petition - Duty on petitioner - What he must pleads prove - Documents he must tender and witnesses he must call

EVIDENCE - Proof - Petitioner in election petition - Onus of thereon

EVIDENCE - Proof - Return of *election - Where challenged* on *ground* of *corrupt practices* or *non-compliance with Electoral Act - Duty on petitioner - What he* must *prove - Section J 38(1) and 139(1), Electoral Act, 2010* (as *amended).*

PRACTICE AND PROCEDURE - Appeal – Concurrent findings of fact by two *lower courts- Altitude of Supreme* Court *thereto -When Supreme Court can interfere therewith.*

PRACTICE AND PROCEDURE - Appeal - Evaluation of evidence by trial court - Attitude of appellate court thereto - When appellate court will interfere therewith.

Issues:

1 • Whether, in the circumstances of this case, the holding of the Court of Appeal that documents were simply dumped on the tribunal was perverse.

2. Whether the Court of Appeal was right when it held that exhibit "P20" was worthless, being unsigned.

3. Whether the Court of Appeal was right to have regarded the difference in stated dates as showing conclusively that exhibits "P20" and "P32" were full of discrepancy and without probative value.

4. Whether the Court of Appeal was right to have held that the appellants failed to furnish oral or documentary evidence to support the allegations of non-compliance made in the their petition.

Facts:

On 11th April 2015, the 3rd respondent conducted elections into the office of the Governor of Nasarawa State. The appellant, like the respondent, contested the election. Whereas the appellant was sponsored by the 4th respondent, the 1st respondent was sponsored by the 2nd

respondent. The 1st respondent was declared and returned as duly elected by the 3rd respondent having polled the majority of awful votes cast at the election and he was issued with a certificate return.

Aggrieved, the appellant and the 4th respondent in a joint Potion challenged the election and return of the 1st respondent at Governorship Election Tribunal of Nasarawa State on the grounds that the election had been marred by corrupt practice, and by substantial non-compliance with the Electoral Act. 2010 (as amended). The appellant and the 4th respondent sought and order nullifying the election and return of the 1st respondent and an order declaring the appellant the duly elected Governor o Nasarawa State. In the alternative they sought an order that the 3rd respondent should conduct re-run elections in the units affected by the irregularities and non-compliance.

The appellant subpoenaed the 3rd respondent to produce electoral materials, in particular the ballot papers for six local government areas of the State. Most of the documents were tendered from the bar by the appellant's counsel.

At the trial. PW48, a legal practitioner, who participated in an ordered joint inspection of ballot papers used across Nasarawa State in the election and who prepared an inspection report, tendered the report which was admitted and marked as exhibit "P20". He gave evidence in respect thereof. However, the report was not

signed by the witness or by anybody. PW48 testified that he prepared the report on 28ih July 2015 but the unsigned report showed the date of 3 H* August 2015.

The content and purport of exhibit '"P20" were replicated in another report tendered by PW53, which was admitted as exhibit "P32". The witness' statement on oath of PW53 was tendered along with the report. Between exhibit "P20" and exhibit "P32", whereas exhibit "P20" was not signed but bore the name of PW48, the name and signature of PW53 were contained on exhibit "P32". However, the date on exhibit ""P32" was different from the date PW53 purportedly prepared it as deposed to in his statement on oath.

At the conclusion of trial, the tribunal in its judgment dismissed the appellant's joint petition for lacking in merit and upheld the election and return of the 1st respondent as the duly elected Governor of Nasarawa State. The tribunal found that the failure of the appellant to link any of his documents to specific aspects of his case was fatal to the petition: that the appellant only dumped the various documents on it: and that, accordingly, the appellant did not prove his case. The tribunal further found that PW53 did not link the ballot papers to the respective polling units and did not tie up the inspected ballot papers to exhibit "P32"; and so it could not conduct the inquiries into whether or not there were irregularities inherent in the conduct of the election as claimed by the appellant. In addition, the tribunal found that the testimonies, of PW48 and PW53 and their exhibits "P20" and "P32" were worthless.

Dissatisfied with the judgment of the trial tribunal, the appellant appealed to the Court of Appeal. The appeal was consolidated with the 4lh respondent's appeal against the judgment. In its judgment, the Court of Appeal dismissed the appellant's appeal and affirmed the judgment of the tribunal. The Court of Appeal agreed with the finding of the trial tribunal on the dumping of documents.

The Court of Appeal also held that exhibit "P20" was worthless because it was not signed. Notwithstanding that PW48, the maker of the document, tendered it personally and gave evidence in respect thereof. In dealing with the evidence of exhibit "P32", the Court of Appeal also held that the document was not backed up with ballot papers through the appropriate witnesses. Thus, the Court of Appeal affirmed the findings of the tribunal on the worthlessness of exhibits “P20" and “P32”

Still dissatisfied, the appellant appealed to the Supreme Court.

Held *{Unanimously dismissing the appeal)'.*

1. *On Duty on petitioner where challenges legality of votes in election petition –*

   Where an election petition challenges the legality of the number of votes a candidate polled at the conclusion of an election on the basis of winch scores the candidate was returned duly elected, it is

incumbent on the petitioner, in addition to pleading material facts which constitute miscalculation of votes or falsification of results, to plead such other malpractices and non-compliance with the Electoral Act and to further lead evidence in support of the pleadings. *(P. 221 . paras. D-F)*

2. *On Duty on petitioner challenging legality of votes in election petition* -

A petitioner who contests the legality or lawfulness of votes cast at an election and subsequent return must tender in evidence all the necessary evidence by way of forms and other documents used at the election. He should not stop there but he must call witnesses. The documents are among those in which the results of the votes are recorded. The witnesses are those who saw it all on the day of the election, not those who picked the evidence from an eye-witness. They must be eye-witnesses. *[Abubakar v. Yar'adua* **(2008) 18 NWLR (Pt.1120) 1;** *Iniama* v. *Akpabio* (2008) **17 NWLR (Pt. 1116) 275;** *Ucha v. Elechi* (2012) **13 NWLR (Pt. 1317)** 330; *Omisore* v. *Aregbesola* **(2015) 15 NWLR (Pt. 1482) 202 referred to.]** *(P. 722, paras. D-F)*

3. *On Duly an petitioner challenging return of election on ground of corrupt practices or non-compliance with Electoral Act*

By section 138(l) (b) and 139(1) of the Electoral Act. 2010 (as amended), in an election petition, where a ground for challenging the return of a candidate in an election is by reason of corrupt practices or noncompliance with the provisions of the Electoral Act, the petitioner has the duty of proving:

(a) that the corrupt practice or non-compliance took place and,

(b) that the corrupt practice or non-compliance substantially affected the result of the election

[Awolowo v. Shagari **(1979) All NLR 12(1;** *Ibrahim v. Shagari* **(1983) 2 SCNLR 176;** *Buhari* v. *Obasanjo* **(2005) 2 NWLR (Pt. 910) 241 referred to.]** *(P. 227, paras. F-H)*

4. *On Onus of proof on petitioner in election petition –*

The onus of proving the case pleaded and for which documents are tendered in evidence lies on the petitioner in an election petition, despite the tendering of exhibits in proof of the petition or ease. If the case of the petitioner is that there was no accreditation or there was over-voting, the voters' register is essential and must he pleaded and tendered in evidence as well as the results of the election, polling unit by polling unit, etc. It is the duty of

the petitioner to also tender the ballot minors, where necessary and to link the exhibits with the case of the petitioner through the witnesses called to prove the case. Where a petitioner pleads thousands of documents in an election petition, such as ballot papers used in an election which usually amounts to loads of bags of the paper and tendered them, usually in that hulk without linking them individually to the case being made, such as over-voting, wrongful cancellation, inflation of results, etc. that is a case of dumping of the documents on the court. It is not the duty of the court to sort out (he exhibits and relate them to the heads of claim or case of the petitioner. *[Iniaman v. Akpabio* **(2008) 17 NWLR (Pt. 1116) 225:** *Ucha v. Elechi* **(2012) 13 NWLR (PLI317) 330 referred to.]** *(Pp. 222, paras. A-D: 237-232, parass. F-B)*

Per M. D. MUHAMMAD, J.S.C. at pages 221-222, para. F-D:

> **"The tribunal at page 3115 of the record found that appellant only 'dumped' the various documents on it did not tie them to specific aspects of his case. Accordingly, the tribunal found, appellant did not prove his case. The lower court affirmed these findings of the**

tribunal at pages 3349-3350 of the record. These are the findings of the two courts below the appellant asserts are perverse. On scrutinizing the record of appeal one must agree with learned counsel to the respondents that the findings of the two courts below that the appellant only 'dumped' the documents which would otherwise have sustained his case remain unassailable. Indeed, as counsel rightly further submitted, most of the documents produced by the 3"[1] respondent on subpoena were never even tendered by the petitioners let alone have the tribunal admit them in evidence. To establish his case, the principle is indeed not only for the appellant to tender and have admitted the evidence he relies in making his case, he must go the extra mile of linking the evidence, here (he various documents, to specific aspects of his case. Appellant's contention in his brief that it was impracticable to link the various documents he tendered to specific aspects of his case is a subtle

admission that he did not. Learned counsel to the respondents are again on a firm wicket that the demonstration of the value of the various documentary exhibits resorted to by the learned appellant counsel at paragraphs 4.65 to 4.87 on pages 14-19 of the appellant's brief is a desperate and belated effort at doing not only the needful but the necessary. The reliance of the two courts on the decisions of this Court in determining the fortunes of appellant's petition, given his failure to tie the various documents to specific aspects of his case, is as apposite as it is mandatory."

Per RHODES-VIVOUR, J.S.C. at page 230, paras. C-H:

"Documents were tendered from the bar. It is the duty of the party tendering the said documents to relate each documents tendered to the part of the ease he intends to prove. Both courts below were correctly of the view that the appellant failed to relate documents tendered to the part of the case he intends to prove. This could be very fatal, and usually is. Indeed in *Ucha*

v. Elechi **(2012) 13 NWLR (Pt. 1317) p. 330. On dumping of documents I said that:**

'When a party decides to rely on documents to prove his case, there must be a link between the document and the specific areas of the petition. He must relate each document to the specific area of his case for which the document was tendered. On no account must counsel dump documents on a trial court. No 1 court would spend precious judicial time linking documents to specific areas of a party's case. See

A. N.P.P. v. I.NE.C. **(2010) 13 NWLR (Pt. 1212) p. 549. A Judge is to descend from his heavenly abode, no lower than the treetops, resolve earthly disputes and return to the Supreme Lord. His duty entails examining the case as presented by the parties in accordance with standards well laid down. Where a Judge abandons that duty and starts looking for irregularities in electoral documents, and investigating documents not properly before him he would**

most likely he submerged in the dust of the conflict and render a perverse judgment in the process.'

Several documents after being admitted in evidence as exhibits were of no evidentiary value as there was no oral evidence to explain why they were tendered. It is the duty of appellant's counsel to link documents tendered to specific areas of the appellant's ease, a procedure lie failed to follow with obvious consequences.'

5. *On Duty on party to relate documents he tendered to specific areas of his case* -

The prescription that parties have a duty to link their documents with their averments in their pleadings rests on the adversarial nature of Nigerian jurisprudence which was inherited from the common law. Therefore, it is the impregnable juridical postulate of Nigerian adversarial jurisprudence that prohibits a Judge from embarking on an inquisitorial examination of documents outside the courtroom. *A fortiori*, **it is anathema for a Judge to be allowed to act on what he discovered from such a document in relation to an issue when that was not supported by evidence or was not brought to the notice of the parties to**

be agitated in the usual adversarial procedure. It is against this background that *viva voce* **depositions and the entries in documents and assertions relating to entries in such documents in electoral materials are invariably tested under cross-examination. This is more so in cases which involve mathematical calculations of deductions and additions. It would amount to failure of justice for a court to base its judgment on ex curiae arithmetical deductions and additions which were not subjected to cross-examination. It is not the duty of the Judge to sit down *ex* curiae and attempt to sort out the ease of any party. On the contrary, it is the duty of the party to elicit such evidence in court through its witnesses especially where various documents are involved. That done, he would sit hack for such evidence to be either tested in cross-examination or for his adversary to debunk such testimony by fresh contrary evidence. This must be so for no court would spend precious judicial time linking documents to specific areas of a party's case. In other words, it is the duty of the party to relate each document to the specific area of his case for which the document was tendered.** *[Ivienagbor v. Bazuaye* **(1999) 9 NWLR (Pt. 620) 552;** *Owe v. Oshinhanjo* **(1965) 1 All NLR 72;** *Bornu Holding Co. Ltd.*

v. Bagoco **(1971) 1 All NLR 324;** *Onibudo v. Akibu* **(1982) 7 SC 60;** *Nwaga v. Registered Trustees. Recreation Club* **(2004) FWLR (Pt. 190) 1360;** *Jaltngo v. Nyame* **(1992) 3 NWLR (Pt. 231) 538;** *Ugodmkwti v. Co-Operative Bank* **(1996) 6 NWLR (Pt. 456) 524;** *W.A.B. v. Savannah Ventures Ltd. (2002)* **10NWLR (Pt. 775) 401;** *Obasi Brothers Ltd. v. M.B.A. Securities Ltd***. (2005) 9 NWLR (Pt. 929) 117;** *A.N.P.P. v. I.N.E.C.* **(2010) 13 NWLR (Pt. 1212) 549;** *Ucha v. Elechi* **(2012) 13 NWLR (Pt.1317) 330;** *Omisore v. Aregbesola* **(2015) 15 NWLR (Pt. 1482) 202 referred to.]** *(Pp. 247-248, paras. E-D; 249-250. paras. E-B)*

6. *On essence of front-loading statements of witnesses in an election petition-*

The essence of front-loading statements of witnesses in an election petition is to facilitate the speedy disposal of the petition. It does not justify the dumping of exhibits and urging the election tribunal and the court to proceed in a manner that opens them to unnecessary and avoidable suspicion of bias. All facts that entitle the party to the court's indulgence must be demonstrated in open court to court's indulgence must be demonstrated in open court to ensure that in arriving at its decision on the matter the court is as detached and neutral as anyone could easily see. The examination of exhibits outside the

court and behind the litigants y stands in the way of these necessary and laudable traits. *[Obasi Brothers Ltd. v. M.B.A Securities Ltd.* **(2015) 9 NWLR (Pt. 929) 117;** *Onibudo v. Akibu (***1982) 7 SC 60:** *Ucha v. Elechi* **(2012) 13 NWLR (Pt. 1317) 330 referred to]** *(Pp. 222-223, paras. (J-A)*

7. *On Probative value of unsigned document* - **Where a document ought to be signed and it is not, its authenticity is in doubt. An unsigned document carries no weight. It is a worthless document in that it has no evidential value. It does not matter whether the document in question was tendered by an alleged maker. The maker, who allegedly made a document, must sign it for it to be examined by a court of law. Where a document tendered in evidence as primary evidence is not signed, it cannot be relied upon. Where it is tendered as secondary evidence of the original, it must be certified as such by the maker of the original or the person who has custody of the original. When it is said that a document speaks for itself, what is meant is a valid document, which has no legal defect in any way. In the instant case, exhibit "P20" was not signed by anybody or the maker. The exhibit not being a signed document by the maker thereof had no weight.** *[Omega Bank (Nig.) Pic v. O.B.C.*

Ltd. **(2005) 8 NWLR (Pt. 928) 547;** *Ikem v. Bidah Packaging Ltd.* **(2011) All FWLR (Pt. 601) 1476***; Ojo v. Adejohi* **(1978) 11 NSCC 161;** *Global Soap and Detergent International Ltd. v. NAFDAC* **(2011) All FWLR (Pt. 599) 1022 referred to.]** *(Pp. 224, paras. C-E; 220, paras. C-G; 245, paras. A-C; 246. paras. A-B)*

8. *On Difference between admissibility of document and probative value of document-* **There is a clear dichotomy between the admissibility of a document and the probative value to be placed on it. While admissibility is based on relevance, the probative value to be attached on the document depends not only on relevance but on proof. In tire instant case, exhibits P20 and P32 may have been relevant and therefore admissible. However, the fact that they were admitted in evidence did not necessarily render them reliable.** *[Buhari* v. *I.N.E.C.* **(2008)** ***18*** **NWLR (Pt.1120) 246 referred to]***(P. 224, paras. F.-F)*

9. *On Whether contents of document can he varied by oral evidence -*

A document cannot be varied by oral evidence. *[U.B.N, v. Ozigi* **(1994) 3 NWLR (Pt. 333) 385 referred to.]** *(Pp. 244-245, paras. H-A)*

10. *On Attitude of Supreme Court to concurrent findings of fact by two lower courts* -

The Supreme Court is always very hesitant to allow interference with concurrent findings of fact of two courts. The Supreme Court will rarely upset findings of fact made by a trial court and affirmed by the Court of Appeal. The reason is that such findings were made by the trial court after cross-examination of witnesses, the court observing the demeanor of the witnesses, their reactions and assessing the veracity of their testimonies. Such findings should not be treated lightly. However, such findings of fact would be set aside by the Supreme Court if found to be perverse or cannot be supported from the evidence before the court or there was miscarriage of justice. In the instant case, the trial tribunal and the Court of Appeal were correct in their findings that relevant documents tendered by the appellant were not properly linked to specific areas of his petition. Consequently, the appellant's case on irregularities and substantial non-compliance remain unproved. The appellant failed to show that the concurrent findings were perverse or that they should be disturbed by the Supreme Court. *[P.D.P. v. I.N.E.C.* **(2012) 7 NWLR**

(Pt. 1300) 538; *lyaro v. State* **(1988) 1 NWLR (Pt. 69) 256;** *Magit v. University of Agriculture, Makurdi* **(2005) 19 NWLR (Pt. 959) 211:** *Akeredolu v. Mimiko* **(2014) 1 NWLR (Pt. 1388) 402:** *Haruna v. A-G Federation* **(2012) 9 NWLR (Pt. 1306) 419;** *Adckoxa v.* ***State*** **(2012) 9 NWLR (Pt.1306) 539;** *Anekwe v. Nweke* (**2014) 9 NWLR (Pt.1412) 353:** *Akoma v. Oscnwokwu* **(2014) 11 NWLR (Pt. 1419) 462:** *Chafe v. Chafe* **(1996) 15 NWLR (Pt. 455) 417;** *Nwosu v. Board of Customs A Excise* **(1998) 5 NWLR (Pt. 53) 225 referred to.]** *(Pp. 224-225, paras. H-A: 251, paras. A-C; 243, paras. B-P>)*

11. *On Attitude of appellate court to evaluation of evidence by trial court -*

Evaluation of relevant and material evidence and the ascription of probative value to such evidence are the primary functions of the trial court, which saw, heard and assessed the witness as they testified. Where the trial court unquestionably evaluates the evidence and justifiably appraises the facts, it is not the business of the appellate court to substitute its own views with the views of the trial court. *[Olonode v. Sowemimo* **(2014) 14 NWLR (Pt. 1428) 462 referred to.]** *(Pp. 241-242. paras. G-A)*

12. *On When appellate court will interfere with evaluation of evidence by trial court -*

It is the primary function of a trial tribunal to evaluate evidence and ascribe probative value to same. The Court of Appeal and the Supreme Court would only interfere where the tribunal failed to discharge that duty and the failure has occasioned miscarriage of justice. *[Makinde v. Akinwale* **(2000) 2 NWLR (Pt. 645) 435;** *Ihekoronye* v. *Hart* **(2000) 15 NWLR (Pt. 692) 840 referred to.]** *(P. 225. paras. A-B)*

Nigerian Cases Referred to in the Judgment:

A.N.P.P. v. I.N.E.C. (2010) 13 NWLR (Pt. 1212) 549

Abiodun v. State (2013) 9 NWLR (Pt. 1358) 138

Almbakar v. Chuks (2007) 18 NWLR (Pt. 1066) 386

Abitbakar v. Yar'adua (2008) 19 NWLR (Pt. 1129) 1

Adekoya v. State (2012) 9 NWLR (Pt. 1306) 539

Akeredolu v. Mimiko (2014) I NWLR (Pt. 1388) 402

Akoma v. Osemvokwu (2014) 11 NWLR (Pi. 1419) 462

Alao v. Alamo (2005) 11 NWLR (Pt. 935) 160

Anekwe v. Nweke (20 14) 9 NWLR (Pt. 1412) 353

Aregbesola v. Oyinlola (201 1) 9 NWLR (Pt. 1253) 45

Awolowo v. Shagari (1979) All NLR 1 20

Bortiu Holding Co. Lid. v. Bogoco (1971) 1 All NLR 324

Buhari v. I.N.E.C (2008) J 9 NWLR (Pt. 1120) 246

Buhari v. Obasanjo (2005) 2 NWLR (Pt. 910) 241
Duruminiva v. CO.P. (1962) NNLR 70
Enang v. Obasanjo (1981) 11 - 12 SC (Reprint) 25
Garba v. Kwara Investment Co. Ltd. (2005) 5 NWLR (Pt. 917)160
Gbafe v. Gbafe (1996) 15 N WLR (Pt. 455) 417
Global Soap and Detergent International Ltd. v. NAFDAC (2011) All FWLR (Pt. 1022) 599
Haruna v. A.-G., Federation (2012) 9 NWLR (Pt. 1306) 419
Ibrahim v. Shagari (1 983) 2 SCNLR 1 76
Ihekoronye v. Hart (2000) 15 NWLR (Pt. 692) 840
lkem v. Bidah Packaging Ltd. (2011) A11 FWLR (Pt. 601) 1476
Iniama v. Akpabio (2008) 1 7 NWLR (Pt. 1116) 225
Ivienaghor r. Bazuaye (1999) 9 NWLR (Pt. 620) 552
Ivaro v. Stale 09SH) J NWLR (Pt. 69) 256
Jalingo v. Nyame (1992) 3 NWLR (Pt. 23 1) 538
Magit v. University of Agriculture. Makurdi (2005) 19 NWLR (Pt. 959) 211
Makinde v. Akinwale (2000) 2 NWLR (Pt. 645) 435
Nwadtke v. Ibekwe (1987) 4 NWLR (Pt. 67) 61 8
Nwaga v. Registered Trustees. Recreation Club (2004) FWLR (Pt. 190) 1360
Nwosu v. Board of Customs & Excise (1998) 5 NWLR (Pt. 53)225
Obasi Brothers Ltd. v. M.BA. Securities Ltd. (2005) 9 NWLR (Pt. 929) 117
Ogboru v. llduaghan (2011) 2 NWLR (Pt. 1232) 538
Ojo v. Adejobi (1978) 11 NSCC 161

Olonode v. Sowemimo (2014) 14 NWLR (Pt. 142S) 472

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

Omisore v.Aregbesola (2015) 15 NWLR (Pt. 1482) 202

Onibudo v. Akibu (1982) 7 SC 60

Owe v. Oshinbanjo (I 965) l All NLR 72

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

Seven-Up Bottling Co. v. Adewale (2004) 4 NWLR (Pt. 862) 183

Terah v. *Lawan* (1992) 3 NWLR (Pt. 231) 569

U.B.N, v. Ozigi (1994) 3 NWLR (Pt. 333) 385

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

Ugochukwu v. Co-Operative Bank (1996) 6 NWLR (Pt. 456) 524

W.A.B. v. Savannah Ventures Ltd. (2002) 10 NWLR (Pt. 775) 401

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1996 (as amended). Ss. 177, 179, 182.221

Electoral Act. 2010 (as amended). Ss. 84, 85. 86, 87. 137(1). 138(1). 140(2)

EvidenceAet.2011.S.83(4)

Appeal:

This was an appeal against the decision of the Court of Appeal dismissing the appeal against the judgment of the Governorship Flection Tribunal which dismissed the petition of the appellant and

the 4th respondent. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Walter Samuel Nkanu Onnoghen, J.S.C. (Presided); Olabode Rhodes-Yivour, J.S.C; Mary Ukaego Peter-Odili. J.S.C; Musa Dattijo Muhammad, J .S.C *(Read the Leading Judgment)* Clara Bata Ogunbiyi. J.S.C; Chima Centus Nweze, J.S.C; A mi ru Sanu si. J.S.C. *Appeal No.:* SC. 982/2015 *Date of Judgment:* Monday. 25th January 2016 *Names of Counsel:* P>. O. Onanusi *(with him.* I *M*. Oluwasina, K. Dadzama, D. I. Onyekwere. C. 13 Onyedmt [Miss], B. Mallick, Fatima Dattijo Muhammad [Miss]. J. O. Ajene and R. Nsefik-Eyo [Miss]) - *for the Appellant*

Yusuf Ali, SAN *(with him*, P. Akubo SAN, K. K. Eleja. SAN, A. Oladeji, J. Lawrence, I. Adebayo, R. O. Balogun, Dr. B.A. Omipidan, A. Ajayi, K.O. Lawal, A.O.

Usman, Adaobi Ike [Miss], T. Opejim [Miss] and K.T. Sulyma) -*for the 1st Respondent*

Prof. Wahab Egbewole, SAN (wiih hini.Ayo Olaronwaju. S. A. Oke, Dr. M. T.

Adekilckun. M. Bukar, M. T. Usman and S. A. Osuolale) - *for the 2nd Respondent*
H. N. Liman. SAN (*with him*, M. B. Usman. A. L. Abbas [Mrs], I. M. Dikko, Y.D. Dangana. F. Bukar [Miss], M. Usman. F. I. Henry [Mrs.J. A. F. Amanzi, D. N. Mesbi, S. Rabin. 1.1. Aseki, A. S. Gayam. U.I. Oduko. IS Umar [MissJ, A. P. Osadebamwen [Miss], N. K. Udeze. E. G. Agbara, I. B. Malami and M. Danladi) - *for the 3rd Respondent*
Chief S. U. Akuma. SAN *(with him,* N. B. Adiukwu, O. N. Okwori, A. I. Asjikpa. E. S. Adaji. Y. Z. Edego and D. Mbila [Miss]) - *for the 4th Respondent*

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Makurdi
Names of Justices that sat on the appeal: Mohammad Lawal Garba, J.C.A. (Presided): Ignatius Igwe Agube, J.C.A.; Rita Nosakhare Pemu, J.C.A.; Tani Yusuf Hassan. J.C.A.; Bitrus Gynrazama Sanga. J.C.A.
Appeal No.: CA/MK/EP/GOV/23/2015
Date of Judgment: Friday. 27th November 2015
Names of Counsel: B. O. Onamusi (with him, V.T. Tor Tsuga, Esq.; T.T. Chahur. Esq.; Y.Z. Edogo. Esq.; A. Edache, Esq. and D. I. Onyekwere) - *for the 1st Appellant*

Awa U. Kalu, SAN (with him, N.B. Adiukwu, Esq. O.M. Okwori, A. I. Ashokpa, Esq.; B. Foluronso, Esq. and C.I. Obidikc) - *for the 2nd Appellant*

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Professor Wahab Egbewole (with him. Dr. M. T. Adekul ekun; Mathcw Burka A. [esq.; B.L. Ibrahim. Esq.; M.Z. Oshafu, Esq.; S. A. Osuolale, Esq.; Ajewale Ajewole, Esq.; A.O. Orire. Esq.; M.A. Ahmed, Esq.; T.A. Alatishe and R.O. Lawal, Esq.) - *for the 2nd Respondent*

H. M. Liman, SAN (with him. I. M. Dikko. Esq.; Y. f). Dangana, Esq. and Liman Liman & Co.) - *For the 3rd Respondent*

Election Tribunal:

Name of the Tribunal: Governorship Election Tribunal, Makurdi

Names of the Justices: H.S. Mohammed - Chairman; A.O. Ayoola - Member; PS. Darit - Member

Petition No.: EPT/NS/Gov/01/2015

Date of Judgment: Friday. 30th September 2015

Counsel:

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Yusuf Ali, SAN (*with him*, P. Akubo SAN, K. K. Eleja, SAN. A. Oladeji, .1. Lawrence. I. Adebayo, R. O. Balogun, Dr. B. A. Omipidan, A. Ajayi. K. O. Lawal, A. O. Usman, Adeobi Ike [Miss], J. Opejim [MissJ and K. T. Sulyma) - *for the 1st Respondent*

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Chief S. U. Akuma, SAN (*with him,* N. B. Adiukwu. O. N. Okwori, A. I. Asjikpa, E. S. Adaji, Y. Z. Edego and D. Mbila I Miss]) - *for the 4th Respondent*

M.D. MUHAMMAD, J.S.C. (Delivering the Leading Judgment): On Wednesday 20th January, 2016, I dismissed this appeal and promised to give my reasons today. I so do below.

This appeal is against the judgment of the Court of Appeal, hereinafter referred to as the court below, sitting in Makurdi in appeal No.CA/MK/EP/GOV/23/2015 delivered on 27th November. 2015.

In the judgment, the court dismissed appellant's appeal against the judgment of the Governorship Election Petition Tribunal, hereinafter referred to as the tribunal, dismissing appellant's unmeritorious petition. The tribunal's judgment was delivered on the 30th day of September. 2015. A brief statement of the fads on winch the appeal predicates is supplied below.

On the 11th day of April, 2015, the 3rd respondent conducted election into the office of the Governor of Nasarawa Stale. The appellant, like the 1st respondent, contested the said election. Whereas the appellant was sponsored by the 4lh respondent, All Progressive Grand Alliance (APGA). The 1st respondent was sponsored by the 2nd respondent, the All Progressive Congress (APC). Having polled the majority of lawful votes cast at the election. 1st respondent was declared and returned as duly elected by the 3rd respondent.

Aggrieved, the appellant and the 4th respondent in-a joint petition challenged the election and return of the 1st respondent at the

tribunal on the grounds that the election had been marred by corrupt practices and substantial non-compliance with the Electoral Act. 2010 (as amended). The petitioners urged the tribunal to nullify the election and return of the 1st respondent and to further declare the appellant the duly elected Governor of Nasarawa State. In the alternative, they prayed the tribunal to order the 3rd respondent to conduct re-run election in the units affected by the irregularities and non-compliance. The three respondents incorporated in their respective replies to the petition preliminary objections seeking that the petition be struck out and or dismissed. Tire objections were duly determined in the tribunal's final judgment.

At the conclusion of trial, including addresses of counsel, the tribunal dismissed appellant's petition for lacking in merit and upheld the election and return of the 1st respondent as the duly elected Governor of Nasarawa State. Dissatisfied with the tribunal's judgment, the appellant bv a notice containing ten grounds flied on the 18th October. 2015 appealed against same to the court below. Appellant's appeal No. CA/MK/EP/GOV/23/2015, on being consolidated with the appeal No. CA/MK/EP/GOY/22/2015 filed by the 4th respondent, was jointly beard. Even though the lower court in its judgment delivered on the 27th day of November, 2015 had allowed the consolidated appeals in part, it all the same dismissed both appeals and affirmed the judgment of the tribunal.

Still aggrieved; the appellant has further appealed to this conn by his notice filed on 16"' December, 2015.

At the hearing of the appeal, counsel identified, adopted and relied on the briefs of parties as their respective arguments for and against the appeal. The 4th respondent who did not file any brief remained latent and aloof. The four issues considered to have arisen for the determination of the appeal distilled in the appellant's brief settled by Chief Joe Kyarin Gadzama. SAN read:

1. Whether in the circumstances of tins case, the holding of die Court of Appeal that documents were simply dumped on the Tribunal was not perverse? (Ground 5)
2. Whether the Court of Appeal was right when it held that exhibit P20 (the Inspection Report of PW48) was worthless, being unsigned, notwithstanding the fact PW48 tendered the Report personally and gave evidence on it? (Ground 1)
3. Whether the Court of Appeal was right to have regarded a mere difference in stated dates as showing conclusively that exhibit PW20 and PW32 (Inspection Reports) were full of discrepancy and without probative value? (Ground 2 and 3)
4. Whether the Court of Appeal was right to have held that the appellants failed to furnish evidence (oral or documentary) to

support the allegations of non- compliance made in the petition'' (Grounds 4, 6. 7 and 8).

The appeal will be determined on the basis of the foregoing issues.

Appellant's grouse under his first issue pertains the refusal of the two courts below to evaluate the various documentary evidence in proof of his case on the premise that the documents were dumped on them. The courts, it is argued, should have taken the variety and quantum of the various documents and the time available to the appellant to prove his case into consideration to appreciate how impracticable it was for him to lead oral evidence to explain each document. The courts' reliance on: *Akio v. Alamo* (2005) 11 NWLR (Pt. 035) 160; *Ogboru v. Uduaghan* (2011)2 NWLR (Pt. 1232) 538. and *Terab v. Lamm* (1992) 3 NWLR (Pt. 231) *569; Duruminiya v. CO.P.*(1961) NNLR 70 to exclude the documentary evidence led s by the appellant, it is submitted, is misplaced.

Concluding, appellant insists that his witnesses, particularly PW1. PW5. PW6. PW7. PW8 and PW5I had supplied sufficient oral evidence to link the documents he tendered and to prove the case. Relying on *W.A.B. Ltd. v. Savannah Ventures Limited* 7 (2002) 10 NWLR (Pt. 775) 401 at 426 and *Abiodun v. Slaw* (2013) L.PL142 203 13 SC (2013) 9 NWLR (Pt. 1358) 138; learned counsel prays that this court evaluates the documentary evidence, ascribe probative

value to them and grant the appellant the reliefs lie seeks.

Under their 3rd issue, learned senior counsel to the 1st respondent Yusuf Ali submits that the lower court's affirmation of the tribunal's finding that appellant's failure to link any of the documents to specific aspects of his case is fatal to the petition, cannot be faulted. It is indeed not the duty of the courts, it is submitted, to examine the documents and link each to specific aspect of appellant's case. Having failed to demonstrate the value of the documents through his witnesses in the open court the appellant has disentitled himself the very reliefs lie pressed on the basis of the documents. Learned senior counsel supports his submission with: *Obusi Brothers Ltd. v. M.B.A. Securities Ltd. Ininma* v. *Akpahio* (2008) 17(2005) 2 SC (Pt. I) 51 (2005) 9 NWLR (Pt. 929) 117; NWLR (Pt. 1116) 225 at 299: *Abubakur v. Yar'adua* (2008) 18 NWLR (Pt. 1 120) 1 at 155 and *Ucha v. Elechi* (2012) 13 NWLR (Pt. 1317) 330 at 360.

Relying on *Ucha v. Elechi* (supra), learned counsel submits further that appellant's explanations on exhibits P5A, P6A and P9A series in paragraphs 4.65 to 4.87, at pages 14-19 of his brief arise out of has realisation of the need to offer such explanation to the conn which lie is not allowed to do through the medium of filling the yearning gap in his case.

Learned counsel to the 2nd respondent Prof. Egbewole and Hid Hassan M. Liman SAN for the 3rd respondent proffered similar submissions as those made by learned senior counsel to the 1st respondent.

It does not enhance any cause to reproduce these arguments again. My lords, appellant's contention under his 1st issue for die determination of the appeal is that both courts below in discountenancing the various documents tendered and admitted in roof of his petition have fallen into serious error such that entitles this court to evaluate the documents and find for him. He asserts that beyond tendering the documents the two courts found "clumped" on them, the appellant had led oral evidence through his witnesses to link the documents to various aspects of his ease.

In another breadth, however, the appellant asserts differently at paragraph 4.56 of his brief thus:

> "...Where documents are tendered in bulk, it would be impractical to expect that a party will call witnesses to give oral evidence to explain each document. Furthermore, one must appreciate that there is a difference between explaining the purport of a document and relating/linking such document to aspects of a case. Clearly the latter is what the law contemplates and this is done in the pleading."

Appellant's petition challenges the legality of the number of voles the 1st respondent polled at the conclusion of election on the basis of which scores the 3rd respondent returned him the duly elected Governor of Nasarawa State. It is incumbent on him, in addition to pleading material Diets which constitute miscalculation of votes or falsification of results, to plead such other malpractices and non-compliance with the Electoral Act and to further lead evidence in

support of these pleadings. The tribunal at page 3115 of the record found that appellant only "dumped" the various documents on it did not tie them to specific aspects of his case. Accordingly, the tribunal found, appellant did not prove his case. The lower court affirmed these findings of the tribunal at pages 3349-3350 of the record.

These are the findings of the two courts below the appellant asserts are perverse.

On scrutinizing the record of appeal one- must agree with learned counsel to the respondents that the findings of the two courts below that the appellant only "dumped" the documents which would otherwise have sustained his case remain unassailable. Indeed, as counsel rightly further submitted, most of the documents produced by the 3rd respondent on subpoena were never even tendered by the petitioners let alone have the tribunal admit them in evidence. To establish his case, the principle is indeed not only for the appellant to tender and have admitted the evidence he relies in making his case, he must go the extra mile of linking the evidence, here the various documents, to specific aspects of his case. Appellant's contention in his brief that it was impracticable to link the various documents he tendered to specific aspects of his case is a subtle admission that he did not. Learned counsel to the respondents are again on a firm wicket that the demonstration of the value of the various documentary exhibits resorted to by the learned appellant counsel at paragraphs 4.65 to 4.87 on pages 14-19 of the appellant's

brief is a desperate and belated effort at doing not only the needful but the necessary.

The reliance of the two court on the decisions of this court in determining the fortunes of appellant's petition, given his failure to tie the various documents to specific aspects of his case, is as apposite as it is mandatory. In Abubakar v. Yar'adua (2008) 18 NWLR (Pt. 1120) 1 at 173 paras. D-F this court re-stated the principle thus:

> "A petitioner who contests the legality or lawfulness of votes exist at an election and subsequent return must tender in evidence till the necessary evidence by way of forms and other documents used at the election. He should not stop there. He must call witnesses substantially affected the result of the election. The documents are among those in which the results of the votes are recorded. The witnesses are those who saw it all on the day of the election not those who picked that evidence from an eye-witness. No, they must be eye witnesses too."

See also *lniama v. Akpabio (supra*); *Ucha v. Elechi* (*supra*) and *Omisore v. Aregbesola* (*supra*).

Lastly, the essence of front-loading statements of witnesses is to facilitate speedy disposal of election petition and does not justify "dumping" of exhibits and urging the tribunal and the court to proceed in a manner that opens them to unnecessary and avoidable suspicion of bias. All facts that entitle the party to the courts indulgence must be demonstrated in open court to ensure that in arriving at its

decision on the matter the court is as detached and neutral as anyone could easily see. The examination of exhibits outside the court and behind the litigants certainly stands in the way of these necessary and laudable traits. See *Obasi Brothers Ltd. v M.B.A. Securities Ltd. (supra*) and *Onibudo v. Akibu*(1982) 7 SC 60 at 62 and *Ucha v. Elechi (supra).*

It is for all these that I resolve appellant's 1st issue against him.

And this brings us to appellant's issues 2 and 3 which, being same complaints, will be jointly considered.

It is argued in the appellant's brief that the lower court is wrong in its refusal to 'ascribe any value to exhibits P20 and P32. In particular, learned appellant counsel contends. PW48 has significantly established facts at the tribunal as the maker of exhibit P20 and the meager reason advanced by the lower court to render the exhibit worthless has worked injustice to appellant's ease. Both exhibits P20 and P32, learned appellant counsel further submits, are wrongly excluded for the further wrong reason that they bear different dates from the dates their respective makers testified they were made. Neither section 83(4) of the Evidence, 2011 nor the decision in *Omega Bank (Nig.) Plc v. O.B.C. Ltd*. (2005) 8 NWLR (Pt. 925) 547, learned counsel further submits, sustain the court's conclusions.

The lower courts' refusal to be bound by its decision on the point in *Aregbesola v. Oyinlola* (2011) 9 NWLR (Pt. 1253) 458 at 610-611, learned counsel further submits, is unpardonable.

1st respondent's 1st issue clearly subsumes appellant's 2nd and 3rd issues and on it learned senior counsel Yusuf Ali, SAN submits that the concurrent findings of the tribunal and the lower court on exhibit P20 and P32 are beyond reproach. The lower court, it is submitted, excluded exhibit P20 on two grounds. Failure of the maker, PW48, to sign the document and the exhibit being different from the one PW48 averred in paragraph 7 of his sworn statement to have made. The cases of *Aregbesola v. Oyinlola* (*supra*) and *Garuba v. Kwara Investment Company Ltd*. (2005) All FAVLR (Pt. 252) 469 at 478 - 479 reported as *Garba v. Kwara Investment Co. Ltd*. (2005) 5 NWLR (Pt. 917) 160, learned counsel submits, are unavailing to the appellant

Appellant's further argument that die identification of exhibit P20 by PW48 clears the doubt about its authorship remains equally unavailing. The second defect that runs through exhibit P20 also mars exhibit P32 which, counsel contends, is aimed at supplanting the former. The two courts, it is submitted, are bound by the decisions of this court on the two exhibits rightly applied the decisions, they cannot be said to have committed any wrong.

The main response of learned counsel to the 2nd and 3rd respondents to appellant's arguments on his 2nd and 3rd issues are in tandem with 1st respondent's foregoing submissions.

The lower court in affirming the tribunal's findings on exhibits P20 and P32 firstly, see pages 3336-3337 of the record, relied on the decision of this Court in *Abubakar v. Chuks* (.2007) I8 NWLR (Pt. 1066) 386 at 403 to stress the difference between the issue of admissibility of a document

and the issue of the weight to be attached to the document. The court concluded at pages 3336-3340 of the record by further relying on another decision of this court. *Omega Bank (Nig.) Plc v. O.B.C. Ltd. (supra)* on the worthlessness of the two exhibits.

Being rightly guided, one cannot agree more with the court m its foregoing findings. It is indeed the principle that where a document ought to be signed and it is not, its authenticity is in doubt. An unsigned document such as exhibit P20, it is correct to hold, carries no weight. In addition to *Omega Bank (Nig.) Plc v. O.B.C. Ltd*. (supra) the lower court relied upon, see also *Ikem v. Bidah Packaging Ltd*. (2011) All FWLR (Pt. 601) 1476 at 1507; *Ojo v. Adejobi & Ors*. (1 978) NSCC (Vol. 11) 161 at 165.

Certainly, there is a clear dichotomy between the admissibility of a document and the probative value to be placed on it. What the appellant herein seems to ignore is that while admissibility is based on relevance, the probative value to be attached on the document depends not only on relevance but on proof. Exhibits P20 and P32 may be relevant and therefore admissible. The fact that they have been admitted in evidence, however, does not necessarily render them reliable, see *Buhari v. I.N.E.C*. (2008) 12 SC (Pt. 11)1. (2008)18 NWLR (Pt. 1120) 246. The two courts are aware of this principle and, for all the reasons adumbrated in their concurrent findings, they are entitled to discountenance the documents consequent upon the serious doubt in the authenticity of both exhibits.

Appellant's 2nd and 3rd issues are, for the foregoing, resolved against him.

Finally, appellant's entire appeal is in respect of concurrent findings of fact of the two courts below which this court in that vein is always very hesitant to allow. See *P.D.P. v. I.N.E.C.* (2012) 7 NWLR (Pt. 1300) 538 at 565; *Iyaro v. State* (1988) 1 NWLR (pt. 69) 256; *Magit v. University of Agriculture, Makurdi* (2005) 19 NWLR (Pt. 959) 211 and *Akeredolu v. Mimiko* (2014) All NWER (Pt. 728) 829, (2014) 1 NWLR (Pt. 1388) 402.

Undoubtedly, it is the primary function of the trial tribunal to evaluate evidence and ascribe probative value to same. The lower court and indeed this court would only interfere where the tribunal failed to discharge that duty and the failure has occasioned miscarriage of justice. See *Makinde v. Akinwale* (2000) 2 NWLR (Pt. 645) 435 and *Ihekoronye v. Hart* (2000) 15 NWLR (Pt. 692) 840.

So far, the appellant has failed to establish that the lower court is wrong in its findings that the tribunal has creditably evaluated, the evidence led by parties and ascribed appropriate value on same. On what evidence, any way, does the appellant place his hope to win his case? The documents to sustain the two grounds in his petition were either "dumped" on the tribunal or not even tendered at all to enable the court access them to grant the appellant the reliefs he seeks. With this paucity of evidence one is not in the slightest doubt, too, that the appellant has Ruled to establish his ease and is not entitled to the reliefs he insists he has been denied by both courts below. Resultantly, his last issue also crumbles, The foregoing explain my dismissal of the appeal. Parties should bear their costs.

ONNOGHEN, J.S.C.: On Wednesday, the 20th day of January, 2016 this court heard and delivered judgment in this appeal but fixed today for reasons for the decision to be given. Below are my reasons for the judgment.

Appellant was a candidate for the Governorship election for the office of Governor of Nasarawa State held on 11th April, 2015 being sponsored by the 4th respondent. The 1st respondent was the candidate of the 2nd respondent for the same Governorship election which was conducted by the 3rd respondent.

At the end of voting, the 3rd respondent declared 1st respondent as winner of the election by majority of lawful votes cast in the election and issued him with a certificate of return.

Appellant was dissatisfied with the conduct of the election and consequently filed a petition before the Nasarawa State Governorship Election Petition Tribunal which petition was heard but found to be unmeritorious and consequently dismissed. Appellant was v dissatisfied with the decision of the tribunal and lodged an appeal to the Court of Appeal holding at Makurdi in appeal No. CA/MK/EPT/2015.The instant appeal is against the judgment dismissing that appeal.

The detail facts of this case have been stated in the lead reasons for judgment of my learned brother M.D. Muhammad, JSC and I do not intend to repeat them herein. Suffice it, however, to say that the grounds for challenging the election of 1st respondent in the said election are that:

1. that the 1st respondent was not duly elected by a majority of lawful votes cast at the Governorship election in Nasarawa State held on the 11th day of April, 2015 and announced on the 13th April, 2015.
2. that the Governorship Election in Nasarawa State held on the 11th day of April, 2015 specifically in local governments, ward collation centres and polling units complained of in this petition was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended).

I have had the benefit of reading in draft the lead reason for judgment delivered by my learned brother, M.D. Muhammad. JSC just delivered and I agree completely with his reasoning and conclusion. I however want to make contributions in relation to issues 1, 2 and 4 which are as follows:

1. Whether in the circumstances of this case, the holding of the Court of Appeal that documents were dumped on the tribunal was not perverse?
2. Whether the Court of Appeal was right when it held that exhibit P20 (the Inspection Report of PW48) was worthless, being unsigned, notwithstanding the fact PW48 tendered the Report personally and gave evidence on it (Grounds 1)
4. Whether the Court of Appeal was right to have held that the appellant failed to furnish

evidence (oral or documentary) to support the allegations of non- compliance made in the petition? (Grounds 4, 6, 7 and 8)"

It is the contention of learned senior counsel for appellant that the concurrent findings by the lower courts that appellant dumped documents on the court was not borne out by the record and that the lower court did not evaluate the documents admitted in evidence; that this court should interfere because the said findings are perverse, relying on: *Enang v. Adu* (1981) 11 - 12 SC (Reprint) 25, 42; *Nwadike v. Ibekwe*(1987) 12 SC (Reprint) 12 (1987) 4 NWLR (Pt. 67) 618 that the petitioners called 56 witnesses to prove their case and tendered numerous documents winch were admitted without objection - that the documents were linked to the polling units in question and witness statements; that the documents were therefore not dumped on the tribunal as found by the tribunal and affirmed by the lower court; that the tribunal has the duty to carefully examine the record before them to see whether there was a link between the documents tendered and specific allegations by the appellants: that the documents had already been linked with the case of the appellants by their pleading and the duty of the Judge was simply to evaluate them.

On issue 2, learned senior counsel referred to the report of PW48 which was admitted as exhibit P20 which is a report of "joint inspection conducted by representatives of the political parties; that the report, exhibit P20, shows that 67,771 votes credited to 2nd respondent were invalid votes while 4,832 votes credited to the 4th respondent were invalid; that the anomalies and irregularities identified by

exhibit P20 were fundamental issues of unstamped, unsigned, undated and uncustomized ballot papers; missing, unidentified or unseen ballot papers; that PW48 prepared exhibit P20; that the lower court was in error in holding that exhibit P20 was worthless because it was not signed despite the fact that the maker of the document, PW48 tendered it in person and gave evidence in respect of same.

It is now settled law that where a ground for challenging the return of a candidate in an election is by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, the petitioner has the duty of proving:

(a) That the corrupt practice or non-compliance took place and,

(b) That the corrupt practice or non-compliance substantially affected the result of the election. See section 138(1)(b) and 139(1) of the Electoral Act, 2010, as amended. *Awolowo v. Shagari* (1979) All NCR 120; *Ibrahim v. Shagari* (1983) 2 SCNLR 176; *Buhari v. Obasanjo*(2005) 2 NWLR (Pt. 910) 241."

It is also settled law that despite the tendering of exhibits 1 in proof of a petition/case, the onus of proving the case pleaded and for which the documents were tendered in evidence, lies on the petitioner. If the case of the petitioner is that there was no accreditation, or over voting, the voters' register is essential and ; must be pleaded and tendered m evidence as well as the results of the election, polling unit by polling unit, etc, etc. It is the duty of the petitioner to also

tender the ballot papers, where necessary and to link these exhibits with the case of the petitioner through the witnesses called to prove the case. Where a petitioner pleads thousands of documents in an election petition, such as ballot papers used in an election which usually amounts to loads of bags of the paper and tendered them, usually in that bulk without linking them individually to the case being made, such as over-voting, wrongful cancellation; inflation of results etc, that is clearly a case of dumping of the documents on the court. It is not the duty of the court to sort out the exhibits and relate them to the heads of claim or ease of the petitioner. To hold that the above scenario does not amount to dumping, I wonder that it is.

If the situation revealed in this case is encouraged, then, the 1 role of the courts/tribunals in election matters will be anything but that of an impartial arbiter.

In this case, the Court of Appeal, after evaluating the evidence on record on the issue under consideration, came to the following conclusion at page 3116 of the record of appeal:

> "However, the fact that exhibit P32 was admitted in evidence does not exonerate the petitioners from tendering the ballot papers through the appropriate witnesses to back up the report tendered as exhibit P32. This is more so when the PW53 failed to tie his evidence to the ballot papers which were brought before the tribunal but not tendered thus there was nothing before the tribunal to test the report on the un-customized

> unsigned, undated ballot papers with, as sought by the petitioners. On the unit agents and voters caked by the petitioners, all they did was to allege that there was no collation, no proper accreditation, there was over voting by inflation votes, etc. when they were brought in as witnesses the petitioners never tested them with their unit result, showing no alteration but yet the result was cancelled at the collation centres. No collation agent was tested on the ward result to the effect that an submission of unit result handed over to him by his unit agent, the collation officer refused to collect same or refused to enter the result in Form EC 8B as alleged, thus form EC8B is not reflecting the unit result"

It is not in dispute that exhibit P20 was not signed by anybody or the maker. It is now trite law that an unsigned document is a worthless document in that it has no evidential value. It does not matter whether the document in question was tendered by an alleged maker. The maker, who allegedly made a document, must sign it for it to be examined by a court of law. Where a document tendered in evidence as primary evidence is not signed it cannot be relied upon. Where it is tendered as secondary evidence of the original, it must be certified as such by the maker of the original or the person who has custody of the original. It should be noted that when we say that a document speaks for itself, we mean a valid document, which has no legal defect in any way. Much has been said about the unsigned document being tendered, by the maker but my question is: which is more

difficult or labourious? The making of a document or the signing thereof?

It is my considered view that exhibit P20 not being a signed document by the maker thereof, has no weight whatsoever as held in Omega Bank (Nig.) Plc v. O.B.C. Ltd. (2005) All FWLR (Pt. 249) 1964 at 1993 - 1994; (2005) 8 NWLR (Pt. 928) 547 *Global Soap and Detergent International Ltd. v. NAFDAC* (2011) All FWLR (Pt. 599) 1022 at 1047, etc, etc. The law being as above stated, it follows that the lower courts are right in the conclusion s they reached in respect of the said exhibit P20.

It is for the above reasons and the more detailed reasons contained in the lead reasons for Judgment of my learned brother, M.D. Muhammad, JSC that I too dismiss the appeal.

I abide by the consequential orders made by my learned brother including the order as to costs.

Appeal dismissed.

RHODES-VIVOUR, J.S.C.: This court heard submissions from counsel in this appeal on the 20th day of January, 2016. We dismissed the appeal and adjourned to today to give reasons for dismissing the appeal. My learned brother, M.D. Muhammad, J.S.C. has obliged me with a draft of the reasons for dismissing the appeal. I am in complete agreement with his lordship's reasoning and conclusions. I would, though say a few words on:

1. Tendering of documents in the election tribunal by the appellant; and
2. Concurrent findings of fact by the two courts

below.

1. Documents were tendered from the bar. It is the duty of the party tendering the said documents to relate each documents tendered to the part of the case he intends to prove. Both courts below were correctly of the view that the appellant failed to relate documents tendered to the part of the case he intends to prove. This could be very fatal, and usually is. Indeed in Ucha v. Elechi(2012) 13 NWLR (Pt. 1317) p. 330 @ page 360. paras. E-H.

On dumping of documents I said that:

> "When a party decides to rely on documents to prove his case, there must be a link between the document and the specific areas of the petition. He must relate each document to the specific area of his case for which the document was tendered. On no account must counsel dump documents on a trial court. No court would spend precious judicial time linking documents to specific areas of a party's case. See A.N.P.P. v. I.N.E.C. (2010) 13 NWLR (Pt. 1212) p. 549. A Judge is to descend from his heavenly abode, no lower than the tree tops, resolve earthly disputes and return to the Supreme Lord. His duty entails examining the case as presented by the parties in accordance with standards well laid down. Where

> a Judge abandons that duty and starts looking for irregularities in electoral documents, and investigating documents not properly before him he would most likely be submerged in the dust of the conflict and render a perverse judgment in the process."

Several documents after being admitted in evidence as exhibits were of no evidentiary value as there was no oral evidence to explain why they were tendered. It is the duty of appellant's counsel to link documents tendered to specific areas of the appellant's case, a procedure he failed to follow with obvious consequences.

2. The well settled position of the law is that an appellate court (in this case this court) will rarely upset findings of fact made by a trial court and affirmed by a Court of Appeal. The reason is simple. Such findings were made by the trial Judge after cross-examination of witnesses, the Judge observing the demeanour of the witnesses, their reactions and assessing the veracity of their testimony. Such findings should not be treated lightly. But such findings of fact would be set aside by this court if found to be perverse, or cannot be supported from the evidence before the court, or there was miscarriage of justice. See *Haruna v. A.-G., Federation* (2012) 3 SC (Pt. IV) p. 40: (2012) 9 NWLR (Pt. 1306) 419; *Adekoya v. State* (2012) 3 SC (Pt. III) p. 36 (2012) 9 NWLR (Pt. 1306) 539: *Anekwe & Anor. v. Nweke & 2 Ors*. (2014) 4 SC (Pt. III) p. 65; (2014) 9 NWLR (Pt. 1412) 353; *AkomA & Anor. v. Osenwokwu & 2 Ors.* (2014) 5-6 SC (Pt. IV) p. 1: (2014) 11 NWLR (Pt. 1419) 462.

Both courts below were correct in their findings that relevant documents tendered by the appellant's were not properly linked to specific areas of their petition. Ballot papers were not tendered, thereby resulting in serious flaws.

Consequently, the appellant's case on irregularities, substantial non case compliance remain unproved. The appellant have not shown that these concurrent findings are perverse or that they should be disturbed by this court.

For this and the more detailed reasoning of my learned brother, M.D. Muhammad, JSC, the appeal is hereby dismissed. Parties shall bear their costs.

PETER-ODILI, J.S.C.: The reasons of the judgment delivered on 20-1-16 have been rendered by my learned brother, Musa Dattijo Muhammad, JSC. In support of the said reasoning I shall make some comments.

This appeal emanated from the judgment of the Makurdi Division of Court of Appeal Coram: M.L. Garba, I.I. Agube, Rita N. Pemu, T.Y. Hassan and B.G. Sango on the 27th day of November, 2015 in which the Court of Appeal dismissed the appeal of the appellant against the judgment of the trial tribunal of 30th September, 2015, hence the recourse to the Supreme Court to ventilate his grievance.

The appellant's brief of argument filed on the 30/12/15 was adopted by learned counsel, Solo U. Akuma,SAN though it was filed by J.K. Gadzama, SAN. He distilled four issues for determination which are thus:

1. Whether in the circumstances of this ease, the holding of the Court of Appeal that documents were simply dumped on the Tribunal was not perverse? (Ground 5)
2. Whether the Court of Appeal was right when it held that exhibit P20 (the Inspection Report of PW48) was worthless being unsigned, notwithstanding the fact PW48 tendered the report personally and nave evidence on it. (Ground 1)
3. Whether the Court of Appeal was right to have regarded a mere difference in stated dates as showing conclusively that exhibits PW20 and PW32 (Inspection Reports) were full of discrepancy and without probative value. (Ground 2 and 3)
4. Whether the Court of Appeal was right to have held that the appellants failed to furnish evidence (oral or documentary) to support the allegations of non compliance made in the petition? (Grounds 4, 6, 7 and 8).

Yusuf Ali, SAN learned counsel for the 1st respondent adopted his brief of argument filed on 4/1/16. He formulated three issues for determination which are as follows:

1. Whether the court below acted wrongly in confirming the findings and decision of the trial tribunal on the worthlessness of the testimony of PW48 and exhibit P20 tendered through him and PW53 and exhibit P32 tendered through him when there was no

miscarriage of justice occasioned against the appellant thereby. (Grounds 1,2. and 3)

2. Whether the court below was not right in affirming the various findings of facts made by the trial tribunal after a thorough and painstaking review and ascription of probative value to all the oral and documentary evidence proffered by the appellant at the trial I especially the testimonies of PW1 and PW51 and agreed that the order of dismissal entered against his case by the trial tribunal was just and legal. (Grounds 4, 6, 7 and 8)

3. Whether the court below erred in agreeing with the trial tribunal that the appellant failed to lead evidence to link the myriad of documents he tendered to any aspect of his case and that the documents were merely dumped before the trial tribunal. (Ground 5)

Prof. Wahab Egbewole of counsel for the 2nd respondent adopted its brief of argument filed on the 4/1/2016 and in it were distilled three issues for determination, *viz*:

1. Whether the court below acted wrongly in confirming the findings and decision of the trial tribunal on the worthlessness of the testimony of PW48 and exhibit P20 tendered through him and PW 53 and exhibit P32 tendered through him when there was no miscarriage of justice occasioned against the appellant thereby. (Grounds 1, 2 & 3)

2. Whether the court below was not right in affirming the various findings of facts made by the trial tribunal after a thorough and painstaking review and ascription of probative value to all the oral and documentary evidence proffered by the appellant at the trial especially the testimonies of PW1 and PW51 and agreed that the order of dismissal entered against his case by the trial tribunal was just and legal. (Grounds 4, 6, 7 and 8).
3. Whether the court below erred in agreeing with the trial tribunal that the appellant failed to lead evidence to link the myriad of documents he tendered to any aspect of his case and that the documents were merely dumped before the trial tribunal. (Ground 5)

For the 3rd respondent was filed a brief of argument on the 3/12/2016 which was adopted by Hassan M. Liman, SAN and he crafted four issues for determination which are thus:

1. Whether in the circumstances of this case, the holding of the Court of Appeal that documents were simply dumped on the Tribunal was not perverse. (Distilled from Ground 1 of the notice of appeal.)
2. Whether the Court of Appeal was right when it held that exhibit P20 (The Inspection Report of PW48) was worthless, being unsigned notwithstanding the fact PW48 tendered the Report personally and have

evidence on it. (Distilled from Ground 1 of the notice of appeal).

3. Whether the Court of Appeal was to have regarded a mere difference in stated dates as showing conclusively that exhibits P20 and P32 (Inspection Reports) were lull of discrepancy and without probative value. (Distilled from Grounds 2 and 3 of the notice of appeal)

4. Whether the Court of Appeal was right to have held that the appellant failed to furnish evidence (oral or documentary) to support the allegations of noncompliance made in the petition. (Distilled from Grounds 4, 6, 7 and 8 of the notice of appeal).

I shall utilize the issues as crafted by the appellant for ease of reference though some together.

Issue One

Whether in the circumstances of this case, the holding of the Court of Appeal that documents were simply dumped on the Tribunal was not perverse.

Learned counsel for the appellant contended that concurrent findings of the two courts that the documents were dumped were incorrectly made. That the ward results complained about and the polling unit results covered by such wards if tendered would have been clearly linked to the specific allegations made and the testimonies of the

witnesses if not cancelled by INEC for no tangible reasons would have proffered the linkage.

For the appellant it was submitted that in election petition cases where time is of essence, tendering documents in bulk from the Ear is not only possible but actually desirable. He cited *Buhari v. I.N.E.C*. (2008) 19 NWLR (Pt. 1120) 246 at 415.

That where documents have been tendered and admitted it is the duty of the Judge to evaluate the documents and test them for probative value.

Reacting, learned counsel for the 1sl respondent disagreed with the appellant stating that it is not the duty of the trial tribunal to place the myriad of documents which were dumped by the appellant on the table and examine them one by one in order to determine whether or not the appellant's petition had been established to be entitled to the reliefs sought. That the appellant did not attempt to tie any of the documents to this ease. He cited *Iniama v. Akpabio* (2008) 17 NWLR (Pt. 1116) 225 at 299.

For the 2nd respondent was contended that the appellant instead of tying the relevant documents with any specific part of his case lie intended to prove merely subpoenaed the 3rd respondent to produce the documents which were tendered in evidence without linking the relevant documents to various acts of non-compliance complained of in the petition.

For the 3rd respondent it was submitted that this court should uphold the concurrent findings of the trial tribunal as

well as the Court of Appeal which held that the appellant dumped the documents.

The stance of the appellant is that it is a well established principle of law that when a document is admitted in evidence, it should be allowed to spook for itself and the legal implication being that every inscription on the document should attract the reasonable inference it deserves.

The respondents took a different posture stating that at the trial tribunal the appellant simply dumped documents before it without linking them or explaining the purport of the documents to the trial tribunal.

For the avoidance of doubt I shall restate portions of the trial tribunal's handling of the matter of the documents presentation before it. See pages 3348 - 3349.

> "I agree with submissions of the learned Silks on behalf of the respondents that the appellant simply dumped documentary exhibits on the tribunal which necessitated the tribunal to hold as it did and page 60/3116 of the judgment/record of appeal. Infact the lower tribunal stated the correct position of the law at page 3115 paragraph 2 of the records/page 59 of the judgment and went further at page 3116/page 60 of the records/judgment thus:
>
> "However the fact that exhibits P32 was admitted in evidence does not exonerate the petitioners from tendering the ballot papers through the appropriate witnesses to back up

> the report tendered as exhibit P32. This is more so when the PW53 failed to tie his evidence to the ballot papers which were brought before the tribunal but not tendered thus there was nothing before the tribunal to test the report on the uncustomised, unsigned, undated ballot papers with, as sought by the petitioners. On the Unit Agents and voters called by the petitioners, all they did was to allege that there was no collation, no proper accreditation, there was over voting by the inflation of votes etc. When they were brought in as witnesses the petitioners never tested them with their unit result, showing no alteration but yet the result were cancelled at the collation order. No collation agent was tested on Iris ward result to tire effect that on submission of unit result handed over to him by is unit agent, the collation officer refused to enter the result in Form EC8B as alleged, thus form EC8B is mot reflecting the unit result."

The appellant subpoenaed the 3rd respondent, INEC to produce the documents which were tendered in evidence and intact most of the appellant's documents were tendered across die bar by counsel for appellant and the tribunal ruled thus page 3115 of the record as follows:

> "On tire issue of dumping documents, it is trite that documents apart from what they contain, do not speak. Therefore, a document

> cannot serve any useful purpose in the absence of oral evidence explaining its essence. The fact that a document has been admitted in evidence from tire bar or by consent of parties does not necessarily mean that significant weight or any weight at all, should automatically be attached to it without further proof. It is tire duty of the party tendering documents to relate each document tendered to that part of the case he intends to prove. This will enable the opposing party ask appropriate question. It does not lie in the court to fish for evidence for the party tendering from the bar from those documents. The position of the law on dumping of documents on courts is that a party is under an obligation to tie his documents to facts or evidence or admitted in the open court and not through a counsel's address written of oral. It has been held by plethora of authorities that it is not the duty of the court or tribunal to embark upon cloistered justice by making inquiry outside court,| not even by examination of document which was in evidence when the document have not been examined in open court nor brought out and exposed to test in open court.

The Court of Appeal at pages 33-19 - 3350 of the record of proceedings held as follows:

> "The tribunal rightly relies on the case of *Obasi Brothers Ltd. v. Man Brothers Ltd.* (2005) 2 SC (Pt. I) 51 at 08, (2005) 9 NWLR (Pt. 929) 1 17 to unassailably hold that the position of the law on dumping of documents on courts is that the party is under an obligation to tie his documents to the facts or evidence or admitted facts in the open court and not through counsel's oral or written address. As for the contention of the learned counsel for the appellant that no banner was on lire way of the tribunal to evaluate the documents tendered, the tribunal also was on a very strong wicked (sic) when it held that from a plethora of authorities, it is not the duty of a court or tribunal to embark on inquiry outside the court, not even by examination of documents which were in evidence when the documents had not been examined or analyzed as in the instance case by the party who tendered them."

The tribunal had further found that PW53 did not link the ballot papers to the respective polling units and no tying up of the inspected ballot papers to the exhibit 32, the expert report and so the tribunal could not conduct the inquires into whether or not there were irregularities inherent in the conduct of the election as claimed by the appellant. Indeed the tribunal was of the view that the exhibit 32 was hanging in the air without foundation or basks. The Court of Appeal agreed with this finding which I find difficult to depart from considering the plethora of judicial authorities on dumping

to which what transpired in this ease represents. I shall rely on Iniama v. Akpabio(2008) 17 NWLR (Pt. 1116) 225 at 299. paras. D-F which is akin to the situation here and I quote:

> "Where a party has the burden of specifically relating or linking each of the document to specific parts of their ease, it is inconceivable to argue that the several bag of bundle of document "metamorphosed' into exhibit (b) 4 to 32(b) could just be dumped on the tribunal to sort them out. Even if the appellant's ease is built on affidavit evidence, the court can neither be saddled with nor can it *suo motu* assume the partisan responsibility of tying each of such huge bundle of documentary evidence lo specific aspects of the appellant's cases of mal- practices alleged in pleadings when they have no: done so themselves."

The same position was taken by this court per Rhodes-Vivour J.S.C. in *Ucha v. Elechi*(2012) 13 NWLR (Pt. 1317) 330 at 360.

This issue for the reasons above are resolved against the appellant.

Issues 2 & 3

Whether the Court of Appeal was right when it held that exhibit P20 (the Inspection Report of PW48) was worthless, being unsigned, notwithstanding the fact PW48 tendered the Report personally and gave evidence on it.

> Whether the Court of Appeal was right to have regarded a mere difference in stated dates as showing conclusively that exhibits PW20 and PW32 (Inspection Reports) were full of discrepancy and without probative value.

Learned counsel for the appellant submitted that by stepping into the witness box and giving evidence on exhibit 20. the witness PW48 was in effect recognizing in writing that he was responsible for the accuracy of Inspection Report and the Court of Appeal was wrong to hold that exhibit P20 was worthless for being unsigned. He cited *Garba v. Kwara Investment Co. Ltd*. (2005) 5 NWLR (Pt. 917) page 160 at 176; section 83(4), Evidence Act. 2011.

That the issue of discrepancy in date is a minor inconsistency which cannot impeach or render exhibit P20 worthless since the maker of the document testified personally in court and the authenticity of the said exhibit not challenged.

It was contended for the 1st respondent that the two courts below were correct in their findings that the exhibit P20 was worthless and the disparity in dates was a grave matter, a serious vice which could not be treated lightly.

Learned counsel for the 2nd and 3rd respondents respectively canvassed along the some lines as counsel for the 1st respondent.

The Court of Appeal confirmed the findings and decision of the trial tribunal on the worthless less of the testimony of PW48 and exhibit 20 and PW53 and exhibit 32.

In the case of PW48, one Adaji Samuel who tendered the report of inspection which was admitted as exhibit 20 which in evidence he said he prepared on 28th day of July, 2015 and the report itself which was unsigned showed 31st August, 2015. The report tendered by the PW53 which is exhibit 32 is a replication of the content and purport of exhibit P20. The difference between the two documents is that whereas P20 was not signed but bears the name of PW48, the PW53's name and signature was contained on exhibit P32. The tribunal stated thus at page 3119 of the record:

> "On the evidence of PW53 and the report now in evidence as exhibit P32, we are of opinion that this witness has nothing to offer as his report was full of discrepancies, he did not impress the tribunal by his evidence whether for the reason that he was no coherent in his evidence under cross-examination when he made all efforts to avoid simple questions put to him forgetting that as a witness, he was not there to play to the gallery notwithstanding the fact that he is lawyer. When asked by the respondents how long it takes to inspect a ballot paper, he stated that it takes 20 seconds to inspect. It is our view on this that with that calculation, and within the six hours the witness stated they take (sic) in inspecting a local government ballot papers, thee witness can only inspect about 1000 ballot papers thus leaving approximately over 43,000 ballot

uninspected per local government. How then did he arrive at the figures on the ballot papers within the stated time? Furthermore, it is his evidence that there were missing and unseen ballot papers, and up to the time he gave evidence, he still could not trace them as exhibit P32 pages 5 - 8 and 11. These are the ballot papers mixed up between Nasarawa LGA and Lafia LGA. How then did he arrive at the final tabulation of ballot papers, where did he place the votes of the presumed missed unseen ballot papers? In the light of the above we do not hold the report tendered by him as exhibit P32 worthy of consideration on the issues raised as the witness has not shown professionalism in the conduct of the assignment given him by his client. We in the main therefore hold that the evidence and the report tendered in evidence as exhibit P32 through him clearly is from an interested party since he admitted that he was paid lo produce the report, all he die therefore is to enable him earn his fees and nothing more. We are thus not bound to give much weight to exhibit P32. This is more so that the report was produced during the pendency of this litigation. For the reason variously stated, we find ourselves unable to rely on exhibit P32 and we hereby discountenance same. See *N.S.T.I.F.M.B. v Klifco (Nig.) Ltd*. (2010) 12 NWLR (ft. 1211) 307."

In dealing with 1,lc evidence of PW53 the Court of Appeal as follows at pages 3336 - 3337 as follows:

> "Apart from the fact that the tribunal had rightly held that of all the documentary exhibit tendered by PW53 secured to have-passed through the crucible of being tested with some Forms EC8A's and other documents tested through the respondents from which the appellant could benefit even the said P32 was not backed up with ballot papers through the appropriate witnesses with as shall also demonstrated anon.
>
> The law is trite that the admissibility of a document is one thing the weight to be attached to the admitted document is another kettle of fish.
>
> In *Abubakar v. Chuks* (2007) 18 NWLR (Pt. 1066) 386 at paras. 403 E - F, Tobi, JSC stated the position as was done by the learned trial tribunal Judges that:
>
> > "Admissibility of a document is one thing and the weight to be attached to it another. The weight the court will attach to the document will depend on the circumstances of the case as contained or portrayed in the evidence"
>
> In the instant ease, the honourable Judges of the lower tribunal, were conscious of the fact that whatever phantom figures as contained

in exhibit P20 went to no issue as those figures were as worthless as the unsigned papers on which they were written. Again whatever anomalies and irregularities identified in the report regarding unstamped and unsigned, undated and uncustomized ballot papers missing and unidentified or unseen ballot papers were held by the tribunal after a dispassionate evaluation of the evidence and in exercise of its undoubted powers and exclusive preserve came to the inevitable conclusion that the petition ought to fail and same was accordingly dismissed."

On the testimony of PW53 and exhibit P32, the Court of Appeal found as follows at pages 3338 - 3340:

"The witness statement of the PW53 was also tendered along with his inspection report at the hearing of the petition on the 6th day of August, 2015 (see 3020 -3021) and the said report was admitted and marked exhibit P32.

As observed in the case of the PW48 contrary to the deposition in paragraph 7 of the witness statement that he prepared the inspection report dated the 28th day of July, 2015, the purported report tendered admitted and marked exhibit P32 which spans pages 2661 - 2670 is dated the 1st day of August, 2015. Although the PW53 signed the report wherein he came to the same conclusion in his analysis of the electoral materials that at

> the end of this exercise he discovered that it was clear that 67,771 votes for APC were invalid while 4,853 voters for APGA were also invalid; it is also clear that the date on that report is different from the elate he purportedly prepared it as deposed to in paragraph 7 of his statement of oath. Where his deposition on oath contradicts the so-called report, the court or tribunal ought not to attach any probative value to both his statement and the document."

That the two courts below did a thorough job of what was before them is without question and so this court cannot embark on a needless and wasteful exercise of redoing the evaluation of the evidence and so I shall follow in the footsteps of my learned brother, Okoro, JSC in *Olonode v. Sowemimo* (2014) All FWLR (Pt. 750) 1311 at 1327; (2014) 14 NWLR (Pt. 1428) 472 @ page 495 paras. F-H wherein he said:

> "Firstly, evaluation of relevant and material evidence and the ascription of probative value to such evidence are the primary functions of the trial court, which saw, heard and assessed the witness as they testified. Where the trial court unquestionably evaluates the evidence and justifiably appraises the facts, as it has been manifestly shown to have been done in the instant case it is, not the business of an appellate court to substitute its own views with the views of the

> trial court. The application of this trite principle by the lower court cannot, certainly be a basis for the reversal of the court's decision: *Mogaji v. Odofin (1978*) 4 SC 91 (1978) 11 NSCC 275; *Ojokolobo v. Alamu*(1998) 9 NWLR (Pt. 565) 226 and *Sha v. Kwan* (2000) FWLR (Pt.II) 178: (2000) 5 SC 178 (2000) 8 NWLR (Pt.670 685.

For sure I have nothing to add to what the concurrent finding have epitomised in respect to the worthless documents dumped a the tribunal and in the light of the better and fuller reasoning in the lead judgment I resolve these issues against the appellant as I am one in the dismissal of the appeal which lacks merit.

OGUNBIYI, J.S.C.: This appeal was heard and dismissed on the 20th day of January, 2016 while the court adjourned the reason for the judgment to be given today being the 25th day of January. 2016.

I have been privileged to read in draft the reasons for the dismissal of the judgment by my learned brother, M.D. Muhammad, JSC. I agree in total and subscribe to the reasons and conclusion arrived at by Ins Lordship.

I wish however to say a few words of mine as it relates to the witnesses PW48 and PW51 and the exhibits P20 and P32. In other words, whether the- lower court and indeed the trial Tribunal were on strong footing by treating

the evidence of the witnesses and the exhibits tendered through them respectively as being worthless.

It is pertinent to state that the witness PW48, who prepared exhibit P20 which is contained in pages 2627 to 2639 of the record of appeal, participated in a tribunal ordered joint inspection of ballet papers used across Nasarawa State in the Governorship election which was challenged by the appellant.

The Court of Appeal held that the said inspection report admitted and marked as exhibit P20 and prepared by PW48 was worthless because it was not signed; this is notwithstanding that the maker of the document (PW48) tendered it personally and gave evidence in respect thereof. The appellant's counsel contends that the lower court erred when it failed to follow its earlier decision in the case of *Aregbesola v. Oyinlola* suit No. CA/1/EPT/GOV/02/2010.

PW48 was one Adaji Samuel, a legal practitioner, whose witness statement is at pages 2625 – 2639 of the record. He gave evidence before the tribunal but was not cross-examined.

In his testimony, the witness said thus:

> "That I have prepared an inspection report on the said inspection dated 28th day of July, 2015."

The said report exhibit P20 was however not signed either by the witness or anybody at all. The lower court and the tribunal were unanimous and concurrent on the worthlessness of the testimony of PW48 and document P20. This court has formed an opinion and laid down the principle

which is well establish that concurrent finings will not be interfered with except in situations of exceptional circumstances. There must in other words be some extenuating circumstances shown by the appellant to justify interference by this court. See the cases of *Gbafe v. Gbafe* (1996) 15 NWLR (Pt.455) 417 at 436; *Nwosu v. Board of Customs & Excise* (1998) 12 SC (Pt.III) 77 at 88, (1988) 5 NWLR (Pt.53) 225; *Magit v. University of Agriculture, Makurdi* (2005) 19 NWLR (Pt. 959) 211 at 251 and *Anekwe v. Nweke* (2014) All FWLR (Pt. 739) 1154 at 1177 – 1178), (2014) 10 NWLR (Pt. 1412) 393.

On the validity and effect of exhibit P20 and the absence of cross-examination thereon, the Court of Appeal in its wisdom aptly summarized the position at pages 3335 – 3336 of the record in the following terms:

> "The PW48 may not have been cross examined on the document and he may have given evidence that he prepared the report but suffice it to state in line with the authorities of Omega Bank (Nig.) Plc v. O.B.C. Ltd. (supra); Global Soup & Detergent Int. Ltd. v. NAFDAC (2001) All FWLR (Pt. 601) 1478 at 1507, that unsigned document still remains a worthless document and the learned counsel for the respondents' failure to cross examine the PW48 on it is immaterial as you cannot put something on nothing and expect it to stand. On wicket on why the trial tribunal ought not to attach any probative value to the said exhibit P20 and the averments of the said PW48 in his statement on oath, his said averment in paragraphs 6 and 7 of the statement on oath are at

variance with the content of the said exhibit PW20 (sic). For the avoidance of doubt whereas the said paragraphs of the witness statement aver *inter alia:*

'6. that the inspection exercise was concluded on the 28th day of July, 2015.

'That I have prepared an inspection report on the said inspection dated 28th day of July, 20 J 5 (See page 2626 of the records: Exhibit P20 is purportedly dated 1st August, 2015. This clearly shows that the inspection report tendered and admitted by the court without objection is not even the one purportedly prepared by the PW48."

Sequel to the foregoing the Court of Appeal also in giving its approval to the trial tribunal, condemned exhibit P20 when it concluded as follows at page 3337 of the record:

"In the instant case, the honourable Judges of the lower Tribunal, were conscious of the fact that whatever phantom figures as contained in exhibit P20 went to no issue as those figures were as worthless as the unsigned papers on winch they were written.

Again whatever anomalies and irregularities identified in the report regarding unstamped and unsigned, undated and uncustomized ballot papers missing and unidentified or unseen ballot papers were held by the tribunal after a dispassionate evaluation of the evidence and in exercise of its undoubted

> powers and exclusive preserve came to the inevitable conclusion that the petition ought to fail and same was accordingly dismissed."

The learned counsel for the appellant relied extensively upon the case of *Garuba v. Kwara Investment Company Limited* (2005) All FWLR (Pt. 252) 469 at 478 - 479 reported as *Garba v. Kwara Investment Company* (2005) 5 NWLR (Pt. 917) 160 in support of his argument. In my view, it appears as if the learned counsel did not appreciate what that case stood for. In other words, it did not obviate the need for a document to be properly signed. The appellant submits further that the identification of exhibit P20 by PW48 suffices to clear any doubt relating the authorship and/or its foundation. Exhibit P20 in legal parlance is a which cannot be varied by oral evidence. Sec U.B.N, v. Ozigi(1994) 3 NWLR (Pt. 333) 385 at 400. PW48 in his evidence contradicted the contents of P20 on the issue of date therein.

In the wise of *Omega Bank v. O.B.C. Ltd*. (2005) All FWER (Pt. 249) 1964 at 1993 (2005) 8 NWLR (Pt. 928) 547 @ page 581. paras. A-C this court stated clearly the position of an unsigned document when it said and put in the following terms:

> "Let me take the issue of signing a document. In *Ojo v. Adejobi* (supra) cited by the learned counsel for the appellant, the court said at page 165:
>
> > "This court cannot in any event, ignore a situation in which the foundation of a claim to a preparatory legal interest is based on a worthless, unsigned and inadmissible document."

The same principle was applied also in the case of: .A.-G., *Abia State v. Agharanya* (*supra*) where at page 371 of the report it was held that:

> "It is well settled that an unsigned document is worthless and void."

Exhibit P20 which was made on a completely different date is alien to PW48's statement on oath. No explanation was offered whatsoever for this irreconcilable conflict which has rendered both paragraph 7 of the witnesses' statement on oath and exhibit P20 as unreliable and worthless. Also and importantly too, the ballot papers and the other election materials which PW48 claimed he used to arrive at the report exhibit P20, were not tendered before the tribunal. The pertinent question to pose at this juncture is: What therefore is the basis of the document'? The simple answer is: It is unknown for verification and confirmation since it has no foundation.

Exhibit P20 is a strange document and it has nothing to do with PW48 and the assignment he sought to give evidence thereon. While the document related to PW48 was dated 28th July, 2015, exhibit P20 is dated 1st August, 2015. There cannot be a better description of the document than that given by the lower court that - "it is worthless." As rightly submitted by the 1st respondent's counsel therefore, the appellant is oblivious of the fundamental discrepancies in the date contained in exhibit P20 and PW48's witness statement when he described it as a mere difference. On the converse the vice is serious and fundamental, and which has rendered both evidence and document unreliable.

I wish to say briefly that the reference and reliance made by appellant's counsel on the decision of the Court of Appeal in the case of *Aregbesola v. Oyinlola* (*supra*) was completely on, of context and did not in any way give credence or authenticate unsigned documents. In that case, the (acts contained in the unsigned document was within the knowledge of the witness and evidence thereof was admissible, which did not however qualify the document for admission as exhibit as wrongly submitted by the counsel for the appellant. The fact is settled that unsigned document is worthless and does not have a legal status. The reference made to that case is out of context and totally misconceived by the appellant

On the question of whether or not the documents were dumped on the tribunal. I seek to state the undisputed fact that the 3rd respondent was subpoenaed to produce electoral materials before the court in particular ballot papers for six local government areas which same were never tendered in evidence. There is also no bearing on the record that any witness testified and demonstrated their value in the open court.

At page 3115 of the record, the trial tribunal came to the conclusion that the appellant failed to link the myriad of documents tendered to any specific part of their case. This view is affirmatively endorsed by the lower court at pages 3349 - 3350 of the record of appeal before them. The law is settled that there must be link between document and the specific area of the case of a party. See the case of *Omisore v. Aregbesola* (*supra*). Without evidence of any connection,

the documents will be of no value as rightly held by the trial tribunal and approved by the lower court.

The concurrent findings by the two lower courts on the issue of dumping cannot be faulted and I so hold.

In other words, the Tribunal was on a firm ground when ii held that the appellant dumped a myriad of documents tendered before it by refusing to connect same to applicable aspects of his case through credible oral evidence and the court below was right in endorsing the stance of the trial tribunal on the matter.

With all said and done, I hold the firm view that the 1st respondent, rightly submitted that the lower court, which is hi tandem with the conclusions reached by the trial tribunal, and which led to the dismissal of the appellant's case is firmly positioned ark the appellant had not shown that the dismissal was perverse. On the totality therefore, I have come to the conclusion that the appellant has fallen short of proving the various allegations of electoral malpractices, irregularities and non-compliance with the provisions of Electoral Act as required by law.

My learned brother, Hon. Justice Musa Dattijo Muhammad. JSC had meticulously considered all the issues raised in the appeal. With the few words of mine and particularly on the comprehensive judgment of my brother, which I adopt as mine. I also dismiss the appeal and abide by the order made as to costs.

NWEZE, J.S.C.: This appeal was heard and dismissed on Wednesday. January 20, 2016. In so doing, the court promised to proffer its reasons today. I had the advantage of reading the draft of the reasons which my Lord, Musa Dattijo Muhammad, JSC, advanced in this regard. I, entirely, agree with His Lordship's reasons and conclusion.

Incidentally, in the reasons, which I offered this morning, for dismissing the sister appeal, that is. Appeal No. SC. 983/2015 *A.P.G.A. v. Alh. Umaru Tanko Al-Makura and Ors*, I dealt, at length, with the first issue in this appeal, namely, the propriety of the lower court's holding that documents were, simply, dumped on the trial tribunal. I have no reason for departing from the said reason part of which I now reproduce here as my reasons for dismissing the instant appeal on Wednesday, January 20, 2016.

The prescription (that parties have a duty to link their documents with their averments in their pleadings) rests on the adversarial nature of our jurisprudence which we inherited from the common law.

It is, therefore, the impregnable juridical postulate of our adversarial jurisprudence that prohibits a Judge from embarking on an inquisitorial examination of documents outside the court room. *A fortiori* it is anathema for a Judge to be allowed to act on what he discovered from such a document in relation to an issue when that was not supported by evidence or was not brought to the notice of the parties to be agitated in the usual adversarial procedure. The authorities on this point are many.

We shall only cite one or two of them here, *Ivienagbor v. Bazuaye* (1999) 9 NWLR (Pt. 620) 552, (1999)

6 SCNJ 235, 243; *Owe v. Oshinbanjo* (1965) 1 All NLR 72 at 75; Bornu Holding Co. Ltd. v. Alhaji Hassan Bogoco (1971) 1 All NLR 324 at 333; Alhaji Onibudo & Ors. v. Alhaji Akibu & Ors. (1982) 7 SC 60, 62; *Nwaga v. Registered Trustees Recreation Club* (2004) FWLR (Pt. 190) 1360, 1380-1381; *Jalingo v. Nyame* (1992) 3 NWLR (Pt. 231) 538; *Ugochukwu v. Co-Operative Bank* (1996) 7 SCNJ 22, (1996) 6 NWLR (Pt. 456) 524.

It is against this background that *viva voce* depositions and the entries in documents and. indeed assertions relating to entries in such documents in electoral materials are, invariably, tested under cross examination. *Ivienagbor v. Bazuaye*(*supra*). This is more so in cases which involve mathematical calculations of deductions and additions. *Ugochukwu v. Co-operative* Bank (1990) 7 SCNJ 22, 36; (1996) 6 NWLR (Pt. 456) 524; Onibudo v. Akibu (1982)1 NSCC 211; W.A.B. Ltd. v. Savana Ventures (2002) FWLR (Pt. 112) 53. 72, (2002) 10 NWLR (Pt. 775) 401: *Obasi Brothers Ltd. v. MBA Securities Ltd.* (2005) 2 SC (Pt. 1)51, 68, (2005) 9 NWLR (Pt. 928) 117.

Indubitably, therefore, it would amount to failure of justice for a court to base its judgment on *ex curiae* arithmetical deductions and additions which were not subjected to cross examination. (*Ugochukwu v. Cooperative Bank* (supra). In that case, Kutigi JSC (as he then was, later, CJN) frowned tit the procedure where the learned trial Judge decided to sort out the various amounts in dispute and other exhibits and did all his calculations in his chambers to arrive tit the figures or amounts given in his judgment.

At page 37 of the report, the distinguished JSC (later CJN) held that the

> "...the Court of Appeal was wrong, when after setting aside the award made to the plaintiff by the trial court, it proceeded to make (an award) which the learned trial Judge had by *his own arithmetic and calculations in chambers* found to be owed to the plaintiff." (italics supplied for emphasis)

Instructively, the danger inherent in the submissions of the learned SAN for the appellants played out in *Onibudo v. Akibu* (*supra*) where the record (*did*) not show that any of the numerous"-points discovered ...in the extra-curia exercise (by the Judge) were m brought out in court at the trial and at the hearing. According to Bello, JSC (as he then was; later CJN):

> It needs to be mphasized that the duty of a court is to decide between the parties on the basis of what has been demonstrated, tested, canvassed and argued in court. It is not the duly of a court to do cloistered justice by making an inquiry into the case outside even if such inquiry is limited to examination of documents which wore in evidence, when the documents had not been examined in court and their examination out of court disclosed matters that had not been brought out and exposed to test in court and were not such matters that, at least, must have been noticed in court.

(page 211, italics supplied for emphasis). In *W.A.B. v. Savana Ventures* (*supra*) at page 72, Ayoola, JSC, first, conceded that

> "there is plethora of authorities all going to show that it is not proper for a trial court to embark upon examination of documents tendered as exhibits when such examination will amount to a fact finding investigation that leads to discovers of tacts which could have been proved by evidence."

His Lordship, then, proceeded to offer illuminating insights into the distinction between "investigation" and “evaluation of documentary evidence." According to him:

> "Granted that, sometimes, the line between what is investigation and what is evaluation of documentary evidence is blurred and difficult to define, the distinction is that whereas, *investigation leads to the discovery of fresh facts, the truth of which could have been challenged by fresh contrary evidence; evaluation of evidence leads merely to finding based on the quality of evidence already existing ..."*
>
> (Italics supplied for emphasis)

It can thus be seen that it is not the duty of the Judge to sit clown *ex curiae* and attempt to sort out the case of any party. On the contrary, it is the duty of the party to elicit such evidence in court through its witnesses especially where various documents are involved. *Obasi Brothers Ltd. v.*

M.B.A. Securities Ltd. (2005) 2 SC (Pt. 1) 51, 68, (2005) 9 NWLR (Pt. 929) 117.

That done, he would sit back for such evidence to be either tested in cross examination. *Ivienagbor v. Bazuaye* (*supra*); *Owe v. Oshinbanjo (supra*); *Bornu Holding Co. Ltd v. Alhaji Hassan Bogoco* (*supra*): *Alhaji Onibudo & Ors v. Alhaji Akibu & Ors (supra*); *Nwaga v. Registered Trustees Recreation Club Nwaga v. Registered Trustees Recreation Club (supra)* or for his adversary to debunk such testimony by fresh contrary evidence. *W.A.B. v, Savanah Ventures (supra*).

This must be so for no court would spend precious judicial time linking documents to specific areas of a party's case. *A.N.P.P. v. I.N.E.C.* (2010) 13 NWLR (Pt. 1212) 549. In other words, it is the duty of the party to relate each document to the specific area of his case for which the document was tendered. *Ucha v. Elechi* (2012) 13 NWLR (Pt. 1317) 330, 360; *Omisore v. Aregbesola* (2015) 15 NWLR (Pt.1482) 202,323 - 324.

It is for these, and the more detailed, reasons advanced by my Lord. Musa Dattijo Muhammad, JSC, this morning that I too entered an order dismissing the appeal as indicated above. I abide by the consequential orders of His Lordship.

SANUSI, J.S.C.: This appeal was taken by us on Wednesday, 20th day of January 2016. On that same day this curt delivered its judgment dismissing the appellant's appeal

for being devoid of any merit. The court then adjourned to today, Monday 25th day January to delivered its reasons for the judgment dismissing the appeal.

The reasons for judgment ably given in the lead reasons for judgment prepared and delivered by my learned brother Musa Dattijo Mumainmad, JSC, were made available to me before now and they are agreeable to me. While adopting them as mine. I also do not see any merit in the appeal and dismiss it accordingly, except that I would chip in a word just for purpose of emphasis. It is not in dispute that the findings of the trial tribunal on the grave men of the petition were accepted and endorsed by the Court of Appeal (the lower court). There is therefore concurrent finding of both the courts below, on the unmeritorious nature of the appeal leading to same being dismissed. The appellant herein, further appealed to this court. It is not the practice of this court as an apex court, to interfere with or disturb the concurring findings of two lower courts except where there exist exceptional circumstances, for instance, where the finding is perverse of not supported by evidence shown on the record of appeal. That, to my mind, had not been demonstrated by the appellant as would warrant such interference by this court. See *Shorunmu v. State* (2010) 12 (Pt. 1) 73; *Seven-Up Bottling Company v. Adewale* (2004) 4 NWLR (Pt. 862) 183; *Salien v. State* (2015) EJSC 39. In the instant appeal, having seen no exceptional circumstance and having not found the finding of the lower court to be perverse in any respect, I shall not interfere with the findings of the two courts below.

On the while, with these few remarks, and for the detailed reasons advanced in the lead reasons for judgment which as I said earlier, are agreeable to me, I also consider the appeal to be devoid of merit.

It is hereby dismissed by me. Appeal dismissed.

Appeal dismissed.