1. MR.PETER GREGORY OBI

2. LABOUR PARTY

V.

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION

2. SENATOR BOLA AHMED TINUBU

3. SENATOR SHETTIMA KASHIM

4. ALL PROGRESSIVES CONGRESS

PRESIDENTIAL ELECTION PETITION COURT

HOLDEN AT ABUJA

PETITION NO: CA/PEPC/03/2023

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

STEPHEN JONAH ADAH, J.C.A.

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

BOLOUKUROMO MOSES UGO, J.C.A.

ABBA BELLO MOHAMMED, J.C.A.

WEDNESDAY, 6TH SEPTEMBER 2023

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CONSTITUTIONAL LAW'-'Fine' as used in section 137(1) (d) of the 1999 Constitution - Meaning and interpretation of.

CONSTITUTIONAL LAW-'Offence' as used in section 137(1) (d) of the 1999 Constitution - Meaning and interpretation of.

CONSTITUTIONAL LAW - Office of President of Nigeria –Nature of offence that can disqualify person from seeking election thereto.

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WORDS AND PHRASES – 'Sentence' in section 137(1) (d) of the1999 Constitution -Meaning and interpretation of.

Issues:

1. Whether, having regard to the provision of section 137of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 35 of the Electoral Act, 2022 and the evidence before the court, the 2nd and 3rdrespondents were qualified to contest the Presidential election of 25th February 2023.

2. Whether, having regard to the evidence adduced by the parties, the petitioners established that there was substantial non-compliance with the provisions of the Electoral Act, 2022 and that the non-compliance substantially affected the results of the election.

3. Whether, from the totality of the evidence adduced, the petitioners proved that the presidential election held on 25th February, 2023 was invalid by reason of corrupt practices.

4. Whether, from the evidence adduced, the petitioners established that the 2nd respondent was not duly elected by majority of lawful votes cast at the election.

Facts: On 25th February 2023, the Independent National Electoral Commission (I.N.E.C.) (the 1st respondent), conducted the Presidential and National Assembly elections in Nigeria. At the end of the elections the 1st respondent declared Bola Ahmed Tinubu (2nd respondent) who was sponsored by the All Progressives Congress as the winner of the election and returned him as duly elected as the President of the Federal Republic of Nigeria. The petitioners were not happy with the declared outcome of the election and they filed a petition before the Presidential Election Court. Two other sets of parties, also dissatisfied with the result declared also filed petitions. The other petitions are:

(i) CA/PEPC/04/2022*: Allied Peoples Movement v .I.N.E.C. & 4 Ors.;* and
(ii) CA/PEPC/05/2022*: Abubakar Atiku & Anor v. I.N.E.C. & 2Ors.*

During the pre-hearing session, the three petitions were consolidated by the court, even as the identity of each of the petitions were preserved in line with the settled procedure relating to consolidation of actions.

In this petition the 1st petitioner, who was sponsored by the 2nd petitioner as its Presidential candidate, as well as the 2nd and 3rd respondents, who were sponsored by the 4th respondent as its Presidential and Vice-Presidential candidates, contested the Presidential election, along with other candidates. At the end of the election, the 1st respondent returned the 2nd respondent as the duly elected President of the Federal Republic of Nigeria with 8,794,726 votes.The1st petitioner came third with 6,101,533 votes, behind Abubakar Atiku of the People's Democratic Party (P.D.P.) who came second with 6,984,520 votes. Dissatisfied with the result of the election, the petitioners filed a petition on 20th March 2023challenging the outcome of the election on three grounds, viz:

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

Based on the grounds, the petitioners sought the following reliefs:

"1. First pray as follows:

(i) That it be determined that at the time of the Presidential Election held on 25th February2023, the 2nd and 3rd respondents were not qualified to contest the election.

(ii) That it be determined that all the votes recorded for the 2nd respondent in the election are wasted votes, owing to the non-qualification/ disqualification of the 2nd and 3rd respondents.

(iii) That it be determined that on the basis of the remaining votes (after discountenancing the votes credited to the 2nd respondent) the 1st petitioner scored a majority of the lawful votes cast at the election and had not less than 25% of the votes cast in each of at least 2/3 of the States of the Federation and the Federal Capital Territory, Abuja, and satisfied the constitutional requirements to be declared the winner of the 25th February, 2023 Presidential election.

2. That it be determined that the 2nd respondent having failed to score one -quarter of the votes cast at the Presidential election in the Federal Capital Territory, Abuja, was not entitled to be declared and retuned as the winner of the Presidential election held on 25th February,2023.

In the alternative to 2 above:

3. An order cancelling the election and compelling the 1st respondent to conduct a fresh election at which the 2nd, 3rd and 4th respondents shall not participate.

In the alternative to 1, 2 and 3 above:

4(i) That it may be determined that the 2nd respondent was not duly elected by a majority of the lawful votes cast in the election for the office of the President of the Federal Republic of Nigeria held on 25th February, 2023; and therefore, the declaration and return of the 2nd respondent as the winner of the Presidential election are unlawful, unconstitutional and of no effect whatsoever.

(ii) That it be determined that based on the valid votes cast at the Presidential election of 25th February, 2023, the 1st petitioner scored the highest number of votes cast at the election and not less than one quarter of the votes cast at the election in each of at least two-thirds of all the States of the Federation and the Federal Capital Territory, Abuja and ought to be declared and returned as the winner of the Presidential election.

(iv) An order directing the 1st respondent to issue certificate of return to the 1st petitioner as the duly elected President of the Federal Republic of Nigeria.

(iv) that it be determined that the certificate of return wrongly issued to the 2nd respondent by the 1st respondent is null and void and be set aside.

In the further alternative to 1, 2, 3 and 4 above:

5(i) that the Presidential election conducted on 25th February, 2023 is void on the ground that the election was not conducted substantially in accordance with the provisions of the Electoral Act, 2022 and Constitution of the Federal Republic of Nigeria 1999, as amended.

(iii) An order cancelling the Presidential Election conducted on 25th February 2023 and mandating the 1st respondent to conduct a fresh election for the office of President of the Federal Republic of Nigeria."

On being served with the petition, the 1st respondent filed its reply to the petition on 10th April 2023. The 2nd and 3rd respondents filed a joint reply to the petition on 12th April 2023, while the 4th respondent filed its reply to the petition on 10th April 2023. The petitioners filed separate replies to the replies of the 1st, 2nd and 3rd, and the 4th respondents. The 1st, 2nd and 3rd and the 4th respondents also incorporated various preliminary objections in their respective replies to the petition and also filed motions challenging the competence of the petition and the petitioners' replies or, in the alternative, some of the paragraphs of the petition and the petitioners' replies.

At the pre-trial session which held from 8th May 2023 to 22nd May 2023, the petition was consolidated with the two other petitions challenging the same Presidential election, In line with paragraph 50 of the 1st Schedule to the Electoral Act, 2022.

During the pre-hearing session, the court heard all motions and preliminary objections made by the respondents and deferred

Rulings on the applications to the stage of final judgment as mandated by section 285(8) of the Constitution of the Federal Republic of Nigeria, 1999.

At the trial, the petitioners opened their case with tendering from the Bar several certified true copies of electoral and other documents which were objected to by all the respondents who reserved the reasons for their objection to the stage of final address. The said documents were therefore admitted and marked as exhibits, without prejudice to the objections of the respondents. The court ordered the respondents to file separate addresses on their objections along with their final addresses.

In proof of their petition, the petitioners called 13 (thirteen) witnesses who gave evidence as PW1-PW13. Of those witnesses, only three had their witness statements on oath filed along with the petition, while the other 10 (ten) were subpoenaed witnesses whose statements were filed separately after hearing in the petition had commenced. The respondents objected to the competence of the subpoenaed witnesses to give evidence and adopt their witness statements on oath and reserved the reasons for their objections to the stage of final address. Without prejudice to the objection, the said witnesses adopted their respective witness statements on oath, after which they were duly cross-examined by all the respondents.

Upon closure of the petitioners' case, the 1st respondent, as well as the 2nd and 3rd respondents called 1 (one) witness each in their defences. The 4th respondent did not call any witness but opted to rely on the evidence already adduced by the other respondents and that elicited under cross-examination from petitioners' witnesses on behalf of the 4th respondent.

After the close of evidence, the parties filed and exchanged their respective final addresses, including separate addresses in support of their various objections which they raised during trial.

In the determination of the various motions, preliminary objections and the merit of the petition, the Court considered various provisions of the 1999 Constitution (as amended) as well as other relevant legislations as follows:-

Section 134(2) (a) & (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended):

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

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

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

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

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

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

Section 285(5) of the 1999 Constitution (as amended):

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

Section 299 of the 1999 Constitution (as amended):

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

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

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

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

Section 31 of the Electoral Act, 2022:

"31. A candidate may withdraw his candidature by notice in writing signed by him and delivered personally by the candidate to the political party that nominated him for the election and the political party shall convey such withdrawal to the Commission not later than 90 days to the election."

Section 132(7) of the Electoral Act, 2022:

"132(7) an election petition shall be filed within 21 days after the date of the declaration of the result of the elections."

Paragraph 4(5) of the 1s Schedule to the Electoral Act, 2022:"4(5) the election petition shall be accompanied by-

(a) A list of the witnesses that the petitioner intends to call I proof of the petition;

(b) Written statements on oath of the witnesses; and

(c) Copies or list of every document to be relied on at the hearing of the petition."

Paragraph 14(2) of the 1st Schedule to the Electoral Act, 2022:"14(2) After the expiration of the time limited by-

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

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

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

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

(b)Paragraph 12 for filing the reply, no amendment shall be made-

(i) alleging that the claim of the seat or office by the petitioner is correct or false, or

(ii) except anything which may be done under the provisions of subparagraph (2)(a)(ii),effecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply."

Section 249(1) & (2) of the Evidence Act:

"249(1) A previous conviction in a place outside Nigeria maybe proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order and the fingerprints of the person or photographs of the fingerprints of the person so convicted together with evidence that the fingerprints of the person so convicted are those of the defendant.

(2) A certificate given under subsection (1) of this section shall be *prima facie* evidence of all facts set out in it, without proof that the officer purporting to sign it did in fact sign it and was empowered to do so."

Held (*Unanimously dismissing the Petition*):

1. *On Aim and purpose of pleadings –*

It is trite that adversarial civil litigation is basically fought on pleadings. It is the foundation of the parties' respective cases. The general principle of law is that such pleadings must sufficiently and comprehensively set out material facts, so as to ascertain with certainty and clarity the matters or issues in dispute between the parties. This is because the purpose of pleadings is to give adequate notice to the adversary of the case he is to meet and to afford him the opportunity to properly respond to such case. Its aim is to bring to the knowledge of the opposite side and the court all the essential facts. It is therefore a safeguard against the element of surprise. **[***Sodipo v. Lemminkainen OY* **(1986) 1 NWLR (Pt. 15)220;** *Odom v.*

P.D.P. (2015) **6 NWLR (1456) 527**; *Alhassan v. Ishaku* **(2016) 10 NWLR (Pt.1520) 230;** *P.D.P. v. I.N.E.C.* **(2012) 7 NWLR (Pt.1300)538 referred to.] (***P.104, paras.E-H*)

2. *On Nature of election petition and importance of petitioner's pleadings –*

An election petition is by nature a declaratory action in which the petitioner succeeds only on the strength of his own case and not on the weakness of that of the respondent. It is in this respect that a petitioner has an obligation to set up a clear, unambiguous, precise and positive case in his pleadings, since pleadings is the foundation of a party's case, and it is to the pleadings that the parties to litigation as well as the court are all bound. [*Busari v. Adepoju* **(2015) LPELR-41704;** *Oyetola v. Adeleke* **(2019)LPELR-47529;** *Anazonwu v. Onubogu* **(2023) LPELR-59794;** *Enang v. Adu* **(1981) 11 -12 SC 25 referred to.] (***P.115, paras. A-C***)**

3. *On Nature of election petitions and mandatory requirements of pleadings therein –*

Election petitions are *sui generis***, and for an averment in an election petition to be competent, material facts relating to complaints made therein must be specifically pleaded. Thus, where allegations of non-compliance and corrupt practices are made, such as in the instant petition, the polling units, wards or other places where those irregularities and malpractices are alleged to have occurred must be specifically pleaded.**

In the instant case, the petitioners tendered FormsEC8As for Ebonyi State (exhibits PP1- PP13), Nasarawa State (exhibits PQ1-PQ13), Delta State (exhibits PR1 – PR25), Sokoto State (exhibits PV1-PV7) and Kogi State (exhibits PVW1-P21); FormsEC8Bs for Kogi State (exhibits PAA1-PAA21), Nasarawa State (exhibits PAB1- PAB11), Sokoto State (exhibits PAE1-

PAE21), Delta State (exhibits PAF1-PAF25), Cross River State (exhibits PAL1-PAL18),Akwa Ibom State (exhibits PAN1-PAN31)and Ebony; State (exhibits PAQ1-PAQ12); Forms EC8Cs for Cross River State (exhibits PATI-PAT15), Ebonyi State (exhibits PAU1 -PAU10), Sokoto State (exhibits PBB1- PBB23) and Delta State (exhibits PBD1-PBD25); Forms EC40G (PU)for Edo State (exhibits PBM1 – PBM23); I-REV Reports for Edo State (exhibits PW1 – PW17); Supplementary I-REV Reports for Cross River State (exhibit PCH37 -PCH39); list of Registered Voters and PVCs Collected for 2023 General Elections with respect to Local Government Areas in Ogun State (exhibits PCN5), Akwa Ibom State(exhibit PCN6), Kebbi State (exhibit PCN7), Kogi State (exhibit PCN9), Cross River State (exhibit PCN10), Enugu State (exhibit PCN11), Sokoto State(exhibit PCN12),Ebonyi State (exhibit PCN16), Nasarawa State (exhibit PCN17), Delta State(exhibit PCN18), Anambra State (exhibit PCN22),Jigawa State (exhibit PCN25), Edo State (exhibitPCN27) and Abia State (exhibit PCN25). However, no single complaint was made by the petitioners in respect of any of those States as to make those exhibits relevant to the petitioners' case, and they were expunged. [*Belgore v. Ahmed*** **(2013) 8 NWLR (Pt. 1355) 60;** ***Ikpeazu v Otti*** **(2016) 8 NWLR (Pt.1513)38;** ***P.D.P. v. I.N.E.C.*** **(2012)7NWLR (Pt.1300)538;** ***Ikpeazu v. Otti*** **(2016) 8 NWLR (Pt. 1513) 38referred to.] (***Pp. 162-164, paras. H-F;166,para.H***)**

4. *On Mandatory requirements of pleadings in election petitions –*

Where a petitioner alleges over-voting in an election petition, he has a duty to specify the polling units where the over-voting took place, the total number of accredited voters, the total number of votes cast and the number of votes to be deducted from

The scores of the parties. In the instant case, the petitioners alleged that there was over voting in the States of Ekiti, Oyo, Ondo, Taraba, Osun, Kano, Rivers, Borno, Katsina, Kwara, Gombe, Yobe and Niger States but they failed to specify the polling units where the over-voting took place, the total number of accredited voters, the total number of votes east and the number of votes to be deducted from the scores of the parties. Also, the petitioners averred that "based on the uploaded results, the votes recorded for the 2nd respondent did not comply with the legitimate process for computation of the result and disfavoured the petitioners", and listed the States of Rivers, Lagos, Taraba, Benue, Adamawa, Imo, Bauchi, Borno, Kaduna, Plateau and other States of the Federation, but they failed to state the scores improperly computed and how they were disfavoured. Also, since the petitioners failed to specify in the petition the polling units to which exhibits PCE1 – PCE4,the 18,088 blurred results related, the said exhibits were clearly inadmissible and were discountenanced and expunged from the record. (*Pp. 164-165, paras. F-A; 166, paras. G-H*)

5. *On Mandatory requirements of pleadings in election petitions-*

The requirements for clarity and precision of fact required by paragraph 4 of the 1st Schedule to the Electoral Act, 2022 means that averments must not be vague, ambiguous or unclear, leaving room for speculation or conjecture, while the requirement of distinctiveness means that each averment must contain a clearly understandable allegation and there should be no confusion as to the linkages between facts contained in the averments in the petition in ascertaining the allegations being made in the petition. The requirements of pleadings in election petitions are primarily provided in

Paragraph 4 of the 1st Schedule to the Electoral Act, 2022. Specifically, paragraph 4(1) (d) mandates that "an election petition shall state clearly the facts of the election petition and the ground or grounds on which the petition is based and the reliefs sought by the petitioner." Subparagraph (2) of the same paragraph further provides that "the election petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts of the election petition, and every paragraph shall be numbered consecutively." In addition to the provision of paragraph 4 of the 1st Schedule to the Electoral Act, paragraph 54 of the same Schedule to the Act has made applicable to election petitions the Rules of Civil Procedure in the Federal High Court of 2019, subject to such modifications as would bring same in conformity with the provisions of the Act. By Order 13 rule 4 of the Federal High Court (Civil Procedure) Rules, 2019, every party to an election petition shall ensure that averments in their pleadings "contain in a summary form the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, and numbered consecutively." By sub-paragraph (4) of that Rule, such facts contained in the pleading must "be alleged positively, precisely and distinctly, and as briefly as is consistent with a clear statement." In the instant case, paragraphs 9, 60, 61, 66, 67, 68, 69, 70, 71, 72, 73, 76, 77, 78, 83 and 99 of the petition which failed to state the specific polling units, collation centres, or the specific places where the irregularities and malpractices were alleged to have occurred, or the figures of votes which were claimed, were grossly vague, imprecise, nebulous and bereft of material particulars, and thus failed to meet the requirements of paragraph 4(1) (d)of the Electoral Act, 2022 and, in accordance with paragraph 4(7) of the said

Schedule, were consequently struck out. [*Belgore v. Ahmed* **(2013)8 NWLR (Pt. 1355)60;** *P.D.P. v. I.N.E.C.* **(2012)7 NWLR (Pt. 1300) 538 referred to.] (***Pp. 105-102.paras.A-C:115, paras.C-E***)**

6. *On Requirements of pleadings in election petitions and when not necessary for respondent to seek further particulars-*

The provision for further particulars as stated in paragraph 17(1) of the 1st Schedule to the Electoral Act, 2022 which requires a respondent to seek further particulars from a petitioner will only come into play where the petition itself contains material or necessary particular. In other words, paragraph 17(1) does not bar a respondent from applying under paragraph 4(7) of the 1st Schedule to strike out averments in a petition which are grossly inadequate, insufficient and devoid of material or necessary particulars. This is because the operational words in paragraph 17(1) is "further particulars", which means there must be some material particulars already pleaded in the petition before further particulars can be sought by the respondent. Specifying the particular polling units or places where irregularities are alleged to have occurred are material particulars in an election petition, and averments in an election petition which allege irregularities and malpractices but fail to specify the polling units or places where the irregularities or malpractices occurred, are bereft of material particulars, and such averments are incompetent and liable to be struck out. A petitioner who has failed to state such material particulars cannot invoke the provision relating to further particulars as a sword against a respondent in order to cure the incompetence of such averments. This is because an application for an order for further

Particulars pursuant to paragraph 17(1) of the 1st Schedule to the Electoral Act is merely a shield in the hand of a party who so desires and not a sword to be used by a party whose pleading is grossly inadequate, insufficient and devoid of necessary particulars as the appellant's petition was in the instant case.

In the instant ease, the petitioners merely made generic allegations of various irregularities and malpractices against the respondents without specifying the polling units, collation centres or specific places where the alleged irregularities and malpractices occurred. They alleged various irregularities and malpractices but failed to specify the particular polling units or specific places where the alleged irregularities, malpractices and anomalies occurred, the places where they occurred, the agents who complained, and the designated officers of the 2nd petitioner and the 1st respondent to whom the complaints were made, for example:-

(a) In paragraphs 60 and 61 of the petition the petitioners alleged that the 1st respondent "suppressed the actual scores obtained by the petitioners by deliberately uploading blurred Forms EC8As on the IReV in 18,088(eighteen thousand and eighty eight) polling units" the petitioners did not specify the polling units but only stated that they would rely on a spread sheet containing the polling unit codes and details of the 18,088 polling units, as well as the authentic results in the said poling units;

(b) in paragraphs 66 and 67 the petitioners alleged that the 1st respondent embarked on "massive misrepresentation and manipulation by uploading fictitious results in polling units where there were no elections", they did not specify the polling Units where they alleged there were

No elections, the incorrect results that were uploaded and which were the correct results;

(c) in paragraphs 68- 71 the petitioners alleged that the scores obtained by them were "unlawfully reduced and added by the 1st respondent to the scores of the 2nd respondent" but they failed to state their scores that were reduced and added to that of the 2nd respondent by the 1st respondent and the figures that showed that the petitioners won the election.

(d) in paragraphs 72, 73,76-78 the petitioners alleged over-voting, but they merely stated that they would "rely on the Forensic Reports of the election materials showing that the votes cast in the polling units in Ekiti State, Oyo State, Ondo State, Taraba State, Osun State, Kano State, Yobe State and Niger State exceeded the number of voters accredited on the BVAS in those States"; they failed to specify the polling units in those States where the over-voting occurred, the number of votes affected, margin of lead which they claimed and the voters who ought to legitimately vote in those polling units;

(e) in paragraph 73, the petitioners only stated that they would "show that in the computation and declaration of results of the election, based on the uploaded results, the votes recorded for the 2nd respondent did not comply with the legitimate process of computation of the result and disfavoured the petitioners ..." in Rivers, Lagos, Taraba, Benue, Adamawa, Imo, Bauchi, Borno, Kaduna and Plateau and other States of the Federation, but they neither specified the uploaded results nor the votes illegally recorded for the 2nd respondent and how they were disfavoured;

(f) in paragraph 83 of the petition the petitioners claimed that the 1st petitioner scored the majority of the lawful votes cast at the election, but they did not state the majority of the lawful votes they claimed to have scored, especially as elections and the determination of who won an election is about figures;

(g) **In paragraph 99 of the petition the petitioners stated they would rely on Forms EC8As to establish that substantial votes were unlawfully credited to the 2nd respondent, but they did not state the figures of the unlawful votes credited to the 2nd respondent.**

Indeed, in a Presidential election like the one being challenged in this petition, which was held in 176,846 polling units, 8,809 wards, 774 Local Government Areas, 36 States and the Federal Capital Territory, it is unimaginable that averments in a petition which merely allege irregularities and or malpractices without specifying the particular polling units or particular collation centres where the irregularities or malpractices allegedly took place, would be regarded as proper merely because the respondent has not requested for further particulars. [*Belgore v. Ahmed*** (2013) 8 NWLR (Pt. 1355) 60; *P.D.P. v. I.N.E.C.* (2012) 7 NWLR (Pt. 1300) 538; *Ikpeazu v. Otti* (2016) 8 NWLR (Pt. 1513) 38 referred to andapplied.] (***Pp. 107, paras. C-E; 108, paras. A-F; 109-110, paras. A-D***)**

7. *On Contents of reply to reply to election petition –*

By virtue of paragraph 16(1)(a) of the 1st Schedule to the Electoral Act, 2022, a petitioner may, in filing a reply, respond to allegations of new facts raised, in a respondent's reply to the petition, provided he Does not in so doing amend or add to the

Petition. By the import of the specific words used there in, what the provision envisages is that the reply of the petitioner must strictly be confined to the new facts raised in the respondent's reply and must not go over that to attempt to amend or add to the petition. The law forbids new additions or amendments by a petitioner which are not contained in their petition because such new additions or amendments will prejudice the respondents and breach the respondents' fundamental right to fair hearing guaranteed by section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999, since the respondents will have no opportunity to respond to those new additions or amendments

In this case, a careful examination of the petitioners' petition, the 1st, 2nd and 3rd, as well as the 4th respondent's respective replies, and the replies which the petitioners filed in response thereof, revealed that apart from rehashing what they already averred in their petition and denying what the respondents stated in their respective replies, the petitioners also introduced new facts in their replies to the respondents' replies which were not contained in their petition. That was in clear contravention of paragraph 16(1) (a) of the1st Schedule to the Electoral Act, 2022. *[A.P.C .v. P.D.P.* **(2015) 15 NWLR (Pt. 1481) 1;** *Dingyadi v. Wamakko* **(2008) 17 NWLR (Pt. 1116) 395;** *Adepoju v. Awoduyilemi* **(1999) 5 NWLR (Pt. 603)364;** *Egesimba v. Onuzuruike* **(2002) 15 NWLR (Pt.791) 466;** *Ikoro v. Izunaso* **(2009) 4 NWLR (Pt.1130) 45; P.D.P. v. I.N.E.C. (2019) LPELR-48101;** *Maku v. Al-Makura* **(2015) LPELR-41814 referred to.] (***Pp. 123-125, paras. C-A***)**

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

The provision of paragraph 15 of the 1st Schedule

to the Electoral Act, 2022, which states that when a petitioner claims that he had the highest number of valid votes cast at the election, the party defending the election or return at the election shall set out clearly in his reply particulars of the votes, if any, which he objects to and the reasons for his objection against such votes, showing how he intends to prove at the hearing that the petitioner is not entitled to succeed, presupposes that the petitioner has a first duty to state clearly in his petition the particulars of such votes in respect of which he claims to have scored the highest number of valid votes and thus entitled to be returned as the winner. This also presupposes that it is only after the petitioner has supplied the particulars of the votes in support of his claim that he scored the highest number of valid votes that a respondent will then have a duty to object to any of the particulars of such votes supplied by the petitioner in order to show that the petitioner is not entitled to succeed. (*Pp.111-112, paras. G-B***)**

9. *On How document can be incorporated in pleading by reference -*

For a document to be properly incorporated as part of pleadings by reference, the document must not only be referred to in the pleadings, it must also be included as part of the pleadings to be served on the adverse party, so as to enable the adverse party to properly respond to same in his defence.

In the instant case, the Spreadsheets and Forensic Reports which were documents prepared by the petitioners' witnesses were not served along with the petition on the respondents, but were only listed as documents to be relied upon at the trial. The petitioners' argument in relation to paragraph 4(5) (c) of the 1st Schedule to the Electoral Act, 2022 which provides that the election petition shall be accompanied by "copies or list of every document to be relied on at the hearing of the petition" was

Untenable as that provision undoubtedly only relates to front-loading of documents to be relied upon by the petitioner as his evidence during trial, and it does not cover incorporation of documents into pleadings by reference. Thus, the petitioners' contention that they incorporated into the petition by reference the Spreadsheets and Forensic Analysis Report containing details of the polling units where they alleged that irregularities and malpractices occurred was wrong in law. Also, the Spreadsheets and Forensic Reports which the petitioners claimed to have incorporated into the petition by reference were actually documents prepared by the petitioners' witnesses. Thus, the Spreadsheets and Forensic Reports were not documents outside the control of the petitioners and which they had to obtain by subpoena. Being the petitioners' own documents, they ought to have served those documents along with the petition on the respondents, so as to enable the respondents to counter same by engaging their own experts to appropriately respond to same, if they so desired. That is the essence of pleadings, so as to avoid taking the other party by surprise. [*E.F.C.C. v. Reinl*** **(2020) 9 NWLR (Pt. 1730) 489;** *Ekpemupolo v. Ederemoda* **(2009) 8 NWLR (Pt. 1142) 166;** *Marine Management Associates Inc. v. N.M.A.* **(2012) 18 NWLR (Pt. 1333)506;** *Dingyadi v. Wamakko* **(2008) 17 NWLR (Pt. 1116)395;** *Nigeria Merchant Bank Plc v. Aiyedun Investment Ltd.* **(1988) 2 NWLR (Pt.537) 221 referred to.]***(Pp. 112-113, paras. B-G***)**

10. *On Right of claimant to seek alternative reliefs and by implication plead conflicting facts-*

Reliefs can be sought in the alternative, and whereso sought by a party he is at liberty to plead conflicting facts in line with the alternative reliefshe has sought. [*Adighije v. Nwaogu* **(2010)12 NWLR (Pt. 1209) 419;** *Metal Construction (W.A.) Ltd. V. Aboderin* **(1998) 8 NWLR (Pt . 563) 538 referred to.]**(*P.518, paras.D-H*)

11. *On Necessary parties to election petition –*

By the import of section 133 of the Electoral Act, 2022, the contest in an election petition is strictly between the petitioner who challenges the outcome of the election, the person who was declared the winner of the election, and the Commission that conducted and declared the outcome of the election. This means that every candidate who lost the election and who is desirous of challenging the outcome of the election is expected to file his own petition against the winner of the election; and, in so doing, he is not required to join as a respondent any other candidate who lost the election like himself. It is in furtherance of this that paragraph 50 of the1st Schedule to the Electoral Act, 2022 requires an Election Tribunal or Court to consolidate two or more petitions which are presented in relation to the same election or return. [*Obasanjo v. Yar'adua*** **(2003)17 NWLR (Pt. 850) 510;** ***Buhari v. Yusuf*** **(2003) 14 NWLR (Pt. 841) 446;** ***Buhari v. Obasanjo*** **(2003)15 NWLR (Pt. 843) 236 referred to.] (***Pp.120-121, paras. D-A; C-D***)**

12. *On Grounds for questioning result of election-*

By virtue of section 134(2) of the Electoral Act, 2022 only an act or omission which is contrary to the Electoral Act, 2022 can be a ground for questioning an election. Thus, complaints relating to non-compliance with provisions of the Regulations and Guidelines or the Manual of Election Officials are not legally cognizable complaints for questioning an election. In the instant case, since electronic transmission of election results of an election is not expressly stated or provided for anywhere in the Electoral Act, but was only introduced by the 1st respondent in its Regulations and Guidelines, 2022

And in the I.N.E.C. Manual for Election Officials, 2023, the failure to electronically transmit election results cannot be made a ground for challenging an election under section 134(1) (b) of the Electoral Act, 2022. [*Nyesom v. Peterside* **(2016) 7 NWLR (Pt. 1512) 452;** *Jegede v. I.N.E.C.* **(2021) 14 NWLR (Pt.1797)409 referred to.] (***Pp.244-245, paras. H-E***)**

13. *On Burden of proof in civil cases and burden on petitioner alleging non-compliance with Electoral Act-*

There is an exception to the general principle that the burden of proof is generally on the party that asserts the affirmative of an issue and not on the party who asserts the negative. Where a negative assertion forms an essential part of a party's case, the burden is on him to establish that fact. The true meaning of the rule is that where a given allegation, whether affirmative or negative, forms an essential part of a party's case, the proof of such allegation rests on him. In the instant case, the petitioners made their allegation of non-compliance with section 73(2) of the Electoral Act, 2022 by the 1st respondent as an essential part of their case in challenging the results of the election declared by the 1st respondent. Not only were the petitioners statutorily required by section 135(1) of the Electoral Act to establish substantial non-compliance with the provisions of the Act, they were required to show how such non-compliance substantially affected the results of the election. The non-compliance that will not invalidate an election under section 135(1), unless it is shown to be substantial and to have substantially affected the result of the election, encompasses non-compliance with all provisions of the Electoral Act, including section 73(2) thereof. In other words, section 73(2) is not derogated from the ambit of section 135(1) of the Act. Therefore, the petitioners who alleged non-compliance with section 73(2) as part of their cause of action had the burden to establish such non-compliance in accordance with the requirements of the section 135(1) of the Act.

[*Buhari v. I.N.E.C.* **(2008) 19 NWLR (Pt. 1120) 246;** *Dashe v. Durven* **(2019) LPELR-48887 referred to and applied.](***Pp.247-249, paras. G-E***)**

14. *On Burden on petitioner alleging non-compliance with Electoral Act –*

By virtue of section 131(1) of the Evidence Act, 2011, a petitioner who alleges non-compliance with the Electoral Act has the legal burden to establish such non-compliance and show how the non-compliance substantially affected the result of the election. In the instant case, the petitioners failed to establish that the 1st respondent deliberately failed to upload the results of the Presidential election to the IReV portal in order to manipulate the results in favour of the 2nd respondent. The 1st respondent, on the other hand, offered credible evidence in the form of exhibits RA6 and RA7 to show that its e-transmission Application hosted on the Amazon Web Services, which was supposed to upload the results of the Presidential election to the IReV portal, suffered a glitch on the Election Day on 25thFebruary, 2023. [*Ladoja v. Ajimobi* **(2016) 10 NWLR (Pt. 1519) 87;** *Shinkafi v. Yari* **(2016) 7 NWLR (Pt.1511)340 referred to.](Pp. 237, paras. A-B; 244, paras. D-F)**

15. *On Burden on petitioner challenging lawfulness of votes cast and what he must prove to succeed –*

A petitioner who contests the legality or lawfulness of votes cast in an election and the subsequent result must, in order to succeed:-

(a) tender in evidence all the necessary documents by way of forms and other documents used at the election. The documents are amongst those in which the results of the votes are recorded;

(b) call witnesses to testify to the illegality or unlawfulness of the votes cast. 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 eyewitnesses too; and

(c) prove that the illegality or unlawfulness substantially affected the result of the election.

Both forms and witnesses are vital for contesting the legality or lawfulness of the votes cast and the subsequent result of the election. One cannot be a substitute for the other. It is not enough for the petitioner to tender only the documents. It is incumbent on him to lead evidence in respect of the wrong doings or irregularities both in the conduct of the election and the recording of the votes; wrong doings and irregularities which affected substantially the result of the election.

In this petition where the petitioners have labelled several allegations against the 1st respondent such as suppression of scores, unlawful reduction and inflation of results; uploading of fictitious results, misrepresentation and manipulation of results where no election took place, and wrong computation of results, it was evident from the evidence of their witnesses that the petitioners did not lead any credible evidence to substantiate those allegations. Of the 13 witnesses they called, only two were presiding officers who were present at their polling units. Hence the petitioners did not establish any of those malpractices which they alleged. The evidence of the witnesses which the petitioners called as experts to try establish that the 1st respondent was mandatorily required to transmit election results for purposes of collation or to link the delay in the upload of the Presidential Election results to IReV by the 1st respondent to any of the malpractices which they alleged were devoid of any value. The petitioners' allegations thus remained mere speculations and unfounded accusations. The petitioners failed to establish beyond reasonable

Doubt the corrupt practices which they alleged, as required of them under section 135(1) of the Evidence Act, 2011. [*Buhari v. I.N.E.C.* **(2008) 4 NWLR (Pt.1078) 546;** *Mohammed v. Danladi* **(2019) LPELR-49138 referred to.](***Pp.270-271, paras.B-D***)**

16. *On Duty on petitioner alleging falsification or forgery of election result and what he must prove-*

In order to establish the allegation of falsification of election result, the petitioner or the party making the allegation must produce in evidence two sets of results: one genuine and the other false. And after putting in evidence the two sets of results, a witness or witnesses conversant with the entries made in the result sheets must be called by the party making the accusation of falsification or forgery of results of the election to prove from the electoral documents containing the results of the election how the results of the election were falsified or made up. [*Kakih v. P.D.P.* **(2014) 15 NWLR (Pt. 1430) 374;** *Nwobodo v. Onoh* **(1984) 1 SCNLR 1;** *Adewale v. Olaifa* **(2012) 17 NWLR (Pt.1330) 478;** *Anozie v. Obichere* **(2006) 8 NWLR (Pt. 981) 140;** *Agbaje v. Fashola* **(2008) LPELR-3648;** *Okechukwu v. Onyegbu* **(2008) LPELR-4711 referred to.] (***Pp. 261-262, paras. E-B***)**

17. *On Distinction between ground of non-compliance and corrupt practices in election petition and standard of proof of each-*

It is not every ground of non-compliance that will amount to corrupt practice. In an election petition, the standard of proof of allegation of non-compliance differs from that of corrupt practice; while the standard of proof of non-compliance is on the balance of probabilities that of corrupt practice is proof beyond reasonable doubt. In the instant case, in paragraph 79 of the petition where the petitioners alleged corrupt practices, they

merely stated that they were repeating their pleadings in support of the grounds of non-compliance to be in support of their allegations of corrupt practices. [*P.D.P. v. I.N.E.C.* **(2012) 7 NWLR (Pt. 1300) 538;** *Mohammed v. Wamakko* **(2018) 7 NWLR (Pt. 1619)573;** *Board of Customs & Excise v. Barau* **(1982) 10SC 48 referred to.] (***P. 111, paras. A-D***)**

18. *On Standard of proof of allegation of crime in election petition –*

Aside the strict requirement of stating material particulars in election petitions, it is also trite that in civil litigations, including election petitions, whenever fraud or any other crime is alleged, material facts of such allegation of fraud or other crime must be pleaded and clearly set out. In this case, the petitioners' allegations of suppression of votes, inflation and reduction of votes, massive misrepresentation and manipulation by uploading fictitious and non-existing votes/results all amount to an allegation of falsification of results of an election which is criminal in nature, and the evidence required in proof thereof must be clear and unambiguous and the proof must be beyond reasonable doubt. [*Sabija v. Tukur* **(1983) 11 SC109;** *Haruna v. Modibbo* **(2004) 16 NWLR (Pt. 900) 487;** *Omoboriowo v. Ajasin* **(1984) 1 SCNLR 327;** *Bessoy Ltd v. Honey Legon (Nig.) Ltd.* **(2008) LPELR-8329;** *Olurin v. Sangolana* **(2021) LPELR - 56280;** *Buhari v. Obasanjo* **(2005) 13 NWLR (Pt. 941) 1;** *Udom v. Umana* **(No.1) (2016) 12 NWLR (Pt.1526) 179;** *Ikpeazu v. Otti* **(2016) 8 NWLR (Pt. 1513) 38;** *Abubakar v. Yar'adua* **(2008) 19 NWLR (Pt. 1120) 7;** *Omisore v. Aregbesola* **(2015) 15 NWLR (Pt. 1482)205;** *Magaji v. A.P.C.* **(2023) LPELR-60356 referred to.](***Pp.260-261, paras. F-E***)**

19. *On Necessity to file witness deposition along with election petition-*

By the combined provisions of section 285(5) of the 1999 Constitution, section 132(7) of the Electoral Act,2022 and paragraphs 4(5) and (6) and 14(2) of the 1st Schedule to the Act, every written statement on oath of the witnesses which a party intends to call must be filed along with the petition within the time limited by section 285(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and section 132(7) of the Electoral Act, 2022. Once the time limited for filing of a petition has elapsed, the contents of the petition cannot be added to or amended in any manner or under any guise. Any written statement on oath of a witness filed outside that 21 days limitation will amount to a surreptitious amendment of the petition and a breach of paragraph 14 of the 1st Schedule to the Electoral Act, 2022. This is irrespective of whether the witnesses to be called are ordinary or expert witnesses and whether they are willing or subpoenaed witnesses. Thus, in election petition litigation, whether the witnesses which a party intends to call are ordinary or expert witnesses and whether they are willing or subpoenaed witnesses, their witness depositions must be filed along with petition before such witnesses will be competent to testify before the tribunal or court. In the instant case the statements on oath of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 which were not frontloaded along with the petition were incompetent and struck out, and the witnesses had no vires to testify. [*Oke v. Mimiko*** **(2014)1 NWLR (Pt. 1388)225;** ***Ogba v. Vincent*** **(2015) LPELR-40719;** ***Okwuru v. Ogbee*** **(2015) LPELR-40682;** ***Ararume v. I.N.E.C.*** **(2019) LPELR-48397 referred to.](*Pp.143-152, paras. G-A; 153-154, paras. H-B*)**

20. *On Duty on petitioner seeking declaratory relief to succeed on strength of his case on not on weakness of respondent-*

In an action seeking a declaratory relief, including an election petition as in the instant case, the petitioner who has made the allegation has the burden to prove his allegation on the strength of his own case and not on the weakness of the respondent. In this case, the petitioners evidently failed to establish their allegation that the 2ndrespondent was disqualified from contesting the Presidential election under section 137(1) (d) of the1999 Constitution because he was fined the sum of $460,000.00 by US District Court, Northern District of Illinois. The order of forfeiture in exhibit PAS on which the petitioners relied did not qualify as a sentence of fine for an offence involving dishonesty or fraud within the contemplation of section 137(1) (d) of the 1999 Constitution. [*Okereke v. Umahi*** **(2016) 11 NWLR (Pt. 1524) 438;** *Emenike v. P.D.P.* **(2012)12 NWLR (Pt. 1315) 556;** *Omisore v. Aregbesola* **(2015) 15 NWLR (Pt. 1482) 297;** *Ucha v. Elechi* **(2012) 13 NWLR (Pt. 1317) 330 referred to.](***Pp.205-206, paras. H-D***)**

21. *On Establishment, functions, powers and independence of INEC-*

The Independent National Electoral Commission (I.N.E.C.) is established by section 153(1) (f) of the Constitution of the Federal Republic of Nigeria, 1999, and part of its functions as stated in Paragraph 15, Item F, Part I of the Third Schedule to the said Constitution is to organize, undertake and supervise elections, including election to the offices of the President and Vice President, among other political offices listed. Being a creation of the Constitution, I.N.E.C. is empowered by section 160(1) of the Constitution to make its own rules or otherwise regulate its own procedure; and in so doing it shall not be under the control of

The President. Indeed, by section 158(1) of the Constitution, I.N.E.C. shall not be subject to direction or control of any authority or person. (*Pp.627-628, paras.F-A***)**

22. *On Presumption of regularity in favour of election result declared by I.N.E.C.-*

There is a rebuttable presumption of regularity with respect to election results declared by I.N.E.C., and it is for a Petitioner who challenges that result to rebut such presumption with cogent and credible evidence. In this case, the petitioners failed to discharge the burden of proof placed on them by law. They failed to prove any of the three grounds contained in paragraph 20 of the petition. They did not lead any cogent, credible and acceptable evidence to rebut the legal presumption of correctness of the results of the Presidential election held on 25th February, 2023 as declared by the 1st respondent. [*Buhari v. I.N.E.C.*** (2008) 4 NWLR (Pt. 1078) 546;** *Udom v. Umana* **(No.1) (2016) 12 NWLR (Pt. 1526)179;** *Abubakar v. Yar'adua* **(2009) 19 NWLR (Pt.1120) 1;** *C.P.C. v. I.N.E.C.* **(2011) 18 NWLR (Pt.1279)493;** *Louis v. I.N.E.C.* **(2010) LPELR-4442;** *Hope v. Elleh* **(2009)LPELR-8520 referred to.](***Pp.286-287, paras.C-C***)**

23. *On How to rebut presumption of regularity in favour ofresult declared by I.N.E.C. –*

There is a presumption of regularity that enures to I.N.E.C. under the law, and the presumption can only be rebutted with cogent and credible evidence. In the instant case, the evidence of PW12 and exhibits PCQ1 to PCQ6 were not sufficient to rebut the presumption. [*A.P.C. v. Sheriff* **(2023) LPELR-59953;** *C.P.C. v. I.N.E.C.* **(2011) 18 NWLR (Pt. 1279) 493 referred to.](***Pp.251-252, paras. H-A***)**

24. *On Procedure for accreditation and verification of voters-*

In the exercise of the powers conferred on it under section 160(1) of the 1999 Constitution and section 148 of the Electoral Act, 2022, the Independent National Electoral Commission (I.N.E.C.), the 1st respondent herein, made the Regulations and Guidelines for the Conduct of Elections, 2022 as well as I.N.E.C. Manual for Election Officials, 2023. In paragraphs 14(a) and 18(a) of the Regulations, the 1st respondent prescribed the Bimodal Voter Accreditation System (BVAS) as the technological device for the purpose of accreditation and verification of voters in the 2023 General Elections.(*P.228, paras. B-D***)**

25. *On Procedure for accreditation of voters, conduct of election and collation of results –*

By virtue of section 4 of the 1999 Constitution, the legislative powers of the Federal Republic of Nigeria is vested in the National Assembly, which in the exercise of that power enacted the Electoral Act, 2022 to regulate the conduct of elections in the Federal, State and Area Councils of the Federal Capital Territory. Section 47(2) of the Electoral Act mandates every Presiding Officer to use a smartcard reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission. Also, under section 60(5) of the Act, the Presiding Officer shall transfer the results of the election, including the total number of accredited voters and the results of the ballot, in a manner as prescribed by the Commission. Section 62(1) of the Act specifically provides that after the recording an announcement of the result, the Presiding Officer shall deliver same along with election materials under security and accompanied by the candidates or their agents where available

To such person as may be prescribed by the Commission. Further, section 64(4) states that a Collation Officer or Returning Officer at an election shall collate and announce the results of an election subject to his/her verification and confirmation that-

(a) number of accredited voters stated on the collated result are correct and consistent with the number of accredited voters recorded and transmitted directly from polling units under section 47(2) of the Act; and

(b) **the votes stated on the collated result are correct and consistent with the votes or results recorded and transmitted directly from the polling units under section 60(4) of the Act.**

(P.226, paras. A-F)

26. On Procedure for accreditation of voters, conduct of election and collation of results-

Section 47(2) referred to in section 64(4) (a) of the Electoral Act, 2022 relates to the procedure for accreditation of voters by the Presiding Officer using the technological device prescribed by the Commission. As for section 60(4) referred to in section 64(4) (b) of the Act, it only mandates the Presiding Officer to count and announce the result at the polling unit. Section 60(5) mandates the Presiding Officer to transfer the result including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission. The Act also provides in section 64(5) that the Collation Officer or Returning Officer shall use the number of accredited voters recorded and transmitted directly from polling units undersection 47(2) of the Act and the votes or results recorded and transmitted directly from polling units under section 60(4) of the Act to collate and announce the result of an election if a collated result

At his or a lower level of collation is not correct. (*Pp.226-227, paras. G-B)*

27. *On Procedure for accreditation of voters, conduct of election and collation of results –*

While section 64(4) of the Electoral Act, 2022 provides for what the collation or returning officer would use to verify and collate the results, section 64(5) also provides for what the collation or returning officer will use to collate the results. Section 64(6) provides for what the collation or returning officer would use to determine the correctness of disputed result where there is a dispute. These are:

(a) The original of the disputed collated result for each polling unit where the election is disputed (which means the physical or hardcopy of the disputed collated result);

(b) The technological device used for accreditation of voters in each polling unit where the election is disputed;

(c) The data of accreditation recorded and transmitted directly from each poling unit where the election is disputed as prescribed under section 47(2) of the Act; and

(d) The votes and result of the election recorded and transmitted directly from each polling unit where the election is disputed as prescribed under section 60(4) of the Act(which requires only the counting and announcement of the result at the polling unit).

(P.227, paras. B-G)

28. *On Basis of electronic transmission of election results*

By virtue of the provisions of Paragraphs 38(i) and(ii), 48(a), (b) and (c), 50(v), (vii) and (xx), 51(ii), 54(xii), 55(xii) and 93 of the I.N.E.C. Regulations and Guidelines for the Conduct of Elections, 2022it is evident that although the Electoral Act has provided in section 62(1) for the delivery by the

Presiding Officer of the result along with other election materials under security and accompanied by candidates or their polling agents, where available, to such person as may be prescribed by the 1st respondent, the 1st respondent has by Paragraph 38 of the Regulations and Guidelines introduced electronic transmission to a collation system in addition to the physical transfer of the election results to the Registration Area/Ward Collation Officer. (*Pp. 228-230, paras. D-D***)**

29. *On Whether Electoral Act prescribes electronic transmission of results –*

The relevant sections of the Electoral Act, 2022 have used the words "deliver" in section 62(1), "transfer" in section 60(5) and "transmitted directly" in sections 50(2), 64(4), (5) and (6) instating how results of elections should be handled under those provisions. The word "transfer" means "to convey or remove from one place, person, etc., to another;" or to pass or hand over from one, to another"; or "specifically to change over the possession or control." The word "transmit" means "to send or transfer from one person or place to another or to communicate". The Electoral Act,2022 has used the words "deliver", "transfer" and "transmitted directly" interchangeably to describe how the results of the election shall be moved from one stage to another until the results are finally collated and declared. It has not, in any of its sections, specifically provided that the results of the election shall be electronically transmitted. *(Pp227-228, paras. F-B)*

30. *On Procedure for transmission and collation of election results and whether electronic transmission prescribed therefor-*

The I.N.E.C. Regulations and Guidelines primarily provide or manual transmission or transfer and Collation of results.

There is nothing in the Electoral Act or the Regulations and Guidelines to show that an electronic collation system was prescribed by the Commission to which results will be electronically transmitted. Thus, contrary to the convention of the petitioners that under the Regulations it was not be possible to collate the Presidential election results without verifying same with the electronically transmitted results, paragraph 92which categorically provides that "at every level of collation, where the I.N.E.C. copy of collated result from the immediate lower level of collation exists it shall be adopted for collation"; paragraph 48© of the Regulations which provides that "if no result has been directly transmitted electronically for a polling unit or any level of collation, the provision of clause 93 of this Regulations shall apply", and clause 93 of the Regulations which provides that where the I.N.E.C. hard copy of collated results from the immediate lower level of collation does not exist, the collation officer shall use electronically transmitted result or results from the IReV portal to continue collation, and that where none of those exist, the Collation Officer shall ask for the duplicate hard copies issued by the Commission to the Nigeria Police or to the agents of political parties in that order clearly show that the contention of the petitioners was not correct and that results of the election can be validly collated without the electronically transmitted results. In the circumstances, the petitioners were unable to establish their assertion that the 1st respondent was mandatorily required to electronically transmit the polling unit results to a collation system. On the other hand, the 1st respondent adduced unchallenged evidence that apart from the I.N.E.C. IReV portal, no collation system was established by the 1respondent to which the result of the Presidential election must be electronically transmitted for collation. Therefore both the Electoral Act and the

Regulations and Guidelines provide for manual collation of election results, and the electronic transmission to a collation system apparently introduced by the 1st respondent in the Regulations and Guidelines are not mandatory; and, based on the evidence adduced, the only collation system put in place by the 1st respondent in the conduct of the Presidential election is comprised of the physical collation centres in the Registration Areas/Ward Collation Centres, Local Government Area Collation Centres, the State Collation Centres and the National Collation Centre elaborately stated in Paragraphs 47, 50,53, 54 and 55 of the Regulations and Guidelines for the Conduct of Elections,2022. *(Pp.233-234, paras. G-H)*

31. *On Functions of BVAS with respect to accreditation, transmission and collation of election results –*

The technological device prescribed by I.N.E.C. in the conduct of the 2023 election is the Bimodal Voter Accreditation System (BVAS). The function of the BVAS is for verifying the voter, through a positive identification of the voter and authentication of the voter, by matching his or her fingerprints or face (facial recognition), thus accrediting the voter to vote at the election and storing the data and number of such accredited voters. The BVAS is also to be used by the Presiding Officer to upload a scanned copy of the EC8A to the I.N.E.C. Result Viewing Portal (IReV), after which the Presiding Officer shall take the BVAS and the original copy of each of the forms to the Registration Area/Ward Collation Officer. Thus, apart from using the BVAS to scan the physical copy of the polling unit result and upload same to the IReV, there is nothing in the Regulations to show that the BVAS was meant to be used to electronically transmit or transfer the results of the Polling Unit directly to the collation system. *(P.230, paras. D-G)*

32. *On Functions of and distinction between Collation System and I.N.E.C. Result Viewing Portal (IReV) –*

The I.N.E.C. Results Viewing portal (IReV) is not a collation system. As their names depict, the Collation system and the I.N.E.C. Result viewing Portal are part of the election process and play particular but different roles in that process. The Collation system is made of the centres where results are collated at various stages of the election. So the polling units' results transmitted to the collation system provides the relevant collation officer the means to verify a polling unit result as the need arises for the purpose of collation. The results transmitted to the Result viewing portal is to give the public at large the opportunity to view the polling unit results on the Election Day. A community reading of the relevant provisions of the Electoral Act, 2022, the Regulations and Guidelines for the Conduct of Elections, 2022and the I.N.E.C. Manual for Election Officials, 2023 shows that the Electoral Act expressly provides in section 62(1) that after recording and announcement of the result, the Presiding Officer shall deliver same along with election materials under security and accompanied by the candidates or their polling agents to such persons as may be prescribed by the Commission. The Regulations and Guidelines as well as the I.N.E.C. Manual also state that hard copies of election results shall be used for collation and it is only where no such hardcopies of the election results exist that electronically transmitted results or results from the IReV would be used to collate the results. In the instant case, the petitioners were wrong in their contention that I.N.E.C. was mandatorily required to electronically transmit the election results to the collation system. They did not cross-examine or contradict the evidence of RW1, the Deputy Director in the ICT Department of the 1ST respondent, who testified that contrary to the assertion of the petitioners

In paragraph 37 of the petition, there was no "collation system of the 1st respondent" to which polling unit results were mandatorily required to be electronically transmitted or transferred directly by the Presiding Officer, and that I.N.E.C. has not established any collation system to which results would be electronically transmitted from the polling units. Similarly, the petitioners did not cross examine RW2 on his oral evidence and exhibits RA24 and RA25 in support of his oral evidence where the I.N.E.C. Chairman was reported to have stated that raw figures will not be transmitted because the law does not allow for electronic transmission of results and because it is susceptible to hacking, and that only scanned copies of polling unit results would be uploaded to the IReV for public viewing. In addition, none of the witnesses called by the petitioners gave evidence of the existence of any collation system to which results shall be electronically transmitted by the Presiding Officers of the 1st respondent.[*Oyetola v. I.N.E.C.*** **(2023) 11 NWLR (Pt.1894) 125 referred to and applied.] (***Pp. 230-231, paras.H-F; 232, paras. D-G; 233, paras. A-F***)**

33. *On Status of document downloaded from IReV portal and condition for admissibility thereof-*

Computer/internet generated documents printed from the website of a public institution is a public document and only a copy of such document which is duly certified in compliance with section 104 of the Evidence Act, 2011 is admissible. Thus, documents downloaded from the Independent National Electoral Commission's IReV Portal and certified by I.N.E.C. as true copies of what they have in their IReV Portal qualify as public documents within the meaning of section 102 of the Evidence Act, 2011and the certification by I.N.E.C. authenticates those documents. Therefore, the provision of section 84

Of the Evidence Act would not apply in such cases. In the instant case, exhibits PBP1-PBP21, having been downloaded from the IReV Portal and duly certified by I.N.E.C., were clearly admissible.[*Kubor v. Dickson* **(2013) 4 NWLR (Pt.345)534;***Danda v. F.R.N.* **(2017) 11 NWLR (Pt. 1576) 315 referred to.| (***Pp.160-161, paras.E-C***).**

34. *On Procedure for applying for certified copies of I.N.E.C. documents-*

Section 74(1) of the Electoral Act, 2023 mandates the Resident Electoral Commissioner in a State where an election is conducted to, within 14 days after an application is made to him by any of the parties to an election petition, cause a certified true copy of such document to be issued to the said party. Section 74(2) goes on to provide that any Resident Electoral Commissioner who fails to comply with subsection (1) commits an offence and is liable on conviction to a maximum fine of N2,000,000.00 or imprisonment for a term of 12 months or both. In this case, the letters in exhibits PCQ1 – PCQ6 were all addressed to the Chairman of I.N.E.C. instead of the Resident Electoral Commissioners in the States as required of the petitioners by section74(1) of the Electoral Act, 2023.The petitioners therefore failed to follow the clear legal procedures of requesting for those documents; more so, when the subpoenas which they claimed to have served upon the 1st respondent were also served on the Chairman of the 1st respondent only the previous day to when he was mandated to appear in court. Moreover, PW12 testified that apart from voting at his Polling Unit 04 at Dawaki, Abuja, the only role he played in the Presidential election was that he was a member of the 2nd petitioner's Situation Room, and on cross examination by the respondent she stated that he was neither a polling agent nor a collation agent. Therefore, his evidence that the 1st

Respondent failed to record in the prescribed forms the quantity, serial numbers and other details of the electoral materials could only be hearsay evidence which had no probative value. The petitioners produced no other evidence to substantiate their allegation that 1st respondent failed to comply with the provision of section 73(2) of the Electoral Act, 2022. (*Pp.250-251, paras.E-C***)**

35. *On Nature of issue of membership of political party and whether justiciable-*

The issue of membership of a political party is an internal affair of the political party. It is not justiciable and the courts have no jurisdiction to entertain same. The provision of section 77(3) of the Electoral Act, 2022 which only mandates every political party to submit the register of its members 30 days before its party primaries cannot be invoked by the respondents for the purpose of challenging the 1st petitioners' membership of the 2nd petitioner. It is only the 2nd petitioner that has the sole prerogative of determining who its members are, and having sponsored the 1st petitioner as its candidate for the Presidential election, the 1st petitioner has satisfied the requirement of being a member of the 2nd petitioner as provided for in section 131(c) of the 1999 Constitution. It is not within the rights of the 2nd and 3rd respondents and the 4th respondent to question the 1st petitioner's membership of the 2nd petitioner. [*Enang v. Asuquo*** **(2023) 11 NWLR (Pt.1896) 501;** *Sani v. Galadima* **(2023)15 NWLR (Pt. 1908) 603;** *Tumbido v. I.N.E.C.***. (2023)15 NWLR (Pt.1907)301 referred to.](***P.119, paras. B-G***)**

36. *On whether political party can challenge nomination of candidate of another party or action of I.N.E.C. in relation to another party-*

No political party can challenge the nomination of

A candidate of another political party. No matter how pained or disgruntled a political party is with the way and manner another political party is conducting or has conducted its affairs concerning its nomination of candidates for any position, it lacks *locus standi* **to challenge such nomination in court. A political party equally lacks the** *locus standi* **to challenge the actions of I.N.E.C. in relation to another political party. Section 285(14) (c) only allows a political party to challenge the decisions and activities of I.N.E.C. disqualifying its own candidate from participating in an election, or to complain that the provisions of the Electoral Act or any other law have not been complied within respect of the nomination of the party's own candidates, time table for an election, registration of voters and other activities of I.N.E.C. in respect of preparation for an election. A political party is only vested with locus to file a pre-election matter when the aforesaid situations affect it or its own candidates. When the actions of I.N.E.C. relate to the activities of a political party, no court has the jurisdiction to entertain a suit brought by another political party in that regard.**

In the instant case, the petitioners who belonged to a different political party from the 2nd and 3rd respondents had no locus to complain about the nomination of the 3rd respondent. Hence, they could not use same to challenge the qualification of the2nd and 3rd respondents to contest the Presidential election. [*P.D.P. v. I.N.E.C.* **(2023) 13 NWLR (Pt.1900) 89 referred to and applied.](***Pp. 195-196, 195-1 paras. B-A***)**

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

Unlike the interpretation of ordinary statutes, the interpretation of the Constitution, which is

The supreme law of the land, has its own guiding principles which are:

(a) In interpreting the Constitution, mere technical rules of interpretation of statutes should be avoided so as not to defeat the principles of government enshrined therein. Hence a broader interpretation should be preferred, unless there is something in the text or in the rest of the Constitution to indicate that a narrower interpretation will best carry out the objects and purpose of the Constitution;

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

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

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

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

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

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

(h) Where the intention of the lawmaker is clear, precise and unequivocal, a purposive rule of interpretation will not be resorted to;

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

[*F.R.N. v. Nganjiwa* **(2022) 17 NWLR (Pt.1660)407;** *Rabiu v. State* **(1981)2 NCLR 293;** *A.-G., Bendel State. V. A.-G., Fed***. (1982) 3 NCLR 1;** *Buhari v. Obasanjo* **(2005) 13 NWLR (Pt. 941) 1;** *Savannah Bank Ltd. v. Ajilo* **(1989) 1 NWLR (Pt. 97) 305;** *A.-G., Abia State v. A.-G., Fed.* **(2005) 12 NWLR (Pt. 940) 452** *Abubakar v. Yar'adua* **(2008) 19 NWLR (Pt.1120)1;***Global Excellence Communications Ltd. V. DonaldDuke* **(2007)6 NWLR (Pt. 1059) 22;** *Saraki v. F.R.N.***(2016)3 NWLR (Pt. 1500) 531;***Skye Bank Plc v. Iwu***(2017)16 NWLR (Pt. 1590) 124;** *Shelim v. Gobang* **(2009) 12 NWLR (Pt.1156) 435;** *ronik Motors Ltd. v. Wema Bank Ltd.* **(1983) 1 SCNLR 296;** *F.R.N. v. Dingyadi* **(2018) LPELR-4606 referred to.] (***Pp.278-282, paras.C-E***)**

38. *On Principles governing interpretation of Constitution and construction of section 137 (d) & (e), 1999 Constitution-*

In the interpretation of the Constitution or statute the settled rule is that were the court is faced with two or more differing provisions over the same subject matter, the judicial attitude is to treat the special provision as overriding the general provision, on the principle that by enacting a separate provision for a part of the general class the Legislature intended that the said part shall not be treated the same with the general class. It is also a cardinal principle of interpretation of the Constitution that relevant provisions must be read together and not disjoint. In this case, since in both paragraphs (d) and (e) of section 137(1)

"sentence for any offence involving dishonesty" is mentioned but in paragraph (e) a limitation often years has been introduced, then it means in respect of sentence for offence of dishonesty, the two paragraphs must be read together, such that for conviction and sentence for an offence involving dishonesty, it must be within a period of less than ten years before the date of the election in order for such a conviction and sentence to be used for disqualifying a Presidential candidate from contesting the election.[*Iwuchukwu v. A.-G., Anambra State*** **(2015) LPELR-24487;** *Martin Schroeder & Co. v. Major &Co. (Nig.) Ltd.* **(1989)2 NWLR (Pt.101)1;** *F.M.B.N. v. Olloh* **(2002) 9 NWLR (Pt.773) 475;** *Abegunde v. O.S.H.A*. **(2015) 8 NWLR (Pt. 1461)314 referred to.] (***Pp. 206-207, paras. D-B***)**

39. *On Meaning of 'offence' as used in section 137(1) (d) of the 1999 Constitution-*

The operative words of section 137(1) (d) of the 1999 Constitution are "sentence", "imprisonment or fine" and "for any offence." The word "offence", while sometimes used in various senses, generally implies a felony or a misdemeanour infringing public rights as distinguished from mere private rights, and punishable under the criminal laws, though it may also include the violation of a criminal statute for which the remedy is merely a civil suit to recover the penalty. An offence is as an act which is clearly prohibited by law and which may be a crime or a civil offence. [*Umar v. State*** **(2014) 13 NWLR (Pt. 1425) 497 referred to.] (***Pp.200-201, paras. H-C***)**

40. *On Meaning of 'sentence' as used in section 137(1) (d) of the 1999 Constitution-*

"Sentence" is the judgment formally pronounced by the court or Judge upon the defendant after his conviction in a criminal prosecution, imposing the punishment to be inflicted, usually in the form of a fine, incarceration or probation. It is the judicial

Determination of a legal sanction to be imposed on a person found guilty of an offence. It means the prescription of a particular punishment by a court to someone convicted of a crime. [*Yakubu v. State* **(2015) LPELR-40867 referred to.] (P.201.parasC-F)**

41. *On Meaning of 'fine' as used in section 137(1) (d) of the 1999 Constitution-*

"Fine" referred to in paragraph (d) of section 137(1) is one which emanates from a sentence for a criminal offence involving dishonesty or fraud. The words "for imprisonment or fine" also pre-supposes that the "fine" envisaged under the section is one which is imposed as an alternative to imprisonment. In other words, the provision of section 137(1) (d) relates to sentence of death, or sentence of imprisonment or fine imposed as a result of a criminal trial and conviction. (*P. 201, paras. F-H***)**

42. *On Nature of offence that can disqualify person from seeking elective office-*

The disqualification that can amount to disqualification under section 137(1) of the Constitution involves a deprivation of right and a presumption of guilt for embezzlement or fraud in derogation of the safeguards in section 36(1) and (5) of the Constitution. The trial and conviction by a court is the only constitutionally permitted way to prove guilt and therefore the only ground for the imposition of criminal punishment or penalty for the criminal offences of embezzlement or fraud. Clearly, imposition of the penalty of disqualification for embezzlement or fraud solely on the basis of an indictment for those offences by an Administrative Panel of Enquiry implies a presumption of guilt, contrary to section 36(5) of the Constitution of the Federal republic of Nigeria, 1999, whereas, conviction for offences and imposition of penalties and punishments are matters appertaining

Exclusively to judicial power. [*Action Congress v. I.N.E.C.* **(2007) 12 NWLR (Pt. 1048) 220;** *Amaechi v. I.N.E.C.* **(2008) 5 NWLR (Pt.1080)227;** *Omowaiye v. A.-G., Ekiti State* **(2010) LPELR-4779;** *Abdulkarim v. Shinkafi* **(2008) LPELR-3555 referred to.] (***Pp.201-202, paras. H-E***)**

43. *On Nature of offence that can disqualify person from seeking election to office of President of Nigeria-*

The "sentence of imprisonment or fine for any offence involving dishonesty or fraud" envisaged in section 137(1) (d) of the Constitution is one imposed upon a criminal trial and conviction. In the instant case, the petitioners have failed to show evidence that the 2nd respondent was indicted or charged, arraigned, tried and convicted and was sentenced to any term of imprisonment or fine for any particular offence. Exhibit PA5 relied upon by the petitioners showed that the Case No. 1:93-cv-04483 was in the Civil Docket of the US District Court, Northern District of Illinois and it was a civil forfeiture proceeding against Funds in specified Accounts with First Heritage Bank and Citibank N.A.ExhibitPA5 was actually an action in rem against the funds with First Heritage Bank and Citibank. It was not an action *in personam* **against the 2nd respondent. (***Pp.202, paras. F-G; 203, paras. B-D***)**

44. *On Object of civil forfeiture and when order of forfeiture of property can be made without criminal charge or conviction –*

Section 17 of the Advance Fee Fraud & Other Related Offences Act, 2006 provides for the power to make an order of forfeiture without conviction for an offence; and that an order of forfeiture under the section shall not be based on conviction for an offence under the Act or any other law. In such a situation, there is no need to prove any crime in forfeiture of property under section 17 of the Advance Fee Fraud & Other Related Offences Act,

As civil forfeiture is a unique remedy which rests on the legal fiction that the property, not the owner, is the target. Therefore it does not require conviction or even a criminal charge against the owner as it is not a punishment nor is it for criminal purposes. [*Jonathan v. F.R.N.* **(2019)10 NWLR (Pt.1681) 533;** *La Wari Furniture & Baths Ltd. V. F.R.N.* **(2019) 9 NWLR (Pt. 1677) 262;** *Alison-Madueke v. E.F.C.C.* **(2021) LPELR-56922 referred to.| (***Pp.202-203.paras.G-B***)**

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

The use of the word 'and' by the framers of the Constitution between the words "all the States in the Federation and the Federal Capital Territory, Abuja" in section 134(2) (b) of the 1999 Constitution indicates nothing more than the framers' understandable desire for consistency in referring to the Federal Capital Territory by that name, as it is done all through the Constitution, whenever reference is made to the Federal Capital Territory. The word 'and' and 'Federal Capital Territory, Abuja' do not by any means imply that for a candidate to be declared a winner of the Presidential election he must score not less than one-quarter of the votes cast in the Federal Capital Territory Abuja as contended.by the petitioners. This position is also buttressed by the provision of section 299 of the Constitution which dispels any lingering doubt that may still be existing in anyone's mind by stating clearly that the entire provisions of the Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation, This means that section 134 (2) (b) of the same Constitution, requiring a presidential candidate to poll at least one quarter of the votes cast in two-thirds of the States of the Federation in order to be returned elected, means nothing more than

That the Federal Capital Territory shall be taken into account in calculating the said two-thirds of the States of the Federation. In other words, the FCT is no more than one of the States of the Federation for the purpose of that calculation. Nothing more than that can be implied or inferable from section 134(2) (b) of the Constitution. Moreover, if the framers had intended to make scoring one-quarter of votes cast in the Federal Capital Territory, Abuja, a specific requirement for the return of a Presidential candidate, they would have made that intention plain by using words that clearly separate the scoring of one-quarter of votes in the Federal Capital Territory as a distinct requirement. [*Bakari v. Ogundipe*** **(2021) 5 NWLR (Pt.1768) 1 referred to.](*Pp.283-284, paras. H-E; 285, paras. B-H*)**

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

By virtue of section 299 of the 1999 Constitution, for the purposes of fulfilling the requirements of section 134(2) (b) of the Constitution for the return of a Presidential candidate as duly elected, the Federal Capital Territory, Abuja, is to be treated as one of the States in the calculation of two-thirds of the States of the Federation; such that if the candidate polls 25% or one-quarter of the votes in two-thirds of 37 States of the Federation (FCT Abuja inclusive), the Presidential candidate shall be deemed to have been duly elected, even if he fails to secure 25% of the votes cast in the Federal Capital Territory, Abuja, as the 2nd respondent did. Thus, in a Presidential election, polling one-quarter or 25% of total votes cast in the Federal Capital Territory of Abuja is not a separate precondition for a candidate to be deemed as duly elected undersection 134 of the Constitution. (*Pp.285-286, paras. H-C*)

47. **NOTABLE PRONOUNCEMENT:**

On Equality of all Nigerian citizens vis-à-vis status of votes cast in FCT Abuja-

Per TSAMMANI, J.C.A. at pages 282-283, paras. G-F:

"The Preamble to the 1999 Constitution loudly proclaims equality between citizens as its cornerstone among others, thus:

"WE the people of the Federal Republic of Nigeria;
Having firmly and solemnly resolved;
……..
AND TO PROVIDE a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom, EQUALITY and Justice, and for the purpose of consolidating the Unity of our people:
DO HEREBY MAKE AND GIVE TO OURSELVES the following Constitution:"

"For those who are not used to reading preambles, the Constitution still in its Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the Constitution, which this Court aptly described as the 'road to construction' in *F.R.N .v. Dingyadi* **(supra),repeats this equality principle. Under its Social Objectives provision of that Chapter in section 17 thereof, it again proclaims that:**

"(1) The State Social order is founded on ideals of Freedom, Equality and Justice.

(2) In furtherance of the social order –

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

Equality of rights in every citizen as stated in this provision cannot by any means be read

To exclude equality of the weight and value of their votes. No, it includes it. Even more so, when the issue here is the right of every such citizen to elect with their votes their President whose policies are supposed to and will affect all of them equally regardless of which part of the country they reside or live.

So even stopping here, the futility and hollowness in the argument of the petitioners that the votes of the voters in the FCT, Abuja have more weight than other voters in the country, to the extent of their votes purportedly have a veto effect on other votes, and is rendered bare."

48. *On Duty on court to admit and act only on legally admissible evidence –*

A court is not permitted in any event to admit and act on legally inadmissible evidence even if such evidence had been admitted by agreement of the parties or under an order of court in the course of hearing. Once such evidence is legally inadmissible, the court must reject it when giving its final judgment even if that will amount to overruling itself by doing so. Thus, even when pieces of evidence had been improperly received in evidence, the trial court as well as appellate court have the power to expunge it from the record and decide the case only on legally admissible evidence. [*Shanu v. Afribank* **(Nig.) Plc (2000) 13 NWLR (Pt.684) 392;** *Sani v. Akwue* **(2019) LPELR-48206 referred to.](***Pp.155-156, paras. H-B***)**

49. *on whether witness subpoenaed to testify is witness of court and implication thereof-*

By virtue of paragraph 42(1) of the 1st Schedule to the Electoral Act, 2022 which states that "the tribunal or court may summon a person as a witness who appears to the tribunal or court to have been

Concerned in the election" it is a person summoned by the court *suo motu* in exercise of its powers under paragraph 42(1) that is a witness of the court and not a person subpoenaed at the request of a party to the case. Indeed, the procedure for calling of witnesses by the court is by summons. In this case, contrary to the argument of the petitioners that PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 were witnesses of the court because they were called pursuant to subpoenas issued by the court, the said witnesses were petitioners' witnesses and not witnesses of the court in that the subpoenas in respect of those witnesses were issued upon the request of the petitioners. The applications for the issuance of the subpoenas were duly filed at the Registry by the petitioners' counsel and the requisite fees, including filing fees and service fees as assessed, were duly paid by them, before the court approved and issued the subpoenas. Furthermore, the said witnesses subpoenaed by the petitioners were available to the petitioners at the time of filing the petition. They were neither subpoenaed as adversaries nor subpoenaed as official witnesses. (*P.152, paras. B-G*)

50. *On Treatment of document tendered by witness declared incompetent to testify-*

By virtue of paragraph 41(3) of the 1st Schedule to the Electoral Act, 2022, oral examination of witnesses is not allowed. Witnesses are only to adopt their respective written depositions and tender in evidence all disputed documents or other exhibits referred to in their depositions. By paragraph 4(5) (b) of the Schedule, such written depositions of the witnesses must be filed along with the petition. In the instant case, the exhibits which were documents, including expert reports, tendered through the subpoenaed witnesses who were declared incompetent because their witness statements on oath were filed in violation of the mandatory provision of paragraph 4(5)(b) of the 1st

Schedule to the Electoral Act, 2022, the documents admitted through them which formed part of their evidence were inadmissible and liable to be expunged from the record. [*Buhari v. I.N.E.C.* **(2008) 4 NWLR (Pt.1078) 546 referred to and applied.](***P.155, paras. C-F***)**

51. *On Treatment of document made by person interested in anticipation or during pendency of case –*

By virtue of section 83(3) of the Evidence Act, 2011, a document which is made by a party interested in a pending or anticipated proceeding, involving a dispute as to any fact which the document tends to establish, is inadmissible in evidence.

In the instant case, PW4 who claimed to be an expert was contracted by the petitioners before the election to carry out data analysis on the results of the Presidential elections held on the 25th of February 2023; he produced his initial report on 19th of March 2023. His report was made a day before the petition was filed on 20th March 2023.Obviously, the report (exhibit PCD1 – PCD3) was prepared in anticipation of the petition. PW7, who also claimed to be an expert witness, admitted that she was not only a member of the 2nd petitioner, but had contested the House of Representative selection under the platform of the 2nd petitioner, which election was conducted the same time with the Presidential election on the 25th February 2023.She also admitted that the report she presented in exhibits PCJ3A – F, were public information hosted by Amazon which she downloaded from the Amazon Website and that the open access information she downloaded in her Report could not be amended by her. That showed that she was not the maker of the said documents. PW8 claimed to be a cyber-security expert and he stated under cross examination by the 1st respondent that he was engaged by the 2nd petitioner as an expert on 10th March 2023 and that he produced a preliminary

Report on 17th and 18th March 2023 and final report (exhibit PCK1) at the end of May 2023 while this proceeding was pending. Thus, PW4, PW7 andPW8 were persons interested in the outcome of the proceedings. The reports produced by PW4and PW8 qualified as statements made by persons interested in anticipation or during the pendency of the petition. As for PW7 she was admittedly an interested party having been a member of and even contested election under the umbrella of the 2ndpetitioner. Her interest was further underscored by the fact that she admitted under cross-examination that she was attending court throughout the proceedings prior to her evidence. By virtue of section 83(3) of the Evidence Act, 2011, the reports tendered by those witnesses which formed part of their evidence were inadmissible. [*Oyetola v. I.N.E.C.*** **(2023) 11 NWLR (Pt. 1894) 125;** ***Ladoja v. Ajimobi*** **(2016) 10 NWLR (Pt. 1519) 87;** ***B.B. Apugo & Sons Ltd. V. O.H.M.B.*** **(2016) 13 NWLR (Pt.1529) 206***; U.T.C. v. Lawal* **(2014) 5 NWLR (Pt.1400) 221 referred to.] (***Pp. 155-160, paras. H-A*)

52. *on what constitutes public document and secondary evidence thereof admissible-*

An agreement made by the member States of the Economic Community of West African States (ECOWAS) Community, and signed by Heads of States and Governments of the 16 member-States forms part of the official record of ECOWAS, an official body established under the ECOWAS Treaty. It is undoubtedly a public document within the meaning of section 102 of the Evidence Act, 2011. In this case, exhibit RA27, the ECOWAS Preliminary Declaration, was a public document but since it was not certified as required by section104 of the Evidence Act to render same admissible, it was expunged from the record. (*P. 178, paras. D-F***)**

53. *On Type of secondary evidence of public document admissible and requirements of proper certification thereof-*

By virtue of section 104(1) of the Evidence Act 2011, the secondary evidence of any public document is only admissible in evidence if it has been duly certified by a public officer having custody of the original copy of the document, who by that section may give a copy of same to any person who has a right to inspect "together with a certificate written at the foot of such copy that it is a true copy of such document or part of it as the case may be." Under subsection (2) of that section, the public officer is enjoined to certify same by subscribing his name, official title and date and where he is authorized to use a seal, with his seal. The whole essence of the court's insistence on scrupulous adherence to the certification requirements of public documents is to vouchsafe their authenticity *vis-à-vis* **the original copies.**

In the instant case, the Registry of the Presidential Election Petition Court, which was not the custodian of the original copy of exhibit X2, the European Union Election Observation Mission Nigeria 2023 Final Report, could not validly certify that document under section 104(1) of the Evidence Act, 2011. Since exhibit X2 was not validly certified, it was inadmissible in evidence, and accordingly expunged from the record. [*Omisore v. Aregbesola* **(2015) 15 NWLR (Pt. 1482)205;** *Udom v. Umana* **(No.1) (2016), 12 NWLR (Pt.1526) 179 referred to.](***Pp.161-162, paras. F-B***)**

54. *On Type of secondary evidence of public document admissible and essence of requirement of certification of public document-*

The essence of certification of public documents is to ensure their authenticity. By virtue of sections89€ and 90© of the Evidence Act, 2011 secondary

Evidence of public documents must be certified to make them admissible. In this case the 18,088 blurred polling unit results which PW4 claimed to have downloaded from the IReV portal were not certified by the 1st. Respondent. PW4 admitted under cross-examination by the 1st respondent that the primary source of the data he used in his investigation was from the IReV portal. It meant that since those documents were not certified, he based his investigation on inauthentic data. [*Emeka v. Chuba-Ikpeazu*** **(2017) 15 NWLR (Pt.1589)345;** *Egbue v. Araka* **(1988) 3 NWLR (Pt. 84) 598;** *Udom v. Umana* **(No.1) (2016) 12 NWLR (Pt. 1526) 179referred to.](***P.265, paras. D-G***)**

55. *On What constitutes public document and who can tender secondary evidence thereof in evidence –*

By virtue of section 102(b) of the Evidence Act, 2011, public documents include public records kept in Nigeria of private documents. It is also trite that a public document duly so certified is admissible in evidence not withstanding that it is not tendered by the maker. Indeed, a certified true copy of a public document can be tendered by person who is not a party to the case. [*Onwuzuruike v. Edoziem* **(2016)6 NWLR (Pt. 1508) 215;** *Maranro v. Adebisi* **(2007) LPELR-4663;** *Daggash v. Bulama* **(2004) 14 NWLR (Pt. 892) 144 referred to.](Pp. 169-170, paras. F-B)**

56. *On Condition for application of doctrine of estoppel-*

In order for a judgment of a court to constitute estoppel in a subsequent action, it must have finally decided the same issue in contention between the same parties or their privies. In this case, from the averments contained in the petition it was clear that the petitioners' allegation of non-compliance averred in ground 2 of the petition was hinged on the contention that I.N.E.C. "was mandatorily required to electronically transmit or transfer the results of

The polling units directly to the collation system of the 1st respondent" and also "mandatorily required to use the BVAS to upload a scanned copy of the Form EC8A to the 1st respondent's Result viewing Portal (IReV) in real time." In both the instant petition and in exhibit XI, a subsisting judgment of the Federal High Court in Suit No. FHC/ABJ/CS/1454/2022: Labour Party v. I.N.E.C. delivered on 23 January 2023, the parties were the same in that 2nd petitioner herein was the sole plaintiff in exhibit XI, while the 1st respondent herein was the sole defendant in exhibit XI. Secondly, from the averments in ground 2 in this petition and the reliefs sought by the 2nd petitioner in exhibit XI, it was clear that the issue in both cases was whether the 1st respondent was mandatorily required to electronically transmit or transfer election results from the polling unit directly to the collation system. In exhibit XI, the Federal High Court had decided the Issue against the petitioners herein by holding that the 1st respondent could not be compelled to electronically transmit election results. There was no evidence that 2nd petitioner against whom the judgment in exhibit XI was given appealed against that decision and so it remained subsisting and binding upon the parties. [*Anchorage Leisures Ltd.v. Ecobank (Nig.) Ltd.*** **(2023)15 NWLR (Pt.1907) 243;** *Adedayo v. Babalola* **(1995) 7 NWLR (Pt.408) 383 referred to.](***P.220, paras. B-H***)**

57. *on what constitutes estoppel by judgment and application thereof-*

Where an issue of fact affecting the status of a person or a thing has been determined in a final manner as a substantive part of a judgment of a court having jurisdiction to determine that status, such determination will constitute estoppel by judgment to any subsequent proceedings between any parties whatsoever. In the instant case, since the Supreme Court in *Peoples' Democratic*

Party v. I.N.E.C. **had finally decided that the nomination of the 3rd respondent by the 2nd respondent as his running mate to contest the Presidential election was valid, the petitioners' allegation of double nomination of the 3rd respondent, which they raised in this petition, was evidently caught up by** *issue estoppel***. [***Agbogunleri v. Depo* **(2008) 3 NWLR (Pt.1074) 217;** *Cole v. Jibunoh* **(2016) 4 NWLR (Pt.1503) 499;** *A.P.C. v. P.D.P.* **(2015) 15 NWLR (Pt.1481)1 referred to.](***P.199, paras. B-E***)**

58. *On Meaning and application of doctrine of issue estoppel-*

The doctrine of issue estoppel is that where an issue has been decided by a competent court, the court will not allow it to be relitigated by the same or different parties. In the judgment in Appeal No. CA/LAG/CV/332/2023: *A.P.C. v. Labour Party* **the Court of Appeal upheld the decision of the Federal High Court in exhibit XI (Suit No. FHC/ABJ/CS/1454/2022: Labour Party v. I.N.E.C.), and construed same against the petitioners as issue estoppel, in relation to the petitioners' contention which they were making in this petition; that is, that I.N.E.C. was mandatorily required to electronically transmit election results. So that judgment also constituted issue estoppel against the petitioners. [***A.P.C. v. P.D.P.* **(2015) 15 NWLR (Pt. 1481) 1;** *Inakoju v. Adeleke* **(2007) 4 NWLR (Pt. 1025) 423referred to.](***P.221, paras. B-H***)**

59. *On Treatment of unchallenged and uncontroverted evidence-*

The court has a duty to act on unchallenged and uncontroverted evidence. In the instant case, although RW1 who testified for the 1st respondent was cross-examined by the petitioners' counsel, he was not cross-examined on his evidence that I.N.E.C. has not established any collation system to which

Results would be electronically transmitted from the polling units. Also the petitioners did not cross examine RW2 on his oral evidence and exhibits RA24 and RA25 in support of his oral evidence where the I.N.E.C. Chairman was reported to have stated that raw figures will not be transmitted because the law does not allow for electronic transmission of results and because it is susceptible to hacking, and that only scanned copies of polling unit results would be uploaded to the IReV for public viewing. Thus, the testimonies on that fact remain unchallenged and uncontroverted. [*Bronwen Energy Trading Co. Ltd. v. Overseas Agency (Nig.) Ltd.*** **(2022) 11 NWLR (Pt.1842) 489;** *Ogunyade v. Oshunkeye* **(2007) 15 NWLR (Pt.1057) 218 referred to.] (***Pp. 232-233, paras. G-E***)**

60. *On Status and treatment of hearsay evidence-*

Hearsay evidence is inadmissible and has no probative value. In the instant case, PW12, the petitioners' star witness, whose evidence was merely a copy of the averments in the petition, stated that on the day of the election he voted at his polling unit at Dawaki, Abuja, after which he went to the Situation Room of his party, the 2nd Petitioner; that apart from his polling unit and the Situation Room, he was not present physically at any other place on the day of the election; that he was not a collation agent or polling agent in any polling unit or collation centre. His evidence-in-chief was therefore mostly laced with hearsay. Apart from his evidence in chief being inadmissible hearsay, he also stated that his party had agents throughout the Federation with over 133,000 agents. When asked by the 2nd and 3rd respondents' counsel to state the score of the Labour Party, he stated that he would not know the scores of the Labour Party because the results were still being uploaded on the IReV. When cross examined by 4th respondent's counsel, he confirmed that his statement on oath wherein he stated that he would

Rely on the evidence of forensic expert was made on 20th March, 2023 while the final expert report he was relying on was made in May, 2023. It was clear that PW12 relied on an expert report that was not in existence at the time he made his statement. It was obvious that the evidence of the witness lacks credibility and was therefore manifestly unreliable. [*Ladoja v. Ajimobi* **(2016)10 NWLR (Pt.1519) 87;** *Okereke v. Umahi* **(2016) 11 NWLR (Pt. 1524) 438referred to.] (***Pp. 268-269, paras. G-F***)**

61. *On Duty on court not to decide substantive matter atpreliminary or interlocutory stage –*

A court should not comment on or decide at preliminary stage, matters or issues which are supposed to be decided in the substantive case. In the instant case, the issue relating to a challenge of the qualification of the 2nd respondent to contest the election; the issue relating to allegations of corrupt practices and non-compliance with the Electoral Act, 2022 and the plea of estoppel in relation thereto, as well as the issue relating to competence of the reliefs sought in the petition were matters on which the parties joined issues in the main petition, the merits of which could only be decided after considering the pleadings and evidence led in the petition; and so could not be taken and ruled upon at the preliminary stage based on the preliminary objection of the respondents. [*Nwankwo v. Yar'adua* **(2010) 12 NWLR (Pt. 1209) 518;** *James v. I.N.E.C.* **(2015)12 NWLR (Pt. 1474) 538 referred to.] (***P118, paras. A-D***)**

62. *On Duty on court to adjudicate only live issue in dispute-*

A court of law adjudicates only on matters over which the parties are in dispute. In the instant case, the educational qualifications of the 2nd respondent were never challenged by the petitioners in

The Petition. It was the 2nd and 3rd respondents that introduced the educational qualifications of the 2nd respondent in their reply and the petitioners did not join issue with them in their reply to the 2nd and 3rd respondents' reply. Since there was no controversy or dispute between the parties as it relates to the 2nd respondent's educational qualifications, exhibit RA10 was not relevant to the determination of the petition, and it was so discountenanced.[*Adedeji v. Oloso*** **(2007) 5 NWLR (Pt. 1026) 133;** ***Trade Bank Plc v. Benilux*** **(Nig.) Ltd.(2003)9 NWLR (Pt.825)416 referred to.] (***Pp. 176-177, paras. F-B***)**

63. *On Meaning and status of obiter dictum –*

An obiter dictum is a judicial expression of opinion or comment by a judicial officer made in passing while rendering a judgment which does not decide the live issue in the matter. In the instant case, the firm pronouncements of the Supreme Court on the alleged double nomination of the 3rd respondent in ***P.D.P. v. I.N.E.C.*** **(2023) 13 NWLR (Pt. 1900) 89 were not mere comments, expressions of sentiments or opinions made in passing. Rather, they were clear findings of fact and statements of the firm position of the law in relation to the status of the nomination of the 3rd respondent by the 2nd respondent as mate to contest the Presidential election for the offices of President and Vice President of the Federal Republic of Nigeria respectively. The pronouncement of the Supreme Court in** ***P.D.P. v. I.N.E.C.*** **on the status of the nomination of the 3rd respondent was, therefore, undoubtedly a decision on the merit and not an obiter dictum as contended by the petitioners. [***Babarinde v. State*** **(2014)3 NWLR (Pt. 1395) 568***; K.R.K. Holdings (Nig.) Ltd. v. F.B.N. Ltd.* **(2017)3 NWLR (Pt.1552)326;** ***Aondoakaa v. Obot (*****2022) 5 NWLR (Pt. 1824) 523 referred to.] (***Pp.197-198, paras. F-D***)**

64. *On Bindingness of decision of Supreme Court on other courts-*

The judgment of the Supreme Court has a binding effect on the lower courts. Therefore it was wrong for the petitioners to invite the court to ignore the firm pronouncement of the Apex Court on the validity of the nomination of the 3rd respondent as the running mate of the 2nd respondent and Vice-Presidential candidate of the 4th respondent. [*Odedo v. Oguebego* **(2015)13 NWLR (Pt. 1476) 229;** *Dingyadi v. I.N.E.C.* **(2011) 10 NWLR (Pt.1255) 347;** *Nobis-Elendu v. I.N.E.C.* **(2015) 16 NWLR (Pt.1485) 197 referred to.](***Pp. 198-199, paras. D-B***)**

65. *On Treatment of judgment of court not appealed –*

An decision of a court not appealed remains subsisting and binding upon the parties. [*Abba v. Abba Aji* **(2022) 11 NWLR (Pt. 1842) 535;** *Jegede v. I.N.E.C.* **(2021)14 NWLR (Pt.1797) 409;** *Oleksandr v. Drilling Co. Ltd.* **(2015) 4 NWLR (Pt.1464) 337 referred to.] (***Pp.220-221, paras. H-B***)**

66. *On Need for Court of Appeal to take judicial notice of its decision and bindingness of its previous decision thereon-*

By virtue of section 122(2) of the Evidence Act, the Court of Appeal is entitled to take judicial notice of its previous decision, and by the doctrine of precedent is bound it. In this case the Court was bound by its decision in Appeal No. CA/LAG/CV/ 332/2023: *A.P.C. v. Labour Party***, which upheld the decision of the Federal High Court in exhibit XI (Suit No. FHC/ABJ/CS/ 1454/2022;** *Labour Party v. I.N.E.C.***), that under the Electoral Act and I.N.E.C. Regulations and Guidelines for the Conduct of Elections, the 1st respondent could not be compelled to electronically transmit election results. (***P 227. paras. E-H***)**

67. *On Sui generis nature of election petition and implication thereof-*

An election petition by nature is sui generis, of its own kind or class. It is not like a claim of debt, in contract or in tort. It has its own character and it is unique by its nature. The slightest non-compliance with a procedural step which otherwise could either be cured or waived in ordinary civil proceedings could result in a fatal consequence to the petition. Election petition as a special proceeding is specifically regulated by the Constitution of the Federal Republic of Nigeria, 1999, the Electoral Act and other Rules of Procedure such as the Federal High Court (Civil Procedure) Rules and Practice Direction of the Honourable President of the Court of Appeal for the hearing of the election petition and the election petition appeals. [*Buhari v. Yusuf*** **(2003) 14 NWLR (Pt. 841) 446;** *Hassan v. Aliyu* **(2010) 17 NWLR (Pt. 1223) 547;** *Lokpobiri v. A.P.C.* **(2021)3 NWLR (Pt.1764) 538;** *Oke v. Mimiko* **(No.1) (2014)1 NWLR (Pt. 1388) 225;** *Eze v. Umahi* **(2023) 6 NWLR (Pt. 1880) 383;** *Nyesom v. Peterside* **(2016)7 NWLR (Pt. 1512) 452 referred to.](***P. 288, paras. B-E***)**

68. NOTABLE PRONOUCEMENT:

On Notion of justice in election petitions –

Per ADAH, J.C.A. at page 289, paras. D-F:

> **"When a court is called upon to determine an election dispute, he is called upon to do justice. Our notion of doing justice is not that of doing justice according to the whims and caprices of the Judges or the parties. It must be justice according to law. Justice according to law is also that which is neither based on technicality nor justice according to the suggestive clout of pressure groups, but such as substantially meets the demands of justice. This with all respect, is what we have done in the lead judgment."**

69. *On Status, function and efficacy of concurring judgment or opinion-*

A concurring judgment or opinion forms part of the leading judgment and it is meant to complete same by way of addition or an improvement on the issues resolved in the leading judgment. In P.D.P. v. I.N.E.C. (2023) 13 NWLR (Pt.1900) 89,the Supreme Court, per Okoro, Augie, Ogunwumiju and Agim, JJSC in their concurring opinions held that the 3rd respondent, having withdrawn his nomination and personally delivered the notice of the withdrawal to his party (4th respondent in this petition) on 6th July, 2022, was no longer a candidate for the Borno Central Constituency Senatorial election and his subsequent nomination as the Vice-Presidential candidate for the presidential election was not multiple nomination. That opinion of those Justices was not a comment or observation made in passing. It was an exposition of the law on withdrawal of a candidate from an election and the allegation that the 3rd respondent knowingly allowed himself to be nominated as the Vice-Presidential candidate whilst he was still a Senatorial candidate for the Borno Central Constituency. The Supreme Court having rendered its considered and definite opinion on the validity of the nomination of the 2nd respondent as a Vice Presidential candidate of the 4th respondent, the attempt by the petitioners to re-open the issue in this case was a misadventure. [*Nwana v. F.C.D.A***. **(2004) 13 NWLR (Pt. 889) 128;** *Oloruntoba-Oju v. Abdul-Raheem* **(2009) 13 NWLR (Pt.1157)83;** *Bot v. Jos Electricity Distribution Plc* **(2021) 15 NWLR (Pt.1798)53 referred to.]**(*P.290, paras. A-G*)

70. *On Connotation of 'sentence', 'imprisonment' and 'fine' in section 137(d), 1999 Constitution and whether civil forfeiture amounts to conviction-*

The context in which the word "sentence" is used in Section 137(1) (d) of the 1999 Constitution connotes

A formal pronouncement awarding punishment after conviction for an offence. Conviction is a finding of guilt after an indictment, arraignment and trial. Therefore, the words "sentence", "imprisonment" and "fine" used in section 137(1)(d) of the Constitution definitely connotes only a punishment imposed on a defendant following an indictment, trial and conviction for an offence.[*Koleosho v. F.R.N.(***2014) LPELR-22929; *Mohammed v. Olawunmi* (1990) 2 NWLR (Pt.133) 458; *Modu v. F.R.N*. (2016) LPELR-40471; *Usman v. State* (2015) LPELR-40855; *Sheriff v. F.R.N.* (2016)LPELR-41632 referred to.] (*P.291, paras. C-E*)**

71. *On Nature and effect of and distinction between civil and criminal forfeiture –*

In civil forfeiture or a non-conviction-based forfeiture proceeding, the Government only needs to show by preponderance of evidence that the property is a proceed of crime or was used to facilitate a crime. Criminal forfeiture, on the other hand, is seizure of a property connected with a crime after obtaining conviction and as part of sentence or punishment for the crime. Civil forfeiture is not a conviction or verdict of guilt after an indictment, trial and conviction. Civil forfeiture is an action in rem embarked upon when the interest of the government is merely to recover the proceeds of unlawful activity. Thus, an application for interim forfeiture of property that is not predicated on conviction of the owner of the property would necessarily be an action *in rem* because it is the recovery of the property that the law aims at. [*Jonathan v. F.R.N.*** (2019) 10 NWLR (Pt. 1681) 533referred to.](*Pp. 291-292, paras. E-A*)**

72. *On Condition precedent to acceptance in Nigeria of forfeiture order made by foreign court –*

A forfeiture order by a foreign court can only be

Accepted and recognized by a court in Nigeria for the purpose of section 137(1) (d) of the Constitution if it is made after an indictment, trial and conviction and properly proved as required by section 249 of the Evidence Act. In addition, the conviction and sentence must be shown to have been a product of due process of law. Compliance with due process of law has to be determined by the procedure and standard set by section 36 (5) and (6) of the 1999 Constitution. In the instant case, the forfeiture order relied on by the petitioners was not shown to be a result of a process similar to the one set by the 1999 Constitution for trial of a defendant for an offence.(*P.292. paras. A-C***)**

73. On Nature of conviction that can disqualify a candidate from contesting election to office of President-

A non-conviction-based forfeiture being civil in nature, and an action in rem, cannot be equated with a sentence of imprisonment or fine imposed for an offence involving dishonesty or fraud or for any other offence to disqualify a person from contesting for election to the office of the President of Nigeria. An indictment, arraignment, trial and conviction are necessary preconditions for the disqualification of a person under section 137(1) (d) of the Constitution. [*Abacha v. F.R.N***. (2014) 6 NWLR (Pt. 1402) 43 referred to.](*Pp.292-293, paras. E-A*)**

74. *On Whether Electoral Act 2022 prescribes electronic transfer and collation of election results-*

A global reading of the Electoral Act, 2022particularly sections 47(2), 60(1-5), 62(1) and 65(1-8) would show that what the Act provides for is manual transfer and manual collation of results by Collation Officers at various physical collation centres. There is no provision for electronic transmission or IReV or electronic collation of results in the Act. By Paragraphs 38 and 48(a)

Of the INEC Regulations and Guidelines for the Conduct of Elections, 2022, the 1st respondent made provision for electronic transmission and physical/manual transfer of election results from the polling units. However, Paragraph 48(c) provides that if no result has been electronically transmitted from the polling unit, the provision of Paragraph 93 shall be applied. Paragraph 92 categorically provides that at every level of collation, where the INEC copy of collated results from the immediate lower level of collation exists, it shall be adopted for collation. By Paragraph 93, where INEC hardcopy and electronically transmitted results from the immediate lower level of collation do not exist, the Collation Officer shall use duplicate hard copies issued to the Nigeria Police Force and Agents of Political Parties to collate results. It is therefore not correct that it shall not be possible to collate results of the election where results have not been electronically transmitted. (*Pp.293, paras. B-F***)**

75. *On Status of INEC Regulations and Guidelines vis-à-vis Electoral Act and which takes precedence –*

By law, the INEC Regulations and Guidelines for the Conduct of Elections, 2022 is subordinate to the Electoral Act, 2022. Where a provision of the guidelines conflicts with the Act, the Act prevails. By virtue of section 134(2) of the Electoral Act, any circular, press release, promise or stated intention of INEC that is in conflict with or expand the provisions of the Electoral Act cannot prevail over the Act. INEC Guidelines cannot be elevated above the provisions of the Electoral Act so as to elevate electronic transmission of results over and above manual or physical transmission of hard copies and manual collation of results as provided by the Act to the extent that non-compliance with the Regulation automatically invalidates an election. [*Odeneye v. Efunuga*** **(1990) 7 NWLR (Pt. 164) 618;** ***Nyesom v.***

Peterside **(2016) 1 NWLR (Pt. 1492) 71 referred to.]** (*P.293.paras.G-A*)

Per BOLAJI-YUSUFF, J.C.A. at pages 294-295, paras. A-B:

> **"PW4, the Professor of Mathematics presented to this court as an expert witness confirmed under cross-examination that IReV is not a collation system. He also confirmed that whether or not transmission to IReV failed or the image of result on the IReV is blurred will not change the result entered on the formEC8A at the polling unit level. Under cross-examination, PW 12 stated that the petitioners had 133,000 agents. He was not a party agent at any of the INEC's designation polling units or collation centres. None of the 133,000 party agents was called to testify that there was a dispute regarding any collated result at the polling units, Registration ward, Local Government, State or National Collation Centres so as to enable the Collation Officers at the various levels of collation to activate the process prescribed under section 64(6) of the ACT.**
>
> **PW12 stated that the petitioners believed they would have won the election if the results had been uploaded. When asked about the score of the petitioners by which they claimed to have won the election, he answered rhetorically that how are they supposed to know the score when the results were still being uploaded on the IReV. So, this petition is about the belief of the petitioners that they would have won the election if results had been uploaded on the IReV. Election petition is a serious issue. A petitioner is not permitted to engage in fishing expedition or a roving enquiry as the petitioners herein did. It is clear from the pleadings and the evidence of PW 12 that the petitioners were**

From the onset engaged in a wild goose chase and inquisitorial adventure. By Paragraph 9 of the Regulation, a political party has a right to appoint one person as its polling agent for each polling unit, collation center and one representative at each point of distribution of electoral materials in the constituency where it is sponsoring candidate(s) for an election. According to PW12, the petitioners exercised that right and had 133,000 party agents in the election. I stated earlier that none of those 133,000 polling agents was called and not a single one of the result forms collected by any of the agents was tendered in evidence. Electoral Act provided a candidate who wishes to challenge any result declared by INEC with a potent material which are the Forms on which results are entered, signed by the 1st respondent's officials and party agents and a duplicate copy of which is given to a party agent. Any serious candidate ought not to depend on INEC for materials to prosecute his petition. By section 167 (d) of the Evidence Act, the failure of the petitioners to produce election result forms collected by their agents raises a presumption that if those forms had been produced, would have been unfavourable to the petitioners."

76. *On Duty on court to rely on and act only on credible evidence adduced before it –*

Per BOLAJI-YUSUFF, J.C.A at page 295, paras. B-F:

"The 1st respondent in their pleadings and evidence through RW1 stated that the delay in uploading the results from the polling units to the IReV was due to a technical glitch which occurred on its transmission system and which was rectified within a few hours. All that the petitioners could do was to bring PW7, a

Member of their party who claimed to be a software engineer and an employee of Amazon Web services, Inc. She had the temerity and the audacity to claim authorship of a document, a word of which does not belong to her. The 1st Respondent never claimed that the glitch which occasioned the delay in uploading the results to the IReV occurred on the AMAZON Server. It is obvious from PW4's evidence that the Petitioners did not understand the explanation of the 1st respondent or they were just fixated on their believe that they won the election. They did not bother to place any cogent and credible Evidence before the court. They expected the Court to collect evidence from the market or be Persuaded or intimidated by threat on social Media. That is not the way of the court. See Tobi, JSC's admonition in *Buhari v. I.N.E.C.* **(2008) 4 NWLR (Pt.1078) 546; (2008) LPELR-814 (SC) at 174-178(D-B) in a situation like the Instant case."**

77. NOTABLE PRONOUNCEMENT:

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

Per BOLAJI-YUSUFF, J.C.A at page 296, paras. B-H:

"Our Constitution is based on the principles of freedom, equality and justice in all ramifications, and is for the purpose of consolidating the unity of our people. Section14 (1) and (2) states that the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice. The participation by the people in their Government shall be ensured in accordance With the provisions of the Constitution. The right to vote is at the foundation of our democracy. It is the most potent and priceless

Opportunity a citizen has to have a say in who governs. Every citizen who is qualified to vote must be afforded equal opportunity to cast his or her vote to elect leaders who governs. Our constitutional principles of freedom, equality and justice, democracy and social justice means that the vote of each citizen shall count. Each and every vote should count equally. No vote should weigh more than the other. The principles of equality of votes must protected by the court.

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

78. NOTABLE PRONOUNCEMENT:

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

Per UGO, J.C.A at pages 298-302, paras. H-F:

"Incidentally, that assertion of petitioners- that INEC simply closed down or block edits IReV and e-transmission system from the

Public to enable it manipulate the presidential election results in favour of 2nd respondent-also takes me directly to the more important question in the petition, namely, whether that allegation is even worthy of belief given the results declared by INEC for them and the2md respondent in the election. To answer that million-Dollar question, I deem it necessary to resort to the probabilities arising from the facts of the case, otherwise called the 'probability test', which test highly celebrated Judge, Chukwudifu Akunne Oputa, J.S.C, always maintained is "the surest road to the shrine of truth and justice." See *Dibiamaka v. Osakwe* **(1989) 3 NWLR (Pt.107)101; (1989)2 NSCC253 @ 260 lines 46-50 (per Oputa, JSC) and** *Ojegele v. The State* **(1988) 1 NWLR (Pt.71) 404 @ 420 paragraph G-H. Here, the assertion of petitioners is that 1st respondent, INEC, merely used the excuse of glitch in its IReV portal to block the public from seeing its polling unit's results real time so that it could manipulate, and in fact did actually manipulate, the 25thFebruary 2023 presidential election results in favour of 2nd respondent. It is their further contention that the manipulation of IReV by INEC with the said phantom glitch in favour of 2md respondent was nationwide. The question is, do the results declared nationwide by INEC support that hypothesis? They say the taste of the pudding is in the eating. I shall therefore now try to walk us through some of these election results to see if that assertion of petitioners is supported by the results declared by INEC and so probable and worthy of belief. In doing that, I shall randomly pick on the results of some States of the Federation and the Federal Capital Territory. I shall be relying on the State Summary of Results (Form EC8D) declared by INEC and as also attached**

To their petition by the petitioners in CA/PEPC/05/2023, which result was also tendered by both sets of petitioners and respondents. So, I take on, first, Abia State. There,2nd respondent, the alleged favoured candidate of INEC, for which it was said to have shut down its IReV to manipulate results, only garnered a miserly 8, 914 votes. That is as against the Labour Party which, by INEC's declaration, polled as many as 327,095 votes. Even the other set of petitioners, the PDP and its candidate, scored more votes in Abia than INEC's purported favoured candidate. They also scored 22,676 votes in Abia State and was so recorded by INEC. Those votes alone are close to three times the votes of 2nd respondent for whom INEC was said to have manipulated results by closing down its IReV so that the public would not witness its manipulative activities in favour of 2nd respondent.

In Enugu State, the same 'favoured' candidate, 2nd respondent, was again declared/credited by INEC to have polled only 4,772 votes in the entire State. Meanwhile, the Labour Party and its candidate were again declared by 'manipulative and unfriendly' INEC to have scored as much as 428,690 votes in that State. In the same Enugu State, PDP and its candidate also was declared by INEC to have polled 15,745 votes: a number that is also nearly three times the votes of the so-called favoured 2nd respondent.

In Anambra State, the same purported favoured candidate (2nd respondent) was declared by its alleged friend, INEC, to have scored only 5,111 votes. Meanwhile, the Labour Party, whose candidate, 1st petitioner in CA/PEPC/03/2023, I must take judicial notice of vide section 124 of the Evidence Act 2011, is from that State, again was declared to have

Polled as much as 584, 621 votes. Again, like Enugu State, the PDP and its candidate was declared by INEC to have polled 9,036 votes, a number that is also nearly double the votes of 'INEC favoured' 2nd respondent.

In neighbouring Delta State, the same INEC. favoured candidate, 2nd respondent, was declared by INEC to have scored 90,180.Thatis as against the Labour Party and its candidate which is credited by the same 'biased' INEC to have scored as much as 179,917 votes. In that same Delta State, the PDP and its candidate scored 161,600 votes, again nearly double the votes of 2nd respondent.

In Adamawa State of the PDP and its candidate, the same 'favoured' 2nd respondent was declared by INEC to have scored only 105,648 votes while the PDP and its candidate were declared by the 'biased' INEC to have scored as much as 214,012 votes.

In Imo State, the same purported INEC-favoured candidate (2nd respondent) was declared by INEC to have scored only 66,406votes while the Labour Party and its candidate is declared by the same INEC to have polled as much as 360,495.

In Ebonyi State the Labour Party again scored as much as 259,738 votes. That is as against alleged INEC-favoured 2nd respondent, who, by INEC's declaration, again polled a relatively miserly 42,402 votes. The PDP is said to have scored 13,503 votes there too.

Even in Lagos State where 2nd respondent once held sway as elected Governor, the Labour Party and its candidate was again declared by 'biased' INEC to have beaten 2nd respondent with almost 10,000 votes. Labour Party was declared by INEC to have polled 582,455 votes, as against 572,606 polled by 2nd respondent and so declared by INEC.

It is a similar story in the Federal Capital Territory of Abuja where INEC has its headquarters and supposedly carried out/directed all its manipulative and biased activities in favour of 2nd respondent that petitioners claim it did in the election. Second respondent and his political party still lost there. In fact, by the result '2nd respondent friendly' INEC declared in the Federal Capital Territory of Abuja, 2nd respondent could not even make 25% of the total votes cast there. He was said to have only polled 90,902 votes. That amounts to just 18.991% of the total votes cast in the F.C.T., yet INEC declared that result. That is as against 281, 717 votes, amounting to 58.856% of the total votes, the same INEC declared for Labour Party and its candidate. There are also other States, including Katsina State of the immediate past President of this country, a member of 2nd respondent who was still in office at the time of the elections, a fact I shall again take judicial notice vide section 124 of the Evidence Act 2011. There again, 2ndrespondent and his Party, the A.P.C., which he shares of the then sitting President, was declared by the same INEC to have lost to the petitioners in CA/PEPC/05/2023.If all these results declared by INEC for each

Of these States for the two sets of petitioners and 2nd respondent is anything to go by, then INEC must be an abysmally poor manipulator, if not even an imbecilic one. Surely, it would not go through all the trouble of closing down its IReV and blocking the public from seeing its manipulative efforts in favour of 2nd respondent, as alleged by the petitioners, only to still end up favouring the petitioners with jumbo votes and posting miserly figures for its favoured 2nd respondent. It is said that "All

Men stamp as probable that which they would have said or done under similar circumstances and as improbable that which they themselves would not have said or done under the same set of similar circumstances. Things inconsistent with human knowledge and experience are properly rated as improbable." See Oputa, J.S.C in *Onuoha v. The State* **(1989) 1 NSCC 411 @ 418: (1989) 3 NWLR (Pt. 107) 101 and** *Bozin v. The State* **(1985) LPELR-799 (SC) p.9; (1985) 2 NWLR (Pt.8) 465.**

At any rate, why did any of the two sets of petitioners not tender even a single polling unit result issued by INEC to their polling unit agents to support their claim of manipulation of election results by INEC, even as they all agreed that they had agents in the polling units? I had thought that is the best and most effective way of proving the manipulation of election results alleged by them. After all, the polling unit is the only place where voting takes place and so also constitutes the building block of election results. See paragraph 91 of INEC Regulations and Guidelines for the Conduct of Elections, 2022 and the cases of *Nwobodo v. Onoh* **(1984) 1 SCNLR 1 and** *Awuse v. Odili* **(2005) 16 NWLR (Pt.952) 416 @ 448.**

In short, the allegation of the petitioners that INEC shut down its IReV to manipulate votes for 2nd respondent just does not add up for me. If anything, the probabilities arising from the results INEC declared nationwide as X-rayed above rather seem to me to eloquently support INEC's position that its inability to upload the polling unit results real-time as earlier promised was not deliberate but caused by technical issues outside its control that afflicted its e-transmission system, which issues it claims made it impossible for its e-transmission system to map the uploaded

Polling units' results for the Presidential election to any specific State. That it claimed, is unlike the much smaller National Assembly elections that were conducted simultaneously with the Presidential election. It is that phenomena it describes as glitch that was giving it an 'HTTP500' Error which resultantly delayed real time public viewing of the said polling unit results."

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

Without the makers of reports of election observers presenting themselves in court to face cross-examination to authenticate their opinions, such reports are completely valueless and inadmissible for the purpose of authenticating the opinions expressed in them by their makers. In the instant case, the European Union Election Observer Mission Report on the 2023 Presidential Election tendered by the petitioners and admitted as exhibit RA27 as well as the ECOWAS Election Observer Report, without the authors presenting themselves in court to defend their opinions, were worthless for purposes of proving the opinions expressed in them by their makers, and it made no difference that the Reports had been put in the form of print because books cannot be cross-examined.[*Nyesom v. Peterside*** **(2016) 7 NWLR (Pt. 1512) 452;** ***Sa'eed v. Yakowa*** **(2013) All FWLR (Pt. 692) 1650;** ***Idundun v. Okumagba*** **(1976) 9-10 SC 227 referred to and applied.] (***Pp. 303-304, paras. A-C***)**

Per UGO, J.C.A. at page 304, paras. D-E:

> **"And for those who like the petitioners are enamoured by the now very familiar patronising judgments passed on our elections by European Election Observer Missions every four years, even as the same Europeans have maintained a deafening silence on the never-ending complaints of former President Donald Trump that the year 2020 Presidential**

election of the United States of America that saw him out of office was also a fraud, it may interest them to know that Sir (Justice) Lionel Brett, J.S.C., who made the comments cited approvingly by the Supreme Court in Okumagba's case was also a European."

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

The doctrine of issue estoppel is that once an issue has been finally decided by a competent court, the issue will not be allowed to be relitigated by the same or even by different parties. In the instant case, the decisions of the Federal High Court in exhibits X1 and X2 tendered in Petitions Nos. PEPC/03/2023 and PEPC/05/2023, respectively, as well as the decision of the Court of Appeal in CA/LAG/ CV/332/2023: *A.P.C. v. Labour Party* **had finally decided the issue that by the provisions of the Electoral Act, 2022 and the Regulations and Guidelines for Conduct of Elections, 2022 the 1st respondent was not mandatorily required to electronically transmit election results to the collation system and the INEC Result Viewing Portal (IReV). [***Ikotun v. Oyekanmi* **(2008) 10 NWLR (Pt.1094) 100;** *A.P.C. v. P.D.P.* **(2015) 15 NWLR (Pt. 1481) 1;** *Ezewani v. Onwordi* **(1986) 4 NWLR (Pt.33) 27 referred to.](***Pp.307-308, paras. E-B***)**

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Petition:

This was a petition challenging the return by the 1st respondent of the 2nd , 3rd and 4th respondents as duly elected following the election to the office of President of the Federal Republic of Nigeria held on 25th February 2023.The Court of Appeal, sitting as the Presidential Election Petition Court, in an unanimous decision, dismissed the petition.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Presidential Election Petition Court, Abuja Names of Justices that sat on the appeal: Haruna Simon Tsammani, J.C.A.(*Presided and Read the Leading Judgment*):Stephen Jonah Adah, J.C.A.; Misitura Omodere Bolaji-Yusuff, J.C.A.; Boloukuromo Moses Ugo ,J.C.A.; Abba Bello Mohammed, J.C.A.

Petition No.: CA/PEPC/03/2023

Date of Judgment: Wednesday, 6th September 2023

Counsel:

Dr. Livy Uzoukwu, SAN; Awa Kalu, SAN; Dr. Onyechi Ikpeazu, SAN; Chief Ben Anachebe, SAN; Ikechukwu Ezechukwu, SAN; J.S. Okutepa, SAN;Prof. Paul Ananaba, SAN; Dr. Mrs. Valerie-Janette Azinge, SAN; Emeka Okpoko, SAN; Alex Ejesieme, SAN; Peter Afuba, SAN(*with them*, Emenike Mbanugo, Esq, Chike A. Obi, Esq. and Vincent Ottaokpukpu, Esq.)-*for the Petitioners*

A.B.Mahmoud, SAN; Miannaya Essien, SAN; Sir Stephen Adehi,SAN; T.M. Inuwa, SAN; Alhassan A. Umar, SAN; Abdulaziz Sani, SAN and S.O. Ibrahim, SAN (*With them*, Nasara H. Auta, Esq; Aminu Sadauki, Esq. and Dr. Patricia Obi,Esq.)-*for the 1st Respondent*

Chief Wole Olanipekun, SAN; Chief Akin Olujinmi,SAN; Yusuf Ali,SAN; Emmanuel Ukala, SAN; Prof. Taiwo Osipitan, SAN; Dele Adesina, SAN; Dr. Hassan Liman, SAN; Olatunde Busari, SAN; A.U. Mustapha, SAN; Kehinde Ogunwumiju, SAN; Bode Olanipekun, SAN; A.A. Malik, SAN; Funmilayo Quadri, SAN; Babatunde Ogala, SAN; Dr. Remi Olatubora, SAN and M.O. Adebayo, SAN (*with them,* Emmanuel Uwadoka; Esq.; Yinka Ajenifuja, Esq. and Akintola Makinde,Esq.)-for the 2nd & 3rd Respondents

L.O. Fagbemi, SAN; Chief Dr. Charles U. Edosomwan, SAN; Chief Adeniyi Akintola, SAN; Afolabi Fashanu, SAN; Chukwuma Ekomani, SAN; Abiodun J. Owonikoko, SAN; Solomon Umoh, SAN; Hakeem O. Afolabi, SAN; Y.H.A. Ruba, SAN; Chief Anthony Adeniyi, SAN; Mumuni Hanafi. SAN (*with them*, Japhat Opawale, Esq., Olanrewaju Akinshola,Esq and Huwaila M. Ibrahim,Esq.)-*for the 4th Respondent*

TSAMMANI, J.C.A. (Delivering the Leading Judgment): On the 25th of February, 2023, the Independent National Electoral Commission (I.N.E.C.), (the 1st respondent in all the above three petitions), conducted the Presidential Elections in Nigeria. At the end of the elections the 1st respondent declared Bola Ahmed Tinubu who was sponsored by the All Progressives Congress as the winner of the election and returned him as duly elected as the President of the Federal Republic of Nigeria. Arising from the outcome of the election, the above three petitions were filed before this court. During the pre-hearing session, the three petitions were consolidated by the court, even as the identity of each of the petitions were preserved in line with the settled procedure relating to consolidation of actions. I shall proceed to deliver the judgments in the above three petitions starting however, with petition No. CA/PEPC/04/2023, then CA/PEPC/03/2023 and CA/PEPC/05/2023, in that order.

CA/PEPC/03/2023:

On the 25th of February, 2023, the Independent National Electoral Commission (I.N.E.C.), the 1st respondent herein, conducted the Presidential and National Assembly Elections in Nigeria. The 1st petitioner, who was sponsored by the 2nd petitioner as its Presidential candidate, as well as the 2nd and 3rd respondents, who were sponsored by the 4th respondent as its Presidential and Vice-Presidential candidates, contested the Presidential election, along with other candidates. At the end of the election, the 1st respondent returned the 2nd respondent as the duly elected President of the Federal Republic of Nigeria, with 8,794,726 votes. The Is petitioner came third with 6,101,533 votes, behind Abubakar Atiku of the People's Democratic Party (PDP)who came second with 6,984,520 votes. Dissatisfied with the result of the election, the petitioners filed this petition on

The 20 of March, 2023 challenging the outcome of the election on the following three grounds, which are stated in paragraph 20 of the petition:

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

(ii) The election of the 2nd respondent was invalid by Reason of corrupt practices or noncompliance with the Provisions of the Electoral Act, 2022.

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

Based on the above grounds, the petitioners then sought for the reliefs stated in paragraph 103 of the petition, which I reproduce below:

103. On behalf of the petitioners, I hereby:

1. First pray as follows:

(i) That it be determined that at the time of the presidential Election held on 25th February, 2023, the 2nd and 3rd respondents were not qualified to contest the election.

(ii) That is be determined that all the votes recorded For the 2nd respondent in the election are wasted votes, owing to the non-qualification/Disqualification of the 2nd and 3rd respondents.

(iii) That it be determined that on the basis of the remaining votes (after discountenancing the Votes credited to the 2nd respondent) the 1st Petitioner scored a majority of the lawful votes cast at the election and had not less than 25% Of the votes cast in each of at least 2/3 of the States of the Federation and the Federal Capital Territory, Abuja, and satisfied the constitutional Requirements to be declared the winner of the 25th February, 2023 Presidential election.

2. That it be determined that the 2nd respondent having failed to score one-quarter of the votes cast at the presidential election in the Federal Capital Territory, Abuja, was not entitled to be declared and retuned as the winner of the Presidential election held on 25th February, 2023.

In the Alternative to 2 Above:

3. An order cancelling the election and compelling the 1srespondent to conduct a fresh election at which the 2nd 3rd and 4th respondents shall not participate.

In the Alternative to 1, 2 and 3 Above:

4(i) That it may be determined that the 2nd respondent was not duly elected by a majority of the lawful votes cast in the election for the office of the President of the Federal Republic of Nigeria held on 25th February, 2023; and therefore, the declaration and return of the 2nd respondent as the winner of the Presidential election are unlawful, unconstitutional and of no effect whatsoever.

(ii) That it be determined that based on the valid voted cast at the Presidential election of 25th February, 2023, the 1st petitioner scored the highest number of votes cast at the election and not less than one quarter of the votes cast at the election in each of at least two-thirds of all the States of the Federation and the Federal Capital Territory, Abuja and ought to be declared and returned as the winner of the Presidential election.

(iii) An order directing the 1st respondent to issue certificate of return to the 1st petitioner as the duly elected president of the Federal Republic of Nigeria.

(iv) That it be determined that the certificate of return wrongly issued to the 2nd respondent by the 1st respondent is null and void and be set aside.

In the Further Alternative to 1, 2, 3 and 4 Above:

5(i) That the Presidential election conducted on 25th February, 2023 is void on the ground that the election was not conducted substantially in accordance with the provisions of the Electoral Act,2022 and Constitution of the Federal Republic of Nigeria,1999(as amended).

(ii) An order cancelling the Presidential Election conducted on 25th February, 2023 and mandating the1st respondent to conduct a fresh election for the office of President of the Federal Republic of Nigeria.

Upon being served with the petition, the 1st respondent filed its reply to the petition on the 10th of April, 2023.The 2nd and 3rd respondents filed a joint reply to the petition on 12th April, 2023,

While the 4th respondent filed its reply to the petition on the 10th of April, 2023. On the 21st of April, 2023 the petitioners responded by filing separate replies to the replies of the 1st, 2nd and 3rd and the 4th respondents. The 1st, 2nd and 3rd and the 4th respondents also incorporated preliminary objections in their respective replies to the petition and also filed motions challenging the competence of the petition and the petitioners' replies or in the alternative, some of the paragraphs of the petition and the petitioners' replies.

The pre-trial session was held from the 8th of May, 2023 to the 22nd of May, 2023. At the pre-hearing session, this petition was consolidated with two other petitions challenging the same Presidential Election, in line with paragraph 50 of the 1st Schedule to the Electoral Act, 2022. The other petitions are:

(i) CA/PEPC/04/2022*: Allied Peoples Movement v. I.N.E.C. & 4 Ors*; and
(ii) CA/PEPC/05/2022: *Abubakar Atiku & Anor v. I.N.E.C.& 2 Ors*

During the pre-hearing session, the court heard all pending motions and preliminary objections made by the respondents. As mandated by section 285(8) of the Constitution of the Federal Republic of Nigeria, 1999, the court deferred rulings on those applications to be delivered at the stage of final judgment.

In line with the trite position of law as restated by the Supreme Court in *F.B.N. Plc v. T.S.A. Industries Ltd.* (2010) LPELR-1283(SC) at page 13, paras. B-E, (2010)15 NWLR (Pt.1216)247, I shall first consider and determine the respondents' objections to the competence of the petition and the petitioners' replies, or the listed paragraphs thereof, before determining the main petition.

The Respondents' Various Preliminary Objections:

The 1st respondent represented by A.B. Mahmoud, SAN; the 2nd and 3rd respondents represented by Chief Wole Olanipekun SAN; and the 4th respondent represented by Prince L.O. Fagbemi, SAN, filed separate preliminary objections challenging the competence of the petition and the petitioners' replies to the respondents' respective replies, or in the alternative, seeking to strike out some of the grounds and/or paragraphs of the petition, as well as the petitioners' replies. The various objections of the respondents fall in to three categories. These are:

(i) those seeking to strike out some paragraphs of the petition for being vague, generic and nebulous;

(ii) those seeking to strike out the petition or some of its grounds; and

(iii) those seeking to strike out the petitioners' replies or some paragraphs of the replies.

1. Objections to Vague, Generic, Imprecise and Nebulous Averments:

The first category consists of those applications seeking to strike out some paragraphs of the petition. They are:

A: 1st respondent's motion filed on 19th April, 2023 essentially sought the following reliefs:

(i) Order striking out paragraphs 60 – 79, 83, 98 and 99 of the petition for being vague, nebulous and imprecise and after striking out those paragraphs, strike out grounds of the petition alleging corrupt practices and failure of the 2nd and 3rd respondents to score majority of lawful votes.

(ii) Strike out paragraphs 57 and 58 of the petition for being inconsistent with paragraphs 65, 67, 70 and 71 of the petition.

(iii) Strike out prayers 3, 5(i) and (ii) in paragraph 102 of the petition, as well as prayers 1(iii), 4(i), (ii), (iii), (iv) in paragraph 102 of the petition, and thereafter dismiss the petition *in limine* for being academic and for being an abuse of court process.

B: The 2nd and 3rd respondents' motion filed on 13th May, 2023 seeking for:

(i) Order striking out paragraphs 9, 52 -55, 60, 66-73, 75 -78, 92, 95, 96 & 97 of the petition for being vague, imprecise, generic and nebulous.

(ii) Order striking out paragraphs 80 – 82, 84-98 for failure to disclose facts to support the ground that the 2nd and 3rd respondents did not score majority of lawful votes.

(iii) Order striking out paragraphs 80 – 82 and 84-98 on the failure to score 25% in the FCT which cannot be premised on the ground of failure to score majority of lawful votes.

C: 4th Respondent's motion filed on 8th May, 2023 seeking for:

(i) An order striking out this petition for being incompetent and in gross violation of paragraphs 4(1) (d), (2) and 7 of the First Schedule to the Electoral Act, 2022.

(ii) An order of this honourable court striking out ground (ii) of the petition and all associated facts contained in paragraphs 20(ii), 33 - 78 of the petition for being incompetent.

(iii) An order of this honourable court striking out paragraphs 20(ii), 33 -78 of the petition for not being in support of any valid ground in the petition.

(iv) An order of this honourable court striking out paragraphs 21 -27, 29 -100 of the petition for being non-specific, lacking in clarity, generic, nebulous, vague, speculative and gold-digging in contravention of the 1st Schedule to the Electoral Act, 2022.

In their above applications, all the respondents relied on the provisions of paragraph 4(1) (d) and (2) of the First Schedule to the Electoral Act, 2022 and variously argued that the paragraphs of the petition which they have listed are liable to be struck out for being vague, generic, imprecise and nebulous. In so arguing, the respondents have relied on the cases of *Akpoti v. I.N.E.C.* (2022) 9 NWLR (Pt. 1836) 403 at 423; *Belgore v. Ahmed* (2013) 8 NWLR (Pt. 1355) 60 at 95- 96, paras. G - C; *Ikpeazu v. Otti* (2016) 8 NWLR (Pt. 1513) 38 at 97; *P.D.P. v. I.N.E.C.* & 3 Ors (2012)7 NWLR (Pt. 1300) 538 at 560; *Ogu v. Ekweremadu* (2006)1 NWLR (Pt. 961) 255 at 278; and *Ojukwu v. Yar'Adua* (2009) 12 NWLR (Pt.1154) 50 at 110, among several others.

Per contra, the petitioners have submitted that the respondents' objections that the listed paragraphs of the petition are vague and nebulous, is defeated because the petitioners have indicated in the petition that they shall be relying on spreadsheets and forensic/expert evidence to prove the averred facts. The petitioners have particularly argued that in paragraphs 61, 65, 67, 69, 70, 71, 72, 73, 83 and 100 of the petition, they have pleaded the said spreadsheets and forensic reports by incorporation or reference, and that this

means that the said documents have not only been incorporated but have been sufficiently pleaded. On this point, the petitioners have relied on the cases of *E.F.C.C. v. Reinl* (2020) 9 NWLR (Pt.1730) 489 at 517-519(SC); *Ekpemupolo v. Ederemoda* (2009) 8 NWLR (Pt. 1142) 166 at 186F – 187C; *Marine Management Associates Inc. v. N.M.A.* (2012) 18 NWLR (Pt. 1333)506 at 535H-537C; and *Dingyadi v. Wamakko* (2008) 17 NWLR (Pt. 1116) 395 at 444C-D.

The petitioners further argued that the facts in *Belgore v. Ahmed; Ikpeazu v. Otti*; *Ogu v. Ekweremadu*; *Ojukwu v. Yar'adua*; *P.D.P. v. I.N.E.C. & 3 Ors*; *Asogwa v. Ugwuede*, and all other cases cited by the respondents above, are not the same with the facts of this petition, because documents were never pleaded by reference or incorporation in those cases. Additionally, the petitioners have relied on paragraph 17(2) of the 1st Schedule to the Electoral Act, 2022 and argued that the respondents have joined issues with the petitioners on those paragraphs, and having failed to seek for further particulars, they must be taken to have understood the said paragraphs. They placed reliance on *Ombugadu v. Sule* (2021)2 NWLR (Pt. 1759) 171 at 183E-F (SC), and argued that same constitutes binding precedent over *P.D.P. v. I.N.E.C. & 3 Ors* (supra), which was decided in 2012.

I have carefully considered the submissions of the parties and the judicial authorities cited. It is trite that adversarial civil litigation is basically fought on pleadings. It is the foundation of the parties' respective cases. The general principle of law is that such pleadings must sufficiently and comprehensively set out material facts, so as to ascertain with certainty and clarity the matters or issues in dispute between the parties. This is because the purpose of pleadings is to give adequate notice to the adversary of the case he is to meet and to afford him the opportunity to properly respond to such case. Its aim is to bring to the knowledge of the opposite side and the court, all the essential facts. It is therefore a safeguard against the element of surprise. See: *Sodipo v. Lemminkainen OY &Anor (*1985) LPELR-3088 (SC) at page 56, para. F, (1986) 1 NWLR (Pt.15) 220, per Oputa, JSC; *Odom & Ors v. P.D.P. & Ors* (2015) LPELR-24351(SC); (2015) 6 NWLR (Pt.1456) 527; *Alhassan & Anor v. Ishaku & Ors* (2016) LPELR-40083(SC); (2016)10 NWLR (Pt. 1520) 230;and *P.D.P. v. I.N.E.C. & 3 ors* (supra).

The requirements of pleadings in election petitions are primarily provided in paragraph 4 of the 1st Schedule to the Electoral Act, 2022. Specifically, paragraph 4(1) (d) mandates that "an election petition shall state clearly the facts of the election petition and the ground or grounds on which the petition is based and the reliefs sought by the petitioner." Subparagraph (2) of the same paragraph further provides that "the election petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts of the election petition, and every paragraph shall be numbered consecutively."

In addition to the provision of paragraph 4 of the 1st Schedule to the Electoral Act, paragraph 54 of the same Schedule to the Act has made applicable to Election petitions the Rules of Civil Procedure in the Federal High Court of 2019, subject to such modifications as would bring same in conformity with the provisions of the Act. By Order 13 rule 4 of the Federal High Court (Civil Procedure) Rules, 2019, every party to an election petition shall ensure that averments in their pleadings "contain in a summary form the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, and numbered consecutively." By subparagraph (4) of that Rule, such facts contained in the pleading must "be alleged positively, precisely and distinctly, and as briefly as is consistent with a clear statement."

The aforementioned provisions contained in the 1 Schedule to the Electoral Act, 2022, as well as the Federal High Court Rules, 2019 state the mandatory requirements of pleadings in election petitions. The requirements for clarity and precision off act required by paragraph 4 of the 1st Schedule to the Act means that averments must not be vague, ambiguous or unclear, leaving room for speculation or conjecture, while the requirement of distinctiveness means that each averment must contain a clearly understandable allegation and there should be no confusion as to the linkages between facts contained in the averments in the petition in ascertaining the allegations being made in the petition. In particular, paragraph 4(1) (d) relating to the facts of the petition, the grounds on which it is based, and the reliefs sought by the petitioner, have been severally considered and interpreted by the appellate courts.

In *Belgore v. Ahmed* (supra), the complaint against the averments in the petition was that they were unspecific, generic,

Speculative, vague, unreferable, omnibus and general in terms. In that case the apex court specifically held as follows:

> "Pleadings in an action are the written statements of the parties wherein they set forth the summary of the material facts on which each relied in proof of his claim or his defence as the case may be and by means of which the real matters was (sic) controversy between the parties and to be adjudicated upon are clearly identified. Although only material facts are required to be pleaded and in a summary form, they must nevertheless be sufficiently specific and comprehensive to elicit the necessary answers from the opponent. See *Ashiru Noibi v. Fikolati & Ors* (1987) 3 SC 105 at 119, (1987) 1 NWLR (Pt.52) 629 and *Omorhirihi v. Enetevwere* (1988) 1 NWLR (Pt.73) 746. They must contain such details as to eliminate any element of surprise to the opposing party. In this case where the dispute involves the election in as many as 895 polling units, the pleading in the petition which alleged electoral malpractices, non-compliance and/or offences in "some polling units", "many polling units", "most polling units" or "several polling units" cannot be said to have met the requirements of pleadings as stipulated in paragraph 4(1)(d) of the 1st Schedule to the Electoral Act and/or Order 13 rules 4(1), 5 and 6(1) of the Federal High Court (Civil Procedure) Rules, 2009."

Also, in *P.D.P. v. I.N.E.C.* (supra), the apex court, was also categorical when it held thus:

> "On whether the affected paragraphs were rightly struck out, I have read the affected paragraphs and found that they relate to allegations of non-voting in several polling points, disruption of election, non-conclusion of election, thumb-printing of ballot papers, falsification of election results, wide spread disruption, irregularities and malpractices without providing particulars or the polling units where the alleged malpractices took place. The lower court was therefore right when it held as follows:

> "The paragraphs above in my view are too generic, vague and lacking in any particulars as they are not tied specifically to any particular polling unit or any particular number of people who were alleged to be disenfranchised. The fact that a party can file further particulars or deny in a reply the averment in the pleading must not be general, it must be specific as to facts. It is settled law that a petitioner's obligation to plead particulars of fraud or falsification without which the allegation is a non-starter."
>
> I have nothing to add to this statement of law as advanced above, and I adopt it as mine."

Indeed, on the provision of paragraph 17(1) of the 1st Schedule to the Electoral Act, relating to further particulars, the apex court held in *P.D.P. v. I.N.E.C. & Ors* (supra), that:

> "An application for an order for further particulars is merely a shield in the hand of a party who so desires and not a sword to be used by a party whose pleading is grossly inadequate, insufficient and devoid of necessary particulars as the appellant's petition was in the instant case."

A sober consideration of the decisions of the Supreme Court in relation to the requirements of pleadings in paragraphs 4(1)(d) of the 1st Schedule to the Electoral Act, 2022 on the one hand, and the decisions of the Supreme Court on the provision of paragraph 17(1) and (2) of the 1st Schedule to the Electoral Act, 2022 relating to further particulars, on the other hand, shows that, whilst incases such as *Abubakar v. Yar'adua* (supra) and *Ombugadu v. Sule* (supra), the Supreme Court had held that a respondent who complains of vagueness of averments in an election petition should avail himself of the provision of paragraph 17(1) of the 1st Schedule to the Electoral Act to seek for further particulars or the direction of the Tribunal or Court, the decisions of the apex court especially in *P.D.P. v. I.N.E.C.* (supra) and *Belgore v. Ahmed* (supra), have specifically held that where averments in a petition are grossly imprecise and generic, such averments will be incompetent and liable to be struck out. See also on this: *Ikpeazu v. Otti* (2016) LPELR-40055(SC), (2016) 8 NWLR (Pt.1513)38.

It is therefore clear that the state of the law as could be deduced from the various decisions of the apex court, is that the provision for further particulars as stated in paragraph 17(1) of the 1st Schedule to the Electoral Act, 2022 will only come into play where the petition itself contains material or necessary particulars. In other words, paragraph 17(1) of the 1st Schedule to the Electoral Act, 2022 does not bar a respondent from applying under paragraph 4(7) of the 1st Schedule to strike out averments in a petition which are grossly inadequate, insufficient and devoid of material or necessary particulars. This is because the operational words in paragraph 17(1) is "further particulars", and this means there must be some material particulars already pleaded in the petition before further particulars can be sought by the respondent.

As borne from the apex court decisions in *Belgore v. Ahmed* (supra); *P.D.P. v. I.N.E.C. & Ors* (supra) and *Ikpeazu v. Otti* (supra),the law is clearly settled that specifying the particular polling units or places where irregularities are alleged to have occurred are material particulars in an election petition, and averments in an election petition which allege irregularities and malpractices but fail to specify the polling units or places where the irregularities or malpractices occurred, are bereft of material particulars, and such averments are incompetent and liable to be struck out. As specifically stated in *P.D.P. v. I.N.E.C.* (supra), a petitioner who has failed to state such material particulars cannot invoke the provision relating to further particulars as a sword against a respondent in order to cure the incompetence of such averments.

With respect, it is a misconceived argument on the part of the senior counsel for the petitioners to state that the later decision of the apex court in *Ombugadu v. Sule* (supra), which relates to further particulars under paragraph 17(1) of the 1st Schedule has departed the specific decisions of the apex court in *Belgore v.Ahmed* (supra), *P.D.P. v. I.N.E.C. & Ors* (supra); and *Ikpeazu v. Otti* (supra),on the mandatory requirements for stating material facts as provided in paragraph 4(1) of the same 1st Schedule to the Electoral Act. Contrary to the contention of the petitioners, the decision of the Supreme Court in *Ombugadu v. Sule* (supra) has merely reiterated the legal position relating to further particulars as provided in paragraph 17(1) of the 1st Schedule to the Electoral Act, 2022. It has not departed from the above specific decisions of the apex court on the materiality of specifying in an election petition the polling

Units or places where irregularities and malpractices are alleged to have occurred.

A look at the averments in the petitioners' petition shows that the petitioners have only alleged various irregularities and malpractices but failed to specify the particular polling units or specific places where the alleged irregularities and malpractices have occurred. For instance, in paragraph 9 of the petition where the petitioner averred that "in appropriate cases these agents raised complaints about anomalies where they occurred and reported such complaints to designated officers of the 2md petitioner and the 1"respondent'", the petitioners failed to specify the anomalies, the places where the anomalies occurred, the agents who complained, and the designated officers of the 2nd petitioner and the 1st respondent to whom the complaints were made. In paragraphs 60 and 61 of the petition where the petitioners alleged that the 1st respondent "suppressed the actual scores obtained by the petitioners by deliberately uploading blurred Form EC8As on the IReV in 18,088 (eighteen thousand and eighty eight) polling units, the petitioners did not specify the polling units but only stated that they will rely on a spread sheet containing the polling unit codes and details of the 18,088 polling units, as well as the authentic results in the said polling units. In paragraphs 66 and 67 where the petitioners alleged that the 1st respondent embarked on "massive misrepresentation and manipulation by uploading fictitious results in polling units where there were no elections", they did not specify the polling units where they alleged there were no elections, the incorrect results that were uploaded and which are the correct results. Again, in paragraphs68-71 where the petitioners alleged that the scores obtained by them were "unlawfully reduced and added by the 1st respondent to the scores of the 2nd respondent", they failed to state their scores that were reduced and added to that of the 2nd respondent by the 1srespondent and the figures that shows that the petitioners won the election. In paragraphs 72, 73, 76-78 where the petitioners alleged over voting, they merely stated that they will "rely on the Forensic Reports of the election materials showing that the votes cast in the polling units in Ekiti State, Oyo State, Ondo State, Taraba State, Osun State, Kano State, Yobe State and Niger State exceeded the number of voters accredited on the BVAS in those States. The petitioners failed to specify the polling units in those States where the over-voting occurred, the number of votes affected, margin of

Lead which they claim and the voters who ought to legitimately vote in those polling units. And in paragraph 73, the petitioners only stated that they will "show that in the computation and declaration of results of the election, based on the uploaded results, the votes recorded for the 2nd respondent did not comply with the legitimate process of computation of the result and disfavoured the petitioners… "in Rivers, Lagos, Taraba, Benue, Adamawa, Imo, Bauchi, Borno, Kaduna and Plateau and other States of the Federation. The petitioners neither specified the uploaded results nor the votes illegally recorded for the 2nd respondents and how they were disfavoured. In paragraph 83 of the petition where the petitioners claimed that the 1st petitioner scored the majority of the lawful votes cast at the election, they did not state the majority of the lawful votes they claimed to have scored, especially as elections and the determination of who won election is about figures. In paragraph 99 of the petition where the petitioners said they will rely on FormEC8As to establish that substantial votes were unlawfully credited to the 2nd respondent, they failed to state the figures of the unlawful votes credited to the 2nd respondent.

In the petition, the petitioners merely made generic allegations of various irregularities and malpractices against the respondents without specifying the polling units, collation centres or specific places where the alleged irregularities and malpractices occurred. Rather, the petitioners only stated that they will rely on Spreadsheets, Inspection Reports and Forensic/Expert Analysis, which they said they have incorporated in the petition. But none of the Spread Sheets, Inspection Report and Forensic/ Experts Analysis was attached and served along with the petition on the respondents. Rather, they were only listed as items 35 and 36 in the list of documents to be relied upon by the petitioners.

It is only in paragraphs 62 and 64 of the petition where the petitioners alleged that the 1st respondent suppressed the lawful votes of the petitioners and inflated the votes of the 2nd and 4threspondents in Rivers and Benue States, that the petitioners gave figures of the votes suppressed for the petitioners and those inflated for the 2nd and 4th respondents and also stated what they claim to bethe actual figures scored by them and by the 2nd and 4th respondents. But all other paragraphs of the petition where irregularities and malpractices were alleged are bereft of the material details of the polling units or places where they were alleged to have taken place,

Or the figures of votes alleged to have been suppressed, deflated or inflated.

It is also pertinent to observe that in paragraph 79 of the petition where the petitioners alleged corrupt practices, they merely stated that they are repeating their pleadings in support of the grounds of non-compliance to be in support of their allegations of corrupt practices. It should be noted however, that not every ground of non-compliance will amount to corrupt practice. In fact, the standard of proof of non-compliance differs from that of corrupt practice. While the standard of proof of non-compliance is on the balance of probabilities, that of corrupt practice is beyond reasonable doubt. See: *P.D.P. v. I.N.E.C.* (supra) at page 31, paras. A-B, (2012) 7 NWLR (Pt. 1300) 538, per Rhodes-Vivour, JSC; *Mohammed v. Wamakko* (2017) LPELR-42667 (SC) at page 10, paras. D-F, (2018) 7 NWLR (Pt. 1619) 573, per Nweze, JSC; and *Board of Customs & Excise v. Alhaji Ibrahim Barau* (1982) LPELR-786(SC) at pages 41- 43, paras. F – E; (1982) 10 SC 48, per Idigbe, JSC.

It Is instructive that in paragraph 3.2- 3.21 of their submission in opposition to the 1st respondent's objection, the petitioners appeared to have conceded that in the averments of the petition they have not specified the particular polling units where the alleged irregularities and malpractices occurred, or specified the figures of the votes or scores which they alleged have been suppressed, deflated or inflated. Rather, they stated that the details of the polling units are contained in the Spreadsheets and Forensic Analysis Reports which they have incorporated and made part of their pleadings by reference. (See particularly paragraph 67 of the petition). The petitioners further argued that since the respondents have failed to apply for further particulars under paragraph 17(1) and (2) of the 1s Schedule to the Electoral Act, 2022, they are deemed to have understood those averments.

However, by paragraph 15 of the 1 Schedule to the Electoral Act, 2022, when a petitioner claims "… that he had the highest number of valid votes cast at the election, the party defending the election or return at the election shall set out clearly in his reply particulars of the votes, if any, which he objects to and the reasons for his objection against such votes, showing how he intends to prove at the hearing that the petitioner is not entitled to succeed." This provision presupposes that the petitioner has a first duty to state clearly in his petition the particulars of such votes in respect

Of which he claims to have scored the highest number of valid votes and thus entitled to be returned as the winner. This also presupposes that it is only after the petitioner has supplied the particulars of the votes in support of his claim that he scored the highest number of valid votes, that a respondent will then have a duty to object to any of the particulars of such votes supplied by the petitioner in order to show that the petitioner is not entitled to succeed.

With regard to the petitioners' contention that they have incorporated into the petition by reference the Spread Sheets and Forensic Analysis Report containing details of the polling units where they alleged that irregularities and malpractices occurred, it is trite that for a document to be properly incorporated as part of pleadings by reference, the document must not only be referred to in the pleadings, but it must also be included as part of the pleadings to be served on the adverse party, so as to enable the adverse party to properly respond to same in his defence. Indeed, in all the cases of *EFCC v. Reinl* (supra); *Ekpemupolo v. Ederemoda* (supra); *Marine Management Associates Inc. v. N.M.A.* (2012) 18 NWLR (supra); and *Dingyadi v. Wamakko* (supra) which were relied upon by the petitioners, the documents which were incorporated as part of pleadings by reference were served along with the pleadings on the adverse party.

In considering a similar scenario, this court, per Ayoola, JCA (as he then was) held in Nigeria *Merchant Bank Plc v. Aiyedun Investment* Ltd. (1997) LPELR-5951(CA), (1988)2 NWLR (Pt.537) 221, thus:

> "Before I part with this appeal, it is pertinent to advert to one pleading question raised in this appeal in regard to the consequence of a party pleading that he would rely on certain unspecified documents at the trial. The plaintiff contended that such averment made the contents of such document part of the pleadings. In this case, the plaintiff in para. 30 of the statement of claim pleaded thus:
>
> > 'The plaintiff at the trial will rely on all letters and documents between the parties pertaining to this suit.'
>
> Although the principle is established that "if an agreement in writing is referred to in a pleading, it becomes part of the pleading and it is open to the Court

> To give the agreement its true legal effect, irrespective of the terms used in the pleading to indicate such effect", that proposition of law should not be used to cover such averment as shown above which lacks specificity. Besides, a report, such as exhibit P.22 in this case, prepared by a witness for the plaintiff and tendered at the trial by the witness, cannot be described as 'documents between the parties pertaining to the suit'. At the appropriate time and when the occasion arises the true ambit of the proposition of law in such cases such as *Banque Genevoise v. Spetsai Ltd.* (1962) 2 SCNLR 310; (1962) 1 All NLR 570, ought to be defined."

In the instant case, the Spread Sheets and Forensic Reports which were documents prepared by the petitioners' witnesses, were not served along with the petition on the respondents, but were only listed as documents to be relied upon at trial. We are not oblivious of the petitioners' argument in relation to paragraph 4(5) (c) of the 1st Schedule to the Electoral Act, 2022 which provides that the election petition shall be accompanied by "copies or list of every document to be relied on at the hearing of the petition." This provision undoubtedly only relates to front-loading of documents to be relied upon by the petitioner as his evidence during trial. Contrary to the petitioners' argument, it does not cover incorporation of documents into pleadings by reference.

It is also noteworthy that the Spreadsheets and Forensic Reports which the petitioners claim to be incorporating into the petition by reference are actually documents prepared by the petitioners' witnesses. In other words, the Spreadsheets and Forensic Reports are not documents which are outside the control of the petitioners and which they have to obtain by subpoena. Being the petitioners' own documents, they ought to have served those documents along with the petition on the respondents, so as to enable the respondents to counter same by engaging their own experts to appropriately respond to same, if they so desire. That indeed is the essence of pleadings, so as to avoid taking the other party by surprise.

The petitioners have also tried to argue that the respondents having joined issues on the general allegations contained in the petition they are deemed to have understood same. With respect this is also not a tenable argument in view of the grossly generic

Allegations made in the petition. Faced with a similar scenario, this court, per Ogunwumiju, JCA (as he then was, now JSC), held *in Udeagha & Anor v. Omegara & Ors* (2010) LPELR-3856(CA), (2010)11 NWLR (Pt. 1204) 168, as follows:

> "The argument of appellants' counsel that the respondents did not adequately traverse the petition is unfounded. The petition itself contained general complaints. There was no effort to pinpoint in the pleadings the various places where corrupt practices, non-voting, use of violence, thuggery, rigging in polling units, massive thumb-print of ballot papers, fictitious entry of election results took place. Therefore, there was a general corresponding reply denying the allegations in general terms from the respondents. If the petitioners did not plead particulars, how could the respondents traverse non-existent particulars? The averments in the appellants' pleadings should have contained details of the allegations and complaints to which the respondents could reply in detail in their own pleadings. The appellants expected the respondents to reply to the various specific allegations contained in the witness statements filed along with the petition. That is not the correct procedure. Those specific allegations should have been in the pleadings. The pleadings must show the facts disputed while the witnesses' would give evidence of these facts. In election petitions, it has been held that there is need for particulars where required in order to prevent taking adverse party by surprise. See *Buhari v. Obasanjo* (2005) 7 SCNJ 1, (2005)13 NWL (Pt. 941) 1. It is not the function of particulars to take the place of necessary averments in pleadings. See *Nwobodo v. Onoh* (1984)1 SC 201, (1984)1 SCNLR1..."

Indeed, in a Presidential election like the one being challenged in this petition, which was held in 176,846 polling units, 8,809 wards, 774 Local Government Areas, 36 States and the Federal Capital Territory, it is unimaginable that averments in a petition which merely allege irregularities and or malpractices without specifying the particular polling units or particular collation centres where the irregularities or malpractices have allegedly taken place,

Will be regarded as proper merely because the respondent has not requested for further particulars, [*Belgore v. Ahmed* (supra) and *P.D.P. v. I.N.E.C.* (supra)]. Moreso, when an election petition is by nature a declaratory action in which the petitioner succeeds only on the strength of his own case and not on the weakness of that of the respondent. See: *Busari v. Adepoju* (2015) LPELR-41704(CA); *Oyetola v. Adeleke* (2019) LPELR-47529(CA): *Anazonwu v. Onubogu & Ors* (2023) LPELR-59794 (CA). It is in this respect that a petitioner has an obligation to set up a clear, unambiguous, precise and positive case in his pleadings, since pleadings is the foundation of a party's case, and it is to the pleadings that the parties to litigation as well as the court are all bound. See*: Enang & Ors v. Adu* (1981) LPELR-1139 (SC) at page 13, paras. C-D; (1981)11-12 SC 25, per Nnamani, JSC.

It is in the light of all the foregoing, that I find and hold that the motions of the respondents listed above succeed. In consequence. paragraphs 9, 60, 61, 66, 67, 68, 69, 70, 71, 72, 73, 76, 77, 78, 83 and 99 of the petition which have failed to state the specific polling units, collation centres, or the specific places where the irregularities and malpractices are alleged to have occurred, or the figures of votes which are being claimed, are grossly vague, imprecise, nebulous and bereft of material particulars, and have thus failed to meet the requirements of paragraph 4(1)(d) of the Electoral Act, 2022. In accordance with paragraph 4(7) of the said Schedule, the said paragraphs are consequently hereby struck out.

On the 1st respondent's prayer to strike out paragraphs 57 and 58 of the petition for being inconsistent with paragraphs 65, 67, 70 and 71 of the petition, the essential contention of the 1st respondent is that whilst in paragraphs 57 and 58 the petitioners have alleged that the 1st respondent failed to comply with the order of inspection granted by the court, the petitioners have in paragraphs 65, 67, 70 and 71 stated that they would rely on the report of the inspection. Additionally, the 1st respondent also argued that whilst the petitioners have alleged that the election was marred by corrupt practices and was not conducted in substantial compliance with the Electoral Act 2022,they have also alleged that they have scored majority of lawful votes cast and should be declared the winner of the election. Relying on the cases of *I.N.E.C. v. Youth Party* (2021) LPELR-54802(CA); and *Abubakar v. Yar 'Adua* (2008) 19 NWLR (Pt. 1120) 1 at 153- 154, paras. H-A, the 1st respondent urged the

Court to strike out the paragraphs, as well as prayers 1-4 on the one hand, and prayers 5(i) and 5(ii) on the other hand, for being inconsistent.

Conversely, the petitioners contended that the law allows them to plead conflicting facts in so far as they have claimed alternative reliefs. They referred to the alternative reliefs at pages 35-37 of the petition and relied on the cases of *Abia State Independent Electoral Commission v Kanu* (2013) 13 NWLR (Pt. 1370) 69 at 84-85(SC); *G.K.F.I. (Nig.) Ltd. v. NITEL Plc* (2009) 15 NWLR (Pt. 1164) 344 at 377 – 378 (SC); and *Newbreed Org. Ltd. v. Erhomosele* (2006) 5 NWLR (Pt. 974) 499 at 544 (SC), as well as the ruling on similar objection by the 2019 Presidential Election Court in CA/PEPC/002/2019 delivered on 11th September, 2019,per Garba, JCA(as he then was).

As rightly submitted by the petitioners, the reliefs in this petition, which I have reproduced at the beginning of this judgment, are undoubtedly sought in the alternative. The settled law is that reliefs can be sought in the alternative and where so sought by a party, he is at liberty to plead conflicting facts in line with the alternative reliefs he has sought. In *Adighije v. Nwaogu & Ors* (2010) 12 NWLR (Pt. 1209) 419 at 545, paras. E-G; (2010) LPELR-4941(CA) at pages 14 – 16, paras. E-G, this court, per Ogunwumiju, JCA (as he then was, now JSC), held that:

> "…in civil litigation and indeed in election matters, a party can make two seemingly contradictory pleadings leading to two different heads of claim. That is why a petitioner can claim that the election be annulled for reason of substantial non-compliance and in the same breath claim that he won the election by a majority of lawful notes. A petitioner may plead the same set off acts to ground alternative reliefs. Those pleadings are not ipso facto held to be self-contradictory. The Court can only grant one relief as the party must decide which relief is best supported by the evidence on record."

See also*: Metal Construction (W.A.) Ltd. V. Aboderin* (1998) LPELR- 1868(SC) at pages 26, paras. C-E, (1998)8 NWLR (Pt.563) 538.

In any case, the 1st respondent, which is the body that conducted the election, and to whom the 1st petitioner's nomination documents were submitted by the 2nd petitioner, admitted paragraph 4 of the

Petition wherein the petitioners averred that the 1st petitioner was duly sponsored by the 2nd petitioner on whose platform the 1st petitioner contested the election.

I therefore have no hesitation in discountenancing this ground of the objection.

2. *Challenge to the Competence of the Petition or Some of its Grounds:*

The second category of the respondents' applications that challenge some of the grounds of the petition and or the competence of the petition are as follows:

A: *1st Respondent's Motion filed on 19 April, 2023, Seeking:*

(i) Order striking out ground 2, paragraphs 33(1) - 79 and reliefs 5(i) & (ii) of the petition on transmission of election results for being caught by issue estoppel.

(ii) Order striking out paragraphs 20 (i), 21, 23, 24, 25, 26 and 27 on nomination of the 2nd and 3rd respondents for lack of jurisdiction.

B: The 2nd and 3rd Respondents' Motion Filed on 12h May, 2023 seeking:

(i) Order striking out/dismissing the petition for being incompetent and defective.

(ii) Order striking out grounds (i), (ii) and (iii) of the petition.

(iii) Order striking out reliefs 1(i)-(iii), 2, 3, 4(i)-(iv), 5(i) & (ii) of the petition.

The above two motions are predicated upon several grounds. These include:

(i) 1st petitioner's *locus standi* to present the petition;

(ii) non joinder of necessary parties;

(iii) the competence the ground 1 of the petition challenging the qualification of the 2nd respondent to contest the election;

(iv) The competence of ground 2 of the petition alleging corrupt practices and non-compliance with the provisions of the Electoral Act,2022;

(v) Issue estoppel against ground 2 of the petition as it relates to electronic transmission of election results;

(vi) The competence of the reliefs sought and whether ornot they are grantable as couched by the petitioners.

It is the view of this court that the issue relating to ground challenging the qualification of the 2nd respondent to contest the election; the issue relating to the competence of ground 2 relating to allegations of corrupt practices and non-compliance with the Electoral Act, 2022 and the plea of estoppel in relation thereto; as well as the issue relating to competence of the reliefs sought in this petition, are matters on which the parties have joined issues in the main petition, the merits of which will be decided after considering the pleadings and evidence led in the petition. It is the settled position of the law that a court should not comment on or decide at preliminary stage matters or issues which are supposed to be decided in the substantive case. See: *Nwankwo & Ors v. Yar 'adua & Ors* (2010) LPELR-2109 (SC) at page 71, paras. B-F, (2010)12 NWLR (Pt. 1209) 518, per Commassie, JSC; and *Ocholi Enojo James*, *SAN v. I.N.E.C. & Ors* (2015) LPELR-24494(SC) at page 92, para. G, (2015) 12 NWLR (Pt. 1474) 538, per Okoro, JSC. Hence, while leaving those issues to be dealt with while considering the merit of the petition, we shall determine at this stage the objections relating to the 1st petitioner's *locus standi*; the non-joinder of necessary parties; and the objection to the competence of the petitioners' replies to the respondents' replies or to some of the paragraphs of the petitioners' replies.

1. Lack of *Locus Standi* of the 1st Petitioner

The 2nd and 3rd respondents and the 4th respondents in their motion filed on 08/05/23 also objected to the 1st petitioner's *locus standi* to bring this petition. Their principal contention is that the1st petitioner was in contravention of section 77(3) of the Electoral Act, 2022. They argued that the 1st petitioner who was a member of the People's Democratic Party and who was screened as one of its aspirants for the Presidential election only resigned his membership of that party on 24th May, 2022 to join the 2nd petitioner on 27th May, 2022. They contended that as at 30th Aril, 2022, the 1st petitioner could not have been in the register of members of the 2nd petitioner which it submitted to the 1s respondent 30 days before its Presidential primary election as mandated by section 77(3) of the Electoral Act, 2022, and since 1st petitioner is not in the membership register submitted to the 1st respondent by the 2nd petitioner, the 1st petitioner lacks the *locus standi* to challenge the outcome of the Presidential election.

Per contra, the petitioners submitted that the issue of membership of a political party is a domestic affair of the political party concerned and the court lacks the jurisdiction to entertain same. They relied on the cases of *Agi v P.D.P. & Ors* (2016) LPELR-42578 (SC) at 48 – 50. (2017) 17 NWLR (Pt.1595) 386; *Ufomba v I.N.E.C.* (2017) LPELR-42079(SC), (2017) 13 NWLR (PL.1582) 175; and *A.P.C. v Moses* (2021) 14 NWLR (Pt.1796) 278 at 320, paras. C-F.

The courts have consistently, held in a plethora of cases that the issue of membership of a political party is an internal affair of the political party. It is not justiciable and the courts have no jurisdiction to entertain same. See: *Enang v. Asuquo & Ors* (2023) LPELR-60042 (SC) at pages 29-35, paras. D-A, (2023)11 NWLR (Pt.1896) 501; *Sani v. Galadima & Ors* (2023) LPELR-60183(SC) at pages 32 – 33, paras. D – A; (2023) 15 NWLR (Pt. 1908) 603; and *Tumbido v. I.N.E.C. & Ors* (2023) LPELR-60004(SC) at pages 31-35, paras. D-C, (2023)15 NWLR (Pt. 1907) 301, as well as all the cases cited above by the petitioners.

The provision of section 77(3) of the Electoral Act, 2022 which only mandates every political party to submit the register of its members 30 days before its party primaries cannot be invoked by the respondents for the purpose of challenging the 1st petitioner's membership of the 2nd petitioner. It is only the 2nd petitioner that has the sole prerogative of determining who its members are, and having sponsored the 1st petitioner as its candidate for the Presidential election, the 1st petitioner has satisfied the requirement of being a member of the 2nd petitioner as provided for in section 131(c) of the 1999 Constitution. It is not within the rights of the 2nd and 3rd respondents and the 4th respondent to question the 1st petitioner's membership of the 2nd petitioner. This ground of the objection is hereby overruled.

II. *Non-Joinder of Necessary Parties.*

The 1st respondent in its motion filed on 19th April, 2023, the 2nd and 3rd respondents, as well as the 4th respondent raised the issue of non-joinder of Abubakar Atiku and or the People's Democratic Party who came second in the Presidential election as respondents to the petition. The contention of the respondents is that since by relief 1(iii), 4(iv) of the petition, the petitioners, who came third in the presidential election are seeking to be declared the winners of the election, the petition cannot be effectually and completely

Determined without the joinder of Abubakar Atiku and or the People's Democratic Party, who came second in the election, as respondents to the petition. For that reason, the respondents have contended that this court lacks the jurisdiction to entertain the petition as constituted. They placed reliance on: *Jegede & Anor v. I.N.E.C. & Ors* (2021) LPELR-55481 (SC) at 62-63, para. C, (2021) 14 NWLR (Pt.1797) 409; and *Buhari & Ors v. Obasanjo & Ors* (2003) LPELR-24859(SC) at 54, para. A, (2003)15 NWLR (Pt.843) 236.

In opposition however, the petitioners relied on the cases of *Obasanjo v. Yar 'adua* (2003) 17 NWLR (Pt. 850) 510 at 560H -561C; *Buhari v. Yusuf* (2003) 14 NWLR (Pt. 841) 446(SC); and *Akpoti v. I.N.E.C.* (2022) 9 NWLR (Pt. 1836) 403 at 420 C-D (SC); and contended that only statutory respondents provided in section 133 of the Electoral Act, 2022 are necessary parties to a petition and the petitioners are not under any obligation to join Abubakar Atiku and the People's Democratic Party.

By section 133 of the Electoral Act, 2022, the statutory respondents to an election petition are:

(i) the person whose election is being complained of; and
(ii) the Independent National Electoral Commission which will also be deemed to be defending the petition on behalf of its officers whose conduct is complained of.

In the cases of *Obasanjo v. Yar'adua* (supra); and *Buhari v. Yusuf* (supra), cited by the petitioners, the Supreme Court categorically held that only the statutory respondents stated in section 133 of the Electoral Act are necessary parties, and that losers at an election who are not statutory respondents are not necessary parties to an election petition.

By the import of section 133 of the Electoral Act, 2022, the contest in an election petition is strictly between the petitioner who challenges the outcome of the election, the person who was declared the winner of the election, and the Commission that conducted and declared the outcome of the election. This means that every candidate who lost the election and who is desirous of challenging the outcome of the election is expected to file his own petition against the winner of the election, and in so doing, he is not required to join any other candidate who lost the election like himself. It is in furtherance of this that paragraph 50 of the 1st Schedule to the Electoral Act, 2022 requires an Election Tribunal

Or court to consolidate two or more petitions which are presented in relation to the same election or return.

As rightly submitted by the petitioners, the case of *Jegede v. I.N.E.C.* (supra), cited by the 1st respondent is clearly not applicable to this case, since the decision in that case is that Mai Mala Buni was a necessary party because by the provisions of section 183 of the 1999 Constitution he would have ceased being the Governor of Yobe State if the case made out in the petition that he could not combine the offices of Governor of Yobe State and Acting Chairman of the All Progressives Congress, is sustained. In this case, Abubakar Atiku and People's Democratic Party who were only runners up in the presidential elections, are not necessary parties as they are not statutory respondents to this petition, and the petitioners herein have no obligation to join them in this petition.

Again, in *Buhari v. Obasanjo* (supra) relied upon by the respondents, the Supreme Court reconfirmed its decision in *Buhari v. Yusuf* (supra),that there is no obligation on a petitioner to make a candidate who lost an election like himself a respondent to his petition.

Moreso, as Abubakar Atiku and the People's Democratic Party have filed a separate petition no. CA/PEPC/05/2023 which, as mentioned in the earlier part of this judgment, this court has consolidated with this petition, in line with paragraph 50 of the 1st Schedule to the Electoral Act, 2022. This ground of the objection to the competence of the petition is unmeritorious. It is accordingly overruled.

On the arguments over the competence of the reliefs sought in this petition, it is our view that the reliefs which the court can grant in an election petition are statutory, as provided in section 136(1), (2) and (3) of the Electoral Act, 2022. Therefore, the determination of whether the reliefs sought by a petitioner are grantable can only be made after trial.

3. *Challenge to Competence of Petitioners' Replies.*

The third category of the applications of the respondents seek to strike out the petitioners' replies or some paragraphs of the replies. These are:

A: *1st Respondent's Motion filed on 9th May, 2023 seeking:*

(i) Order striking out the petitioners' reply to the 1st respondent's reply for being incompetent.

(ii) In the alternative, order striking out paragraphs 15, 16 (i) - (vii), 17-20, 22, 24, 25, 27-32, 34, 36, 37, 38, 40 and 41 of the petitioners' reply for offending the provisions of the 1st Schedule to the Electoral Act, 2022.

B: *2nd and 3rd Respondents' Motion Filed on 13th May, 2023 seeking:*

(i) Order striking out petitioners' reply of 21st April, 2023 for being incompetent.

(ii) In the alternative, order striking out paragraphs 8-17, 19 -32, 34-42 of the petitioners' reply for introducing new facts.

C: *4th Respondent's Motion Filed on 8th May, 2023 praying for:*

(i) Order striking out paragraphs 15-32 of the petitioners' reply to the 4th respondent's reply, as well as the witness statement on oath for failure to deny the 4th respondent's allegations.

(ii) Order striking out paragraphs 5(i) - (ix), 15(i) - (vii), 16(i) – (vii), 17(i) – (vii), 18(i)(a)-(h), 18(ii)(a) – (e), 18(iii), (v), (vii)(a) & (b),(viii)(a) & (b), (ix), (xi), 20-25 (a) – (d), 26(i), (ii), 27 -31 of the petitioners' reply to the 4th respondent's reply for raising new issues.

All the respondents challenged the competence of the petitioners' replies to their respective replies or in the alternative, the paragraphs thereof which they have variously listed above. Their essential contention is that the replies or in the alternative the paragraphs thereof have either raised and or introduced new facts aimed at substantially altering the grounds and reliefs in the petition, or are a mere repetition or rehash of the facts already contained in the petition, contrary to the provisions of paragraph 16(1) (a) and (b) of the 1st Schedule to the Electoral Act, 2022. The respondents relied on several judicial authorities, such as: *Dingyadi v. Wamakko* (2008) 17 NWLR (Pt. 1116) 395 at 443; *Airhiavbere v. Oshiomhole* (2013) All FWLR (Pt. 687) 782 at 792, reported as *Oshiomhole v. Airhiavbere* (2013) 5 NWLR (Pt.1538)265; *Ogboru v. Okowa* (2016) 11 NWLR (Pt. 1522) 84 at 144-145; *Sylva v. I.N.E.C.* (2018) 18 NWLR (Pt. 1651) 310 at 352; *Ngige v. Akunyili* (2012)15 NWLR (Pt. 1323) 343 at 385; *Udeachara v. Onyejeocha & Ors* (2019) LPELR-49547(CA); and *Stephen & Anor v. Moro & Ors* (2019) LPELR-47852(CA).

In response, the petitioners have argued that they have merely reacted to the fresh/new issues raised in the replies of the respondents which attempted to justify the grounds of non-qualification of the2nd and 3rd respondents, as well as the non-compliance by the 1strespondent with the Electoral Act, 2022. They relied on *Sylvia v. I.N.E.C.* (2018)18 NWLR (Pt.1651)352; and *P.D.P. v. Ezeonwuka* (2017) LPELR-42563 (SC), (2018) 3 NWLR (Pt.1606) 187, and urged the court to discountenance the objections of the respondents and uphold the petitioners' replies.

Paragraph 16(1) (a) of the 1st Schedule to the Electoral Act, 2022 provides as follows:

"16(1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the Registry, within five (5) days from the receipt of the respondent's reply a petitioner's reply in answers to the new issues of fact, so however that-

(a) the petitioner shall not at this stage be entitled to bring in new facts, grounds, or prayers tending to amend or add to the contents of the petition filed by him."

By the import of paragraph 16(1)(a) of the 1st Schedule, a petitioner may in filing a reply respond to allegations of new facts raised in a respondent's reply to the petition, provided he does not in so doing amend or add to the petition. It is instructive to observe that the words used in paragraph 16(1) (a)are "new facts, grounds or prayers tending to amend or add to the contents of the petition". The word "new" suggests something which is not there, while the word "amend" signifies modification. "Add" on the other hand means to increase. What the provision envisages therefore, is that the reply of the petitioner must strictly be confined to the new facts raised in the respondent's reply and must not go over that to attempt to amend or add to the petition. See: *All Progressives Congress v. Peoples Democratic Party & Ors* (2015) LPELR-24587(SC), (2015)15NWLR (Pt.1481) 1; *Dingyadi v. Wamakko* (2008) 17 NWLR (Pt.1116) 395 at 442 -443; *Adepoju v. Awoduyilemi* (1999) 5 NWLR (Pt. 603) 364; and *Ikoro v. Izunaso & Ors* (2008)4 LRECN; (2009)4 NWLR (Pt.1130)45.

Indeed, in succinctly explaining the new issue which should attract a reply, the Supreme Court had held in *Egesimba v. Onuzuruike* (2002) 15 NWLR (Pt. 791) 466 at 518, thus:

> "A new issue to attract a reply must in law be really new in the sense of being brand and fresh. The issue must be really new to the statement of claim, in that it was not existing therein and was therefore brought into existence or introduced for the first time in the statement of defence by the defendant. The new issue, both in its content and materiality, must be further and additional to the statement of claim. Thus, the mere fact that a defendant states his own side of the case does not necessarily make it new, particularly when the plaintiff has told a contrary story in his statement of claim. In such a situation, the case stated by the defendant amounts to joining issues with the plaintiff and that does not bear the name of a new issue in law. A new issue arises where the plaintiff did not avert to or touch the content of the defendant's averments in anticipation, and the defendant's averment was introduced to the pleadings for the first time and therefore unique and novel to his pleadings."

A careful examination of the petitioners' petition, the 1st, 2nd and 3rd, as well as the 4th respondent's respective replies, and the replies which the petitioners filed in response thereof, reveals that apart from rehashing what they have already averred in their petition and denying what the respondents have stated in their respective replies, the petitioners also introduced new facts in their replies to the respondents' replies which were not contained in their petition. This is in clear contravention of paragraph 16(1) (a) of the 1st Schedule to the Electoral Act, 2022.

The law, as encapsulated in paragraph 16(1) (a) of the 1st Schedule to the Electoral Act quoted above, forbids new additions or amendments by a petitioner which are not contained in their petition because such new additions or amendments will prejudice the respondents and breach the respondents' fundamental right to fair hearing guaranteed by section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999, since the respondents will have no opportunity to respond to those new additions or amendments. See also: *P.D.P. v. Anor v. I.N.E.C. & Ors* (2019) LPELR-48101(CA)

At pages 41-43, para C, per Adah JCA; *Maku & Anor v. Al - Makura & Ors* (2015) LPELR-41814(CA) at pages 99-103.paras.D-C.per Agube, JCA.

An examination of paragraph 4(iii), (iv) and (v) of the 1st respondent's reply shows that the paragraph has not raised any new issue, contrary to the assertion of the petitioners in paragraph 15 of their reply to the 1st respondent's reply to the petition. It is only a response to paragraphs 7 and 8 of the petition. But the petitioners' averment in the same paragraph 15 that the 1st respondent's officials at the polling units failed to give clear copies of the results of the election (Forms EC8A) to the petitioners' agents, as the pink copies given to the petitioners agents were very faint and unreadable, is anew fact which tends to amend the petition.

Paragraphs 16(i) – (vii), 17, second part of 18, 22 and 24 of the 1st respondent's reply are traverse to paragraphs 21 – 27 of the petition. Hence, paragraph 16 of the petitioners' reply which purport to respond to new issues in paragraphs 17, 18, 19, 20, 21,22 and 24 of the 1st respondent' reply actually contain new facts which will amount to amendment of the petition. Also, paragraphs 17, 18, 19, 24, 25, 27, 28, 29, 30, 31, 32, 34, 35, 36 and 37 of the petitioners' reply to the 1st respondent's reply are either a rehash of the facts already averred in the petition or contain new facts which will amount to amendment of the petition.

In respect of the petitioners' reply to the 2nd and 3rd respondents reply to the petition, the latter are seeking for an order striking out paragraphs 8 – 42 of the petitioners reply. However, a careful examination of those paragraphs shows that only paragraph 21 of that reply has raised a new allegation against the 1st respondent of attempts to manipulate the data uploaded on the backend server of the AWS. The said paragraph 21 of the petitioners' reply to the 2nd and 3rd respondents' reply is hereby struck out.

Similarly, the petitioners have introduced new facts in paragraphs 16, 17, 18, 20, 22, 23, 24, 25 and 27 of their reply, some of which contain serious allegations to the 4th respondent has no opportunity to respond. Being in contravention of paragraph 16(1) of the 1st Schedule to the Electoral Act, 2022, the said paragraphs are hereby struck out.

The Main Petition:

In bringing this petition, the petitioners, who were contestants in the Presidential Elections held on the 25th of February, 2023,

Have challenged the declaration and return of the 2nd respondent as the winner of the election and sought for the declaratory and consequential reliefs which I have reproduced in the beginning of this judgment. The petitioners have predicated their petition on the three statutory grounds earlier stated.

Although in the ruling of this court on the objections of the respondents, some paragraphs of the petition and replies have been struck out for stated reasons, this court will take into consideration the entire averments in the petition in determining the merit or otherwise of the petition, in the interest of justice.

At trial, the petitioners opened their case with tendering from the Bar several certified true copies of electoral and other documents which were objected to by all the respondents who reserved the reasons for their objection to the stage of final address. The said documents were therefore admitted and marked as exhibits, without prejudice to the objections of the respondents. The court ordered the respondents to file separate addresses on their objections along with their final addresses.

In proof of their petition, the petitioners called thirteen (13) witnesses who gave evidence as PW1 – PW13. Of those witnesses, only three had their witness statements on oath filed along with the petition, while the other ten were subpoenaed witnesses whose statements were filed separately after hearing in the petition had commenced. The respondents objected to the competence of the subpoenaed witnesses to give evidence and adopt their witness statements on oath and reserved the reasons for their objection to the stage of final address. Without prejudice to the objection, the said witnesses adopted their respective witness statements on oath, after which they were duly cross examined by all the senior counsel for the respondents.

Upon closure of the petitioners' case, the 1st respondent, as well as the 2nd and 3rd respondents called one (1) witness each in their defence. The 4th respondent did not call any witness but opted to rely on the evidence already adduced by the other respondents and that elicited under cross examination on behalf of the 4th respondent.

After the close of evidence, the parties filed and exchanged their respective final addresses, including separate addresses in support of their various objections which they raised during trial.

Respondents' Objections to the Competence of Some of the Petitioners' Witnesses and to the Documents Tendered by Them During Trial:

On the 14th of July, 2023. The 1st respondent filed a written address on objections to the admissibility of documents tendered by the petitioners and to the evidence of some of the petitioners' witnesses. On the same date, the 2m and 3rd respondents as well as the 4th respondent also filed their respective Written Addresses in support of their objections to the competence of some of the petitioners' witnesses and to the admissibility of the documents tendered by the petitioners during trial.

In opposition, the petitioners filed their replies to the 1st, the 2nd and 3rd and the 4th respondents objections, which were filed on the 23rd July, 2023, 20th July, 2023 and 23rd July, 2023, respectively. The petitioners also filed two written addresses in support of their objections to the admissibility of the documents tendered by the1st, as well as 2nd and 3rd respondents. These were filed on the 23rd and 20th of July, 2023, respectively. The 1st as well as the 2nd and3rd respondents opposed the petitioner's objections with written addresses which they filed on 28th July, 2023 and 25th July, 2023, respectively.

The 1st respondent raise's objection to the evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 who were subpoenaed witnesses called by the petitioners. The main contention of the 1st respondent is that the witness statements on oath of those witnesses were not frontloaded with the petition at the time the petition was filed on 20th March, 2023, but were filed in June, 2023 during hearing. Citing paragraph 4(5) of the 1st Schedule to the Electoral Act, 2022, the learned senior counsel for the 1st respondent argued that the witness statements on oath of those witnesses which were filed outside the 21 days limited for presentation of the petition, are incurably defective and grossly incompetent. Relying on *Oke v. Mimiko* (No.1) (2014) 1 NWLR (Pt.1388) 225 at 262-263; and *A.N.D.P. v. I.N.E.C. & 2 Ors*, appeal No.CA/A/EPT/406/2020, delivered on the 17th of July, 2020, he pointed out that PW4, PW7 and PW8 worked for the petitioners as experts, and that PW7 has stated in her statement on oath that she is a member of the second petitioner and even contested the National Assembly elections which was conducted simultaneously with the Presidential Elections of 25th February, 2023.He also

pointed out that PW4 had admitted during cross examination that he was requested by the petitioner to produce the report which he concluded on 19th of March, 2023 before the petition was filed. Counsel submitted that it is certain that PW4, PW7 and PW8 are not adversaries or official witnesses and do not need subpoena to be compelled to attend court in this petition. Relying on *Dingyadi v. I.N.E.C.* (No.1) (2010) 18 NWLR (Pt. 1224) 1 at 74-45; *Oke v. Mimiko* (2014) 1 NWLR (Pt. 1388) 332; and *Francis Adenigba & Anor v. C.B. Omoworare & Ors* (2015) LPELR-40531(CA), counsel submitted that securing the attendance of PW4, PW7 and PW8 through subpoenas constitute abuse of court process. He finally urged the court to discountenance the witness statements on oath of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10,PW11and PW13 which were not filed along with the petition but were sought to be included after the time limited for filing same had expired, which amounts to an amendment of the petition.

The 1st respondent also objected to the admissibility of exhibits PCD1-PCD3, PCE1-PCE4, PCF2, PCG2, PCJ1, PCJ2, PCJ3A-F, PCJ4, PCK1 and PCK2, which were tendered through PW4, PW5, PW7 and PW8 whose witness statements were filed outside the prescribed period. Counsel explained that exhibits PCD1-PCD3, PCE1 – PCE4 and PCF2 are documents including expert reports tendered through PW4; exhibit PCG2 is a flash drive tendered through PW5; exhibits PCJ1, PCJ2, PCJ3A-F and PCJ4 were tendered through PW7; and exhibits PCK1 and PCK2 were tendered through PW8. He submitted that those witnesses through whom those documents were tendered were all subpoenaed witnesses whose witness depositions were filed outside the prescribed period in paragraph 4(5) of the 1st Schedule to the Electoral Act, 2022. Relying on *Oke v. Mimiko* (supra); and *Buhari v. I.N.E.C.* (2008)19 NWLR (Pt. 1120) 246 at 414, paras. E-A, he urged the court to discountenance and expunge the witness statements of the said witnesses and the said exhibits admitted through them.

It was also the contention of the 1st respondent that exhibits PCD1 – PCD3, PCE1 – PCE4, PCJ2, PCJ3A-F and PCKI are caught up by the provisions of section 83(3) of the Evidence Act,2011 and are inadmissible, having been made during the pendency of This petition and/or in anticipation of this petition. He relied on *Owie v. Ighiwi* (2005) 5 NWLR (Pt. 917) 184; *P.D.P. v. I.N.E.C.* (2012) 7 NWLR (Pt. 1300) 538 at 565; and *Ladoja v. Ajimobi*

(2016)10 NWLR (Pt. 1519)87, and urged the court to expunge the said exhibits. Counsel added that exhibits PCJ3A-F were tendered through PW7 who claimed to be an expert under the employment of Amazon Web Services, but who admitted that she was not the maker of the documents, but had merely downloaded same from internet. He also pointed out that the subpoena was personally addressed to the PW7 instead of Amazon Web Services. He submitted that the documents tendered by PW7 amount to hearsay evidence and ought to be expunged. He relied on *Andrew v. I.N.E.C*. (2018) 9 NWLR (Pt. 1625) 507 at 576, paras. B -C; *Belgore v. Ahmed* (2013)8NWLR (Pt. 1355) 60; *Abdulmalik v. Tijani* (2012) 12 NWLR (Pt.1315) 461 at 474; and *Haruna v. Modibbo* (2004)16 NWLR (Pt.900)487.

The 1st respondent also objected to the admissibility of exhibits PD1 – PD18, PL1 – PL18, PN1-PN31, PP1- PP13,PQ1-PQ13,PR1- PR25, PV1 – PV7, PW1- PW21, PAA1- PAA21, PAB1-PAB12, PAD1- PAD18, PAE1 – PAE25, PAL1- PAL18, PAM1-PAM15, PAN1- PAN31, PAQ1- PAQ12, PAT1-PAT18, PAU1 -PAU10, PAV1-PAV18, PBB1-PBB23, PBD1-PBD25, PBM1- PBM15, PBN1-PBN11, PBQ1-PBQ21, PBT1-PBT25, PBW1- PBW17, PCN33, PCN37 – PCN39, which were Forms EC8As,EC8Bs and EC8Cs tendered by the petitioners in respect of Akwa Ibom, Cross River, Delta, Edo, Kogi, Ogun, Sokoto, Ebonyi and Nasarawa States. The contention of the 1st respondent is that no facts were specifically pleaded by the petitioners in respect of those States, because no reference was made in the petition to any Local Government Area, or polling unit in any of those States. Relying on *Emegokwue v. Okadigbo* (1973)4 SC 113 at 117; *Ogboru v. Okowa* (2016)11 NWLR (Pt. 1522) 84 at 150; *Buhari v. Obasanjo* (supra) at 201, paras. F -A; *Hashidu v. Goje* (2003) 15 NWLR (Pt. 843)352 at 389. Paras. E – G; and *Belgore v. Ahmed* (supra) at 95. Para. F. Counsel submitted that the pleadings provided by the petitioners were not specific and all those exhibits tendered by the petitioners go to no issue and ought to be expunged by the court. Learned senior counsel for the 1st respondent finally urged the court to reject the evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 and all the identified inadmissible documents tendered by the petitioners.

On their part, the 2nd and 3rd respondents also objected to the competence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10,

PW11 and PW13, the petitioners' subpoenaed witnesses, on the ground that their witness statements on oath were not frontloaded along with the petition within the 21 days of declaration of result of the election, as limited by paragraph 4(5) of the 1st Schedule to the Electoral Act, 2022. In his oral submission in support of the objection, learned senior counsel for the 1st respondent had referred the court to paragraph 4(5) and (6) of the 1s Schedule to the Act and relied on the decisions of this court in *Ararume v. I.N.E.C.* (2019) LPELR-48397 (CA) at page 33; *P.D.P. v. Okogbuo* (2019) LPELR-489989(CA) at pages 22 – 28; and *A.N.D.P. v. I.N.E.C. & Ors*, appeal No. CA/A/EPT/406/2020, delivered on 17th July, 2020, at pages 35 -43. He submitted that the petitioners were aware that they will be calling those witnesses, but failed to list them and frontload their witness statements as required by law. He urged the court to discountenance the evidence of those witnesses.

The 2nd and 3rd respondents also objected to the admissibility of the various documents tendered as exhibits by the petitioners on the ground that facts relating to those exhibits were not specifically pleaded by the petitioners in the petition. The 2nd and 3rd respondents particularly objected to the result sheets tendered as exhibits by the petitioners in respect of some States, and submitted that the said exhibits are not relevant because the petitioners failed to ventilate any complaint in relation to those States. The exhibits objected to by the 2nd and 3rd respondents are:

(i) Exhibits PAQ1 – PAQ12, PBC1 – PBC16 and PBD1- PBD25, listed in the petitioners' Fifth Schedule of documents, which are the Ward Collation Results Sheets for Ebonyi State (Forms EC8B), the local Government Collation Result Sheets for Ekiti and Delta States (Forms EC8C),

(ii) Exhibits PBK1 – PBK16, PBL1- PBL15, PBM1 -PBM23, PBN1- PBN11, PBR1-PBR16 and PBQ1-PBQ21,listed in the petitioners' Seventh Schedule of Documents, which are Forms EC40G (Summary of Registered Voters in Polling Units Where Election did not Hold or was Cancelled) for Niger, Osun, Edo and Sokoto States, as well as Forms EC8A (Polling Unit Results) for Ekiti and Ogun States,

(iii) Exhibits PBW1- PBW17, PBY1- PBY10, PBZ1-PBZ9,listed in the petitioners' Ninth Schedule of

Documents, which are IReV Reports for Bayelsa and Gombe States downloaded and certified by the 1st respondent;

(iv) Exhibits PCN37, PCN38 and PCN51, listed in the petitioners' Eleventh Schedule of Documents, which are Supplementary IReV Reports for Cross River and Gombe States downloaded and certified by 1st respondent;

(v) Exhibits PJI-PJ8, PK1-PK31, PL1-PL18, PP1-PP13, (A)PQ1 – PQ13, PR1- PR25, PU1- PU18, PV1-PV7 and PW1- PW21, listed in petitioners' Eleventh Schedule of Documents, which are Forms EC8A (Polling Unit Results) for Bayelsa, Oyo, Edo, Ebonyi, Nasarawa, Delta, Ondo, Sokoto and Kogi States;

(vi) Exhibits PY1-PY8, PAA1-PAA21, PAB1-PAB12, PAC1- PAC25, PAD1- PAD18, PAE1 – PAE23, PAF1-PAF25, PAG1 – PAG11, PAK1 – PAK31, PAL1- PAL18, PAM1 – PAM15 and PAN1 – PAN31, also listed in the Eleventh Schedule of Documents, which are Forms EC8B (Ward Results) for Bayelsa, Kogi, Nasarawa, Niger, Ondo, Sokoto, Delta, Ekiti, Oyo, Cross River, Edo and Akwa Ibom States;

(vii) Exhibits PAR1-PAR8, PAT1-PAT18, PAU1-PAU10, PAV1-PAV18, PAX1-PAX25, PAY1-PAY18, PAZ1- PAZ33 and PBB1 – PBB23, also listed in Eleventh Schedule of Documents, which are Forms EC8C(Local Government Results) for Bayelsa, Cross River, Ebonyi, Edo, Niger, Ondo, Oyo and Sokoto States;

(viii) Exhibits PBP1- PBP21, which are the IReV Reports from I.N.E.C. for Adamawa State downloaded and certified by the 1st respondent which are listed in the petitioners' Sixth Schedule of documents. The 2nd and3rd respondents objected to these exhibits on the ground that they were not accompanied with a certificate of authentication as required by section 84(2) of the Evidence Act, 2011.

In addition to the above, the 2nd and 3rd respondents also objected to the admissibility of all the Form EC8As, EC8Bs, EC8Cs and all other documents tendered for polling units, wards

and local governments across the country on the ground that the polling units, wards and Local Government Areas were not specifically pleaded in the petition. These include Form EC8As for Ebonyi State (exhibits PPI- PP13), Nasarawa State (exhibits PQI – PQ13). Delta State (exhibits PRI – PR25), Sokoto State(exhibits PV1- PV7), Kogi State (exhibit PWI- PW21); FormEC8Bs for Kogi State (exhibits PAA1- PAA21), Nasarawa State(exhibits PAB1-PAB11), Sokoto State (exhibits PAE1-PAE21),Delta State (exhibits PAF1 – PAF25), Cross River State (exhibit PAL1-PAL18), Akwa Ibom State (exhibit PAN1- PAN31), Ebonyi State (exhibits PAQ1 – PAQ12); Form EC8Cs for Cross River State (exhibits PAT1- PAT18), Ebonyi State (exhibits PAU1- PAU10), Rivers State (exhibit PBA1 – PBA23), Sokoto State (exhibits PBB1- PBB23),Delta State (exhibit PBD1- PBD25); Forms EC40G (PU) for Edo State (exhibits PBM1-PBM23); IReV Report for Edo State (exhibits PBW1 – PBW17);Supplementary IReV Report for Cross River State (exhibits PCH37- PCH39); List of Registered Voters and PVCs Collected for 2023 Elections with respect to Local Government Areas in Ogun State (exhibit PCN5), Akwa Ibom State (exhibit PCN6), Kebbi State (exhibit PCN7), Kogi State (exhibit PCN9), Cross River State (exhibit PCN10), Enugu State (exhibit PCN11), Sokoto State (exhibit PCN12), Ebonyi State (exhibit PCN16), Nasarawa State (exhibit PCN17), Delta State (exhibit PCN18), Anambra State (exhibit PCN22), Jigawa State (exhibit PCN25), Edo State (exhibit PCN27) and Abia State (exhibit PCN29).

Learned senior counsel for the 2nd and 3rd respondents also submitted that exhibits PBP1 - PBP21, the IReV Report from INEC for Adamawa State downloaded and certified by the 1st respondent are not admissible because they were not accompanied with a certificate of authentication in compliance with section 84(2) of the Evidence Act, 2011. He similarly objected to the admissibility of exhibits PCE, PCE1 – PCE4, which the petitioners claim in paragraph 50 of the petition to be the blurred copies of results in 18,088 polling units where votes were suppressed due to alleged failure to transmit poling unit results, for the petitioners failure to specify in the petition the polling units to which the 18,088 polling unit results belong.

The learned senior counsel for the 2nd and 3rd respondents submitted that with the failure of the petitioners to specifically plead facts relating to all those documents which they tendered, the documents are inadmissible and same must be expunged by the

Court. He placed reliance on section 6 of the Evidence Act, 2011; paragraphs 4(5) and 41(8) of the First Schedule to the Electoral Act, 2022; as well as the cases of *Nwabuoku v. Onwordi* (2006) All FWLR (Pt. 331) 1236 at 1251; *Fawehinmi v. NBA* (No.2) (1992)2NWLR (Pt. 105) 558 at 583; *Torti v. Ukpabi* (1984) 1 SCNLR 214; *Ogu v. Manid Technology & Multipurpose Co-Operative Society Ltd. (*2010) LPELR-4690, (2011) 8 NWLR (Pt.1249) 345; *Ojioju v: Ojioju* (2010) 8 NWLR (Pt. 1198) 1 at 28; *I.N.E.C. v. Ray* (2004)14 NWLR (Pt. 892) 92 at 136; and *Ekere v. Emmanuel* (2022) 11NWLR (Pt. 1841) 339 at 358. He finally urged the court to expunge those documents.

On the part of the 4th respondent, objection was raised to the same certified true copies of Forms EC8As, EC8Bs, EC8Cs, EC8Ds, EC40G, EC8Es, the IReV Reports, Expert Reports and exhibit B5 Series, which were tendered by the petitioners in the course of trial. The learned senior counsel for the 4th respondent contended that the contested documents are hearsay evidence, having not been tendered by the makers of those documents. Here lied on *Belgore v. Ahmed* (supra); *Mark v. Abubakar* (2004) 2NWLR (Pt. 1124) 79 at 184 -185; *Iniama v. Akpabio* (2008) 17NWLR (Pt. 1116) 225 at 300; *Andrew v. I.N.E.C.* (2018) 9 NWLR (Pt. 1625) 507 at 576, paras. A – B; *Omisore v. Aregbesola* (2015)15 NWLR (Pt. 1482) 205; *Udom v. Umana* (No.1) (2016)2 NWLR (Pt. 1526)179; and *Okonji v. Njokanma* (1999) 12 NWLR (Pt.638) 250.He argued that the said documents are documentary hearsay and therefore inadmissible because they cannot be tendered from the Bar, having been disputed by the 4th respondent pursuant to paragraphs 10 and 11 of its answers to the Pre-hearing Information Sheet (Form TF008 filed on 2nd May, 2023). He pointed out that paragraph 41(3) of the 1st Schedule to the Electoral Act states categorically that all disputed documents shall be tendered by a witness who is the maker during the evidence-in-chief. He cited *Nwankwo v. Yar'adua* (2010) 12 NWLR (Pt. 1209) 518 at 588.He urged the court to expunge the documents.

Learned counsel also submitted that the disputed documents are not admissible because what is being tendered are not exact copies of the original, since the copies being tendered are laced with certain written comments which are not contained in the original documents from where the said exhibits were purportedly made, thereby altering the contents of the original documents. He

referred to sections 87. 89, 90 and 104 of the Evidence Act, 2011 and relied on the case of *Omisore v. Aregbesola* (supra) at page 294, paras. G-H.

Learned counsel also submitted that the disputed electoral forms used for the Presidential Election conducted on 25th of February, 2023 which were tendered by the petitioners were not certified in accordance with the provisions of section 104 of the Evidence Act, 2011, in that the signatures and dates on all the documents are not written in longhand but were rather engraved on the documents. He relied on *Belgore v. Ahmed* (supra); and *Omisore v. Aregbesola* (supra). In addition, he submitted that the documents were purportedly certified "for and on behalf of the certifying officer" which means that the officer who certified the documents is not the officer who has the custody of those public documents and cannot validly certify same in law. He further relied on *Tabik Investments Ltd. v. G.T.B.* (2011) 17 NWLR (Pt. 1275)240 at 256; *Amaechi v. I.N.E.C.* (2008) 5 NWLR (Pt. 1080) 227; and *Nwabuoku & Ors v. Onwordi & Ors* (2006) 5 SC (Pt. III) 103 at 114-115.

It was also the contention of the 4th respondent that in tendering and demonstrating PCG2 (the Flash Drive), the petitioners did not fulfil the requirements of section 84 of the Evidence Act, 2011 and PW5 through whom it was tendered is not originator or the maker of the video and therefore not in a position to satisfy the requirement of the law. He relied on *Akeredolu & Anor v. Mimiko* (2013) LPELR-20532(CA). He added that PW5 is not the appropriate person to issue the purported certificate of compliance as he did not know the condition of the gadget used to upload the alleged recording and or interview which he tendered. He further stated that PW5 is clearly not the maker of the video clips and cannot be cross examined thereon. He contended that where a document makes serious allegations against a party and such document is not tendered by the maker, but admitted and relied upon by the trial court without affording the adverse party opportunity to cross examine the real maker thereof on the contents of the document, then it will amount to a breach of the right to fair hearing guaranteed by section 36(6) (d) of the 1999 Constitution. He relied on *NIMASA v. Hensmor Nigeria Ltd.* (2015)5 NWLR (Pt. 1452) 278; *Maduekwe v. Okoroafor* (1992) 9 NWLR (Pt.263)69 at 81, paras. A-B; 83, para. H.

On his objection to the competence of some of the petitioners witnesses, learned senior counsel for the 4th respondent stated that PW4 and PW7 are witnesses who worked for the petitioners as experts and are therefore not adversaries or official witnesses and do not require subpoena to be compelled to attend court. He argued that the issuance of subpoenas on the application of the petitioners for PW4 and PW7, who are willing witnesses of the petitioners, was not done *bona fide*. He submitted that this is not a mere irregularity but a gross abuse of court process. He urged the court to deprecate and nullify same.

It was also the contention of learned senior counsel for the 4threspondent that PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 who were subpoenaed witnesses cannot give evidence in this petition because their supposed witness statements on oath failed to comply with the provisions of paragraph 4(5) of the 1stSchedule to the Electoral Act, 2022, and as such all their testimonies lack foundation. He relied on *Ararume v. I.N.E.C. (*2019) LPELR-48397 (CA), reported in (2007) 9 NWLR (Pt.1038) 127; *Uduma v. Arunsi* (2012) 7 NWLR (Pt. 1298) 55 at 109, paras. A-C; *A.N.D.P. v. I.N.E.C*., Appeal No.CA/A/EPT/406/2020,delivered on 17th July, 2020; *Dingyadi v. I.N.E.C*. (No.1) (2010) 18 NWLR (Pt.1224)1 at 74-75.

Learned counsel submitted that the purported expert reports tendered by the petitioners in exhibits PCJ1, PCJ2, PCJ3A-Fand PCJ4 are inadmissible in evidence because PW2 and PW7 who produced the reports did not establish their qualification and skills as experts in any relevant field as required by section 68 of the Evidence Act, 2011 so as to make their report admissible. Here lied on *Sowemimo v. State* (2004) 11 NWLR (Pt. 885) 515 at 532.He further submitted that the purported server/cloud with whichPW2 and PW7 claimed to have carried out their analysis were not identified by the witnesses in court. He urged the court to treat exhibits PCJ1, PCJ2, PCJ3A-F and PCJ4 with caution, especially as the purported experts that produced them were engaged by the petitioners. He relied on *U.T.B. v. Awanzigana Ent. Ltd.* (1994) 6NWLR (Pt. 348) 56 at 77, paras B -F; *P.D.P. v. I.N.E.C* .(2012)7 NWLR (Pt. 1300) 538 at 565; *Seismograph Services v. Akporuovo* (1976) 6 SC 119 at 136; *Shell Petroleum Development Company(Nig.) Ltd. V. Farah* (1995) 3 NWLR (Pt. 382) 148at 183-184; and *Ngige v. Obi* (2006) 14 NWLR (Pt. 999) 1 at 191 – 192. He

submitted that there was no basis for which the petitioners called the purported expert evidence of PW7 to prove that there was no glitch in the transmission of results from the BVAS to the IReV, because it is common knowledge that network connections drop sometimes making it impossible for the Internet gateway to open for transmission. He posited that this court can determine the matter based on credible evidence already before it and not necessarily on any expert evidence. Relying on the case of *U.T.B v.Awanzigana Ent. Ltd*. (supra) at page 80, para. H, he urged the court to disregard exhibits P87 – P89 and P90 – P90A-K and expunge same from the record of the court.

It was also the submission of learned senior counsel for the 4threspondent that exhibit X2, the European Union Report tendered by the petitioners through RW1 is inadmissible, same having been obtained by the petitioners from the Registry of this court and not from the custodian of the original copy. He pointed out that exhibitX2 was a document tendered by the People's Democratic Party in petiton No. CA/PEPC/05/2023 and the petitioners obtained a certified copy of same from the court which is not the custodian of the original, especially as the documents was not authored or signed, thus making it a worthless document. He submitted that it is onlythe official who has custody of the original of a public document who is authorized to certify a copy of same. Relying on *Okafor v. Okafor* (2015) 4 NWLR (Pt. 1449) 335 at 363; *Ogbuanyinya v. Okudo* (1979) All NLR 105 at 112; *Garuba v. K.I.C. Ltd.* (2005) 5 NWLR (Pt. 917) 160 at 176 SC; and *A.P.G.A. v. Al-Makura* (2016) 5 NWLR (Pt. 1505) 316 at 348, counsel urged the court to disregard exhibit X2 and expunge same from its record. He finally urged the court to reject the identified documents tendered by the petitioners as well as the evidence of PW1-PW12 as inadmissible in law.

Responding to the 1st respondent's objections, the learned senior counsel for the petitioners submitted that the subpoenaed witnesses are competent to testify and they are not prejudiced by the fact that their witness statements on oath were filed in June, 2023 after the petition was filed. He argued that their testimony did not breach the provisions of paragraph 4(5) (a) – (c) of the First Schedule to the Electoral Act, 2022 because the law does not forbid a subpoenaed witness who is competent to give his testimony orally from reducing the same testimony into a witness statement on oath. He further argued that a subpoena is at the instance of the court and

That the petitioners have listed as numbers 9 and 10 in the list of witnesses, the forensic/expert witnesses to be subpoenaed and the respondents were on notice of the nature of those witnesses.

Learned counsel submitted that contrary to the 1st respondent's assertion, PW4, PW7 and PW8 do not work for the petitioners. *Citing Bashir v. Kurdula* (2019) LPELR-48473; *Omidiran v. Etteh* (2011) 2 NWLR (Pt. 1232) 481; *Lasun v. Awoyemi* (2009) 16NWLR (Pt. 1168) 513 at 548-549; *Okonji v. Njokanma* (1999) 12NWLR (Pt. 638) 250; and *C.P.C. v. Ombugadu* (2013) 18 NWLR (Pt.1385) 66.Counsel submitted that the testimonies of PW4, PW7 and PW8 do not constitute an abuse of court process as contended by the respondents.

On the 1st respondent's prayer that this court should expunge exhibits PCD1-PCD3, PCE1-PCE4, PCF2, PCG2, PCJ1, PCJ2, PCJ3A -F, PCJ4, PCK1 and PCK2 because they were tendered through the petitioners' subpoenaed witnesses, and they were also contrived for the purpose of the suit, contrary to section 83(3) of the Evidence Act, 2011,learned counsel for the petitioners adopted his preceding argument and also submitted that section 83(3) of the Evidence Act, 2011 does not apply to expert witnesses since they are not persons interested in the action and are not swayed by personal interest. He relied on *C.P.C v. Ombugadu* (supra).

On the respondents' objection to Forms EC8As, EC8Bs, EC8Cs for Akwa Ibom, Cross River, Edo, Ebonyi, Nasarawa, Sokoto, Delta, Kogi and Ogun States, counsel submitted that what is required is for the petitioners to plead facts which could elicit that documents to be tendered. He referred to paragraphs 19, 72-73 and 101 of the petition and submitted that the complaint of the petitioners touch on all States of the Federation and is not limited to some few States as erroneously conceived by the 1strespondent. Counsel also contended that the orders of this court made during pre-hearing report is binding on all parties concerningthe duly certified true copies of INEC documents, especially in the absence of appeal against same. Relying on the recent decision of the Supreme Court in Ojeh v. F.R.N. (2023) 5 NWLR (Pt. 1876)1at 30, paras. D – F ,*Chigbu v. Tonimas* (1999) 3 NWLR (Pt. 593)115; and *Sani v. Akwue* (2019) LPELR-48206 (CA), the petitioners submitted that since INEC had testified in this petition, no document certified by INEC and tendered by the petitioners can be regarded as dumping of documents and the parties have agreed on the certified

documents, pursuant to which the court made an order admitting the documents.

Responding to the 2nd and 3rd respondents' objection to the admissibility of INEC certified documents, learned senior counsel for the petitioners submitted that the parties are bound by the order of this court made in the Pre-Hearing Report of 23rd May, 2023 to the effect that since those documents have been consented to by the parties the documents shall be tendered from the Bar and admitted during hearing. He argued that the said order is binding on the parties and urged the court to discountenance all the objection raised by the 2nd and 3rd respondents.

In reaction to the 2nd and 3rd respondents' objection to exhibits PAQ1 – PAQ12, PBC1 -PBC16 and PBD1 – PBD25 which were listed in the petitioners' Fifth Schedule of Documents, learned senior counsel for the petitioners submitted that from paragraphs 59, and 101 of the petition and paragraph 60 and 102 of PW12'switness statement on oath adopted on 22nd June, 2023, it is clear that the petitioners were challenging the return of the 2nd and 3rdrespondents in the States they were purported to have won of which Ekiti State was one of them. He similarly argued that in paragraph 73 of the petition and 74 of PW12's witness statement the petitioners have listed the States that they were challenging, among which are Delta and Ebonyi and other States of the Federation. He submitted that the non-compliance with the Electoral Act, 2022was a universal one and not restricted to only the States listed, and that the documents tendered substantially demonstrate to this court that the issue of non-compliance by the 1st respondent to its laws, guidelines and relevant statutes was a universal issue. According to him, the 1st respondent has not denied the failure to comply with the provisions of the Electoral Act, 2022 on the 25th of February, 2023.He added that the allegations of blurred 18,088 IReV result sheets which was pleaded in paragraphs 60 and 61 and the star witness statement on oath cut across all the States of the Federation, hence those exhibits.

On the objection to exhibits PBP1-PBP21, the certified copies of IReV documents from INEC on Adamawa State, the petitioners contended that section 84 of the Evidence Act does not apply to those documents because they are public documents that have passed the test of certification, and the requirement in section 84is only necessary when the document is tendered by the maker, in

Which case I.N.E.C. is the only body that has the duty to tender same in line with section 84 of the Evidence act. He pointed out that contrary to the assertion of the 2nd and 3rd respondents, the petitioners had tendered certificates of compliance for six (6) States which were marked, as exhibits PCB1-PCB6, and for 28 States, including Adamawa State which were marked as exhibits PCCI-PCC28.

Learned counsel repeated the same argument as a response to the 2nd and 3rd respondents' objection to the exhibits in the petitioners' seventh, ninth and eleventh Schedules of documents. On the Forms ECBBs for Bayelsa, Kogi, Nasarawa, Niger, Ondo, Sokoto, Delta, Ekiti, Oyo, Cross River, Edo and Akwa Ibom States, as well as ECBCs for Bayelsa, Cross River, Ebonyi, Edo, Niger,Ondo,Oyo,and Sokoto States, learned counsel submitted that the petitioners' complaints concerning the general election goes for all those States. He submitted that it is only when those documents are tendered bythe petitioners that the discrepancies can be seen to show how the failure to upload real time on Election Day has significantly impacted the election. He particularly referred to paragraphs 70, 71, 72, 73, 74 and 101 of the petition where the documents were specifically pleaded. He argued that the cases of *Ojioju v. Ojioju* (supra); and *Ogu v. Manid Technology & Multipurpose Co-Operative Society Ltd.* (supra), cited by the respondents are not helpful, because the pleadings in the petition and the facts in the petitioners' star witness statement on oath have captured the petitioners' case.

On the 2nd and 3rd respondents' reliance on section 104 of the Evidence Act, 2011. Counsel pointed out that on 22nd June, 2023 the petitioners tendered all the receipts for certification of documents which they obtained from the 1st respondent which were admitted through PW12 and marked exhibit PCQ. He submitted that this covered all the documents mentioned in paragraph 102 of the petitioner's star witness deposition. He argued that the case of *Tabik Investment v. GT Bank* (supra), cited by the 2nd and 3rd respondents actually support the case of the petitioners in the manner adopted for admissibility of the public documents.

Learned counsel referred to the arguments of the 2nd and 3rd respondents over the failure of the petitioners to specify the polling units in respect of the blurred IReV results. He submitted that the request for specific polling units of the blurred results is nothing

But a request for an impossibility of polling units results that are unreadable.

Counsel finally reiterated that the petitioners have complied with paragraphs 4(5)(c) and 41(8)of the 1st Schedule to the Electoral Act, 2022 as they have specifically pleaded the documents in paragraph 101 coupled with the expert report which detailed most of these polling units. He urged the court to discountenance and dismiss the objections of the 2nd and 3rd respondents.

In opposition to the 4th respondent's objection, the learned senior counsel for the petitioners made similar submissions to those earlier made in opposition to the objections of the 1st, 2nd and 3rd respondents. He particularly submitted that paragraph 41(3) of the 1st Schedule to the Electoral Act, 2022 never stated that it is only the maker of a document that must tender it. He also submitted that the4th respondent also failed to draw attention of the court during trial to the comments made on the secondary public documents tendered by the petitioners and to point to the exact copies that carry those comments as alleged by it. He submitted that with that failure, it is too late in the day for the 4th respondent to complain.

On the 4th respondent's argument over improper certification of the documents, learned counsel for the petitioners relied on the decision of this court in *Regency (Overseas) Co. Ltd. v. Ariori & Ors* (2019) LPELR-47281(CA), and submitted that the 4threspondent failed to specify the exact documents which were improperly tendered in evidence. On the 4th respondent's objection to the evidence of PW4, PW5 and PW7, counsel submitted that PW5 is excused from complying with section 83 of the Evidence Act in relation to exhibit PCG2 since in the opinion of the 4th respondent, PW5 is not the maker of the document. As for PW4 and PW7, he submitted that the 4th respondent failed to show why their evidence is incompetent. He argued that PW4 had stated that he was a public servant under the employment of Nnamdi Azikiwe University, Awka, and as such would require a subpoena to testify. He added that PW4 had also informed the court that even as the petitioners approached him for the project of having real data for the results of the election of 25th February, 2023, he did not do the project for a fee but for educational learning of his students. Counsel also argued that notwithstanding that PW7 is a member of the 2nd petitioner, she did not allow partisan affiliation to prejudice her professional competence.

On the 4th respondent's objection to the evidence of PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW12, counsel submitted that the 4th respondent muddled up everything, in that there is nowhere PW2 featured in the expert evidence of PW7, and there is nothing in section 68 of the Evidence Act which impeaches the evidence of PW7 who testified as cloud Architect and by extension an expert. Turning to the 4th respondent's objection to exhibit X2, he submitted that the court can as well demand for this exhibit to assist in the final determination of the case even if the parties fail to do so. He added that the evidence of the witnesses and the documents tendered are meant to assist the court and exhibit X2 is an integral part of this election which is prepared by persons who were neither partisan nor influenced by any partisan consideration. Counsel concluded by referring this court to the recent decision of the Supreme Court in *Ojeh v. F.R.N.* (2023) 5 NWLR (Pt.1876) 1 at 30, para. D-F, to the effect that where a public institution testifies in the same case, the bundle of certified true copies of documents tendered in that case can no longer be regarded as dumping. He argued that since I.N.E.C. has testified in this petition, no document certified by it and tendered by the petitioners can be regarded as dumped upon the court. Relying on *S.P.D.C.N. v. Ekwems* (2023) 4 NWLR (Pt. 1874) 213, and *Peterside v. Odili* (2022) 17 NWLR (Pt.1860) 549, he urged the court to discountenance the 4th respondent's objection.

Replying on points of law, learned counsel for the 1st respondent submitted that the case of *Lasun v. Awoyemi* (supra), relied upon by the petitioners is inapplicable herein because the said case was decided under the Electoral Act of 2006 which did not have provisions similar to those of paragraph 4(5) (a) of the 1st Schedule to the Electoral Act, 2022, especially as it relates to filing of witness statement on oath. He further contended that contrary to the submission of the petitioners, the law regarding tendering of documents through its maker has not been extended to cover employees of colleagues of the maker who have no input to such documents, hence it is immaterial whether PW7 claimed to be the maker as it is on record that she downloaded the documents she tendered and did not produce them herself. He relied on *Abdulmalik v. Tijjani* (2012) 12 NWLR (Pt. 1315) 461 at 474; and *Haruna v. Modibbo* (2004) 16 NWLR (Pt.900) 487.

On the petitioners' submission that section 83(3) of the Evidence Act does not apply to expert witnesses. Counsel submitted that the Section is applicable to all witnesses, and that the case of *CPC v. Ombugadu* (supra), relied upon by the petitioners did not state otherwise. On the petitioners argument that the electoral documents they tendered are relevant and pleaded, he submitted that having failed to ventilate any complaint regarding the States in respect of which those documents were tendered, the exhibits serve no purpose and are irrelevant and should be expunged from the records of the court. He relied on *Buhari v. Obasanjo* (2005) 7SCNJ 1, (2005) 13 NWLR (Pt.941)1.

Replying on points of law to the petitioners' response to their objection, learned senior counsel for the 2nd and 3rd respondents contended that the argument of the petitioners that there is a binding order of this court is unfounded, as it is trite law that parties cannot by agreement alter the settled position of the law, to the effect that a document which is not pleaded is inadmissible. They relied on the case of *Olowu v. Building Stock Ltd.* (2018) 1 NWLR (Pt.1601)343 at 394 – 395. Learned counsel also contended that the law is settled that the parties and the court are bound by the pleadings. He pointed out that from the totality of the paragraphs of the petition, the petitioners contested election results in 10 States. He referred to paragraph 73 of the petition. He submitted that the general principle of law on pleadings and what facts are to be pleaded have been enunciated in *Odunsi v. Bamgbala* (1995) 1 NWLR (Pt. 374) 641at 655; and *Yare v. N.S.W. & I.C.* (2013) 12 NWLR (Pt. 1367) 173 SC. He added that contrary to the assertion of the petitioners, there is no reference to Bayelsa and Gombe States in paragraphs 70 -73 of the petition or paragraphs 71- 74 of PW12's witness statement on oath. He urged the court to expunge exhibits PBW1-PBW17, PBY1-PBY10 and PBZ1 to PBZ9.

Also replying on points of law, learned senior counsel for the 4th respondent argued that contrary to the position of the petitioners, a maker of public documents must be called to testify to the contents of such document and lay proper foundation for it to be admissible in evidence. He submitted that the petitioners tended disputed documents from the Bar in utter disregard to the provisions of paragraph 4(3) of the 1st Schedule to the Electoral Act, 2022. Headed that the stipulation of the apex court in the cases of *Andrew*

v. I.N.E.C. (supra); and *Okonji v. Njokanma* (1999) 12 NWLR (Pt. 638) 250, still remains the extant position of the law.

Learned counsel pointed out that the certificate of compliance tendered in respect of exhibit PGC2 does not emanate from the person who allegedly produced the said exhibit, and as such, the case of *Stanbic IBTC Bank v. Longterm Global Capital Ltd. & Ors* (2021) LPELR-55610, (2020) 2 NWLR (Pt.1707)1, relied upon by the petitioners is inapplicable to this scenario. He further submitted that PW4 and PW7 are not adversaries or unwilling witnesses, but are petitioners' party members, workmen or consultants. He relied in *Dingyadi v. I.N.E.C.* (No.1) (2010) 18 NWLR (Pt. 1224) 1 at 74- 75. He added that it is preposterous for the petitioners to argue that the provisions of section 68 of the Evidence Act does not impeach the expert evidence of PW7 who claimed to be an expert but failed to produce her qualifications before the court.

Learned counsel also argued that exhibit X2, which was not certified by and obtained from the proper custodian of the document, is not legally admissible in evidence and in as much as the documents tendered are meant to assist the court in doing justice, such documents should not be tendered in utter disregard to the legal requirements. Relying on *Dungal v. Soro* (2019) 10 NWLR (Pt. 1679) 37 at 48, paras. E –G, he urged the court to discountenance and expunge exhibit X2.

Resolution of the Respondents' Objections to Witnesses and to Documents:

On the first segment of the respondents' objection, all the respondents challenged the competence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13, and the respondents' essential contention is that the witness statements on oath of those witnesses of the petitioners were not frontloaded along with the petition, but were only filed during trial, contrary to paragraph 4(5) (b) of the 1st Schedule to the Electoral Act, 2022.

Section 285(5) of the 1999 Constitution (as amended) which limits the time for presentation of election petition, provides as follows:

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

In the same vein, section 132(7) of the Electoral Act, 2022 provides as follows:

"An election petition shall be filed within 21 days after the date of the declaration of the result of the elections."

Paragraph 4 of the 1st Schedule to the Electoral Act, 2022 stipulates the contents of an election petition which shall be filed. In particular, paragraph 4(5) of said Schedule mandates as follows:

"4(5) the election petition shall be accompanied by-

(a) a list of the witnesses that the petitioner intends to call in proof of the petition;
(b) Written statements on oath of the witnesses; and
(c) Copies or list of every document to be relied on at the hearing of the petition."

By subparagraph (6) of that paragraph, a petition which fails to comply with the above requirements shall not be accepted for filing by the Secretary.

Paragraph 14(2) of the same 1st Schedule to the Act then provides as follows:

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

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

(i) introducing any of the requirements of paragraph 4(1) not contained in the original election petition filed, or
(ii) effecting a substantial alteration of the ground for, or the prayer in, the election petition, or
(iii) Except anything which may be done under subparagraph (2)(a)(ii), effecting a substantial alteration of or addition to, the statements of facts relied on to support the ground for, or sustain the prayer in the election petition; and

(b) Paragraph 12 for filing the reply, no amendment shall be made-

(i) Alleging that the claim of the seat or(1)office by the petitioner is correct or false, or
(ii) except anything which may be done under the provisions of subparagraph

(2)(a)(ii) Effecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply."

The above quoted provisions of the Constitution, the Electoral Act, 2022 and the 1st Schedule thereto, have been thoroughly considered by the Supreme Court in *Oke & Anor v. Mimiko & Ors* (2013) LPELR-20645 (SC) at pages 43 -45, paras. D-D, per Ogunbiyi, JSC; (No.1) (2014) 1 NWLR (Pt. 1388)225, which has been followed by several decisions of this court. See among others: *Ogba v. Vincent* (2015) LPELR-40719 (CA) at pages 42-49, paras. C, per Agim, JCA; *Ararume & Anor v. I.N.E.C. & Anor* (2019) LPELR-48397(CA) at pages 28 -36, per Tsammani, JCA; *Okwuru v. Ogbee & Ors* (2015) LPELR-40682 (CA) at pages 25 – 29, per Bolaji-Yusuff, JCA; *P.D.P. v. Okogbuo & Ors* (2019) LPELR-48989 (CA) at pages 11-28, per Orji- Abadua, JCA; and *A.N.D.P. v. I.N.E.C. & Ors,* Appeal No. CA/A/EPT/406/2020, delivered on 17th July, 2020, at pages 35-43.

In *Oke v. Mimiko* (supra), the apex court, per Ogunbiyi, JSC held that:

"By paragraph 4(1) and (5) of the 1st Schedule to the Electoral Act, a composite analysis of an election petition has been spelt out and also a list of materials which must be accompanied. The use of the word "shall" in the subsections is very instructive, mandatory and conclusive. In other words, the provisions do not allow for additions and hence, the procedure adopted by the appellants in seeking for an extension of time is nothing other than surreptitious attempt to amend the petition. This is obvious from the nature and substance of the application especially where one of the grounds seeks to put in facts which were allegedly not available at the time of filing the petition but only came into their possession after the statutory time limit allowed for the presentation of election petition. Expressly, there is no provision in the legislation which provides for extension of time. What is more, vide paragraph 14(2) of the 1st Schedule to the Electoral Act, the appellants by section 134(1) of the Electoral Act had been totally

> Foreclosed from any amendment which was in fact the hidden agenda promoting the application. The saying is true that even the devil does not know a man's intention; it can only be inferred from the act exhibiting that which is conceived in the heart and mind. The use of the word "shall" in paragraph 14(2)(a) of the 1st Schedule to the Electoral Act is mandatory and places a complete bar on any form of amendment to a petition filed and does not also allow for an exercise of discretion whatsoever. See *Ugwu v. Ararume* (2007)12 NWLR (Pt. 1048) 367 at 510-511 and *Bamaiyi v. A.-G., Fed.* (2001) 12 NWLR (Pt. 727) 428 at 497.Further still and on a critical perusal of the application, relief 2 seeks "leave to call additional witness, to wit A.E.O". It is pertinent to restate that at the close of pleadings parties had submitted the list of witnesses who were to testify together with their depositions. The idea, purpose and intention of the application is suggestive of nothing more but a clear confirmation seeking for an order of an amendment as rightly and ingeniously thought out by the trial tribunal and also affirmed by the lower court. This will certainly violate the provisions of section 285(5) of the Constitution and section 134 of the Electoral Act."

In his concurring judgment in the same case, Ngwuta, JSC specifically stated that:

> "The additional or further witness depositions sought to be allowed for a just and fair determination of the petition are fresh facts as found by the tribunal and which finding was endorsed by the lower court. This court will not interfere with a concurrent finding of fact of the two lower courts when the appellants have failed to show a special circumstance for this court to do so. Election petitions are time-bound and the court will not allow a party to resort to any sort of subterfuge to frustrate the intention of the Electoral Act that petitions be disposed of expeditiously."

The petitioners In this case have relied on the earlier decisions of this court in *Omidiran v. Etteh* (supra) and *Lasun v. Awoyemi* (supra), to argue that the subpoenaed witnesses whose

Witness statements on oath were filed outside the time limited for presentation of the petition are competent to testify because they are subpoenaed witnesses who do not work for the petitioners. However, it is pertinent to observe that unlike in the present case, the subpoenas issued at the instance of the petitioners in the cases of *Omidiran v. Etteh* (supra); and *Lasun v. Awoyemi* (supra), were decided under the Electoral Act of 2006 which did not have provisions similar to paragraph 4(5) of the 1st Schedule to the extant Electoral Act, 2022. Secondly, the subpoenas in the above two cases were issued and served on adversaries, namely -the Resident Electoral Commissioners. Again, those two cases were decided before the introduction of section 285(6) of the Constitution of the Federal Republic of Nigeria, 1999 which mandates that an election petition shall be decided within 180 days from the date of filing of the petition.

Thus, whilst this court in *Omidiran v. Etteh* (supra) and *Lasun v. Awoyemi* (supra), appeared to have adopted a flexible approach, the apex court had taken a strict approach in its latter decision in *Oke v. Mimiko* (supra). Indeed, in subsequently following the apex court's decision in *Oke v. Mimiko* (supra), this court, per Agim, JCA (as he then was, now JSC) highlighted this strict position of the law in *Ogba v. Vincent* (supra), at pages.46 -48,paras.A-B,whereinhe held as follows:

> "I think that this court in *Omidiran v. Etteh* and the Supreme Court in *Oke v. Mimiko* adopted different approaches in addressing the issue of whether a Tribunal or court can allow a witness deposition or other document not filed along with the petition ornot filed within the time allowed for filling election petition to be filed and used in an election petition proceeding. Omidiran's case did not strictly enforce the time limits prescribed in S. 141 of the Electoral Act 2006, the provisions in the First Schedule thereto on prohibiting the introduction of additional facts in the proceedings after the period allowed for filing the petition and closure of pleadings and paragraph 1(1) of the Election Tribunal and Court Practice Directions 2006 on the content and form of the petition. It held that the purpose of the Practice Directions is to guide and regulate compliance with and observance of the

Provisions of the First Schedule to the Act and the Federal High Court Rules, where applicable. This elastic application of the electoral laws by this court in that case is not in line with the current judicial approach of strict enforcement of electoral laws and the current approach of applying the Election Tribunal and Court Practice Directions as overriding the rules of court in election cases. In *Oke v. Mimiko*, the Supreme Court approached the issue in keeping with the current judicial trend of strictly applying electoral laws and procedural rules and giving them supremacy overrules of court in election cases. The Supreme Court has consistently in a long line of cases insisted on this strict and inelastic approach in enforcing the electoral laws. See *Audu & Anor v. Wada & Ors* (SC.332/2012 of 10-9-2012 @p.2); (2016) 12 NWLR (Pt.1527) 382, *A.C.N. v. Nyako & Ors* (SC.409/2012 of 5-11-2012 @p.3-5), (2015) 18 NWLR (Pt.1491) 352; *Omisore &Anor v. Aregbesola & Ors* (SC.204/2015 of 27-5-2015@ p. 55), (2015)15 NWLR (Pt.1482) 205.

The law as laid out *strictisima juris* in *Oke v. Mimiko* Is that a witness deposition that is not filed along with The petition within the 21 days allowed for filing the petition cannot be filed in the proceedings. It held thus-

> "… if there was an evidence which was fundamental to the determination of the petition, that evidence ought to have been placed willy-nilly before the Tribunal within the time limit specified by the Electoral Act or any other Act. That evidence ought to be regarded as the spinal cord of the petition. Even if it was been withheld by any person, there are several ways to go about placing same before the Tribunal. The Evidence Act is very clear on this. The petitioners ought to have resorted to that procedure…"

The firm position of the Supreme Court as stated in *Oke v. Mimiko* (supra), and followed by this court in *Ogba v. Vincent* (supra), is that by the combined provisions of section 285(5) of the 1999 Constitution, section 132(7) of the Electoral Act, 2022 and paragraphs 4(5) and (6) and 14(2) of the 1st Schedule to the Act, every written statement on oath of the witnesses which a party

Intends to call must be filed along with the petition within the time limited by section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 132(7) of the Electoral Act, 2022.Once the time limited for filing of a petition has elapsed, the contents of the petition cannot be added to or amended in any manner or under any guise. Any written statement on oath of a witness filed outside that 21 days limitation will amount to a surreptitious amendment of the petition and a breach of paragraph 14 of the 1st Schedule to the Electoral Act, 2022. This is irrespective of whether the witnesses to be called are ordinary or expert witnesses and whether they are willing or subpoenaed witnesses. Since then, this has been the consistent position of the law followed by this court.

Indeed, in *Okwuru v. Ogbee* (supra), this court stressed this position when Bolaji-Yusuff, JCA stated thus:

> "From the records, PW3 and PW4 were summoned by subpoena issued by the Tribunal and presented as expert witnesses. The question is whether this without more entitles the appellant to file their statements on oath outside the time set for filing a petition or a reply to the respondent's reply in answer to the petition. I am of the humble view that whether an expert witness or not, a witness remains a witness. Though the proviso to Order 3 rule 3(1) of the Federal High Court (Civil Procedure) Rules, 2009 made applicable to an election petition by paragraph 54 of the First Schedule to the Electoral Act provides that
>
> (i) The statements on oath of witnesses requiring (1). Subpoena from the court need not be filed at the commencement of the suit.
>
> (ii) the witnesses who require subpoena or summons shall at the instance of the party calling them be served with Civil Form 1(a)before the filing of statements of such witnesses", the application of that rule is with regard to and/or subject to the provisions of the Electoral Act not independent of the Act.
>
> Paragraph 54 reads:
>
> > "Subject to the express provisions of this Act, the practice and procedure of the Tribunal or

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

The provisions of the Electoral Act being a substantive law shall override any rule of court which is contrary to its provision. The subsidiary legislation must conform with the principal law. See: *N.N.P.C. v. Famfa Oil Ltd*.(2012) LPELR-7812(SC), (2012) 17 NWLR (Pt.1328)148.The proviso to Order 3 rule 3(1) of the Federal High Court (Civil Procedure) Rules, 2009 cannot override or affect or whittle down the absolute and mandatory provisions of section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which stipulates that an election petition shall be filed within21 days after the date of the declaration of result of the elections and paragraphs 4(1) and (5) and 14(1)and (2) of First Schedule to the Electoral Act which stipulate the content of a petition. See: *The Gov. of Oyo State & Ors v. Oba Ololode Folayan* (1995) 8 NWLR(Pt. 413) page 292; *Barclays Bank of Nigeria Ltd. v. Ashiru & 2 Ors* (1978) 6-7 SC (Reprint) 70 or (1978) LPELR- 75 2 (SC), *UTA French Airlines v. Williams* (2000)14 NWLR (Pt. 687) pages 277. It is therefore clear that in law, the provisions of Order 3 rule 3 (1) of the Federal High Court (Civil Procedure) Rules, 2009 cannot provide a platform for filing and using witness statement on oath not filed within the time limit set for presentation of petition and which time cannot be extended for any reason under any guise. The focus of our decision in *Ogba v. Vincent* (supra), was the injustice in allowing a piece of evidence not covered by the pleadings to be presented to the court when the opposing party would have no opportunity to react to it

> … It is my humble view that the position of the law as can be gleaned from section 285(5) of the Constitution, paragraphs 4, 14(2) and 16(1) of the First Schedule to the Electoral Act is that a petitioner cannot be allowed to file and use documents or witness statements on oath filed outside the time set for filing a petition and to which the respondents would have no opportunity to react. To do so will amount to creating an avenue which a petitioner can use or exploit to overreach the respondent(s). That is the stand of the Supreme Court in *Oke v. Mimiko* (No. 1) (supra) – followed by this court in *Ogba v. Vincent* (supra)."

Again, *in Ararume & Anor v. I.N.E.C. & Ors* (supra), this court, per Tsammani, JCA held that:

> "The law therefore is that the deposition of a witness must accompany the petition at the time of filing of the petition. In other words, the written statement on oath of an intended witness must be filed along with the petition. Thus, any written deposition of a witness not filed along with the petition will not be countenanced by the court or tribunal. See *Oraekwe & Anor. v. Chukwuka & Ors* (2010) LPELR-9128 (CA); *Chukwuma v. Nwoye & Ors* (2009) LPELR-4997(CA). It therefore means that a written deposition filed by a witness not listed in the petition nor his deposition frontloaded cannot be countenanced by the court or Tribunal after the expiration of the time prescribed for the filing of the petition. I think that is what the trial Tribunal decided in this case in line with the decision in *Ogba v. Vincent* (supra)…The combined effect of paragraph 4(5) (i) & (ii) and 41(1) and (3) of the first Schedule to the Act is that no witness can testify in-chief before a Tribunal if he has not deposed to a written statement on oath which must necessarily have been filed along with the petition."

From the foregoing judicial decisions, it is clear that in election petition litigation, whether the witnesses which a party intends to call are ordinary or expert witnesses and whether they are willing or subpoenaed witnesses, their witness depositions must be filed

Along with petition before such witnesses will be competent to testify before the tribunal or court.

It Is instructive to observe that one of the leading senior counsel for the petitioners in this petition, Dr. Onyechi Ikpeazu, SAN, was the lead counsel to the 2nd respondent in *Ararume &Anor v I.N.E.C. & Ors* (supra), wherein he successfully challenged the competence of a subpoenaed witness, Ama Ibom Agwu (PW2) on the same ground that the witness statement on oath of the said witness was filed on 8/7/2019, long after the time limited for filing of the petition. Therefore, the petitioners in this case were well aware of the settled legal position on subpoenaed witnesses in election petitions, stated by the Supreme Court and by this court. Yet, they embarked on subpoenaing PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 (ten out of their thirteen witnesses), whose witness statements on oath were no frontloaded along with the petition.

The petitioners have tried to argue that the said witnesses are witnesses of this court. With respect, this argument is misconceived, because the subpoenas in respect of those witnesses were issued upon the request of the petitioners. The applications for the issuance of the subpoenas were duly filed at the Registry of this court by the petitioners' counsel and the requisite fees, including filing fees and service fees as assessed were duly paid by them, before this court approved and issued the subpoenas. Therefore, those witnesses are the petitioners' witnesses and not witnesses of this court.

Indeed, the procedure for calling of witnesses by the court is by summons as stipulated in paragraph 42(1) of the 1st Schedule to the Electoral Act, 2022. By the provisions of that Paragraph, "the tribunal or court may summon a person as a witness who appears to the tribunal or court to have been concerned in the election." It is clear from the provision of that paragraph that it is a person summoned by the court *suo motu* in exercise of its powers under paragraph 42(1) that is a witness of the court and not a person subpoenaed at the request of a party to the case.

In the instant case, PW3 who was subpoenaed at the request of the petitioners is a staff of Channels Television who tendered exhibits PBH3 and PBH4, two flash drives containing 3rd INEC Consultative Meeting with Leaders of Political Parties held on 26th October, 2022, and interview with Mr. Festus Okoye, National INEC Commissioner held on 12th March, 2023, respectively.

PW4, a Professor of Mathematics, who was engaged before the election by the petitioners and whom the petitioners presented as a subpoenaed expert witness, stated under cross examination by the 1st respondent that he concluded his report on the 19th of March.2023 before the petition was filed. PW5 is a staff of Arise Television who also tendered exhibit PCG2, a Flash Drive showing the INEC Chairman delivering an address at the Chatham House, London, UK on the preparations for the 2023 Elections in Nigeria. PW6, is a staff of Africa Independent Television (AIT) who tendered exhibit PCH1, a Flash Drive of the Programme: Democracy Today anchored on 22nd November, 2022 wherein the INEC Chairman was shown giving a brief on the preparations for the 2023 General Elections. PW7 who claimed to be a Cloud Engineer and Architect working with Amazon Web Services Incorporated, tendered exhibits PCJ3A-F, which are 6 Reports of Amazon Web Services(AWS) Health Dashboard, which she said she downloaded from the Amazon Website. Under cross examination however, she not only admitted that she is a member of the 2nd petitioner (the Labour Party), but she had contested elections as a candidate of the 2ndpetitioner for the House of Representatives elections conducted along with the Presidential Elections on 25th February, 2023.PW8 who claimed to be a cyber-security expert engaged by the Labour Party on 10th March, 2023 stated that he produced his preliminary report on 17th or 18th March, 2023, before the petition was filed. He tendered exhibit PCK1, a Meta Data. PW9, a staff of Women & Child Rescue Initiative, a non-governmental organization, claimed to be an observer in the 25th February, 2023 elections, but stated that the subpoena was addressed to him personally and served at his village address. PW10 claimed to be an INEC ad hoc staff who acted as a supervisor. He stated under cross examination that the subpoena was addressed to him personally and not through INEC PW11 who is a staff in the Legal Services Department of National Information Technology Development Agency (NITDA) stated that the subpoena was addressed to him personally instead of his organization. As for PW13 who claimed to have acted as a Presiding Officer in the 25th February, 2023 elections, he stated that he was on subpoena. The subpoena which was admitted as exhibit PCR was however addressed to him personally and not through I.N.E.C.

It is pertinent to observe that the above ten witnesses subpoenaed by the petitioners were all witnesses who were available

To the petitioners at the time of filing the petition. They are neither subpoenaed as adversaries nor subpoenaed as official witnesses. It is therefore beyond controversy that the witness statements on oath of those witnesses filed after the time limited for presentation of the petition had elapsed, are incompetent and the said witnesses had no vires to testify in this petition. Their testimonies as embodied in their respective witness statements on oath, being incompetent, are accordingly struck out.

With regard to the respondents' objections to the admissibility of documents tendered by the petitioners, the first objection raised by the respondents is to exhibits tendered through PW4, PW5, PW6, PW7 and PW8. These are exhibits PCD1, PCD2, PCD3, PCE1, PCE2, PCE3, PCE4 and PEF2 tendered through PW4; exhibits PCG1 and PCG2 tendered through PW5; exhibits PCH1tendered through PW6; exhibits PCJ1, PCJ2, PCJ3A-F and PCJ4 tendered through PW7; and exhibits PCK1 and PCK2 tendered through PW8. The said exhibits are:

(i) Exhibit PCD1: Report of Data Analysis from Results of the 25th February, 2023 Presidential Elections in Nigeria (IREV Scores Investigation);

(ii) Exhibit PCD2: Report of Data Analysis from the Results of the 25th February, 2023 Presidential Election in Nigeria (Rivers State Scores); and

(iii) Exhibit PCD3: Report of Data Analysis from the Results of the 25th February, 2023 Presidential Election in Nigeria (Benue State Scores).

(iv) Exhibits PCE1 – PCE4: Four boxes said to contain 18,088 blurred results downloaded from the IREV Portal.

(v) Exhibit PCF2: A letter dated 20/02/2023 addressed to PW4 by the 2nd petitioner.

(vi) Exhibit PCG2: Flash Drive containing Video Clip of INEC Chairman's Address at Chatham House, London, UK on the 17th of January, 2023.

(vii) Exhibit PCH1: Flash Drive of AIT Programme: Democracy Today anchored by PW6, containing Live Streaming of Briefing by INEC Chairman of 22/11/22.

(viii) Exhibit PCJ1:Resume of PW7

(ix) Exhibit PCJ2: document titled: Employment Verification Letter.

(x) Exhibits PCJ3A-Fand PCJ4:6 Amazon Web Services Health Dashboard/Status Reports and Certificate of Compliance, respectively.

(xi) Exhibits PCK1: Bundle of Documents referred to as Meta Data.

(xii) Exhibit PCK2: Copy of INEC Press Release dated11/11/2022 signed by Festus Okoye, National INEC Commissioner.

The respondents' essential argument is that since the subpoenaed witnesses and their witness statements on oath are incompetent, the documents tendered through those witnesses cannot be countenanced by the court.

By paragraph 41(3) of the 1st Schedule to the Electoral Act, 2022, oral examination of witnesses is not allowed. Witnesses are only to adopt their respective written depositions and tender in evidence all disputed documents or other exhibits referred to in their depositions. By paragraph 4(5) (b) of the Schedule, such written depositions of the witnesses must be filed along with the petition.

Since the above exhibits are documents, including expert reports, which were tendered through the subpoenaed witnesses whom we have already declared incompetent because their witness statements on oath were filed in violation of the mandatory provisions of paragraph 4(5) (b) of the 1st Schedule to the Electoral Act, 2022, the documents admitted through them which form part of their evidence are inadmissible and liable to be expunged from the record. See: *Buhari v. I.N.E.C*. (2008) LPELR-814 (SC) at 155, paras. C -F, (2008) 4 NWLR (Pt.1078) 546, per Tobi, JSC.

The petitioners have argued that since the parties have agreed during pre-hearing session that documents properly certified by I.N.E.C. will not be objected to, and the said documents were tendered from Bar pursuant to pre-hearing order of this court of 23rd May, 2023, the parties are bound by the order of the court since same has not been appealed against by the 2nd and 3rd respondents. However, this contention of the petitioners does not represent the position of the law. It is trite that a court is not permitted in any event to admit and act on legally inadmissible evidence even if such evidence had been admitted by agreement of the parties or under order of court in the course of hearing. Once such evidence is legally inadmissible, the court must reject it when giving its final、

Judgment even if that will amount to overruling itself by doing so. See*: Shanu & Anor v. Afribank Nigeria Plc* (2002) LPELR-3036(SC), at page 28, paras. A-B, (2000)13 NWLR (Pt.684) 392, per Uwaifo, JSC. Indeed, even in the case of *Sani v. Akwue* (2019) LPELR-48206(CA), relied upon by the petitioners, this court at page 20, paras. B -A, restated the position of the law that even when pieces of evidence had been improperly received in evidence, the trial court as well as appellate court have the power to expunge it from the record and decide the case only on legally admissible evidence.

On the objection of the respondents to the admissibility of the documents tendered as expert reports by the petitioners, which were admitted as exhibits PCD1 – PCD3, PCE1 – PCE4, PCJ2, PCJ3A-F and PCK1, the respondents' contention is that they are caught up by the provisions of section 83(3) of the Evidence Act, 2011, having been contrived for the purpose of this suit. It is settled law as provided in section 83(3) of the Evidence Act, 2011 and pronounced upon in several decisions of the appellate courts, that a document which is made by a party interested in a pending or anticipated proceeding, involving a dispute as to any fact which the document tends to establish, is inadmissible in evidence. See: *Ladoja v. Ajimobi* (2016) LPELR- 40658(SC) at pages 94 -96, paras. B – E, (2016)10 NWLR (Pt. 1519) 87, where the Supreme Court, per Peter-Odili, JSC held as follows:

> "In respect of what is referred to as a person interested, I shall refer to the cases of: Nigerian Social Insurance *Trust v. Klifco Nigeria Ltd*. (2010) LPELR 22 – 23 Paras C-E as follows:
>
> > "As regards the phrase "a person interested "I agree with the respondent that the phrase has been examined in the case of *Evan v. Noble* (1949) 1KB 222 at 225 were a person not interested in the outcome of action has been described as, a person who has no temptation to depart from the truth one side or the other, a person not swayed by personal interest but completely detached, judicial, impartial, independent'. In other words, it contemplates that the person must be detached, independent, and non-partisan and really not

> Interested which way in the context the case goes. Normally, a person who is performing an act in official capacity cannot be a person interested under section 91(3). I think the phrase 'a person interested' ever more so has been quite definitively put in the case of *Holton v. Holton* (1946) 2 AER 534 at 535 to mean a person who has pecuniary or other material interest in the result of the proceeding a person whose interest is affected by the result of the proceedings, and, therefore would have no temptation to pervert the truth to serve his personal or private ends. It does not mean an interest in the sense of intellectual observation or an interest purely due to sympathy. It means an interest in the legal sense, which imports something to be gained or lost."

C.P.C. v. Ombugadu (2013) All FWLR (Pt.706) 406 at 472-473 Para H-B, (2013) 18 NWLR (Pt.1383) 66, when considering and determining who is a person interested under section 91(3) of the Evidence Act, 2011 held thus:

> "By the provision of section 91(3), Evidence Act, a person interested is a person who has a pecuniary or other material interest and is affected by the result of the proceedings and therefore would have a temptation to pervert the truth to serve his personal or private ends. It does not mean an interest purely due to sympathy. It means an interest in the legal sense which imports something be gained or lost".

For effect section 83(3) of the Evidence Act, 2011stipulates thus:

"83(3) nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to established". In concluding it needs be stated in keeping with section 83(3) of the Evidence Act, 2011 and judicial authorities which abound that

> As a general rule or principle, a document made by a party to a litigation or person interested when proceedings are pending or is anticipated as in the case at hand, such evidence is not admissible See: *Highgrade Maritime Services Ltd. V. F.B.N. Ltd. (*1991) 1 NSCC 199 at 135, (1991)1 NWLR (Pt.167) 290; *Anyaebosi & Ors v. R.T. Briscoe* (Nig.) Ltd. (1987)2 NSCC 805 at823, (1987)3 NWLR (Pt.59)84."

In fact, in its most recent decision in *Oyetola & Anor v. I.N.E.C. & Ors* (2023) LPELR-60392(SC), (2023) 11 NWLR (Pt.1894)125, the Supreme Court, per Agim, JSC restated this position in the following words:

> "The other evidence adduced by the appellant to prove their case is the expert analysis report prepared by PW1, who by his own admission is a member of the 2nd appellant and had been a Special Assistant to the 1st appellant and was engaged by the appellants to establish the invalidity of the disputed results in FormEC8A for the 744 polling units. He testified further that III made the report as directed by the petitioners" and that "I am part of those who wrote the petition". By his own testimony he established that he was no an independent expert as he had an interest in the subject of his analysis and carried out the analysis from the conclusion that the results were invalid, to justify to support the contemplated election petition. It was an analysis from an answer and not from a question. Such a report is not the product of an independent, impartial, detached and professional analysis. He is clearly a person with the disposition or temptation to depart from the truth…The listing of the expert analysis report in the petition among the documents to be relied on to prove the petition show it was made in anticipation or contemplation to be filed. The report having been made by PW1 as a person interested in the subject matter of the report when the petition was anticipated to establish that the election result was invalid is not admissible evidence by virtue of section83(3) of the Evidence Act, 2011 as amended."

See also: *B.B. Apugo & Sons Ltd. V. Orthopedic Hospital Management Board* (2016) LPELR-40598(SC) at pages 67-68,paras.B -F,(2016)13 NWLR (Pt.1529)206; *U.T.C. v. Lawal* (2013)LPELR-23002(SC) at pages 25 – 26, paras. B-E, (2014)5 NWLR (Pt.1400)221; *Nurudeen v. Oyetola* (2023) LPELR-60093(CA) at page 54, paras. F-E;; and *Bua International Ltd. V. Saima (Nig.) Ltd*. (2023) LPELR-59533 (CA)at pages 29, paras. A-F.

In the instant case, PW4 who claimed to be an expert was contracted by the petitioners before the election to carry out data analysis on the results of the Presidential Elections held on the 25thof February, 2023. He even tendered his letter of engagement by 2ndpetitioner dated 20th February, 2023 which was admitted as exhibitPCF2. According to him, he produced his initial report on 19th of March, 2023. His report was made a day before this petition was filed on 20th March, 2023. Obviously, the report (exhibit PCD1-PCD3) was prepared in anticipation of this petition. As for PW7, who also claimed to be an expert witness, she admitted that she was not only a member of the 2nd petitioner, but had contested the House of Representatives election under the platform of the 2nd petitioner, which election was conducted the same time with the Presidential Election on the 25th of February, 2023. She also admitted that the report she presented in exhibits PCJ3A – F, are public information hosted by Amazon which she downloaded from the Amazon Website and that the open access information she downloaded in her Report cannot be amended by her. This shows that PW7 was clearly not the maker of the said documents. As for PW8, who claimed to be a cyber-security expert, he stated under cross examination by the 1strespondent that he was engaged by the 2nd petitioner as an expert on10th March, 2023 and that he produced a preliminary report on 17thand 18th of March, 2023 and final report (exhibit PCK1) at the end of May, 2023 while this proceeding was pending.

It is therefore evident from the above that PW4, PW7 and PW8 are persons interested in the outcome of this proceedings. The reports produced by PW4 and PW8 qualify as statements made by persons interested in anticipation or during the pendency of this petition. As for PW7 she is admittedly an interested party having been a member of and even contested election under the umbrella of the 2nd petitioner. Her interest is further underscored by the fact that she admitted under cross examination that she was attending court throughout the proceedings prior to her evidence. By virtue

of section 83(3) of the Evidence Act, 2011, the reports tendered by those witnesses which form part of their evidence are inadmissible.

In view of the foregoing, exhibits PCD1-PCD3, PCE1-PCE4, PCF2, PCG2, PCH1, PCJ1, PCJ2, PCJ3A-F, PCJ4, PCK1 and PCK2, tendered through the incompetent PW4, PW5, PW6, PW7 and PW8, are hereby expunged from the record of this court.

The second aspect of the respondents' objection is on the ground of improper certification or authentication. On the 2nd and 3rd respondents'objection to exhibit PBP1- PBP21, the IReV Report for Adamawa State on the ground that no certificate of authentication of those computer-generated documents was filed incompliance with section 84 of the Evidence Act, 2011, exhibits PCB1-PCB6 referred to by the petitioners in response to the objection are IReV Certificates of Compliance for Bayelsa, Benue, Ekiti, Niger, Ogun and Rivers States. Adamawa State is not included in those exhibits. Exhibits PCC1 – PCC28 which include Adamawa State are actually BVAS Reports and their Certificates of Compliance. That of Adamawa is PCC21. In short, no certificate of compliance was produced by the 1st respondent in respect of exhibits PBP1-PBP21, the blurred IReV Results (EC8As) in respect Adamawa State.

However, since the documents were stated to have been downloaded from I.N.E.C.'s IReV Portal and were certified by I.N.E.C. as true copies of what they have in their IReV Portal, the documents qualify as public documents within the meaning of section 102 of the Evidence Act, 2011 and the certification by I.N.E.C. authenticates those documents. Therefore, the provision of section 84 of the Evidence Act is not applicable in this case. This is the position of the law as espoused of the Supreme Court in the case of *Kubor v. Dickson* (2012) LPELR-9817(SC), (2013) 4 NWLR (Pt.1345) 534, where the apex court held that computer/internet generated documents printed from the website of a public institution is a public document and only a copy of such document which is duly certified in compliance with section 104 of the Evidence Act, 2011 is admissible. See also *Daudu v. F.R.N.* (2018) LPELR-43637(SC), reported as *Dauda v. F.R.N.* (2017) 11 NWLR

(Pt. 1576) 315 where the apex court, per Aka'ahs, JSC held that:

> "There is no doubt that the documents are computer generated which the EFCC got from the various banks during investigation. It is therefore presumed that

> Before the banks surrendered them to the EFCC, they must have certified that the contents of the statements of accounts contained therein were correct. Even the appellant relied on the contents of the documents for his defence. The lower court pointed out that the appellant cannot approbate and reprobate. He cannot rely on the documents for his defence and at the same time ask that they be expunged from the record. The documents sought to be expunged were found to have been duly certified."

Exhibits PBP1-PBP21, having been downloaded from INEC IReV Portal and duly certified by INEC, are clearly admissible.

As for the 4th respondent's objection to exhibit PCG2, the Flash Drive tendered by PW5, a staff of Arise TV, it is clear that the said witness had in paragraphs 6 – 12 of his witness statement on oath not only stated that he participated in all stages of the recording, production and packaging of the Flash Drive but he had certified the process of its production as required by section 84 of the Evidence Act.

On the 4th respondent's objection to the admissibility of exhibitX2 on the ground that exhibit X2 was obtained by the petitioners from the Registry of this court and not from the custodian of the original copy, we have examined exhibit X2 which is the European Union Election Observation Mission Nigeria 2023 Final Report. As rightly observed by the 4th respondent, the photocopy of the document is certified by Secretary of the Presidential Election petition court and not any officer of the European Union Election Observation Mission which is the custodian of the original copy of the document. By section 104(1) of the Evidence Act, 2011, the secondary evidence of any public document is only admissible in evidence if it has been duly certified by a public officer having custody of the original copy of the document, who by that section may give a copy of same to any person who has a right to inspect" together with a certificate written at the foot of such copy that it is a true copy of such document or part of it as the case may be." Under subsection (2) of that section, the public officer is enjoined to certify same by subscribing his name, official title and date and where he is authorized to use a seal, with his seal. Clearly, the Registry of this court which is not the custodian of the original copy of exhibitX2 cannot validly certify that document under section 104(1) of

The Evidence Act, 2011.See*: Omisore v. Aregbesola & Ors* (2015)15 NWLR (Pt. 1482) 205 at 294; and *Emmanuel v. Umana & Ors* (2016) LPELR-40037(SC) at pages 49-51,paras.B-A, reported as *Udom v. Umana* (No.1) (2016) 12 NWLR (Pt.1526) 179,where Nweze, JSC stated that the whole essence of the court's insistence on the scrupulous adherence to the certification requirements of public documents is to vouchsafe their authenticity vis-à-vis the original copies. Since exhibit X2 has not been validly certified, it is inadmissible in evidence. Accordingly exhibit X2 is expunged from the record.

The third aspect of the respondents' objection to the petitioners' documents is on the ground that the petitioners failed to plead specific facts to cover the documents objected to. The said documents objected to by all the respondents are: Exhibits PD1-PD18, PJ1-PJ8, PK1-PK31, PL1-PL18, PN1-PN31,PP1- PP13, PQ1 -PQ13, PR1-PR25, PU1-PU18, PV1-PV7, PW1-PW21, PY1-PY8, PAA1-PAA21, PAB1-PAB12, PAC1-PAC25, PAD1- PAD18, PAE1- PAE25, PAF1 – PAF25, PAG1 – PAG11, PAK1 – PAK31, PAL1 – PAL18, PAM1-PAM15, PAN1- PAN31, PAQ1 – PAQ12, PAR1 – PAR8, PAT1 – PAT18, PAU1- PAU10, PAV1- PAV18, PAX1- PAX25, PAY1- PAY18, PAZ1- PAZ33, PBA1-PBA23, PBB1 -PBB23, PBC1 -PBC16, PBD1-PBD25, PBK1-PBK16, PBL1-PBL15, PBM1 -PBM23, PBN1-PBN11, PBR1-PBR16, PBQ1-PBQ21, PBT1-PBT25, PBW1-PBW17, PBY1-PBY10, PBZ1-PBZ29, PCH37-PCH39, PCN5-PCN12, PCN16 – PCN18, PCN22, PCN25, PCN27, PCN29, PCN33, PCN37 - PCN39, PCN51. The above exhibits are result sheets in Forms EC8As, EC8Bs, EC8Cs, IReV Reports, List of Registered Voters and PVCs Collected for 2023 General Elections, as well other electoral forms from the States of Abia, Adamawa, Akwa Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Enugu, Jigawa, Kogi, Nasarawa, Ogun, Rivers and Sokoto.

I have carefully examined the petitioners' pleadings and the documents objected to by the respondents. The petitioners have specifically averred in paragraph 101 of the petition that they will be relying on "all 1st respondent's electoral and all other necessary documents used for the conduct of the Presidential Election", including the documents which they listed as items (a) – (ccc) of that paragraph. However, election petitions are sui generis, and it is settled that for an averment in an election petition to be competent,

Material facts relating to complaints made therein must be pleaded. See: *Belgore v Ahmed* (supra): *Ikpeazu v. Otti* (supra): and P.D.P v. I.N.E.C. & 3 Ors (supra). In the latter case of P.D.P. v. I.N.E.C (supra), the Supreme Court, was categorical on this mandatory requirement of specificity in averments of election petitions when the court held as follows:

> "On whether the affected paragraphs were rightly struck out, I have read the affected paragraphs and found that they relate to allegations of non-voting in several polling points, disruption of election, non-conclusion of election, thumb-printing of ballot papers, falsification of election results, wide spread disruption, irregularities and malpractices without providing particulars or the polling units where the alleged malpractices took place. The lower court was therefore right when it held as follows:
>
> > "The paragraphs above in my view are too generic, vague and lacking in any particulars as they are not tied specifically to any particular polling unit or any particular number of people who were alleged to be dis enfranchised. The fact that a party can file further particulars or deny in a reply the averment in the pleading must not be general, it must be specific as to facts. It is settled law that a petitioner's obligation to plead particulars of fraud or falsification without which the allegation is a non-starter."
>
> I have nothing to add to this statement of law as advanced above, and I adopt it as mine."

Thus, where allegations of non-compliance and corrupt practices are made, such as in the instant petition, the polling units, wards or other places where those irregularities and malpractices are alleged to have occurred must be specifically pleaded. The petitioners have argued that the issue of non-compliance by the 1respondent to its laws, guidelines and relevant statutes is a universal complaint because it is an infraction against the Nigerian People and the Nigerian State. However, this contention of the petitioners is not in consonance with the requirement of the law as espoused in *Belgore v. Ahmed* (supra); *Ikpeazu v. Otti* (supra); and *P.D.P. v. I.N.E.C. & 3 Ors* (supra). This is more so as the petitioners'

allegations of non-compliance is interwoven with allegations of corrupt practices and the same set of facts are pleaded for both.

In the instant case, the petitioners tendered Forms EC8As for Ebonyi State (exhibits PPI-PP13), Nasarawa State (exhibits PQ1-PQ13), Delta State (exhibits PRI-PR25), Sokoto State (exhibits PV1 - PV7) and Kogi State (exhibits PW1 – P21); Forms EC8Bs for Kogi State (exhibits PAA1 -PAA21), Nasarawa State (exhibits PAB1 – PAB11), Sokoto State (exhibits PAE1 – PAE21), Delta State (exhibits PAF1 -PAF25), Cross River State (exhibits PAL1-PAL18), Akwa Ibom State (exhibits PAN1-PAN31) and Ebony; State (exhibits PAQ1 -PAQ12); Forms EC8Cs for Cross River State(exhibits PAT1 – PAT15), Ebonyi State (exhibits PAU1 -PAU10), Sokoto State (exhibits PBB1 – PBB23) and Delta State (exhibitsPBD1-PBD25); Forms EC40G (PU) for Edo State (exhibits PBM1- PBM23); IReV Reports for Edo State (exhibits PW1 – PW17); Supplementary IReV Reports for Cross River State (exhibit PCH37- PCH39); list of Registered Voters and PVCs Collected for 2023 General Elections with respect to local Government Areas in Ogun State (exhibits PCN5), Akwa Ibom State (exhibit PCN6),Kebbi State (exhibit PCN7), Kogi State (exhibit PCN9), Cross River State (exhibit PCN10), Enugu State (exhibit PCN11), Sokoto State (exhibit PCN12),Ebonyi State (exhibit PCN16), Nasarawa State (exhibit PCN17), Delta State (exhibit PCN18), Anambra State (exhibit PCN22), Jigawa State (exhibit PCN25), Edo State (exhibit PCN27) and Abia State (exhibit PCN25). However, a look at the entire petition shows that no single complaint was made by the petitioners in respect of any of those States as to make those exhibits relevant to the petitioners' case. For instance, in paragraph72, to which the petitioners referred in response to the objection, the petitioners have alleged that there was over voting in the States of Ekiti, Oyo, Ondo, Taraba, Osun, Kano, Rivers, Borno, Katsina, Kwara, Gombe, Yobe and Niger States. However, the petitioners failed to specify the polling units where the over-voting took place, the total number of accredited voters, the total number of votes cast and the number of votes to be deducted from the scores of the parties. Similarly, in paragraph 73 which was also referred to by the petitioners in their response to the objection, the petitioners have averred that "based on the uploaded results, the votes recorded for the 2nd respondent did not comply with the legitimate process for computation of the result and disfavoured the petitioners", and

Listed the States of Rivers, Lagos, Taraba, Benue, Adamawa, Imo, Bauchi, Borno, Kaduna, Plateau and other States of the Federation. But the petitioners failed to state the scores improperly computed and how they were disfavoured.

As regards the objection to exhibits PCE1 – PCE4, said to be 18,088 blurred results downloaded from IReV and contained in 4 boxes, the petitioners have contended that the respondents' request for the petitioners to specify the 18,088 polling units to which those blurred reports relate is an impossibility, because the results are unreadable and the details of most of the polling units are stated in exhibits PCD1- PCD3, the expert report tendered by PW4. This contention of the petitioners is however misconceived. This is because the petitioners who claim that they could not specify the polling units in the 18,088 blurred results because those results are unreadable, are the same persons who have stated that the said polling units have been specified in the expert report of PW4, through whom the blurred results were tendered. However, PW4 who stated under cross examination that the primary source of the data he used in producing his report was the IReV portal did not state how he was able to determine the particular polling units and the impacted votes, accredited voters and number of PVCs collected. As I earlier noted, PW4's report was concluded on 19th of March, 2023 before the petitioners filed this petition on 20th of March, 2023, which means the petitioners were aware of the polling units to which their complaints relate even before they filed the petition. So, their theory of "impossibility" which they invented around the 18,088 blurred results is misconceived and an obvious misadventure.

Again, in paragraphs 7 and 8 of the petition, the petitioners admitted that they have agents in the polling units and those agents signed and collected duplicate copies of the results sheets. Those paragraphs read as follows:

> "7. The 2nd petitioner is a body corporate with perpetual succession and in the sponsorship of the 1st petitioner, and the conduct of the election thereof, acted through its members duly appointed as agents at all stages of the election, namely, at the polling units, the Ward Collation Centres, the Local Government Collation Centres, the State Collation Centres, and at the ultimate Collation Centre at the Federal level in Abuja.

8. In the conduct of the election, the agents duly appointed by the petitioners performed their assigned and statutorily designated roles at the election. These roles included observing and monitoring the process of arrival of election materials where they were supplied by the 1st respondent, and leading to and including the process of accreditation, voting, counting of votes and announcement of the results of the election. These agents where the election proceeded in due form, upon the 1st respondent's agents duly entering the results in the result sheets at the polling units, signed and collected duplicate copies of the result sheets."

Having clearly admitted that their agents signed and collected duplicate copies of the result sheets, their contention that they are unable to determine the polling units from which the blurred results emanated is untrue. In fact, this admission reinforces the need for the petitioners to specify all the polling units in respect of which they have made complaints since their agents were availed with copies of the results of the polling units.

As regards the petitioners contention that they have complied with paragraph 4(5) (c) and 41(8) of the 1st Schedule to the Electoral Act, 2022, I had earlier considered this argument of the petitioners while resolving the respondents' objections to the petitioners pleadings, wherein I held that the provision of paragraph 4(5) (c) of the 1st Schedule to the Electoral Act, 2022 only relates to the front-loading of documents to be relied upon by the petitioners as their evidence during trial. It does not obviate the mandatory requirement for pleading material facts as stated in paragraph 4(1)(d) & (2) and 41(8) of the same Schedule, so as to enable the adverse party to know the exact case he is to meet and to respond to same accordingly. As I also stated in our earlier ruling, the reports which the petitioners stated they had detailed the polling units was not filed along with the petition so as to afford the respondents the opportunity to respond to same, but was merely tendered at trial, by which time the respondents had no opportunity to respond. Since the petitioners have failed to specify in the petition the polling units to which exhibits PCE1 – PCE4, the 18,088 blurred results relate, the said documents are clearly inadmissible. See: *Belgore v. Ahmed* (supra) and *P.D.P. v. I.N.E.C.* (supra). The said exhibits are hereby discountenanced and expunged from the record.

Petitioners' Objections to the Respondents Documents

In the course of trial, the petitioners also objected to the documents tendered by the 1st and the 2nd and 3rd respondents. At the hearing of the 4th of July, 2023, the 1st respondent had tendered exhibits RA1, RA2, RA3, RA4, RA5, RA6 and RA7 through its sole witness, Dr. Lawrence Bayode, a Deputy Director in the ICT Department of the 1st respondent, who gave evidence as RW1.Ofthose documents, the petitioners had objected to the admissibility of the exhibits RA1, RA2, RA6 and RA7. Similarly, at the hearing of the 5th of July, 2023, the petitioners had objected to all the documents tendered by the 2nd and 3rd respondents from the Bar and through their sole witness, Senator Michael Opeyemi Bamidele who testified as RW2. The petitioners had reserved their reasons for the objections to be adduced at the stage of final address.

Pursuant to the order of this court that parties should file separate addresses on their objections, the petitioners have filed separate addresses in support of their objections to the documents of the 1st respondent and those of the 2nd and 3rd respondents. The written address in support of the objection to the 1st respondent's documents was filed on 23rd July, 2023, while that in support of the objection to the 2nd and 3rd respondents' documents was filed on the20th of July,2023.

Petitioners' Objections to 1st Respondent's Documents

In the written address in support of the petitioners' objection to the 1st respondent's documents, Dr. Livy Uzoukwu, the learned senior counsel for the petitioners, essentially raised the sole issue of whether having regard to the Pre-Hearing Report of 23rd May, 2023 and paragraph 41(3) of the 1st Schedule to the Electoral Act, 2022 and other relevant provisions of the Act and decided cases, exhibits RA1, RA2, RA6 and RA7 are inadmissible and liable to be expunged from evidence. Similarly, In the address in support of the objection to the 2nd and 3rd respondents' documents, the petitioners raised the sole issue of whether having regards to the said Pre-hearing Session Report and paragraph 41(3) of the 1Schedule and decided cases, the documents tendered by the 2nd and 3rd respondents are inadmissible and liable to be expunged from evidence.

The learned Silk had pointed out that exhibit RA1 is a private document emanating from the 3d respondent and argued that "in the absence of the narrow exceptions to the maker of the document

Being the person to tender the document, the witness of the 1st respondent (RW1) cannot tender same in evidence." He relied *on Mainstreet Bank Ltd. V. General Steel Mills & Ors Ltd.* (2016) LPELR-45457 (CA).

Learned senior counsel also submitted that exhibit RA2 is inadmissible because the 1st respondent cannot approbate and reprobate at the same time, since by exhibit RA2 the 1st respondent is trying to deny another letter received by it from the 4th respondent on 15th July, 2022 which it had also certified. He argued that exhibit RA2 can only be a concocted document by the 1st respondent in a desperate attempt to save face. He relied on *Globe Motors Holdings (Nig.) Ltd. V. Ibraheem* (2021) LPELR-54550 (CA).

As for exhibits RA6 and RA7, learned senior counsel submitted that those documents are not admissible because they are not part of the documents allowed to be tendered from the Bar pursuant to the pre-hearing order of this court, which, according to him, is to the effect that only certified documents by INEC and documents not objected to can be tendered from the Bar. He argued that the1st respondent cannot vitiate that order of court. He relied on the cases of *Kanu v. F.R.N.* (2022) LPELR-58768 (CA); *A.-G., Kwara State & Anor v. Lawal & Ors* (2017) LPELR-58768 (SC); (2018) 3 NWLR (Pt.1606) 266; and *Babatunde & Ors v. Olatunji & Anor* (2000) S.C.9, (2000) 2 NWLR (Pt. 646) 557,all of which are to the effect that an order of court remains in force and must be complied by all unless it has been stayed or set aside. Learned counsel finally urged the court to sustain the objection and expunge exhibits RA1, RA2, RA6 and RA7 from the record of court.

In response to the petitioners' objection, learned senior counsel for the 1st respondent, A.B. Mahmoud, SAN submitted that, with regard to exhibit RA1, that the said document is not only relevant but it was pleaded in paragraph 19 of the 1st respondent's reply to the petition and listed as item 9 in the 1st respondent's list of documents. He also pointed out that the document is duly certified by the 1strespondent, being a correspondence addressed to it and a document which is in its custody. He contended that a certified true copy of a public document can be tendered without calling the maker of the document or even the public officer in whose custody the document emanated from. He relied on: *Agagu v. Dawodu* (1990) 7 NWLR (Pt. 160)56; *Daggash v. Bulama* (2004) 14 NWLR (Pt. 892) 144;

And *Bob-Manuel v. Woji* (2010) 8 NWLR (Pt. 1196) 263 at 273, paras. A-B.

Learned senior counsel further submitted that the petitioners' challenge to admissibility of exhibit RA2 on the ground that the 1st respondent cannot approbate and reprobate at the same time, is strange and is not contemplated by the Evidence Act or case law, since relevancy and the fact that a document is pleaded are the requirements that govern admissibility. He relied on *Torti v. Ukpabi* (1984) 1 SCNLR 427; *Adeyefa v. Bamgboye* (2013) 10 NWLR (Pt.1363) 532 at 545, paras. F-G; and *Daggash v. Bulama* (supra).

The learned Silk also submitted that the petitioners' challenge to the admissibility of exhibits RA6 and RA7, on the ground that the documents are not part of those allowed to be tendered from the Bar by the pre-hearing order of this court is misleading. He referred this court to section 122(2)(m) of the Evidence Act, 2011 and urged this court to take judicial notice of the proceedings of 4th July, 2023.He submitted that contrary to the assertion of the petitioners that exhibits RA6 and RA7 were tendered from the Bar, the said exhibits were actually tendered through RW1 who referenced the cloud trail logs in paragraphs 8, 29(viii) and 44(i) of his witness statement on oath, and who gave evidence that his name and signature are on the cloud trail log. Relying on *Tukur v. Govt. of Gongola State* (1989) 4 NWLR (Pt. 117) 517 at 544, paras. D-G, he submitted that counsel owe a duty to assist the court and not to mislead it. He however added that this mistake on the part of the petitioners appears to be an erroneous glitch and not a deliberate one. He urged the court discountenance the objections of the petitioners on the admissibility of exhibits RA1, RA2, RA6 and RA7.

Resolution:

By virtue of the provisions of section 102(b) of the Evidence Act, 2011, public documents include public records kept in Nigeria of private documents. See: *Onwuzuruike v. Edoziem & Ors* (2016) LPELR-26056(SC) at pages 10-11, paras. F -B; (2016)6 NWLR(Pt. 1508) 215, where the Supreme Court, per Onnoghen, JSC held that a private document sent to the Police formed part of the record of the Police and is consequently a public document within the provisions of section 109 of the old Evidence Act, now section 102 of the extant Evidence Act, 2011. It is also trite that a public document duly so certified, is admissible in evidence

Notwithstanding that it is not tendered by the maker. Indeed, a certified true copy of a public document can be tendered by person who is not a party to the case. See: *Maranro v. Adebisi* (2007) LPELR-4663(CA); *Daggash v. Bulama* (2004) 14 NWLR (Pt. 892)144 at 187; and *Mustapha Shettima & Ors v. Alhaji Bukar Customs* (2021) LPELR-56150 (CA). Exhibits RA1 and RA2, being in the public record of the 1s respondent are public documents and are therefore admissible in evidence, having been certified by the 1st respondent under section 104 of the Evidence Act, 2011.

On the petitioners' objection to exhibits RA6 and RA7, the record of proceedings of this court of 4th July, 2023 shows that contrary to the assertion of the petitioners the said exhibits RA6 and RA7, which are the Cloud Trail Log and Certificate of Compliance with section 84 of the Evidence Act, respectively, were not tendered from the Bar but through RW1. Indeed, the record shows that the petitioners consented to the said documents being taken as read and demonstrated. We therefore have no hesitation in discountenancing the petitioners' objection to those documents.

On the whole, the petitioners' objection to exhibits RA1, RA2, RA6 and RA7 tendered by the 1st respondent is unmeritorious. It is here by overruled.

Petitioners' Objections to the 2nd and 3rd Respondents' Documents.

In the written address in support of the petitioners' objection to the documents tendered by the 2nd and 3rd respondent, it was submitted by the learned senior counsel to the petitioners that exhibits RA8 and RA9 tendered through RW2, which are:

(i) a letter by the Inspector-General of Police (IGP) to the US Consulate, Lagos to ascertain whether the 2nd respondent has a criminal record in the US; and

(ii) the reply to that letter by the US Consulate, respectively, are not relevant to the issue of the 2nd respondent's forfeiture of $460,000 being proceeds of narcotic trafficking and money laundering.

He argued that the exhibits were tendered to deceive and hoodwink Nigerians and this court. He added that RW2 had admitted that the order of the Illinois court is not a money judgment. He argued that the said documents did not exculpate the 2nd respondent from the indictment against him by the Chicago Court and the appropriate authority to provide information regarding the

indictment of the 2nd respondent is the Chicago Court. He also relied 171 on section 124 of the Evidence Act to argue that the said documents are not from proper custody within the meaning of sections 116 and 123 of the Evidence Act. He cited *Lawal v. Hon. Commissioner for Lands. Housing & Survey, Oyo State* (2013) LPELR-21114(CA) Bat pages 1919, per Daniel-Kalio, JCA. He urged the court to expunge exhibits RA8 and RA9 from the evidence.

On exhibit RA10 which contains the educational records of the 2nd respondent, learned counsel submitted that the 2nd and 3rd respondents have mixed up proceedings, because there is nothing to show that the academic records of the 2nd respondent is in issue in this petition. Citing *Ajao & Ors v. Alao & Ors* (1986) LPELR- 285(SC), (1986) 5 NWLR (Pt. 45) 802; *Gani Fawehinmi v N.B.A.* (No.2) (1989) 2 NWLR (Pt. 105) 558 at 583; and *Torti v Ukpabi* (1984) 1 SCNLR 214, he submitted that the said bundle of educational records of the 2nd respondents tendered as exhibit RA10 is irrelevant to this petition and urged this court to expunge same from the record.

With regard to exhibits RA11-RA16, which are the data pages of the 2nd respondent's Nigerian Passports and copies of United States Visas variously issued to the 2nd respondent, learned counsel for the petitioners submitted that the documents have nothing to do with answering the question of forfeiture of $460,000 by the 2nd respondent to the US Government for narcotics trafficking and money laundering. He argued that forfeiture in whatever guise does not confer benefit, except the 2nd and 3rd respondents are tendering the documents in order to show that there was compensation given to the 2nd respondent for forfeiting $460,000 to the US Government, which is neither contained in the pleadings of the 2nd and 3rd respondents nor in the testimony of their sole witness. Adopting his earlier argument on irrelevance, he urged the court to expunge exhibits RA11-RA16 for being irrelevant and inadmissible in this proceeding.

Turning to the petitioners objection to admissibility of exhibits RA17 and RA18, which are the 2nd petitioners' letter submitting its Register of Members to the 1st respondent and the 2nd petitioner's Register of Members for Anambra State, respectively, learned counsel argued that the said exhibits are irrelevant because the issue of membership is an internal affair of the party and it does not fall within the qualifying elements under section 134 (3) of

the Electoral Act, 2022. He submitted that although the 2nd and 3rd respondents have raised a preliminary objection on membership of the 1st petitioner to the 2nd petitioner, this issue had been put to rest by this court in *A.P.M v. I.N.E.C.* (2023) 9 NWLR (Pt. 1890) 419, wherein it was confirmed that the 1st petitioner is a member of the 2nd petitioner. He pointed out that membership of a political party is a continuous process and the essence of section 77 of the Electoral Act, which requires political parties to submit their register of members to 1st respondent, is to guard against the impunity of political parties and prevent a political party from short-changing aspirants during primaries by using non-members of the party to make a return of their own choice.

Relying on the cases of *P.D.P. v. Ayedatiwa & Ors* (2015) LPELR-41800(CA); *Anyamwu v Ogunewe* (2014) 8 NWLR (PL. 1410) 437. Para, D. *P.D.P. v. Sylva* (2012) All FWLR (Pt. 607) 598 at 622-623, (2012) 13 NWLR (Pt.1316) 85; and *Onuoha v. Okafor* (1983) 2 SCNLR 244, he submitted that apart from the fact that a non-member of a political party cannot complain against the membership of another political party, the issue of membership of a political party is not one which is justiciable. He urged the court to expunge exhibits RA17 and RA18 from the record. He also adopted his earlier argument on irrelevance and urged this court to expunge exhibit RA19 from the evidence.

It was also the contention of the petitioners that exhibit RA22, being a letter authored by the 3rd respondent and addressed to the 4th respondent, was tendered from the Bar without the maker who can be cross examined on same. Relying on *Andrew v. I.N.E.C.* (2018) 9 NWLR (PL. 1625) 576 (SC), the petitioners argued that the said exhibit is inadmissible and urged the court to expunge same from the record. As for exhibits RA24 and RA25, which are the certified copies of pages 28 and 27 of the Nigeria Tribune Newspapers of 23 February, 2023, the petitioners urged this court to disregard the headline but not the contents of the documents. They pointed out that the true reporting in the documents was that "raw" results will not be uploaded and transmitted, but what the Commission would upload and transmit real time on election day is the hard copy of Form ECSA which contains the raw results of all the political parties, and that this means the photo or scanned copies of Form ECSA is what the Commission would upload and transmit to the IReV. He urged this court to disregard exhibits RA24 and RA25.

On exhibit RA27, the ECOWAS Preliminary Report dated 27 February, 2023 which was tendered by the 2nd and 3rd respondents, the petitioners submitted that the document which is public document is neither in its original form nor in a certified form as required by sections 102 and 104 of the Evidence Act. Relying on *Effiong & Anor v. Ekpe & Ors* (2019) LPELR-48976(CA); and *Tabik Investments v. GT Bank* (2011) LPELR-3131(SC), (2011) 17 NWLR (PL.1276) 240, they urged this court to expunge exhibit RA27 from the record.

Finally, on exhibit RA28, which is RW2's Membership Card of the American Bar Association, learned senior counsel for the petitioners submitted that the document was never pleaded nor listed in the 2nd and 3rd respondents' reply and is also not mentioned in the witness statement on oath of RW2. He relied paragraph 41(3) of the 1st Schedule to the Electoral Act, 2022 and *Ashiru v. I.N.E.C.* (2020) 16 NWLR (Pt. 1751) 416 at 442-443, and urged the court to expunge the exhibit from the record.

Responding to the petitioners objections, the learned senior counsel for the 2nd and 3rd respondents submitted that the petitioners have gone into the merit of the case in their arguments on the admissibility of exhibits RA8 and RA9 which relate only to general inquiry for criminal liability and not whether there was an order of forfeiture against the 2nd and 3rd respondents. He pointed out that the petitioners have by their argument admitted that there was no record of criminal liability whatsoever against the 2nd respondent and this has no nexus with the admissibility of the documents. Relying on the case of *Fredrick v. Ibekwe* (2019) 17 NWLR (PL. 1702) 467 at 480-481, wherein the Supreme Court stated the three criteria for admissibility of documentary evidence, he submitted that the documents were pleaded in paragraphs 50 and 115 of the 2nd and 3rd respondents' reply. He added that the petitioners argument over the relevance of the documents is self-contradictory, in that while they allege that the 2nd respondent was indicted by the Illinois Court in the USA, they are also objecting to the relevance of exhibit RA9 which is a document issued by the US Government of which the Illinois court is an organ, showing that the 2nd respondent has no criminal record in the USA. He added that contrary to the petitioners' argument over custody of the documents, the two letters are those written and received by the Nigeria Police all of which are in its custody. He urged the court to discountenance the petitioners' objection to exhibits RA8 and RA9.

On the argument of the petitioners over the relevance of exhibit A RA10, learned senior counsel submitted that the petitioners have at paragraphs 20-32 of the petition alleged that the 2nd respondent is not qualified to contest the election, which allegation the 2nd and 3rd respondents have countered that the 2nd respondent is more than qualified to contest the election and pleaded his extensive resume which included his academic qualifications. Counsel equally submitted that the argument of the petitioners over the relevance of exhibits RA11-RA16 is misconceived because being immigration documents they establish that the petitioners' allegation against the 2nd respondent is concocted and that the 2nd respondent is not under any criminal impediment in the USA which would have impeded his unfettered movement in and out of the USA. He submitted that relevance is determined by the pleadings and relied on *Asuquo v Eya* (2014) 5 NWLR (Pt. 1400) 247 at 264; and *A.C.B. Ltd. v. Alhaji Gwagwada* (1994) 5 NWLR (Pt. 342) 25 at 44; *Highgrade Maritime Services Lid v. First Bank Ltd.* (1991) LPELR-1364(SC) at 26; (1991) 1 NWLR (Pt. 167) 290; and *Anyamwu & Ors v. Uzowuaka & Ors* (2009) LPELR-515(SC); (2009) 13 NWLR (Pt.1159) 445. He urged the court to discountenance the petitioners' objection.

On the petitioners' objection to the admissibility of exhibits RA17 and RA18, learned counsel submitted that the documents have met the criteria for admissibility of documents and the said documents were tendered in order to challenge the *locus standi* of the 1st petitioner to present the petition. He submitted that being an issue of jurisdiction, it can be raised through any medium at any time of the proceedings, even *suo motu* by the court. He relied on *N.U.C. v. Alli* (2014) 3 NWLR (Pt. 1393) 33 at 83; *Adekunle v Adelugba* (2011) 16 NWLR (Pt. 1272) 154 at 170; and *Adesanya v The President of Nigeria* (1981) 5 SC 112 at 140; (1981) 2 NCLR 358.

On petitioners' objection to exhibit RA19, learned counsel submitted that same is not only relevant but also admissible in evidence having been pleaded in paragraph 115 of the respondent's reply as a response to the petitioners' allegation over the status of the FCT. As for exhibit RA22, counsel also submitted that although H the document was first tendered from the Bar, it was subsequently tendered and identified by RW2, Senator Opeyemi Bamidele as one of the documents he referred to in his witness statement on oath. He added that the witness had knowledge of the making of the

document and its contents, and the petitioners' argument that the maker of the document was not called is of no moment. Relying on *Makinde v. Adekola* (2022) 9 NWLR (Pt. 1834) 13 at 44, he urged the court to discountenance the petitioners' argument.

Turning to the petitioners objection to exhibits RA24 and RA25, learned senior counsel pointed out that the petitioners had no reason to urge the court to disregard the heading but not the contents of those document. He submitted that this is not an aspect of admissibility and urged the court to disregard the petitioners' argument. As for the objection to RA27, the ECOWAS Commission Preliminary Declaration of 27th February, 2023, learned counsel submitted that the petitioners have failed to show how the ECOWAS Observation Mission to Nigeria is a public office/governmental body or how H.E. Earnest Bai Koroma the former President of Republic of Sierra Leone is a public officer within the meaning of section 18 of the Interpretation Act. He urged the court to disregard the petitioners' argument over lack of certification of exhibit RA27. Counsel equally submitted that exhibit RA28 merely seeks to establish the status of RW2 as per his profession and it forms part of the introductory statement of the witness of which a witness may be led during examination-in-chief. He submitted that paragraph 41(3) of the 1st Schedule to the Electoral Act, 2022 is inapplicable and urged the court to discountenance the petitioners' objection.

Resolution:

On the petitioners' objection to exhibits RA8 and RA9, an examination of the petitioners petition shows that in paragraph 28 they have challenged the 2nd respondent's qualification to contest the election on the ground that "he was fined the sum of $460,000 (Four Hundred and Sixty Thousand Dollars) for an offence involving dishonesty, namely narcotics trafficking imposed by the United States District Court, Northern District of Illinois, Eastern Division." As rightly submitted by the 2nd and 3rd respondents they have countered this allegation of the petitioners in paragraphs 46-53 and particularly pleaded in paragraph 50 that "the United States of America, through its Embassy in Nigeria, had by a letter dated February 4, 2003, addressed to the then Inspector-General of Police, confirmed that upon their record checks of the Federal Bureau of Investigation's National Crime Investigation Centre (NCIC), a centralized information centre that maintains records

of every criminal arrest and conviction within the United States of America, there were no record of any form of criminal arrests, wants or warrants against the 2nd respondent. The respondents shall found and rely upon copy of the said letter of February 4, 2023 (sic), signed by Michael M. Bonner."

From the foregoing, it is obvious that issues were joined by the parties on the indictment alleged by the petitioners and exhibits RA8 and RA9 are clearly relevant. As for the argument of the petitioner over the custody of the documents, exhibits RA8 is a letter of inquiry written by the Inspector-General of Police to the Consular-General of the United States Embassy in Nigeria inquiring as to whether the 2nd respondent had any criminal record in the United States of America, while exhibit RA9 is the reply to exhibit RA8 by the United States Embassy in Nigeria. Both letters form part of the record of the Nigeria Police and are therefore public documents under section 102(b) of the Evidence Act. Certification by the Nigeria Police Force is a confirmation that exhibits RA8 and RA9 are true copies of those documents which are in their custody. See: *Onwuzuruike v. Edoziem & Ors (supra)*; and *Agbaje v. Coker* (2016) LPELR-40157(CA) at pages 13-14, paras. F-A.

With regard to the petitioners' objection to the relevance of exhibit RA10, the record shows that the petitioners' challenge to the qualification of the 2nd respondent was confined to allegations of double nomination of his running mate, the 3rd respondent, and the alleged fine of the 2nd respondent of the sum of $460,000 by a US Court. The educational qualifications of the 2nd respondent were never challenged by the petitioners in the petition. It was the 2nd and 3rd respondents who introduced the educational qualifications of the 2nd respondent in their reply and the petitioners have not joined issues with the 2nd and 3rd respondents in their reply to the 2nd and 3rd respondents' reply. It is trite that a court of law adjudicates only on matters over which the parties are in dispute. See: *Adedeji v. Oloso & Anor* (2007) LPELR-86(SC); (2007) 5 NWLR (Pt. 1026) 133, where the Apex Court held that:

> "The isolation of issues, truly in dispute, from those not in dispute, enables the court to save valuable time and cost. It is, by this process, that the court is enabled only to receive evidence on matters in respect of which the parties are in dispute."

See also: *Trade Bank Plc. v. Benilux (Nig.) Ltd.* (2003) LPELR- 3262 (SC): (2003) 9 NWLR (PL 825) 416.

Since there is no controversy or dispute between the parties as it relates to the 2nd respondent's educational qualifications, exhibit RA10 is not relevant to the determination of this petition. It is hereby discountenanced.

Our examination of exhibits RA11-RA16 which are data pages and visa pages in the 2nd respondent's Nigerian Passport, shows that contrary to the assertion of the petitioners that the documents are not relevant, the petitioners have alleged in paragraphs 28-32 of the petition that the 2nd respondent was fined $460,000 for an offence involving dishonesty, namely narcotics trafficking and in response to this allegation, the 2nd and 3rd respondents have denied same in paragraphs 46-53 of their reply and specifically pleaded those documents in Paragraph 52 of the their reply to the petition to show that the 2nd respondent "enjoyed an unrestricted right of ingress and egress to the United States of America and up till now. He still enjoys an unimpeded right of access to the United States of America." It is therefore our considered view that exhibits RA11-RA16 are relevant to these proceedings and the petitioners' objection to same is hereby discountenanced.

As for exhibits RA17 and RA18, the petitioners reason for objecting to same has nothing to do with the admissibility of the documents, the 2nd and 3rd respondents having raised objection to the 1st petitioner's *locus standi* to present the petition in paragraph li (a)-(m) of their reply to the petition. However, we have already considered and determined the issue of the petitioners' *locus standi* whilst resolving the respondents' preliminary objections. We have already resolved same in favour of the petitioners. Therefore, this objection has been overtaken by our ruling on the preliminary objection.

On the petitioners' contention that exhibit RA19, the report of the Committee on the location of the Federal Capital of Nigeria, is not relevant, we have examined the pleadings and the said exhibit. It is apparent to us that while the petitioners have averred in paragraph 81 of the petition that a Presidential candidate must score 25% of the votes in FCT before he can be declared and returned elected, the 2nd and 3rd respondents have averred in paragraph 86 of their reply that the FCT does not enjoy a special status over the other States of the Federation and that Abuja is still inhabited by

Nigerians who are deemed equal to Nigerians in any other parts of Nigeria and residents of Abuja are not conferred with any privilege and advantage that is not accorded to citizens of other communities or States in Nigeria. We are therefore of the view that facts have been pleaded which renders exhibit RA19 relevant and admissible.

On the petitioners' objection to the admissibility of exhibit RA22, we observe that the document is the same as exhibit RA2 which we have already found to be admissible, having been certified by INEC as a copy of document in their possession. The tendering of exhibit RA22 which is not even certified, is therefore a surplusage and is hereby discountenanced.

With regard to the objection to admissibility of exhibits RA24 and RA25 which are CTCs of pages 28 and 27 of Nigerian Tribune Newspaper, respectively, the reasons advanced for the objection by the petitioners are not legal grounds for challenging admissibility of a document. We have no hesitation in discountenancing the objection. Contrary to the argument of the 2nd and 3rd respondents' Counsel that exhibit RA27, the ECOWAS Preliminary Declaration, is a private document, the said document forms part of the official record of the Economic Community of West African States (ECOWAS), an official body established under the ECOWAS Treaty, an agreement made by the member States of the ECOWAS Community, and the treaty was signed by Heads of States and Governments of the 16 member States. It is undoubtedly a public document within the meaning of section 102 of the Evidence Act, 2011. However, we observe that exhibit RA27 is not certified as required by section 104 of the Evidence Act to render same admissible. Not being so certified, exhibit RA27 is hereby expunged from the record. As for the objection to exhibit RA28, being the American Bar Association Membership Card of RW2, which was tendered by RW2 under cross examination by the 4th respondent, it is clear to us that the document was neither pleaded nor listed or referred to in the statement of RW2. As rightly argued by the petitioners, exhibit RA28 is inadmissible. Accordingly, it is hereby expunged from the record.

The Merit of the Petition:

Having disposed of the various objections to witnesses and to some of the documents tendered in this petition, I now proceed to consider the merit of the petition.

The parties filed, exchanged and adopted their respective final addresses starting with the respondents. The respective final addresses of the 1st, the 2nd and 3rd and the 4th respondents were all filed on the 14th of July, 2023, respectively. On the 23rd of July. 2023, 20th July, 2023 and 23rd July, 2023, the petitioners filed three separate final addresses in response to the final addresses of the 1st ; 2nd and 3rd and the 4th respondents, respectively. In reaction to the petitioners" final addresses, the 1st, 2nd and 3rd and the 4th respondents filed their reply addresses on 28th July, 2023, 21 July, 2023 and 28th July, 2023, respectively. The 1st respondent and the 2nd and 3rd respondents also filed Lists of Additional Authorities on the 28% and 31st of July, 2023, respectively. On the 1st of August, 2023, the parties adopted their respective final addresses.

In his adopted final written address, learned senior counsel for the 1st respondent, A. B. Mahmoud, SAN distilled the following five issues for determination:

(a) Whether having regard to the provisions of sections 131 and 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and the evidence before the court, the 2nd and 3rd respondents were qualified to contest the Presidential Election of 25th February, 2023.

(b) Whether having regard to section 47(2) and (3) of the Electoral Act, 2022, Paragraphs 38 and 92 of the Regulations and Guidelines for the Conduct of Elections, 2022, the inability of the 1st respondent to transfer or transmit the results of the Presidential Election to the IReV Portal real time amounted to non- compliance to Electoral Act and whether such non- compliance substantially affected the outcome of the election.

(c) Whether by the totality of the evidence adduced, the petitioners have proven that the election of the 2nd respondent was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2022.

(d) Whether in the absence of any proof of unlawful votes to be added to the scores of the petitioners and/or unlawful votes to be deducted from the 2nd respondent's scores at the election, the petitioners have proven that

the 2nd respondent was not elected by majority of lawful votes cast.

(e) Whether having regard to the declared results of the election and the provision of section 134(2) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 2nd respondent ought not to have been returned as duly elected after having scored the highest number of votes cast with 25 percent of the votes cast in over two-thirds of the States in the Federation.

The learned Silk for the 2nd and 3rd respondents. Chief Wole Olanipekun SAN formulated the following four issues for determination:

(i) Having regard to the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the salient provisions of the Electoral Act, 2022, the judgment of the Federal High Court in Suit No. FHC/ABJ/CS/1454/2022, between *Labour Party v. INEC*, delivered on 23rd January, 2023 (exhibit XI), as well as admissible evidence on record, whether the election of the 2nd respondent into the office of President of the Federal Republic of Nigeria on 25th February, 2023, was not in substantial compliance with the principles and provisions of the Electoral Act. 2022.

(ii) In view of the clear provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Electoral Act, 2022 and plethora of judicial precedents on the criteria for qualification of candidates for election to the office of President, coupled with the unreported decision of the Supreme Court in SC/CV/501/2023: *Peoples Democratic Party v. Independent National Electoral Commission (INEC) & 3 Ors*., delivered on 26th May, 2023, reported in (2023) 13 NWLR (Pt. 1900) 89 (exhibit RA23), whether the 2nd and 3rd respondents were/are not eminently qualified to contest the presidential election of 25th February, 2023.

(iii) Upon a combined reading of sections 134 and 299, as well as other relevant sections of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 66 of the Electoral Act, 2022 and other relevant statutes, whether the 2nd respondent has not satisfied

The necessary constitutional and statutory requirements to be declared winner of the Presidential Election of 25th February, 2023, and retuned as President of the Federal Republic of Nigeria.

(iv) Considering the constitution of the petition and the terse evidence adduced, whether this honorable court can accede to any of the reliefs being claimed by the petitioners.

Prince L. O. Fagbemi, SAN, the senior counsel for the 4th respondent also nominated four issues for determination, which are:

1. Whether having regard to the issues joined and the evidence led on the nomination of the 3rd respondent as vice Presidential candidate of the 2nd respondent and the alleged civil forfeiture of the sum of $460,000 (Four Hundred and Sixty Thousand Dollars) to the United States by order of the District Court in Case No. 93C 4483, the petitioners have established that 2nd respondent was not qualified to contest the presidential election held on 25th February, 2023 as provided for in the Constitution of the Federal Republic of Nigeria, 1999 (as altered).

2. Whether, having regard to the relevant and admissible evidence led by parties, the conduct of the Presidential Election held on the 25th February, 2023 was vitiated by noncompliance that was substantial enough to have affected its outcome and justified nullification of the election as envisaged by the applicable provisions of the Electoral Act, 2022.

3. Whether the burden of proving that 1st petitioner, and not 2nd respondent scored majority of lawful votes cast in each of the at least two-third of all the States of the Federation and the Federal Capital Territory, to be declared and returned as the winner of the Presidential election held on 25th February, 2023, has been discharged by the petitioners.

4. Whether having regard to the totality of the evidence led by the parties and the applicable law, the petitioners are entitled to succeed on any of the reliefs sought

In the petition at all, or that the petition ought to be dismissed in favour of the respondents.

On the part of the petitioners, their lead senior counsel, Dr. Livy Uzoukwu, SAN distilled the following three issues in the petitioners' final addresses in response to the final addresses of the 1st and 4th respondents.

1. Whether the 2nd and 3rd respondents are qualified to contest the Presidential election, by reason of the unchallenged facts and circumstances arising under section 137(1)(d), 142(1)(2) of the 1999 Constitution, section 35 of the Electoral Act,2022, in this petition.

2. Whether from the documentary evidence before the honourable court read and examined together with the unchallenged expert and technical evidence of the petitioners' witnesses, the petitioners proved that the noncompliance by the 1st respondent with the relevant provisions of the Electoral Act, 2022 and the subsidiary legislations made thereunder substantially affected the outcome of the questioned Presidential Election held on 25th February, 2023.

3. Whether the declaration and returning of the 2nd respondent by the 1st respondent as the winner of the Presidential Election held on the 25th February, 2023 was not invalid for non-compliance with the provisions of the Electoral Act (2022) and by virtue of the mandatory provisions of section 134(2) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

In response to the 2nd and 3rd respondents' final address, the petitioners adopted issues A1-3 of the issues for determination which they earlier filed on the 18th of May, 2023 during the pre-hearing session. These are:

1. Whether the 2nd respondent at the time of the Presidential Election held on the 25th day of February, 2023 was not disqualified to contest the said election by virtue of the provisions of section 137(1)(d) of the Constitution of the Federal Republic of Nigeria,1999 (as amended).

2. Whether the 3rd respondent at the time of the Presidential Election held on the 25th of February,

2023 was qualified to contest the said election as the vice Presidential candidate to the 2nd respondent; and if answered in the negative, whether this did not invalidate the qualification of the 2nd respondent to contest the said election.

3. Whether the Presidential Election held on 25th February, 2023 wherein the 2nd respondent was declared and returned by the 1st respondent as the winner, was not invalid by reason of non-compliance with the provisions of the Electoral Act, 2022 and INEC Guidelines and Regulations for the Conduct of Elections, 2022, made pursuant to the Act.

From the pleadings, the evidence adduced and the submissions of counsel of the parties, it is my considered view that the following are the issues which will effectively determine this petition:

1. Whether having regard to the provisions of sections 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 35 of the Electoral Act, 2022 and the evidence before the court, the 2nd and 3rd respondents were qualified to contest the Presidential Election of 25th February, 2023.

2. Whether having regard to the evidence adduced by the parties the petitioners have established that there was substantial non-compliance with the provisions of the Electoral Act, 2022 and that the non-compliance substantially affected the results of the election.

3. Whether from the totality of the evidence adduced, the petitioners have proven that the presidential election held on 25th February, 2023 was invalid by reason of corrupt practices.

4. Whether from the evidence adduced the petitioners have established that the 2nd respondent was not duly elected by majority of lawful votes cast at the election.

Issue l

Whether having regard to the provisions of sections 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 35 of the Electoral Act, 2022 and the evidence before the court, the 2nd and 3rd respondents were qualified to contest the Presidential Election of 25th February, 2023.

On this issue, A. B. Mahmoud, SAN submitted on behalf of the 1st respondent that the reliefs in respect of the petitioners' allegation of non-qualification are declaratory, for which the petitioners must lead credible evidence in support of their case. Relying on *Ali Ucha & Anor v. Elechi & Ors* (2012) LPELR-7823 (SC); (2012)13NWLR (Pt.1317)330; and *Nwokidu v. Okanu* (2010) 2 NWLR (Pt.1181) 362; *Dantata v. Mohammed* (2000) 7 NWLR (Pt. 664) 176;and *Buhari v. Obasanjo* (2005) All FWLR (Pt. 273) 1 at 48;(2005)13 NWLR (Pt. 941) 1, he further submitted that it is only after the petitioners have led credible evidence in support of their case that the evidential burden will shift to the respondents to dislodge the case presented by the petitioners.

Learned senior counsel cited section 134(3) of the Electoral Act, 2022 and the decision of the Supreme Court in *Lado & Anor v Masari & Ors* (2019) LPELR-55596 (SC); (2021) 13 NWLR (Pt. 1793) 334, and contended that the qualification of the 2nd and 3rd respondents would only be determined by reference to the qualifying and/or disqualifying factors contained in sections 131 and 137 of the 1999 Constitution.

On the petitioners' allegation of double nomination of the 3rd respondent, counsel referred to exhibit X2, the certified true copy of the judgment of the Supreme Court in *P.D.P. v. I.N.E.C. & 3 Ors* (2023) LPELR-60457(SC) at page 47; (2023)13 NWLR (Pt.1900) 89, per Okoro, JSC, and submitted that by the doctrine of judicial precedent, that decision which has finally determined the issue of double nomination of the 3rd respondent, is binding on all other courts including this court. He also relied on *Dingyadi & Anor v. INEC & Ors* (2011) LPELR-950(SC) at pages 48 -49, paras. A-B; (No.1) (2010) 18NWLR (Pt. 1224) 1. He further submitted that the issue of the alleged double nomination of the 3rd respondent having been considered and pronounced upon by the Supreme Court, cannot be revisited or reviewed by this court.

Learned senior counsel contended that the issue of double nomination is neither one of the qualifying factors stated in section 131 nor one of the disqualifying factors stated in section 137 of the 1999 Constitution. Citing the Supreme Court decision in respect of a similar complaint in *Jegede v. INEC* (2021) LPELR-55481(SC); (2021) 14 NWLR (Pt. 1797) 409, he submitted that since the allegation of the petitioners does not fall within the qualifying or disqualifying factors stated in the Constitution, the petitioners

Cannot validly raise such allegation as a ground for disqualifying the 2nd and 3rd respondents from contesting the Presidential election.

The learned Silk submitted that by section 31 of the Electoral Act, 2022 which provides for voluntary withdrawal of nomination of candidates, the role of the candidate is limited to giving a notice of his withdrawal to the political that nominated him. He added that under section 35 of the Act which forbids double nomination, knowledge of the double nomination by the candidate must be established to ground a case of double nomination. Relying on *Jime v Hembe & Ors* (2023) LPELR-60334 (SC); (2023) 12 NWLR (Pt. 1899) 463; and *P.D.P. v. INEC* (supra), he submitted that the evidence led before this court, especially exhibits RA2 and RA22 show that the 3rd respondent had on the 6th of July, 2023 duly informed his political party, the 4th respondent, of the withdrawal of his candidature. He added that PW1 and PW2, the petitioners' witnesses had denied knowledge of this document. He argued the document speaks for itself and same should be preferred over oral evidence.

On the petitioners' allegation of imposition of fine on the 2nd respondent by United States District Court in Case No. 93C 4483, learned counsel submitted that the prescription of fine as a disqualifying factor in section 137 of the 1999 Constitution is hinged on a sentence. He pointed out that PW1, the petitioner's witness had admitted under cross-examination that Case No.93C 4483 relied upon was a civil forfeiture proceeding and there was no charge or conviction. Finally, Counsel submitted that the petitioners have failed to establish their allegation that the 2nd and 3rd respondents were not qualified to contest the Presidential Election of 25th February, 2023. He urged this court to so hold and resolve this issue in favour of the 1st respondent.

On the part of the 2nd and 3rd respondents, Chief Wole Olanipekun submitted that the Supreme Court in *P.D.P. v. I.N.E.C. & 3 Ors* (supra), had made very critical findings in respect of the facts relating to the alleged double nomination of the 3rd respondent and firmly held that the 3rd respondent did not at any time have double nomination. He added that the Apex Court had found that the 3rd respondent duly withdrew his candidacy of Borno Central Senatorial District on 6th July, 2022 when he gave notice of voluntary withdrawal to his political party, the 4th respondent. He added that contrary to the allegation of the petitioners, what took

Place on the 15th of July, 2022 as shown on INEC Form EC11C (exhibit PA3) was not the withdrawal itself but the conveyance of the development to the 1st respondent in line with the requirement of section 31 of the Electoral Act, 2022. He submitted that the 3rd respondent's nomination is in conformity with section 142(1) of the 1999 Constitution and urge the court to so hold and resolve this issue in favour of the 2nd and 3rd respondents.

On the petitioner's allegation of imposition of fine on the 2nd respondent, learned senior counsel submitted that exhibit PA5 can be classified judicially as a Non-Conviction Based Forfeiture (NCBF) which is a forfeiture not associated with criminal conviction and sentencing. Citing Article S. 4(1) (c) of the United Nations Convention Against Corruption and sections 13(1) (d) and 24 of the Economic & Financial Crimes Commission Act which contain provisions relating to such Non-Conviction Based Forfeiture, as well as the case of *Oti v. E.F.C.C.* (2020) 14 NWLR (Pt. 1743) 48 at pages 90-91, he submitted that the proceedings in exhibit PA5 does not involve trial or conviction for an offence.

Learned counsel submitted that even if it is assumed, though not conceded that the order of forfeiture in exhibit PA5 is connected with criminal forfeiture, the forfeiture order which was made thirty years ago is no longer a valid ground for disqualification of the 2nd respondent since the forfeiture order is over the period of ten years limited for disqualifying a Presidential candidate under section 137(1) (e) of the 1999 Constitution. He added to underscore the fact that the 2nd respondent has not criminal record in the USA, the 2nd and 3rd respondents have tendered exhibits RA13 - RA16 to show that the 2nd respondent has always enjoyed the rights of ingress and egress to and from US, a right which anyone who is burdened by criminal forfeiture cannot enjoy. He urged the court to resolve this issue in favour of the 2nd and 3rd respondents.

On behalf of the 4t respondent, Prince L. O. Fagbemi, SAN submitted that the judgment of the Supreme Court in *P.D.P. v. INEC & 3 Ors* (supra) is a judgment in rem which binds the whole World including non-parties to the suit. He relied on: *Igwemma v Obidigwe* (2019) 16 NWLR (Pt. 1697) 117 at 138-139 paras. F - C; *Ogboru & Anor v Uduaghan & Federation* (2022) LPELR-57010 (SC) at 268-272; (2012)11 NWLR (Pt. 1302) 357. He urged the court to take judicial notice of the judgment in *P.D.P. v. INEC & 3 Ors* (supra), which was tendered and admitted by this court as exhibit X2. He also relied on *Ogwuche v. F.R.N.* (2021) 6 NWLR

(Pt.1773) 540 at 555; and *Onwuakpa v. Onyeama* (2022)17 NWLR (Pt.1858)97 at 179.

On the allegation that the 2nd respondent was fined of the sum of $460,000 for an offence inivolving dishonesty, he submitted that civil forfeiture of an asset cannot be a ground for disqualification from contesting an election under the Nigerian Constitution. He pointed out that exhibits PA1 - PA4 do not contain the word "fine" and that PW1 had admitted under cross examination that it was a civil forfeiture proceeding. He referred this court to the cases of *Jonathan v. F.R.N.* (2019) 10 NWLR (Pt. 1681) 533 at 570-571, paras. A-H; and *Kubor v. Dickson & Ors* (2012) LPELR-9817(SC); (2013) 4 NWLR (Pt. 1345) 534 and *Alhaji & Anor v Gaya & Ors* (2008) LPELR-3709 (CA). He pointed out that PWI had admitted under cross-examination that the said exhibits are not accompanied by any certificate of conviction which is required to prove criminal conviction under sections 248 and 249 of the Evidence Act, 2011. Citing Blues v. C.O.P. (1959) WRNLR 234; S*anyaolu v. INEC & Ors* (2007) EPR 579; and *Akanni v. Olaniyan* (2006) 8 NWLR (Pt. 983) 536, he argued that the petitioners can only satisfy the requirement of those sections by production of a certificate of conviction signed by the registrar or other officer of the court which has custody of the record of conviction. He added that the petitioners have failed to establish any previous conviction against 2nd respondent. Learned counsel also submitted that the purported foreign judgment in Case No 93C 4483 is not registered in Nigeria as make same judicially noticeable under section 106(h)(i)(ii) of the Evidence Act, 2011.

Responding to the 1st respondent's contentions on this issue, learned senior counsel for the petitioners, Dr. Livy Uzoukwu, SAN submitted that the purported sponsorship of the 2nd and 3rd respondents by the 4th respondents was rendered invalid by reason of the 3rd respondent knowingly allowing himself to be nominated as vice Presidential Candidate whilst he was still a senatorial candidate for the Borno Central Constituency, Citing section 142 of the 1999 Constitution and section 35 of the Electoral Act,2022,he submitted that from exhibits PA1-PA4 there is no doubt that the letter of 6th July, 2022 (exhibit....) purportedly written by the 3rd respondent withdrawing his candidacy does not amount to withdrawal of his nomination as senatorial candidate as provided in section 31 of the Electoral Act, 2022. He added that by section 31 of the Act a

withdrawal of nomination can only be done by the political party and not the candidate and the withdrawal shall be conveyed to the Commission before it becomes effective and the evidence shows that the withdrawal was only received by the 1st respondent on the 15th of July. 2022. He placed relied on the decision of this court in *Gholarumi v P.D.P.* (2019) LPELR-48282(CA) at page 38.

On the reliance placed by the 1st respondent on the Supreme Court decision in *P.D.P. v. I.N.E.C. & 3 Ors* (supra), he argued that the pronouncement of the apex court in that case which stated that there was no double nomination on the part of the 3rd respondent is an obiter dictum, since the court had decided the case on the threshold issue of lack of *locus standi* on the part of the petitioners. Relying on *Bamaiyi v. State* (2001) 8 NWLR (Pt. 715) 270 at 285, and the decision of this court in *Ekpe v. Itanjah* (2019) LPELR-48462(CA), he submitted that the question under section 35 of the Electoral Act, 2022 is not whether the 3rd respondent withdrew his candidature but whether he knowingly allowed himself to be nominated by more than one political party or in more than one constituency. He submitted that the 3rd respondent did on the 14th of July, 2022 allow himself to be nominated as Vice Presidential Candidate while still the Senatorial candidate of the 4th respondent for Borno Central Constituency. He argued that the effect of the breach of section 31 of the Electoral Act, 2022 is that the nomination of the 3rd respondent is void, and the 2nd and 3rd respondents who are running a joint ticket are deemed not to be qualified to contest the election by virtue of section 142 of the 1999 Constitution. He relied on *P.D.P. v. Degi-Eremienyo* (2020) LPELR-49734(SC); 2021)9NWLR (Pt. 1781) 274; and *A.P.C. v. Marafa* (2020) 6 NWLR(Pt.1721) 383, and urged to hold that all the votes cast for the 2nd and 3rd respondents in the Presidential Election are wasted votes.

As regards the second segment of this issue relating to the petitioners allegation of imposition fine on the 2nd respondent, the learned senior counsel for the petitioners submitted that the decision of the United States District Court in Case No.93C 4483 as encapsulated in exhibit PA5 was made sequel to a "Settlement Order of Claims to Funds held by Heritage Bank and Citibank" wherein Bola Tinubu, the 2nd respondent and others claimed ownership of the sums in the accounts. Relying on *Daudu v. F.R.N.* (2018) LPELR-43637(SC); reported as *Dauda v F.R.N.* (2017)11 NWLR (Pt. 1576) 315; and *Kalu v. F.R.N.* (2012) LPELR-9287(CA), as

well as section 137(1)(d) of the 1999 Constitution, he submitted that the petitioners' case is that the 2nd respondent was fined the sum of $460,000 by a US District Court for an offence involving dishonesty, namely narcotics trafficking and money laundering and therefore is expressly disqualified from contesting the Presidential Election.

The learned Silk further submitted that 1st respondent misconception that a conviction must exist before a person will be disqualified from contesting for the office of the President stems from its misguided reliance on section 137(1)(e) of the 1999 Constitution, when the petitioners' case is not based on that section of the Constitution. He argued that all the evidence adduced and arguments canvassed by the respondents including exhibits RA9, RA13- 16, to the effect that the 2nd respondent has never been arrested, charged, convicted and sentenced with respect to any criminal offence in the US and elsewhere are irrelevant and ought to be discountenanced.

The petitioners' response to the 2nd and 3rd respondents' arguments on this issue are essentially the same to their above response to the arguments of the 1st respondent. They only added that the candidacy of the 2nd respondent is invalidated by the failed nomination of the 3rd respondent. They further argued that when the 2nd respondent stood election as the Presidential candidate of the 4th respondent despite his own qualification by virtue of section 137(1) (d) of the 1999 Constitution, both the 2nd and 3rd respondents were affected by the virus of constitutional and statutory disqualification affecting each and both of them.

On the 2nd and 3rd respondents' argument relating imposition of fine on the 2nd respondent, the petitioners also basically made the same submission as the one in response to the 1s respondent's argument. They however added that exhibit PA5, the enrolled Order of the US Court is sealed and certified and had complied with the provisions of section 106(h) (i) of the Evidence Act, 2011.He urged the court to disregard the 2nd and 3rd respondents' argument that exhibit PA5 is required to be registered under section 3 of the Reciprocal Enforcement of Foreign Judgments Ordinance and Foreign Judgments (Reciprocal Enforcement) Act, since exhibit PA5 is not a money judgment.

Learned counsel for the petitioners submitted that it has been held by the US Supreme Court in *Austin v. United States*, 509 US

602 (1993); and *Tims v. Indiana*, Appeal No. 17-1091, decided by US Supreme Court on 20/2/2019,that civil forfeiture ordered in an action in rem is a fine and is a punishment regardless that it did follow from criminal conviction. He also referred to the cases of A.-G., *Bendel State v. Agbofodoh* (1999) 2 NWLR (Pt. 592) 476; *Bashir v. F.R.N.* (2016) LPELR-40252(CA); and *Abacha v. FRN* (2014) LPELR-2201 (SC) at pages 46-47, paras. F-B; (2014) 6 NWLR (Pt.1402)43, where the words "fine" and “forfeiture" were defined. He submitted that by the express meaning and intendment of section 137(1)(d) of the 1999 Constitution, a person who, even though not convicted, has forfeited property on account of criminal conduct should not aspire to or be allowed to occupy the exalted office of President of Nigeria. He added that the word “liar” is used twice in section 137(1)(d) of the Constitution to separate persons convicted from persons who, even though not sentenced are affected by an order of a fine imposed by a court.

With regard to the 4th respondent's arguments on this issue, the petitioners made the response to the one they made in response to the 1st respondent's submissions. It is therefore needless to repeat same here.

In reply to the petitioner's final address, the 1st respondent submitted that the petitioners had abandoned their ground that the 2nd respondent was not elected by a majority of lawful votes cast and its accompanying prayer for the petitioners to be declared as having scored the highest number of votes cast. He observed that the petitioners failed to respond to the 1st respondent's submissions on that issue and in fact made no attempt in their address to contend that the petitioners scored the highest number of votes cast at the election or to justify the prayers sought by the petitioners to be declared as having scored the highest number of votes at the election. Relying on *Ochigbo v. Ameh* (2023) LPELR-59616(CA) at pages 9-10, paras. E - C; *Nwankwo & Ors v. Yar 'adua & Ors* (2010)12 NWLR (Pt. 1209) 518; and *Dana Ltd. v. Oluwadare* (2006) 39 WRN 121, he submitted that the petitioners have abandoned that ground of the petition and its associated relief. He urged the court to so hold.

Learned counsel further submitted that this court is entitled to, and indeed in the prevailing circumstances, bound to follow the pronouncement of the Supreme Court in *P.D.P. v. INEC & 3 Ors* (supra), which is on the same issues ventilated by the petitioners

in respect of alleged double nomination of the 3rd respondent. He relied on *Buhari & Ors v Obasanjo & Ors* (2003) LPELR-813 (SC) at pages 66, paras. B-C; (2003) 17 NWLR (Pt.850)587; *Ladejobi & Ors v. Oguntayo & Ors* (2015) LPELR-41701(CA) at pages 29-32, paras. B- B; and *Chevron (Nig.) Ltd. v. A.-G., of Delta State & Anor* (2018) LPELR-44837(CA).

Also replying to the petitioners' final address, the senior counsel to the 2nd and 3rd respondents submitted that the Supreme Court had in *PDP v. INEC & 3 Ors* (supra) considered the subject matter of the 3rd respondent's voluntary withdrawal of his candidature for Borno Central Senatorial District and every other issue incidental to it under the law and had made a categorical pronouncement that the 3rd respondent had not breached any law. He further submitted that the case of *P.D.P. v. Degi-Eremienyo* (supra), referred to by the petitioners no longer represents the position of the law. He stated that the apex court had in its recent decision in *Edebvie v. Orohwedor* (2023) 8 NWLR (Pt. 1886) 219 at 277, held that its decision in *P.D.P. v. Degi-Eremienyo* (supra), is no longer the law.

On the petitioners' arguments relating to fine imposed on the 2nd respondent, learned counsel submitted that the two cases of *Austin v. United States* (supra); and *Tims v. Indiana* (supra),relied upon by the petitioners' counsel are cases in which the forfeiture proceedings were based a plea of guilt criminal charges and are not civil forfeiture proceedings. He stated that the two cases are therefore inapplicable to the circumstances of this case.

In reply to the petitioners' address, learned senior counsel for the 4th respondent stated the issue of the 3rd respondent's withdrawal of his nomination as Senatorial candidate is a pre-election dispute which cannot be litigated by this court. He relied on *Okadigbo v Emeka* (2012) LPELR-7839(SC); (2012) 11 NWLR (Pt. 1311) 237and *A.P.C. v. Chima* (2019) LPELR-48878 (CA).

On the petitioners argument over 2nd respondent's qualification, learned counsel submitted that the Supreme Court had held in *Action Congress v. INEC* (2007) 12 NWLR (Pt. 1048) 220 at 293- 294, that a trial, conviction and sentence must have taken place for a person to be disqualified under section 137(1)(d) and (e) of the Constitution. He further submitted that the petitioners have not shown that there was any prior criminal trial or conviction of the 2nd respondent.

The counsel to the 4th respondent finally submitted that the validity of the 3rd respondent's nomination was the main issue in *P.D.P. v. INEC & 3 Ors* (supra), and that even if the pronouncements of Okoro, JSC, Ogunwumiju, JSC and Agim, JSC are obiter, the Supreme Court had held repeatedly that its obiter is binding on the lower courts. He relied on *Mrs Macleans v. Inlaks Ltd.* (1980) 8-11SC 1; *Ferodo Ltd. v. Ibeto Ind. Ltd.* (2004) 5 NWLR (Pt. 866) 317at 371-372, paras. H-B; and *Buhari v. Obasanjo* (2003) 17 NWLR (Pt. 850) 587 at 664, paras.D-F.

Resolution of Issue 1:

The petitioners' allegations in ground 1 of the petition are:(1) that the 2nd respondent was not qualified to contest the Presidential Election held on 25th February, 2023 because the 3rd respondent who was his running mate had knowingly allowed himself to be nominated in more than one constituency contrary to section 35 of the Electoral Act, 2022; and (2) that the 2nd respondent was fined the sum of $460,000 (Four Hundred and Sixty Thousand Dollars) by the US District Court of Illinois on October 4, 1993 for an offence involving dishonesty, namely narcotics trafficking and money laundering, pursuant to 21 USC 381(a)(6) and 18 USC 982.

In proof of those allegations, the petitioners first tendered from the Bar the following exhibits:

(i) Exhibit PA1-Form EC11A-Notice of Withdrawal of Candidate of Ibrahim Kabir Masari received by INEC on 15/07/2022;

(ii) Exhibit PA2 - Affidavit in Support of Personal Particulars deposed to by Kashim Shettima as candidate for the Borno Central Senatorial District received by INEC on 17/07/2022;

(iii) Exhibit PA3 - Form ECIC-Notice of Withdrawal of Kashim Shettima as Candidate for Borno Central Senatorial District received by INEC on 15/07/2022;

(iv) Exhibit PA4-Affidavit of Personal Particulars of Kashim Shettima as vice Presidential Candidate of the 4th respondent received by INEC on 15/07/22;

(v) Exhibit PA5 - Record of Proceedings, Terms of Settlement and Order of Forfeiture.

The petitioners then called PW1, Sir Lawrence Uchechukwu Nnanna Nwakaeti, a legal practitioner, whose witness statement was sworn to on 20th March, 2023 under the acronym LUNN, at pages

86-90 of the petition. According to him, the sponsorship of the 2nd and 3rd respondents by the 4th respondent was rendered invalid by reason of the 3rd respondent knowingly allowing himself to be nominated as the Vice-Presidential Candidate while he was still a Senatorial Candidate for Borno Central Senatorial Constituency. PW1 also stated in paragraph 17 of his statement that he knew that the 2nd respondent was not qualified to contest the election because he was fined the sum of $460,000 by US District Court, Northern District of Illinois, Eastern Division for offence involving dishonesty, namely narcotics trafficking. He identified exhibits PA1- PA5 as the documents which he referred to in paragraph 11 of his statement on oath as proof of his assertions. Upon cross-examination by the 1st respondent however, PW1 stated that apart from voting in the elections he did not play any other role. He also stated that even though he is a practicing lawyer he was not an author and had never appeared before the court of Appeal or the Supreme Court as amicus on any constitutional matter. Even as he admitted that his statement on oath was not based on his legal opinion, he insisted that it was based on matters of pure law. When cross examined by the 2nd and 3rd respondents' counsel, PW1 stated that he would be surprised that there is nowhere the 2nd respondent was fined in exhibit PA5. He also admitted that exhibit PA5 was neither registered in Nigeria nor accompanied by a certificate by any Consular Officer either in the USA or in Nigeria. He also admitted under cross-examination by the 4th respondent's counsel that the documents in exhibit PA5 are civil forfeiture proceedings and that he did not mention any charge against the 2nd respondent in his statement.

The petitioners also called PW12, Yunusa Tanko, a member of the 2nd petitioner and member of its Situation Room. He adopted his statement which he deposed to on 20th March, 2023 under the acronym TUJ and which is at pages 44-81 of the petition. In paragraphs 23 and 24 of his statement, he stated that on the 14th of July, 2022, the 3rd respondent, contrary to the Electoral Act, 2022, whilst still being a Senatorial Candidate for Borno Central Constituency, knowingly allowed himself to be nominated as the Vice-Presidential candidate to the 2nd respondent on the platform of the 4th respondent. PW12 also stated in paragraphs 29-33 of his witness statement that the 2nd respondent was not qualified to contest the Presidential Election because he was fined the sum of

$460.000 by the US District Court in Case No. 93C 4483 for an offence involving dishonesty, namely narcotics trafficking. He also identified exhibits PA1 - PA5 as the documents which he listed in paragraph 24 of his statement in proof of his assertion. It is noted that paragraphs 23, 24 and 25 of the statement of this witness is exactly the same as the averments in paragraphs 22, 23 and 24 of the petition. Also paragraphs 29, 30, 31 and 32 of PW12's statement on oath are the same with paragraphs 28, 29, 30 and 31 of the petition. Obviously PW12 merely re-echoed the pleadings in the petition as his evidence in respect of the allegation of disqualification of the 2nd and 3rd respondents.

When cross examined by Fagbemi, SAN on behalf of the 4th respondent, PW12 stated that the petitioners' grounds for bringing this action is based on double nomination and forfeiture of $460,000. He was shown a certified true copy of the judgment of the Supreme Court in Appeal No. SC/CV/ 501/2023: *Peoples Democratic Party v. INEC & 3 Ors* delivered on 26th May, 2023, reported in (2023) 13 NWLR (Pt. 1900) 89. Upon identifying same, the said judgment was tendered through him and admitted in evidence as exhibit X2 without prejudice to the objection raised by the petitioners to the admissibility of the document.

All the respondents had earlier raised preliminary objection to ground 1 and paragraphs 21-27 of the petition which challenge the qualification of the 2nd respondent to contest the election, arguing that the issue of double nomination of the 3rd respondent was caught up by issue estoppel, same having been determined by the Supreme Court in *P.D.P. v. I.N.E.C. & 3 Ors* (supra), a certified true copy of which was tendered under cross examination of PW12 by the 4th respondent and admitted as exhibit X2. A certified true copy of the same judgment was also tendered from the Bar by the 2nd and 3rd respondents' counsel and admitted as exhibit RA23. The respondents have further argued that the petitioners who are not members of the 4th respondent, lack the *locus standi* to challenge the nomination of candidates of the 4th respondent. We had deferred our ruling on that objection to this stage because a consideration of same at that time would touch on the substance of this case.

It is pertinent to observe that upon our careful perusal of exhibits X2 and RA23, which are the certified true copies of the Supreme Court unanimous judgment in *P.D.P. v. INEC & 3 Ors* (supra), it is clear to us that the apex court had not only determined

that the petitioners in that case had no *locus standi* to question the nomination of the 3rd respondent herein, the court proceeded to determine with finality that there was no double nomination on the part of the 3rd respondent.

On the contention relating to the *locus standi* of the petitioners to complain about the double nomination of the 3rd respondent, the apex court, per His Lordship Jauro, JSC delivering the lead judgment in *P.D.P. v. I.N.E.C. & 3 Ors* (supra), held at pages 30-31, paras. C-D, as follows:

> "The position of the law has always been that no political party can challenge the nomination of a candidate of another political party. The position did not change in section 285(14) (c) of the Constitution. No matter how pained or disgruntled a political party is with the way and manner another political party is conducting or has conducted its affairs concerning its nomination of candidates for any position, it must keep mum and remain an onlooker for he lacks *locus standi* to challenge such nomination in court. A political party equally lacks the *locus standi* to challenge the actions of INEC in relation to another political party. Section 285(14) (c) only allows a political party to challenge the decisions and activities of INEC disqualifying its own candidate from participating in an election, or to complain that the provisions of the Electoral Act or any other law have not been complied with in respect of the nomination of the party's own candidates, time table for an election, registration of voters and other activities of INEC in respect of preparation for an election. A political party is only vested with locus to file a pre-election matter when the aforesaid situations affect it or its own candidates. When the actions of INEC relate to the activities of a political party, no court has the jurisdiction to entertain a suit brought by another political party in that regard."

The above legal position as determined by the apex court in *P.D.P. v. I.N.E.C.* (supra), clearly shows that the petitioners in this case who belong to a different political party from the 2nd and 3rd and the 4th respondents have no locus to complain about the nomination of the 3rd respondent. Hence, they cannot use same to

challenge the qualification of the 2nd and 3rd respondents to contest the Presidential election.

On the petitioners' allegation of double nomination of the 3rd respondent, the Supreme Court specifically held in *P.D.P. v INEC & 3 Ors* (supra). That there was no such double nomination. In the concurring judgment of His Lordship Okoro, JSC, particularly at pages 46-47, paras. C-D, the Apex Court held as follows:

> "It is crystal clear that by the two exhibits alluded to above, the 4th respondent did the needful by resigning his position as Senatorial Candidate for Borno Central Senatorial District since 6th July, 2022 before being nominated by the 3rd respondent to run alongside him as vice Presidential Candidate of All Progressives Congress (APC). Section 31 of the Electoral Act, 2022 states clearly as follows:
>
> > "A candidate may withdraw his candidature by notice in writing signed by him and delivered personally by the candidate to the political party that nominated him for the election and the political party shall convey such withdrawal to the Commission not later than 90 days to the election." The above provision of the Electoral Act, was duly complied with by the respondents. It is my well-considered opinion that as at the 6th of July, 2022, having withdrawn his nomination and personally served same on the 2nd respondent of the withdrawal of nomination on 6th of July,2022, and the subsequent replacement on the 14th of July, 2022, the 4th respondent was no longer a candidate for the Borno Central Senatorial District Elections and his subsequent nomination as vice-Presidential candidate of the 2nd respondent for the Presidential election was not multiple nomination as there was no longer a nomination for the 4th respondent since his withdrawal on the 6th of July, 2022."

Also concurring, His Lordship Agim, JSC held page 84, paras. C-B, held as follows:

> "It is glaring from the express wordings of S. 31 of the Electoral Act, 2022 that the legislative intention is that

> the withdrawal should take effect upon the nominated candidate personally delivering a written notice of his withdrawal to the political party and not when the political party conveys it to INEC. S. 31 states that what the party conveys to INEC is the withdrawal. The provision gives the party not later than 90 days to the election to convey the withdrawal of its candidate to INEC. Since the election held on 25-02-2023, the political party had up to 24-11-2022 to convey the 4th respondent's withdrawal to INEC. So it matters not if it was conveyed on 10-7-2022, 15-7-2022 or any other date, provided it is conveyed not later than 90 days to the election. The date of conveyance within the prescribed period has no effect on the withdrawal that has already been done. Therefore, the 4th respondent withdrew as the 2nd respondent's Senatorial candidate for Borno Central Senatorial District on 6-7-2022 when his written letter of withdrawal dated 6-7-2022 when his written letter of withdrawal dated 6-7-2022 was received by his party on 6-7-2022."

In fact, in the concurring judgment of His Lordship Augie, JSC, the learned jurist was categorical when he held that there cannot be double nomination on the part of the 3rd respondent herein, because he did not contest for any primary election for vice President, but "was merely selected to run for a different office as an associate, a scenario envisaged by section 142(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended."

As regards the contention of the petitioners that the pronouncement of the Supreme Court in *P.D.P. v. INEC & Ors* (supra), which had settled the issue of nomination of the 3rd respondent is an *obiter dictum*, it is trite an obiter dictum is a judicial expression of opinion or comment by a judicial officer made in passing while rendering a judgment which does not decide the live issue in the matter. See: *Kayode Babarinde & Ors v. The State* (2013) LPELR-21896 (SC) at pages 62-63, paras. D-A; (2014)3NWLR (Pt. 1395) 568; *K.R.K. Holdings (Nig.) Ltd. v. First Bank of Nig. Ltd. & Anor* (2016) LPELR-41463(SC) at page 19, paras. A-E; (2017)3 NWLR (Pt.1552) 326 and *Aondoakaa, SAN v. Obot & Anor* (2021) LPELR-5 6605(SC) at page 46, paras. B-E; (2022)5 NWLR (Pt.1824)523.

It is pertinent to state that the firm pronouncements of the learned and respected Justices of the Supreme Court on the alleged double nomination of the 3rd respondent in *P.D.P v. INEC & 3 Ors* (supra), are not mere comments, expressions of sentiments or opinions made in passing. Rather, they are clear findings of fact and statements of the firm position of the law in relation to the status of the nomination of the 3rd respondent by the 2nd respondent as his running mate to contest the Presidential election for the offices of President and Vice President of the Federal Republic of Nigeria, respectively. The fact that the Supreme Court intentionally decided to consider the merit of that case (supra), is clearly manifest from the pronouncement of Ogunwumiju, JSC at page 74, para. C wherein he stated that:

> "It is apt in this type of political case of public interest to look into the merits of this case."

The pronouncement of the Supreme Court in *P.D.P. v. INEC* (supra)on the status of the nomination of the 3rd respondent is therefore, undoubtedly a decision on the merit and not an *obiter dictum* as erroneously contended by the petitioners.

The Supreme Court had re-emphasized the binding effect of its judgments on the lower courts in the case of *Odedo v. P.D.P.& Ors* (2015) LPELR-24738(SC); reported as *Odedo v. Oguebego* (2015) 13 NWLR (Pt. 1476) 229,where Kekere-Ekun, JSC stated at page 65, paras. B-E, as follows:

> "The Supreme Court is the highest court in the land. By virtue of section 235 of the Constitution of the Federal Republic of Nigeria, 1999 its decisions are final. In other words, a decision of the Apex Court settles the position of the law in respect of a particular issue and becomes a binding precedent for all other courts of record in Nigeria. Legal practitioners have a responsibility to keep abreast of the pronouncements of the court and advise their clients accordingly. It is wrong to ignore decisions of this court and seek to perpetuate a position that has already been pronounced upon. This is one of the causes of congestion in our courts and must be discouraged."

See also: *Dingyadi & Anor v. INEC & Ors* (2011) LPELR-950(SC), at pages 48 - 49, paras. A - B; (2011) 10 NWLR (Pt.1255) 347, per Adekeye, JSC; and *Nobis-Elendu v. INEC* & Ors

(2015)LPELR-25127(SC), at pages 35-36, paras. A-C; (2015)16NWLR (Pt. 1485) 197, per Muhammad, JSC. Therefore, this court resists the invitation by the petitioners' counsel to ignore the firm pronouncement of the apex court on the validity of the nomination of the 3rd respondent as the running mate of the 2nd respondent and Vice-Presidential Candidate of the 4th respondent.

The law is settled that where an issue of fact affecting the status of a person or a thing has been determined in a final manner as a substantive part of a judgment of a court having jurisdiction to determine that status, such determination will constitute estoppel by judgment to any subsequent proceedings between any parties whatsoever. See: *Madam Abusatu Agbogunleri v. John Depo & Ors* (2008) LPELR-243(SC) at page 20, paras. D -G; (2008) 3 NWLR (Pt. 1074) 217, per Muhammad, JSC; *Mr. Akinfela Frank Cole v. Mr: Adim Jibunoh & Ors* (2016) LPELR-40662(SC) at pages 37- 38,para. D; (2016) 4 NWLR (Pt. 1503) 499, per Kekere-Ekun, JSC; and *A.P.C. v. P.D.P. & Ors* (2015) LPELR-24587(SC) at page 106, paras. A-E; (2015) 15 NWLR (Pt. 1481) 1, per Galadima, JSC.

Since it is clear that the Supreme Court in *People's Democratic Party v. INEC & 3 Ors* (supra), had finally decided that the nomination of the 3rd respondent by the 2nd respondent as his running mate to contest the Presidential Election is valid, the petitioners' allegation of double nomination of the 3rd respondent which they have raised in this petition, is evidently caught up by issue estoppel.

As for the merit of this issue on double nomination of the 3rd respondent, I observe that it is an issue that has been agitated as a sole ground in petition no. CA/PEPC/04/2023 and same will be addressed while consideration of that petition since the three petitions have been consolidated.

The second allegation also made by the petitioners in ground 1, which is as contained in paragraphs 28-32 of the petition, is that 2nd respondent is disqualified from contesting the presidential election because as they stated in paragraph 28 of the petition:

> "The petitioners further plead that the 2nd respondent was also at the time of the election not qualified to contest for election to the office of President as he was fined the sum of $460,000 (Four Hundred and Sixty Thousand Dollars) for an offence involving dishonesty,

namely narcotics trafficking imposed by the United States District Court, Northern District of Illinois, Eastern Division, in Case No.93C 4483 between:

United States of America …….. Plaintiff
v.
Funds in Account 263226700 ……..Defendants
Held by First Heritage Bank,
In the Name of Bola Tinubu,
Funds in Accounts 39483134,
394833396, 4650279566, 00400220,
39936404, 39936383 held by
Citibank N.A. In the name of
Bola Tinubu or Compass Finance
And Investment Co.
Funds in Accounts 52050-89451952,
52050-89451952, 52050-89451953
Held by Citibank, International in the
Name of Bola Tinubu"

The petitioners have pleaded and relied on the Order of the US Court in exhibit PA5 which they tendered from the Bar and which was subsequently identified by PW1 and PW12 in their evidence earlier summarized.

The petitioners have centered their contention on the provisions of section 137(1) (d) of the 1999 Constitution which reads as follows:

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

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

A careful examination of the above provision shows that the operative words of that paragraph of the section are "sentence", "imprisonment or fine" and "for any offence." Blacks' Law Dictionary 6th Edition at page 1081 defines an "offence" as:

> "A felony or a misdemeanour; a breach of the criminal laws; violation of law for which penalty is prescribed. The word "offence", while sometimes used in various senses, generally implies a felony or a misdemeanour infringing public rights as distinguished from mere private rights, and punishable under the criminal laws, though it may also include the violation of a criminal statute for which the remedy is merely a civil suit to recover the penalty. An act clearly prohibited by the lawful authority of the State, providing notice through published laws."

Also, the Supreme Court in the case *Abdullahi Umar v. State* (2014) LPELR-23190 (SC); (2014) 13 NWLR (Pt. 1425) 497, held that an offence is as an act which is clearly prohibited by law and which may be a crime or a civil offence. "Sentence" on the other hand has been defined by the same Black's Law Dictionary at page 1362 as:

> "The judgment formally pronounced by the court or Judge upon the defendant after his conviction in a criminal prosecution, imposing the punishment to be inflicted, usually in the form of a fine, incarceration or probation."

Again, this Court also defined "sentencing" in *Yakubu v. State* (2015) LPELR-40867 (CA) at page 36 paras. A-F, as:

> "...the judicial determination of a legal sanction to be imposed on a person found guilty of an offence. It means the prescription of a particular punishment by a court to someone convicted of a crime."

It is discernible from the above that the "'fine" referred to in paragraph (d) of section 137(1) quoted above is one which emanates from a sentence for a criminal offence involving dishonesty or fraud. The words "for imprisonment or fine" also pre-supposes that the "fine" envisaged under the section is one which is imposed as an alternative to imprisonment. In other words, the provision of section 137(1) (d) relates to sentence of death, or sentence of imprisonment or fine imposed as a result of a criminal trial and conviction.

Indeed, in considering the offence that can amount to disqualification under section 137(1) of the Constitution, the

Supreme Court had held in *Action Congress v. INEC* (2007) 12 NWLR (Pt. 1048) 220 at 259-260, as follows:

> "The disqualification in section 137(1) clearly involves a deprivation of right and a presumption of guilt for embezzlement or fraud in derogation of the safeguards in section 36(1) and (5) of the Constitution. The trial and conviction by a court is the only constitutionally permitted way to prove guilt and therefore the only ground for the imposition of criminal punishment or penalty for the criminal offences of embezzlement or fraud. Clearly, imposition of the penalty of disqualification for embezzlement or fraud solely on the basis of an indictment for those offences by an Administrative Panel of Enquiry implies a presumption of guilt, contrary to section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999, whereas, conviction for offences and imposition of penalties and punishments are matters appertaining exclusively to judicial power."

See also on this: *Amaechi v. I.N.E.C. & Ors* (2008) LPELR-446 (SC) at pages 49-51, paras. E-F; (2008) 5 NWLR (Pt.1080) 227; *Omowaiye v. A.G. of Ekiti State & Anor* (2010) LPELR-4779 (CA) at pages 28-28, paras. A-F, per Nweze, JCA (as he then was); and *Abdulkarim & Ors v. Shinkafi & Ors* (2008) LPELR-3555 (CA) at pages 24-32, paras. A-C.

A careful perusal of exhibit PA5 relied upon by the petitioners shows that the Case No. 1:93-cv-04483 was in the Civil Docket of the US District Court, Northern District of Illinois and it was a civil forfeiture proceeding against Funds in specified accounts with First Heritage Bank and Citibank N.A. exhibit PA5 is actually an action in rem against the funds with First Heritage Bank and Citibank. It is not an action in *personam* against the 2nd respondent.

In *Jonathan v. F.R.N.* (2019) 10 NWLR (Pt. 1681) 533, the Supreme Court held inter alia, that section 17 of the Advance Fee Fraud & Other Related Offences Act, 2006 provides for the power to make an order of forfeiture without conviction for an offence; and that an order of forfeiture under the section shall not be based on conviction for an offence under the Act or any other law. The Apex Court further held that there was no need to prove any crime in forfeiture of property under section 17 of the Advance Fee Fraud

& Other Related Offences Act as civil forfeiture is a unique remedy which rests on the legal fiction that the property, not the owner is the target therefore it does not require conviction or even a criminal charge against the owner as it is not a punishment nor is it for criminal purposes.

See also: *La Wari Furniture & Baths Ltd. v F.R.N.* (2019) 9 NWLR (Pt. 1677) 262; and *Alison-Madueke v. EFCC* (2021) LPELR-56922(CA) at pages 16-24, paras. E-C.

From the legal definitions and judicial authorities above, it is clear that the "sentence of imprisonment or fine for any offence involving dishonesty or fraud" envisaged in section 137(1) (d) of the Constitution is one imposed upon a criminal trial and conviction. In the instant case, the petitioners have failed to show evidence that the 2nd respondent was indicted or charged, arraigned, tried and convicted and was sentenced to any term of imprisonment or fine for any particular offence.

On the part of the 2nd and 3rd respondents, they have contended that the 2nd respondent was never fined for any offence and has no criminal record in the United States. In proof of their assertion, they have tendered exhibits RA8 and RA9 from the Bar and called RW2 to give evidence and identify the said exhibits as documents he referred to in his adopted statement on oath of 12th April, 2023. In paragraphs 45-52 of his statement on oath, RW2 had stated that the 2nd respondent was never convicted or fined for any criminal offence in the United States as alleged by the petitioners. In particular, RW2 stated as follows in paragraphs 46, 47 and49:

> "46. In Case No. 93C 4483 at the United States District Court, Northern District of Illinois, Eastern Division which was pleaded by the petitioners:
>
> (i) No criminal charge was filed against the 2nd respondent;
>
> (ii) The 2nd respondent was not arraigned and did take/make a plea to any count in a charge for allegations of crime;
>
> (iii) The 2nd respondent did not go through a criminal trial;
>
> (iv) The 2nd respondent was not convicted of any crime or any criminal activity;
>
> (v) No sentence of imprisonment was imposed on the 2nd respondent;

(vi) No sentence of fine was imposed on the 2nd respondent;

(vii) No form of sentence was imposed on the 2nd respondent;

(viii) Case No. 93C 4483 was a civil suit in respect of which the court exercised civil jurisdiction under 18 USC 981 and 28 USC 1345 and 1355.

47. I also know that in Case No. 93C 4483 at the United States District Court, Northern District of Illinois, Eastern Division, and no in *personam* criminal sentence was imposed on the 2nd respondent."

"49. The 2nd respondent was not convicted in Case No.93C 4483 United States District Court, Northern District of Illinois. The United States of America, through its Embassy in Nigeria, had by a letter dated February 4, 2003, addressed to the then Inspector-General of Police, confirmed that upon the record checks of the Federal Bureau of Investigation's National Crime Investigation Centre (NCIC), the centralized information centre that maintains the records of every criminal arrest and conviction within the United States of America, there were no records of any form of criminal arrests, wants or warrants against the 2nd respondent. I shall rely upon copy of the said letter of February 4, 2023 (sic), signed by Michael M. Bonner."

Under cross-examination by the 4th respondent, RW2 had stated that as a practising Attorney in the United States he knows that there cannot be a conviction unless there is an indictment. He also stated the exhibits RA8 and RA9 gave the 2nd respondent a clean bill of health as far as criminal conviction is concerned. When cross-examined by the petitioners' counsel, RW2 stated that the American Court relied on section 981 of the American Money Laundering Law which is civil and not section 982 which is criminal and which the petitioners stated in their petition. He further stated that in the US even a minor traffic infraction will be reported, so that if someone has a criminal record the general record will show it. He added that a general search was conducted in respect of the 2nd respondent.

A look at exhibits RA8 and RA9 tendered by the 2nd and 3rd respondents shows that upon receipt of exhibits RA8 written by

Nigeria's Inspector-General of Police to the Consular General of the US Embassy in Nigeria inquiring of the criminal record if any of the 2nd respondent, the US Embassy had replied vide exhibit RA9 and stated as follows:

> "In relation to your letter dated February 3, 2003, reference number SR.3000/ IGPSEC/ ABJ/VO L.24/287, regarding Governor Bola Ahmed Tinubu, a record check of the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC) was conducted. The results of the checks were negative for any criminal arrest records, wants, or warrants for Bola Ahmed Tinubu (DOB 29 March 1952). For information of your department, NCIC is a centralized information center that maintains the records of every criminal arrest and conviction within the United States and its territories."

Apart from all the above, section 249 of the Evidence Act, 2011 has stipulated how previous criminal conviction outside Nigeria can be established. Section 249(1) & (2) provides:

> "249(1) A previous conviction in a place outside Nigeria may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order and the fingerprints of the person or photographs of the fingerprints of the person so convicted together with evidence that the fingerprints of the person so convicted are those of the defendant.
>
> (2) A certificate given under subsection (1) of this section shall be *prima facie* evidence of all facts set out in it, without proof that the officer purporting to sign it did in fact sign it and was empowered to do so."

It is instructive to observe that when cross-examined by the 4th respondent, PW1 had admitted that there was no certificate under the hand of a police officer in the United States of America where a crime was alleged to have been committed by the 2nd respondent.

It is significant to state that this petition is a declaratory action in which the petitioners are seeking inter alia, that this court declare the 2nd and 3rd respondents as unqualified to contest the election. The petitioners who have made the allegation have

The burden to prove their allegation on the strength of their own case and not on the weakness of the respondents. See: *Okereke v. Umahi & Ors* (2016) LPELR-40035(SC) at page 54, paras. C-C; (2016) 11 NWLR (Pt. 1524) 438, per Kekere-Ekun, JSC; *Emenike v. P.D.P.* (2012)LPELR-7802(SC) at page 22, paras.A-D; (2012)12 NWLR (Pt. 1315)556, per Fabiyi, JSC; *Omisore v. Aregbesola* (2015)15 NWLR (Pt. 1482) 205 at 297-299,para.F-A,and *Ucha v Elechi* (2012) LPELR-7823(SC) at page 43,paras. B-D; (2012)13 NWLR (Pt. 1317) 330, per Mohammed, JSC.

The petitioners have evidently failed to establish their allegation that the 2nd respondent is disqualified from contesting the presidential election under section 137(1) (d) of the 1999Constitution because he was fined the sum of $460,000.00 by US District Court, Northern District of Illinois. As shown above, the order of forfeiture in exhibit PAS on which the petitioners have relied does not qualify as a sentence of fine for an offence involving dishonesty or fraud within the contemplation of section 137(1) (d)of the 1999 Constitution.

As regards to whether paragraph (e) of section 137(1) should be read together with paragraph (d) of that subsection, the settled rule of interpretation of the Constitution or statute is that where the court is faced with two or more differing provisions over the same subject matter, the judicial attitude is to treat the special provision as overriding the general provision, on the principle that by enacting a separate provision for a part of the general class intends that the said part shall not be treated the same with the general class. See: *Iwuchukwu & Anor v. A.-G., Anambra State & Anor* (2015) LPELR-24487(CA) at pages 62-64, paras. E-A, per Agim, JCA; *Martin Schroeder & Co. v. Major & Co. (Nig.) Ltd.* (1989) LPELR-1843(SC) at page 13,paras. E-A; (1989) 2 NWLR (Pt.101)1, per Wali, JSC; and *F.M.B.N. v. Olloh* (2002) 4 SC (Pt.II) 177; (2002) 9 NWLR (Pt.773) 475.

Since in both paragraphs (d) and (e) of section 137(1) “a sentence for the offence involving dishonesty" is mentioned but in paragraph (e) a limitation of ten years has been introduced, then it means in respect of sentence for offence of dishonesty, the two paragraphs must be read together, such that for conviction and sentence for an offence involving dishonesty, it must be within a period of less than ten years before the date of the election in order

for such a conviction and sentence to be used for disqualifying a Presidential candidate from contesting the election.

It is also a cardinal principle of interpretation of the Constitution that relevant provisions must be read together and not disjointly. See *Abegunde v. The Ondo State House of Assembly & Ors* (2015) LPELR - 24588(SC) at pages 28-29, paras. D-B; (2015)8 NWLR (Pt. 1461) 314, per Muhammad, JSC.

From all the foregoing, it is clear that having regard to the provisions of section 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the evidence led before this Court, the 2nd respondents was not disqualified from contesting the Presidential Election held on 25th February, 2023. In consequence, issue 1 is hereby resolved against the petitioners and in favour of the respondents.

Issue 2

> Whether having regard to the evidence adduced by the parties the petitioners have established that there was substantial noncompliance with the provisions of the Electoral Act, 2022 and that the non-compliance substantially affected the results of the election.

On this issue, A.B. Mahmoud, SAN submitted on behalf of the 1st respondent, that there is a presumption of regularity in favour of results of an election as declared by the 1st respondent, and it is the duty of the petitioners who challenge the results declared to rebut that presumption by leading credible evidence. He relied on *King v. INEC & Ors* (2008) LPELR-4403 (CA); and *Lawal v. A.P.C.* (2019) 3 NWLR (Pt. 1658) 86, as well as section 134(2) of the Electoral Act, 2022. He further submitted that it is only a complaint of non-compliance which is based on the express provisions of the Electoral Act, 2022 that can ground an action to question an election. He cited section 138(2) of the Electoral Act, 2022 and the case of *Nyesom v. Peterside* (2016) 1 NWLR (Pt. 1492) 71 (SC).

Learned counsel also contended that by section 135(1) of the Electoral Act, the petitioners who have alleged non-compliance with the Electoral Act, 2022 are obligated not only to establish such non-compliance, but also prove that the non-compliance were substantial enough to affect the outcome of the election. He cited *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1. He referred the court to paragraphs 53 and 55 of the petition and pointed out that the petitioners have founded their allegation of non-compliance

on the basis that the 1st respondent is mandated to electronically transmit and collate the election results and upload such results to the IReV Portal. He posited that there is no such obligation on the 1st respondent to electronically transmit and collate results of the election. He referred this Court to exhibit XI, which is the judgment of the Federal High Court, Abuja Division in Suit No. FHC/ABJ/CS/1454/2022: *Labour Party v. INEC*, wherein the Court rejected the contention of Labour Party (the 2nd petitioner herein) that the 1st respondent is by the provisions of the Electoral Act, 2022 under an obligation to electronically transmit results of the election and cannot resort to manual collation and stated that INEC is at liberty to prescribe the manner in which election results could be transmitted. He added that there has been no appeal against that judgment as testified by PW12, the petitioners' witness. Learned counsel submitted that the unappealed decision is binding on the petitioners and constitutes estoppel against them. He relied on *Edem & Ors v. Ishie & Ors* (2022) LPELR-58595 (SC) at page 19, paras. A-B; (2023) 2 NWLR (Pt. 1869) 507 and argued that the petitioners claim of non-compliance in 1 paragraphs 53 and 55 has no basis.

Learned counsel submitted that should the court disagree with the contention that the decision of the Federal High Court in exhibit X2 is binding, it is clearly stipulated in Paragraph 92 of INEC Regulations and Guidelines for the Conduct of Elections, 2022 (exhibit RA3) that collation of the election results is to be carried out manually, and there is nowhere in the Regulations that such collation of results is prevented until results are uploaded on the 1st respondent's IReV. He submitted that by paragraph 93 of the Regulations the results uploaded on IReV are only to be used in the collation process where there is a discrepancy in the hard copy of the 1st respondent's result and those issued to a political party agent and where the 1st respondent's hard copy is not available. He added that even where no results are uploaded on the IReV and the 1st respondent's hard copy is unavailable, recourse may still be had to hard copies with the Nigeria Police and Party Agents.

Learned counsel argued that even if it is assumed that the obligation to electronically transmit results of the election in real time for use in the collation process does exists, the petitioners have failed to lead credible evidence to support their claim on the substantial effect of the alleged incidence of non-compliance.

Learned counsel referred the court to the evidence of PW7 and submitted that the witness was obviously a person interested in the outcome of the proceedings because she is a member of the 2nd petitioner on the platform of which she had contested for elective office and lost. He added that witness who evidence was procured by subpoena after proceedings had commenced, admitted that she was not authorized by Amazon Web Services which she claimed was her employer. He relied on *Agballa v. Nnamani* 2 EPR 757 at 773-774, per Dongban-Mensem, JCA (as he then was, now PCA).

Learned counsel also submitted that the evidence of PW8 under cross examination that there is a cloud trail for every Amazon Account that logs every AP1 action made within that account, exhibit RA6, the Amazon Cloud Trail of the 1st respondent's e-transmission clearly shows that the technological glitch was not a made-up story as the petitioners are seeking to perpetuate, because the AWS shows that indeed patches were deployed to fix the errors that caused the glitch on election day.

Learned counsel further submitted that RW1 had in paragraph 40 of his witness statement explained why it was possible for the results of the other elections held on the same day to be uploaded on the IReV when the results of the Presidential elections could not be uploaded. He added that RW1 had stated in his unimpeached evidence that the BVAS on its own is not capable of sorting the results, but that the results were uploaded according to the type of election.

On behalf of the 2nd and 3rd respondents, Chief Wole Olanipekun, SAN submitted that all the provisions of the INEC Regulations created alternative between an electronic transmission and transfer of results, with the use of the article “or” .He referred to Paragraphs 38(i), 50(xx), 53(xii), 54(xii) of the Regulations and Paragraphs 3.4.5 and 4.2.2 of the INEC Manual where the words “electronically transmit or transfer" were used. He added that by Paragraphs 92 and 93 of the Regulations electronic copy is only relevant where there is no hard copy of collated result. Relying on the case of *Ucha v. Elechi* (2012) 13 NWLR (Pt. 1317) 330 at 359; and *Abubakar v. Yar'Adua* (2009) All FWLR (Pt.457) 1; (2008)19 NWLR (Pt. 1120) 1, he submitted that the petitioners have failed to show how their alleged non-transmission of results affected the election.

Learned senior counsel pointed to deficiencies in the evidence of PW7 and made similar submissions to those made by the 1st respondent, before concluding that the evidence of the witness is manifestly unreliable and exhibits PCJ3 (A-F) which were tendered through her are also inadmissible.

On behalf of the 4th respondent, Fagbemi, SAN submitted that an administrative innovation employed by the 1st respondent, the uploading of the results does not invalidate an election which has been concluded by the declaration of the results at the polling unit, since the law is settled that once the election results has been announced at the polling unit, it cannot be cancelled under any guise. He cited *Doma v. INEC* (2012) 13 NWLR (Pt. 1317)297 at 338, paras.C- D; and *Ikpeazu v. Otti* (2016) 8 NWLR (Pt. 1513)38 at 84-84, paras, G- B. He submitted that the failure to abide by the provisions of Paragraph 38 of the INEC Regulations and Guidelines for the Conduct of Election, 2022 cannot be a basis for the nullification of the election, since the Regulations cannot override the Electoral Act. He relied on *Emmanuel v. Umanah & Ors* (2016) LPELR-40037(SC), reported as *Udom v. Umana* (No.1) (2016)12 NWLR (Pt.1526)179.

Making similar submissions to the other respondents, learned counsel submitted that no by Paragraph 93 of the Regulations, INEC first works with hard copy for collation of results and the petitioners have failed to show how the alleged failure to transmit the results directly to the IReV affected the scores credited to the petitioners or how it assisted the 2nd respondent in winning the election. He relied on *Akuneziri v. Okenwa* (2000) 15 NWLR (Pt.691) 526. He added that the testimonies of the petitioners' witnesses confirmed that election took place and results were released in the polling units and were later collated at the relevant collation centres. He urged the court to discountenance the petitioners' contention that the 1st respondent is mandated to electronically transmit and collate election results.

In response to the submissions of the 1st respondent, learned Senior Counsel for the petitioners, Dr. Livy Uzoukwu, SAN, submitted that the decision of the Supreme Court in *Oyetola v. INEC* (2023) LPELR-60392 (SC); (2023)11 NWLR (Pt.1894) 125, properly read and understood, supports the petitioners' contention that the uploading/electronic transmission of the results of the election in real time or during the election, from the polling units

To the IReV is a mandatory requirement of the electoral process. He further submitted that the evidence of PW2,a Cloud Engineer/Architect: PW3, a staff of Channels Television: PW4, a Professor of Mathematics: PW5, a staff of Arise Television: PW6, a staff of AIT: PW7, a Cloud Engineer/Architect and employee of Amazon Web Services and PW8, a Cyber Security and Risk Advisory Consultant, is to the effect that INEC was irrevocably committed to the on-line real transmission of the election results from the polling units to the IReV on the day of the election. He added that this fact was particularly established via the evidence of PW3, PW5 and PW6 and from exhibits PBH3, PBH4, PCHI and PCG2, the video clips which were played in open court, showing that INEC made representations to that effect locally in Nigeria and internationally.

Learned counsel contended that by section 60(5) of the Electoral Act, the presiding officer shall transfer the results including a total number of accredited voters and results of the ballot in manner as prescribed by the Commission. He argued that the word "transfer" comes from the ICT protocol called "File Transfer Protocol" which is a means of transmitting a file from a device such as the BVAS to a server such as the IReV. He added that the requirement in section 60(5) that the Presiding Officer shall transfer the results in manner prescribed by the Commission connotes the intention of the law maker that any non-compliance with the subsection will attract serious consequences. He specifically referred the court to sections 47(2), 47(3), 50(2), 60(5), 64(4)(a), 64(5) and 64(6)(b) and (c) of the Electoral Act and Paragraphs 38(i) and (ii), 48(a), (b) and (c), 50(v), (vii) and (xx), 51(ii), 55(xii), 54 (xii) and 93 of the Regulations and Guidelines for the Conduct of the Elections which specify the procedures for the transmission polling unit results from the polling unit to the collation centre as well as the procedure for the collation of polling unit results by the collation officer. He submitted that a combined reading of the provisions of 50(2) and 60(5) of the Electoral Act, leaves no one in doubt that the 1st respondent was enabled with the power to prescribe the procedures for the transmission of results from the polling units to the collation centres and the procedure for collation of same.

He further submitted that INEC had pursuant to its Regulations and Guidelines for the Conduct of the Election 2022 and Manual for Election Officials 2023 provided the step-by-step processes for the collation, uploading and transmission of results of the election

From polling unit to the IReV. He posited that the Regulations and Manual are subsidiary legislations made by the 1st respondent pursuant to section 148 of the Electoral Act. He cited *Fayemi v. Oni* (2009) LPELR-4146(CA) at 80-93; (2009) 7 NWLR (Pt.1140) 223; *Yushau v INEC* (2019) LPELR-49629(CA); *Buhari v. Obasanjo* (supra) at page 511; *C.P.C. v. INEC* (2011) 18 NWLR (Pt.1279) 493 at 592; and *Faleke v. INEC* (2016) 18 NWLR (Pt.1543) 61 at 156, paras. D-F, and argued that by the Regulations and Guidelines the 1st respondent is duty bound to electronically transmit the result of the election directly from the polling unit which shall serve as the benchmark for a proper collation of the result of the election in a polling unit. Counsel posited that being part of the process on the election day, and constituting a fundamental part of the electoral process for which the result and winner of the election is to be declared, the information on the EC8A transmitted to the IReV must be complete, verifiable, compared with the information on the physical EC8A and ascertained to be correct before any valid declaration and return can be made. He submitted that burden of proof had shifted to the 1st respondent to prove that as it claimed the blurredness of thousands of results on the IReV do not matter, that they do not affect the transparency and integrity of the election, that they can read and discover the contents of the blurred results, they can link the blurred results to alleged hard copies of the results other than the same and exact originals of the blurred results that produced the blurred results.

Learned counsel also submitted that from the press releases of the 1st respondent tendered before the court, together with the representations/assurances given by the 1st respondent, it follows that the requirement for the uploading/electronic transmission of the results of the election in real time and during the election, from polling units using the BVAS to the IReV, is a fundamental/indispensable requirement of the election process under the Electoral Act, 2022.

The learned Silk pointed out that contrary to the argument of the 1st respondent that the evidence of PW7 should be treated with a pinch of salt because she is a person interested, PW7 had given unchallenged "expert evidence of publicly accessible information by way of documents which she downloaded from the internet showing the health status of the AWS servers in the six (6) regions where AWS hosted its servers." He submitted that a cursory look at

The health status report in exhibits PCJ3 (A-F) and PCJ4 confirms that there was indeed no report of any "glitch" on any of the AWS servers on the day of the election.

Learned counsel submitted that RW1 had given misleading evidence in paragraphs 27 and 28 of his statement by claiming that results of the Presidential election could not be uploaded immediately because down time was encountered on the application which lasted for 4 hours 50 minutes until it was resolved and the first Presidential election results was uploaded at 8.55 pm on 25th February, 2023. Counsel added that RW1 had also testified that any blurred results downloaded from IReV will not affect the authenticity of the physical results and will not be relevant for the collation of results. He referred to exhibits PCE1- PCE4, the four boxes of blurred documents) uploaded from IReV which were tendered by PW4, which he said the 1st respondent had falsely misrepresented as Forms EC8As. He argued that the blank sheets can only mean copies of blank results sheets. He added that contrary to the evidence of RW1 about the temporary failure of communication between the e-transmission system and the IReV which had returned a HTTP error, the petitioners have shown the health status of the Amazon Web Services through the evidence of PW7 which shows that there was no technological glitch. He also referred to exhibit XI, the INEC e-Transmission vulnerability Report made on 22nd February, 2023.

Learned counsel referred the court to paragraph 59 of the petitioner and submitted that the 1st respondent failed to comply with the mandatory provision of section 73(2) of the Electoral Act which mandates the recording in the prescribed forms of the quantity, serial numbers and other particulars of the result sheets, ballot papers and other sensitive electoral materials. He added that the 1st respondent had joined issues with the petitioners in Paragraph 57 of its reply by maintaining that there was due compliance with section 73(2) of the Electoral Act. He argued that by the state of the pleadings the onus was clearly on the 1st respondent to prove that there was indeed due compliance with the provision of the Electoral Act since the petitioners are asserting the negative while the 1st respondent is asserting the positive. He relied on *First Bank of Nigeria Plc & Anor v Adeosun Business Investment Ltd. & Ors* (2020) LPELR-51203(CA); and *Royal United Nigeria Ltd. v. Sterling Bank Plc* (2018) LPELR-50839 (CA).

Counsel also submitted that as pleaded by the petitioners in paragraph 59 and led in evidence through PW12, the petitioners obtained the order of this court for inspection of election documents but the 1s respondent refused to produce the forms despite several letters addressed to them by the petitioners which were tendered through PW12 as exhibits PCQ1-PCQ6. He added that the petitioners also served *subpoena duces tecum* for the 1st respondent to produce the said forms but the officer of the 1st respondent who came to the court on 20th June, 2023 failed to bring the forms. He urged the court to invoke section 167(d) of the Evidence Act and hold that even if the 1st respondent had produced the forms they would be unfavourable to them. He relied on *Okpokam v. Treasure Gallery Ltd. & Annor* (2017) LPELR-42809(CA). He urged the Court to hold that the non-compliance by the 1st respondent with the provisions of section 73(2) of the Electoral Act, 2022 is firmly established. He added that the said non-compliance is in respect of those states where the 2nd respondent was declared to have won which he stated to be Benue, Borno, Ekiti, Jigawa, Kogi,Kwara,Niger, Ogun, Ondo, Oyo, Rivers and Zamfara States as contained in Form EC8DA admitted exhibit PBF.

Finally, counsel submitted that failure to upload and transmit the results of the elections from the polling unit to the IReV as mandated by law substantially affected the outcome of the election,in that the integrity and credibility of the entire election process were compromised and cannot be guaranteed. He urged the court to so hold.

The petitioners' submissions in response to the 2nd and 3rd respondents' final address is essentially the same with that which they made in response to the 1st respondent's final address. However, learned counsel for the petitioners added that the unchallenged expert evidence of the petitioners witnesses, including documentary evidence before the court, support the petitioners' case and sufficiently established that the non-compliance by the 1st respondent were not only substantial, but grievously affect the outcome of the Presidential election.

Learned counsel for the petitioners also pointed out that the unchallenged oral evidence of PW4 which was supported by the Report of Data Analysis of the Results for Benue and Rivers States contained in exhibits PCD1, PCD2 and PCD3, clearly shows that the petitioners won the election in both States. He stated that by the

Unchallenged evidence the number of States won by the petitioners in the Presidential election will now be fourteen States and the FCT, whilst the 2nd - 4th respondents will have their number of States which they won reduced by two States. He pointed out that contrary to the position of the 2nd and 3rd respondents, the Report of PW4 shows that the BVAS accreditation of the polling unit in Degema Local Government where the petitioners alleged over-voting is zero, which means that there was no accreditation in that polling unit and therefore there was no lawful election in the polling unit. He added that Appendix F attached to the Data Analysis Report is a Spreadsheet summary of the National Over-Voting Count, while Appendix G is the Spreadsheet of the polling units affected by over-voting on State-by-State basis.

In response to the 4th respondent's Final Address, the petitioners equally made similar submissions to the responses which they made to the 1st and to the 2nd and 3rd respondents final address. Learned counsel for the petitioners submitted that the 4th respondent did not adduce any evidence in support of its reply to the petition and as such their pleadings are deemed abandoned. He also submitted that the evidence of PW7, PW8 and PW9 confirm that if the 1st respondent had properly tested its IT infrastructure deployed for the conduct of the election, in compliance with the applicable Standard and Guidelines for Government Websites published pursuant to the National Information Technology Development Agency (NITDA) Act, the high vulnerability identified at page 16, para. 7.1 to 7.14 of exhibit XI (INEC e-Transmission Web Portal Vulnerability Assessment and Penetration Test Report of 22nd February, 2023) would have been resolved before deployment of the software for the conduct of the Presidential election. He added that the recommended remediation in paragraph 7.15 of exhibit XI was not shown to have been conducted.

Counsel also submitted that exhibit RA6 does not meet the features requirements of a cloud trail log as enumerated in the evidence of RW1 under cross examination, as it does not contain event time, event source, AWS Region, Source IP Address, I.A.M. (Identity Access Management) and User Address.

In his reply to the petitioners' submissions, learned counsel for the 1st respondent submitted that contrary to the contention of the petitioners, section 134(2) of the Electoral Act renders ineffectual for the purposes of questioning an election a complaint predicated

Solely on noncompliance with the provisions of the Regulations and Guidelines of the 1st respondent. He relied on. legede v. *INEC* (2021)14 NWLR (Pt. 1797) 409 at 550 -551; and *Nyesom v. Peterside* (2016) 7 NWLR (Pt. 1512) 452. He stated that the case of *Faleke v. INEC* (supra), relied upon by the petitioners did not decide that a non-compliance only the provisions of the INEC Regulations can be the basis to question an election, as that decision was not made in respect of an election petition questioning an election on the ground of non-compliance.

Learned counsel further argued that by the recent decision of the Lagos Judicial Division of the Court of Appeal in Appeal No. CA/LAG/CV/332/2023: *A.P.C. v. Labour Party & 42 Ors*, the decision in exhibit XI (Suit No. FHC/ABJ/CS/1454/2022: *Labour Party v. INEC*), was upheld and construed against the petitioners as issue estoppel in relation to the petitioners' contention that electronic transmission of results is mandatory. He pointed out that election petition proceedings are *sui generis* with its own laws governing same and regulating the grounds on which an election can be questioned. He added that assurances and promises have no place in our electoral law or jurisprudence.

He argued that by section 135(1) of the Electoral Act, a complaint of non-utilization of prescribed forms which he submitted is not even proved cannot without showing the effect on the election be a basis to void an election and section 73(2) cannot be excluded from the ambit of section 135(1) of the Act.

As for the 2nd and 3rd respondents, they replied the petitioners by submitting that the case of *Oyetola v. INEC* (supra), did not determine or consider the power or discretion of INEC to determine the mode of transmission of election results, particularly after such results have been correctly entered into the respective Form EC8As by the presiding officers. He added that the case of *Oyetola v. INEC* (supra), is in fact against the petitioners.

Learned counsel drew the attention of this court to the recent decision of the Court of Appeal in Appeal No.CA/LAG/CV/332/23: *A.P.C. v. Labour Party & 42 Ors*, delivered on 19th June, 2023, where the same Labour Party and others have, in spite of the judgment of the Federal High Court, Abuja Division (exhibit XI) delivered against them, went ahead to file a similar suit before the Lagos Division of the same Federal High Court and on 8th March, 2023 obtained an order of mandamus compelling INEC to comply

With Paragraphs 37 and 38 of the Regulations and Guidelines for the Conduct of Elections 2022 in the conduct of Governorship and House of Assembly elections in Lagos State. He pointed out that on appeal to the Court of Appeal by the APC the Lagos Division of the court had set aside that judgment on 19th July, 2023 holding that the petitioners have attempted to relitigate the same cause.

Counsel pointed out that the petitioners have in their submission also urged this court to make use of encrypted documents and even referred this court to a weblink "*www.en.m.wikipedia.orgjust*" as PW7 and PW8, the purported experts of the petitioners had done, especially exhibit PCK1 tendered by PW8 which contains over 10,000 encrypted secret codes only known to the witness. He submitted that it is not within the jurisdiction of this court to start investigating or decoding and decrypting the secret codes in its chambers.

In its reply to the petitioners, the 4th respondent submitted that the case of *Oyetola v. INEC* (supra), does not avail the petitioners, as what the court will consider is whether the petitioners have proved their case sufficiently to entitle them to the relief they sought. He further submitted that contrary to the petitioners' position, evidence elicited by a party under cross-examination can be relied upon by him in support of his case even if he did not call any witness. He relied on *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) 205at 321; and *Andrew v. INEC* (2018) 9 NWLR (Pt. 1625) 507.

Resolution of Issue 2:

The appropriate starting point for the resolution of this issue, is to first consider the objection of the 1st respondent to ground 2of the petition which they raised at preliminary stage but which I deferred to this stage because it touches on the substance of the petition.

The 1st respondent's objection is that the petitioners are estopped from re-litigating the issues contained in ground 2, paragraphs 33-79, as well as reliefs 5(i) and (ii) of the petition, as it relates to electronic transmission and collation of the election results, in view of the subsisting judgment of the Federal High Court in suit No. FHC/ABJ/CS/1454/2022: *Labour Party v. Independent National Electoral Commission*, delivered on 23rd January, 2023, a certified true copy of which they attached to their motion as exhibit A, and which was later tendered in evidence at trial as exhibit XI.

The 1st respondent particularly referred this court to paragraph 55 and 74 of the petition, and submitted that the facts alleging non-compliance with the Electoral Act which are set out in paragraphs 33-79 of the petition are hinged on the same issue of electronic transmission of results which was resolved against the 2nd petitioner, in the said suit No. FHC/ABJ/CS/1454/2022, to the effect that there is no mandatory requirement for the 1st respondent to electronically transmit results of the election. Reliance was placed on the cases of *Bamgbegbin & Ors v Oriare & Ors* (2009) LPELR-733(SC), at page 43, para. B; (2009) 13 NWLR (Pt. 1158) 370; and *Oyerogba & Anor v. Olaopa* (1998) LPELR-2878 (SC) at page 24, para. B; (1998) 13 NWLR (Pt. 583) 509.

An examination of the petitioners' petition and exhibit XI shows that in their petition, especially paragraphs 37 and 45, the petitioners have averred as follows:

> "37. The petitioners aver that at the conclusion of the election at each polling unit, the Presiding Officer was mandatorily required to electronically transmit or transfer the result of the polling unit directly to the collation system of the 1st respondent. In addition, the Presiding Officer was also mandatorily required to use the BVAS to upload a scanned copy of the Form EC8A to the 1st respondent's Result viewing Portal (IReV) in real time."
>
> "45. The petitioners aver that, apart from the importance of the BVAS in the capture of accreditation at a polling unit in an election, the BVAS is also mandatorily to be used in the process of uploading the information or data imputed into it by the 1st respondent's Presiding Officer at each polling unit who shall upon completion of voting and due recording and announcement of the result:
>
> (i) Electronically transmit or transfer the result of the polling unit directly to the collation system as prescribed by the l" respondent;
>
> (ii) Use the BVAS to upload a scanned copy of the form EC8A to the INEC Result viewing Portal (IReV), as prescribed by the first respondent; and
>
> (iii) Take the BVAS and the original copy of each of the forms in tamper-evident envelope to the

> Registration Area/Ward Collation Officer, in the company of security agents. The polling agents may accompany the Presiding Officer to the Registration Areal Ward Collation Centre."

In exhibit XI, the certified true copy of the judgment of the Federal High Court in suit No. FHC/ABJ/CS/1454/2022 (supra), which the 1st respondent is contending should constitute estoppel to ground 2 of this petition, the sole question presented for determination in the originating summons is as follows:

> "Whether having regards to combined effect of sections 47(2), 50(2), 60(4),60(5) and 62(1)(2) and other relevant provisions of the Electoral Act, 2022, the respondent can still insist on manual collation of results in the forthcoming general elections."

Upon determination of the above questions, the plaintiff (which is the 2nd petitioner herein) sought for the following reliefs:

> "1. A declaration that the respondent has no power to opt for manual method other than the electronic method provided for by the relevant provisions of Electoral Act.
>
> 2. An order of this honourable court directing/compelling the respondent to comply with the Electoral Act, 2022 on electronic transmission of result in the forthcoming general election."

In its judgment in exhibit XI, the Federal High Court held as follows:

> "I view of the foregoing, can the act of the defendant in collating and transferring election results manually in the forthcoming 2023 general elections be said to be contrary to the relevant provisions of the Electoral Act, 2022? The answer can only be in the negative as there is nowhere in the above cited sections where the Commission or any of its agents is mandated to only use an electronic means in collating or transferring of election result. If any, the Commission is only mandated to collate and transfer election results and number of accredited voters in a way or manner deemed by it. In view of the above, I am finding that by the provisions of sections 50(2) and 60(5) of the Electoral

> Act, 2022, the correct interpretation of the said statute is that the defendant (Independent National Electoral Commission) is at liberty to prescribe the manner in which election results could be transmitted and I so hold. Consequently, this matter is hereby dismissed."

It is trite law that for a judgment of a court to constitute estoppel in a subsequent action, it must have finally decided the same issue in contention between the same parties or their privies. See: *Anchorage Leisures Ltd. & Ors v Ecobank* (Nig.) Ltd. (2023) LPELR-59978(SC) at pages 12-13, paras.C-A;(2023)15 NWLR (Pt. 1907) 243; and *Adedayo v. Babalola & Ors* (1995) LPELR-8S(SC) at page 24, para. A; (1995) 7 NWLR (Pt. 408) 383.

From the averments contained in the petitioners' petition which I have earlier reproduced above, it is clear that the petitioners' allegation of non-compliance averred in ground 2 of the petition is hinged on the contention that INEC "was mandatorily required to electronically transmit or transfer the results of the polling units directly to the collation system of the 1st respondent" and also "mandatorily required to use the BVAS to upload a scanned copy of the Form EC8A to the 1st respondent's Result Viewing Portal (IReV) in real time." (See paragraph 37 and 45 of the petition quoted above).

First, it is evident that in both this petition and in exhibit XI, the parties are the same, in that 2nd petitioner herein was the sole plaintiff in exhibit XI, while the 1st respondent herein was the sole defendant in exhibit XI. Secondly, from the above referred averments in this petition and the reliefs sought by the 2nd petitioner in exhibit XI, it is clear that the issue in both cases is whether the 1st respondent herein is mandatorily required to electronically transmit or transfer election results from the polling unit direct to the collation system. With the judgment of the Federal High Court in exhibit XI, the excerpt of which has been reproduced above, it is evident that the Federal High Court had decided the issue against the petitioners herein, by holding that the 1st respondent cannot be compelled to electronically transmit election results. There is no evidence before this court that the 2nd petitioner against whom the judgment in exhibit XI was given has appealed against that decision. It is settled law that unappealed decision of a court remains subsisting and binding upon the parties. See: Abba v. Abba

Aji (2022) LPELR-56592 (SC) at page 61, paras. C-D; (2022) 11 NWLR (Pt. 1842) 535; *Jegede v LN.E.C. & Ors* (2021) LPELR-55481(SC) at page 19, paras. C- D; (2021) 14 NWLR (Pt.1797) 409; and *Oleksandr & Ors v Lonestar Drilling Co. Ltd. & Anor* (2015) LPELR-24614(SC) at page 39, paras. A-C; (2015) 4 NWLR (Pt.1464) 337.

It is also trite that the doctrine of issue estoppel is that where an issue has been decided by a competent court, the court will not allow it to be relitigated by the same or different parties. See: *A.P.C. v. P.D.P. & Ors* (2015) LPELR-24587 (SC) at page 116, paras. B-D; (2015) 15 NWLR (Pt. 1481) 1; and *Inakoju & Ors v. Adeleke & Ors* (2007) LPELR-1510(SC) at pages 120-121, paras. E-B; (2007) 4 NWLR (Pt. 1025) 423.

It is also pertinent for us to state that in the final address of the 1st respondent, our attention was drawn to the recent decision of the Lagos Division of this Court in Appeal No. CA/LAG/CV/332/2023: *A.P.C. v. Labour Party & 42 Ors*, wherein this court set aside the decision in Suit No. FHC/L/CS/370/23: *Labour Party & Ors v. INEC*, another case forum-shopped by the 2nd petitioner at the Lagos Division of the Federal High Court, after losing at the Abuja Division of the same court in exhibit XI. In the judgment in appeal No. CA/LAG/CV /332/2023*: A.P.C. v. Labour Party & 42 Ors*, this court had upheld the decision of the Federal High Court in exhibit XI (suit No.FHC/ABJ/CS/1454/2022*: Labour Party v. INEC*), and construed same against the petitioners as issue estoppel, in relation to the petitioners' contention which they are making in this petition, that is, that INEC is mandatorily required to electronically transmit election results.

By virtue of section 122(2) of the Evidence Act, this court is entitled to take judicial notice of the decision in Appeal No.CA/LAG/CV /332/2023: *A.P.C. v. Labour Party & 42 Ors*. Not only that, this court is by the doctrine of precedent bound by that decision. Since the above judicial pronouncements have decided that under the Electoral Act and INEC Regulations and Guidelines for the Conduct of Elections, the 1st respondent cannot be compelled to electronically transmit election results, the petitioners are clearly estopped by those decisions from contending in ground 2 of this petition that the 1st respondent is mandatorily required to electronically transmit the election results to the collation system.

As a court of first instance in this petition, we shall, notwithistanding our above finding, proceed to determine the merit of ground 2 of the petition relating to non-compliance.

It is observed that in their petition, the petitioners have alleged the same set of facts in paragraphs 33- 79 as constituting both non-compliance and corrupt practices. On a careful perusal of the petition however, it seems to me that the allegations of non-compliance are contained in paragraphs 33-56 and 59 of the petition, while specific allegations of corrupt practices were made in paragraphs 60 - 78, even though same were also founded on the same acts of non-compliance alleged by the petitioners.

The gravamen of the petitioners' allegations of non-compliance are as encapsulated in paragraphs 37, 45, 50, 51 and 55 of the petition which are reproduced below:

"37. The petitioners aver that the conclusion of the election at each polling unit, the Presiding Officer was mandatorily required to electronically transmit or transfer the result of the Poling Unit directly to the collation system of the 1st respondent. In addition, the Presiding Officer was also mandatorily required to use the BVAS to upload a scanned copy of the Form EC8A to the 1st respondent's Result Viewing Portal (IReV) in real time."

"45. The petitioners aver that, apart from the importance of the BVAS in the capture of accreditation at a polling unit in an election, the BVAS is also mandatorily to be used in the process of uploading the information or data imputed into it by the 1st respondent's Presiding Officer at each Poling Unit, who shall, upon completion of voting and due recording and announcement of the result:

(i) Electronically transmit or transfer the result of the Polling Unit directly to the collation system as prescribed by the 1st respondent;

(ii) Use the BVAS to upload a scanned copy of the Form EC8A to the INEC Result Viewing Portal (IReV), as prescribed by the 1s respondent;

(iii) Take the BVAS and the original copy of each of the forms in tamper-evident envelope to the Registration Area/Ward Collation Officer, in

the company of Security Agents. The Polling Agents may accompany the Presiding Officer to the Registration Area/Ward Collation Centre."

"50. The respondent created various levels of collation at the Registration Areas, Local Government Areas, State Constituencies and the Federal Constituency; and by that process, the results of any election, including the one hereby challenged, were only to be accepted for collation if the collation officer ascertained that the number of accredited voters corresponded with the number captured in the BVAS and where votes for the parties corresponded with the result electronically transmitted directly from the Polling Units.

51. In the case of a dispute) the results electronically transmitted or transferred directly from the lower levels and announced were to be used to determine the results at that level of the collation process. Where no result was directly transmitted in respect of the polling unit or a level of collation, it will not be possible to resolve that dispute. In this case, the petitioners' agents and agents of other political parties walked away in protest from the National Collation Centre when the Collation Officer blatantly refused to resolve their disputations of the results being collated as mandatorily stipulated by the Electoral Act, 2022. The petitioners hereby plead a video clip of the incident as reported by some media houses."

"55. The petitioners aver that due to the manifest non-compliance by the 1s respondent with the Electoral Act and specific requirements of the Regulations for the conduct of the Presidential election, by the said 1s respondent failing, refusing and neglecting to instantly transmit and upload the result of that election electronically to the IReV from the BVAS, the 1s respondent violated the integrity and safety measures entrenched for the conduct of the said election."

The respondents, particularly the 1st respondent, denied the allegations of non-compliance made by the petitioners in their respective replies to the petition. In particular, the 1st respondent

denied that there was any "collation system of the 1st respondent" to which polling unit results were mandatorily required to be electronically transmitted or transferred directly by the Presiding Officer, and stated that the prescribed mode of collation of results is as stipulated in paragraphs 50- 55 of the Regulations and Guidelines for the Conduct of the Elections. They further stated that the prescribed mode of collation was "manual collation" of the various Forms EC8A, EC8B, EC8C, EC8D and EC8E of the Presidential Election. (See paragraph 31 of the 1st respondent's reply). They also stated that the BVAS is designed to upload the accreditation data at the end of the accreditation process, scan and transmit the result of the election at a polling unit through the e-Transmission system which is uploaded to the 1st respondent's Result Viewing (IReV) Portal. The 1st respondent further averred that the upload of data or images captured and automatically stored on the BVAS device requires data service, and where there is no such data service or where the service is poor, the BVAS device is designed to work offline, and the upload of data will occur when data service is available. They also stated that polling unit results were duly uploaded on the 1st respondent's e-Transmission system by the respective Presiding Officers at the end of the election, but some of the results were not visible on the IReV Portal due to technical glitch experienced on the Election Day.

In specific response to the petitioners allegation of failure, refusal and neglect to instantly transmit and upload the results electronically from the BVAS to the IReV, the 1st respondent stated in paragraph 55 (vii) and (x) as follows:

> "(vii) Immediately after the election on 25th February, 2023, polling unit results were uploaded and received by the e-Transmission system whilst using the BVAS there was a temporary failure of communication between the e-Transmission system and the IReV Portal for the Presidential election. In this regard, the e-transmission system returned an HTTP 500 error which is an application error such that the transmitted results though received on the e-Transmission application hosted on the AWS, the e-Transmission could not organize and push the results instantly to the Presidential module on the IReV Portal because it could not map the result

uploaded for the Presidential election to any State. The 1st respondent pleads and shall rely on the AWS Cloud Trail logs indicating patches deployed to fix the error/technical glitch on the Election Day."

"(x) Upon resolution of the HTTP 500 error, the results which were delayed in the e-Transmission system were eventually organized and pushed to the IReV Portal. The results are available as generated in their original form from the polling units using the BVAS."

The 1st respondent stated that the technical glitch did not in any way affect the result of the Presidential election. However, in paragraph 37 of their reply to the 1st respondent's reply, the petitioners denied that there was any technical glitch experienced on election day as contended by the 1st respondent and stated that the failure by the 1st respondent to upload the Presidential election results using the BVAS to the IReV was a ploy to manipulate the actual results of the election.

As indicated in their pleadings and submissions of Counsel, the petitioners' allegation of non-compliance with the Electoral Act, 2022 and the Regulations and Guidelines for the Conduct of Elections, 2022 is anchored on the provisions of sections 47(2), 60(1), (2)and (5), 64(4)(a) and (b), 64(5) and 73(2) of the Electoral Act and Paragraphs 38(i) and (ii), 48(a), (b) and (c), 50(v), (vii) and (xx), 51(ii), 54(xii), 55(xii) and 93 of the Regulations and Guidelines.

I have carefully considered the submissions of the parties on this issue of non-compliance with the provisions of the Electoral Act and the Paragraphs of the Regulations and Guidelines for the Conduct of the Election, 2022. The Independent National Electoral Commission (INEC), the 1st respondent herein, is established by section 153(1) (f) of the Constitution of the Federal Republic of Nigeria, 1999, and part of its functions as stated in Paragraph 15, Item F, Part I of the Third Schedule to the said Constitution, is to organize, undertake and supervise elections, including election to the offices of the President and vice President, among other political offices listed. Being a creation of the Constitution, INEC is empowered by section 160(1) of the Constitution to make its own rules or otherwise regulate its own procedure; and in so doing it shall not be under the control of the President. Indeed, by section

158(1) of the Constitution. INEC shall not be subject to direction or control of any authority or person.

By section 4 of the 1999 Constitution, the legislative powers of the Federal Republic of Nigeria is vested in the National Assembly, which in the exercise of that power has enacted the Electoral Act, 2022 to regulate the conduct of elections in the Federal, State and Area Councils of the Federal Capital Territory. Section 47(2) of the Electoral Act, relied upon by the petitioners mandates every Presiding Officer to use a smart card reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission. Also, under section 60(5) of the Act, the Presiding Officer shall transfer the results of the election, including the total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission. Section 62(1) of the Act specifically provides that after the recording and announcement of the result, the Presiding Officer shall deliver same along with election materials under security and accompanied by the candidates or their agents where available to such person as may be prescribed by the Commission. Further, section 64(4) states that a Collation Officer or Returning Officer at an election shall collate and announce the results of an election subject to his/her verification and confirmation that-

(a) number of accredited voters stated on the collated result are correct and consistent with the number of accredited voters recorded and transmitted directly from polling units under section 47(2) of the Act; and

(b) the votes stated on the collated result are correct and consistent with the votes or results recorded and transmitted directly from the polling units under section 60(4) of the Act.

At this stage, it should be noted that section 47(2) referred to in section 64(4) (a) relates to procedure for accreditation of voters by the Presiding Officer using the technological device prescribed by the Commission. As for section 60(4) referred to in section 64(4) (b) of the Act, it only mandates the Presiding Officer to count and announce the result at the polling unit. In fact, subsection (5) of section 60 goes ahead to mandate the Presiding Officer to transfer the result including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission.

The Act also provides in section 64(5) that the Collation Officer or Returning Officer shall use the number of accredited voters recorded and transmitted directly from polling units under section 47(2) of the Act and the votes or results recorded and transmitted directly from polling units under section 60(4) of the Act to collate and announce the result of an election if a collated result at his or a lower level of collation is not correct.

From the aforementioned sections, it is clear that while subsection (4) of section 64 provides for what the collation or returning officer will use to verify and collate the results, subsection (5) also provides for what the collation or returning officer will use to collate the results. Subsection (6) of the same section provides for what the collation or returning officer will use to determine the correctness of disputed result where there is a dispute. These are:

(a) the original of the disputed collated result for each polling unit where the election is disputed (which in our view means the physical or hard copy of the disputed collated result);

(b) the technological device used for accreditation of voters in each polling unit where the election is disputed;

(c) the data of accreditation recorded and transmitted directly from each polling unit where the election is disputed as prescribed under section 47(2) of this Act; and

(d) the votes and result of the election recorded and transmitted directly from each polling unit where the election is disputed as prescribed under section 60(4)of the Act (which requires only the counting and announcement of the result at the polling un it).

A careful examination of the above sections relied upon by the petitioners shows that the Electoral Act had used the words “deliver” in section 62(1), “transfer" in section 60(5) and “transmitted directly" in sections 50(2), 64(4), (5) and (6), of the Electoral Act, 2022, in stating how results of elections should be handled under those provisions. A look at the definitions of those words in the Black's Law Dictionary, Sixth Edition shows that the word “transfer” is defined at page 1497 as “to conveyor remove from one place, person, etc., to another;" or to "pass or hand over from one to another"; or to "specifically to change over the possession or control." The word “transmit" on the other hand is defined by the

same Law Dictionary to mean "to send or transfer from one person or place to another or to communicate".

In my view, the Electoral Act, 2022 has used the words "deliver", "transfer" and "transmitted directly" interchangeably to describe how the results of the election shall be moved from one stage to another until the results are finally collated and declared. In all these, the Electoral Act, 2022 has not specifically provided that the results of the election shall be electronically transmitted.

It is in the exercise of its powers under section 160(1) of the 1999 Constitution and section 148 of the Electoral Act, 2022, INEC, that the 1st respondent herein, made the Regulations and Guidelines for the Conduct of Elections, 2022 as well as INEC Manual for Election Officials, 2023. In paragraphs 14(a) and 18(a) of the Regulations, the 1st respondent prescribed the Bimodal voter Accreditation System (BVAS) as the technological device for the purpose of accreditation and verification of voters in the 2023 general elections.

The petitioners have also hinged their allegation of non-compliance on Paragraphs 38(i) and (ii), 48(a), (b) and (c), 50(v), (vii) and (xx), 51(ii), 54(xii), 55(xii) and 93 of the Regulations and Guidelines. Paragraph 38 of the Regulations provides:

> "38. On completion of all the Polling Units voting and results procedures, the Presiding Officer shall:
>
> (i) Electronically transmit or transfer the result of the polling unit, direct tothe collation system as prescribed by the Commission.
> (ii) Use the BVAS to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), as prescribed by the Commission.
> (iii) Take the BVAS and the original copy of each of the Forms in tamper-evident envelope to the Registration Area/Ward Collation Officer, in the company of Security Agents. The Polling Agents may accompany the Presiding Officer to the RA/Ward Collation Centre."
>
> "48(a) An election result shall only be collated if the Collation Officer ascertains that the number of accredited voters agrees with the number recorded in the BVAS and votes scored by Political Parties on the result sheet is correct and agrees with the result electronically transmitted or

transferred directly from the Polling Unit as prescribed in these Regulations.

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

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

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

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

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

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

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

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

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

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

"93. Where the INEC hardcopy of collated results from the immediate lower level of collation does not exist, the Collation Officer shall use electronically transmitted

results or results from the IReV Portal to continue collation. Where none of these exist, the Collation Officer shall ask for duplicate hardcopies issued by the Commission to the following bodies in the order below:

(i) The Nigeria Police Force; and

(ii) Agents of political parties."

From the foregoing provisions of the Regulations and Guidelines relied upon by the petitioners, it is clearly evident to me that although the Electoral Act has provided in section 62(1) for the delivery by the Presiding Officer of the result along with other election materials under security and accompanied by candidates or their polling agents, where available, to such person as may be prescribed by the 1st respondent, the 1st respondent has by paragraph 38 of the Regulations and Guidelines quoted above, introduced electronic transmission to a collation system in addition to the physical transfer of the election results to the Registration Area/Ward Collation Officer.

As stated earlier, the technological device prescribed by INEC in the conduct of the 2023 election is the Bimodal Voter Accreditation System (BVAS). The functions of the BVAS as stated in paragraphs 14(a) and 18(a) is for verifying the voter, through a positive identification of the voter and authentication of the voter, by matching his or her fingerprints or face (facial recognition),thus accrediting the voter to vote at the election and storing the data and number of such accredited voters. By Paragraph 38(ii) and (iii) of the Regulations, the BVAS is also to be used by the Presiding Officer to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), after which the Presiding Officer shall take the BVAS and the original copy of each of the forms to the Registration Area/Ward Collation Officer.

From the above functions of the BVAS, it is clear to me that, apart from using the BVAS to scan the physical copy of the polling unit result and upload same to the Result Viewing Portal (IReV), there is nothing in the Regulations to show that the BVAS was meant to be used to electronically transmit or transfer the results of the Polling Unit direct to the collation system. It should be noted that INEC Results Viewing Portal (IReV) is not a collation system. The Supreme Court in *Oyetola v. INEC* (2023) LPELR-60392(SC);

(2023) 11 NWLR (Pt 1894) 125 has explained the difference between the Collation System and the IReV. In that case, Agim. JSC held as follows:

> "As their names depict, the Collation System and the INEC Result viewing Portal are part of the election process and play particular roles in that process. The Collation System is made of the centres where results are collated at various stages of the election. So the polling units results transmitted to the collation system provides the relevant collation officer the means to verify a polling unit result as the need arises for the purpose of collation. The results transmitted to the Result Viewing Portal is to give the public at large the opportunity to view the polling unit results on the Election Day."

A community reading of the relevant provisions of the Electoral Act, 2022, the Regulations and Guidelines for the Conduct of Elections, 2022 and the INEC Manual for Election Officials, 2023, shows the Electoral Act expressly provides in section 62(1) that after recording and announcement of the result, the Presiding Officer shall deliver same along with election materials under security and accompanied by the candidates or their polling agents to such persons as may be prescribed by the Commission. The Regulations and Guidelines as well as the INEC Manual also state that hardcopies of election results shall be used for collation and it is only where no such hardcopies of the election results exist that electronically transmitted results or results from the IReV will be used to collate the results.

The petitioners who contend that INEC was mandatorily required to electronically transmit the election results to the collation system, have called PW2 as an expert witness who stated that he is a software engineer. He stated that he was aware that INEC was mandated to electronically transmit or transfer the result from the polling unit direct to the collation system as prescribed by INEC. He stated that the IReV Portal is part of the technological architecture developed/deployed by INEC for the storage, management, display and uploading of polling unit results to be accessed by the public. However, under cross-examination he admitted that he was not familiar with the operations and applications of the BVAS machine and that his investigations and findings were on the INEC IReV

Portal. He also agreed that it was only INEC that could prescribe the method of transmission of election results.

PW4 was also called as an expert witness by the petitioners. Even though he stated that part of his brief by Labour Party was to determine INEC compliance with Electoral Act, 2022 and the INEC Regulations and Guidelines for Conduct of Elections, 2022, he prevaricated under cross examination by the 1st respondent when he first stated that IReV Portal is an electronic collation system but later recanted and said the IReV Portal is not capable of collating and/or tabulating the results of an election. The witness also stated under cross examination by the 2nd and 3rd respondents that it is the image of Form EC8A that will be transmitted to IReV while the hardcopy of the Form EC8A will be taken to the Ward Collation Centre. As for PW7, also called as expert witness by the petitioners, her evidence was basically in respect of the health status of Amazon Web Services (AWS), which hosted the INEC IReV Portal. The testimony of PW8, a cyber-security expert also called by the petitioners, was also related to the INEC IReV Portal.

On the part of the 1st respondent, RW1, Dr. Lawrence Bayode, the Deputy Director in the ICT Department of the 1st respondent has testified that contrary to the assertion of the petitioners in paragraph 37 of the petition, there was no "collation system of the 1st respondent" to which polling unit results were mandatorily required to be electronically transmitted or transferred directly by the Presiding Officer. He stated that the prescribed mode of collation was manual collation of the various Forms EC8A, EC8B, EB8C, EC8D and EC8E for the Presidential Election. He explained that the BVAS machine was designed to upload accreditation data at the end of the accreditation process and scan and transmit the results of the polling units through the e-Transmission system to the IReV Portal. Even as this witness was cross examined by the petitioners' counsel, he was not cross examined on his evidence that INEC has not established any collation system to which results will be electronically transmitted from the polling units. Thus, his testimony on that fact remained unchallenged and uncontroverted. It is settled that the court has a duty to act on unchallenged and uncontroverted evidence. See: *Bronwen Energy Trading Co. Ltd. v. OAN Overseas Agency (Nig.) Ltd.* (2022) LPELR-57307(SC) at page 31, paras. B - C; reported as *OAN Overseas Agency (Nig.) Ltd. v. Bronwen Energy Trading Co. Ltd.* (2022) 11 NWLR (Pt. 1842)

489 and *Ogunyade v. Oshunkeye & Anor* (2007) LPELR-2355(SC) at pages 22-23, paras. B; (2007) 15 NWLR (Pt.1057) 218.

In addition, RW2, called by the 2nd and 3rd respondents,had testified that the 1st respondent through its Chairman made clarifications on 23rd of February, 2023 that raw figures of election results will not be transmitted electronically by the 1st respondent as such transmission was susceptible to hacking. He identified exhibits RA24 and RA25 as documents he referred to in his statement. These are the certified true copies of pages 28 and 27 of Tribune Newspapers of 23rd February, 2023 wherein the Chairman made the said clarification.

As indicated in our ruling on objections to documents, the petitioners did not object to the contents of exhibits RA24 and RA25 but only stated that they were objecting to the heading but not the contents. We overruled that objection in our ruling because the reason advanced by the petitioners' counsel did not amount to a proper objection to those documents. It is also noteworthy that the petitioners never cross examined RW2 on his oral evidence and the said exhibits in support of his oral evidence. In exhibit RA24, the INEC Chairman was reported to have stated that raw figures will not be transmitted because the law does not allow for electronic transmission of results and because it is susceptible to hacking. He stated that only scanned copies of polling unit results will be uploaded to the IReV for public viewing.

From the evidence led by the parties on this issue, it is clear that, apart from testifying that the 1st respondent failed to transmit scanned copies of polling unit results to the INEC IReV Portal, none of the witnesses called by the petitioners had given evidence of the existence of any collation system to which results shall be electronically transmitted by the Presiding Officers of the 1st respondent.

Contrary to the contention of the petitioners that under the Regulations it will not be possible to collate the Presidential election results without verifying same with the electronically transmitted results, Paragraph 92 of the same Regulations categorically provides that “at every level of collation, where the INEC copy of collated result from the immediate lower level of collation exists it shall be adopted for collation." In addition, Paragraph 48(c) of the Regulations provides that "if no result has been directly transmitted

electronically for a polling unit or any level of collation, the provision of clause 93 of this Regulations shall apply. "The said clause 93 of the Regulations which I had earlier quoted above, provides that where the INEC hardcopy of collated results from the immediate lower level of collation does not exist, the collation officer shall use electronically transmitted result or results from the IReV portal to continue collation. And where none of this exist, the collation officer shall ask for the duplicate hardcopies issued by the Commission to the Nigeria Police or to the Agents of Political Parties, in that order.

The foregoing provisions of the Electoral Act and the INEC Regulations clearly show that it is not correct as contended by the petitioners that results of the election cannot be validly collated without the electronically transmitted results. Indeed, the Regulations primarily provide for manual transmission or transfer and collation of results. There is nothing in the Electoral Act or the INEC Regulations and Guidelines to show that an electronic collation system was prescribed by the Commission to which results will be electronically transmitted.

Thus, the petitioners were unable to establish their assertion that the 1st respondent is mandatorily required to electronically transmit the polling unit results to a collation system. The 1st respondent on the other hand has adduced unchallenged evidence that apart from the INEC IReV Portal, no collation system was established by the 1st respondent to which the result of the Presidential election must be electronically transmitted for collation.

It is therefore my finding that both the Electoral Act and the Regulations and Guidelines provide for manual collation of election results, and the electronic transmission to a collation system apparently introduced by the 1st respondent in the Regulations and Guidelines are not mandatory as contended by the petitioners herein. It is also my finding based on the evidence adduced that the only collation system put in place by the 1st respondent in the conduct of the Presidential election is comprised of the physical collation centres in the Registration Areas/Ward Collation Centres, Local Government Area Collation Centres, the State Collation Centres and the National Collation Centre elaborately stated in Paragraphs 47, 50, 53, 54 and 55 of the Regulations and Guidelines for the Conduct of Elections, 2022.

With regard to the petitioners' contention that the 1st respondent deliberately failed to upload the Presdential election results to the INEC Results viewing Portal (IReV) real time, the petitioners have averred in Paragraphs 53, 97 and 98 of the petition that:

> "53. The petitioners also contend that in manifest violation of the 1st respondent's Regulations and the Electoral Act, 2022, the results of the Presidential Election held in the Polling Units were not fully uploaded on the IReV as at the time of the purported declaration of the 2nd respondent as the winner of the Presidential Election which gave room for manipulation of the said results by officials of the respondent."
>
> "97. The 1st respondent, via a written communication, sought to excuse the manifest non-compliance with the requirements of the Electoral Act, 2022 and the Regulations by claiming that there were glitches in the electronic system which prevented it [the 1st respondent] from uploading the results of the Presidential election from the polling units to the IReV Portal on the day of the election. The said written communication is hereby pleaded.
>
> 98. The petitioners shall contend that the alleged glitches in the electronic system installed and managed by the 1st respondent were a ploy invented by the 1st respondent to credit unlawful votes to the 2nd respondent and thereby, wipe out the clear advantage which inured to the petitioners following the lawful exercise of voting rights by the electorate."

In response to the above allegation, the 1st respondent had averred in Paragraphs 49 and 55(vii), (viii) (ix) and (x) of their reply to the petition that:

> "49. The 1st respondent in response to paragraph 53 of the petition states that the Polling Unit results were duly uploaded on the 1st respondent's e-transmission system by the respective Presiding Officers at the end of the election but some of the results were not visible on the IReV Portal due to technical glitch experienced on the election day."
>
> "55(vii) immediately after the election on 25th February, 2023, Polling Unit results were uploaded and received by the

e-Transmission system whilst using the BVAS there was a temporary failure of communication between the e-Transmission system and the IReV Portal for the Presidential election. In this regard, the e-transmission system returned an HTTP 500 error which is an application error such that the transmitted results though received on the e-Transmission application hosted on the AWS, the e-Transmission could not organize and push the results instantly to the Presidential module on the IReV Portal because it could not map the results uploaded for the Presidential election to any State. The 1st respondent pleads and shall rely on the AWS Cloud Trail logs indicating patches deployed to fix the error/technical glitch on the Election Day.

(viii) The 1st respondent avers and shall further demonstrate at trial that the HTTP 500 error on the e-transmission system which delayed the instant push of the results transmitted from the Polling Units to the IReV Portal did not in any way alter, affect or vitiate the original results from the Polling Units which in their original form are stored in the BVAS and were utilized by the Ward Collation Officers at the Ward Collation Centres to validate and verify the original copies of the Polling Unit results.

(ix) The 1st respondent shall further contend that the technical glitch did not in any way affect the result of the election.

(x) Upon resolution of the HTTP 500 error, the results which were delayed in the e-transmission system were eventually organized and pushed to the IReV Portal. The results are available as generated in their original form from the Polling Units using the BVAS."

In paragraph 37 of their reply to the 1st respondent's reply, the petitioners have again denied that there was any technical glitch and maintained their assertion that the failure to upload the results on the IReV was a ploy by the 1st respondent to manipulate the results. They stated that they will rely on the server logs and server contents of the IReV hosted on the AWS Cloud platform to show that the result of the election were uploaded on the IReV Portal but the 1st respondent attempted to delete/remove the uploaded results.

It is trite that a petitioner who alleges non-compliance with Electoral Act has the legal burden to establish such non-compliance and show how the non-compliance substantially affected the result of the election. See: *Ladoja v Ajimobi* (2016) LPELR-40658 (SC) at page 29, paras. A-E; (2016) 10 NWLR (Pt. 1519) 87; and *Shinkafi v. Yari* (2016) LPELR-26050(SC) at pages 19-20, para. C; (2016)7 NWLR (Pt. 1511) 340.

In proof of their assertion, the petitioners subpoenaed PW7 and PW8 as expert witnesses, but the respondents challenged their competence to testify because their witness statements on oath were not frontloaded along with the petition as mandatorily required by Paragraph 4(5) of the 1st Schedule to the Electoral Act. In my ruling at the earlier part of this judgment, we have upheld the respondents' objection and struck out their evidence which include their witness statements on oath and the documents and/or reports tendered through them. These are exhibits PCJ3A- F and PCJ4 (6 Reports of AWS Health Dashboard Status and Certificate of Compliance) tendered through PW7; and exhibit PCK1 (Meta Data) admitted through PW8.

However, notwithstanding that position, I shall proceed to consider the evidence of PW7 and PW8 and the other witnesses called by the petitioners. PW7 claimed to be a Cloud Engineer/Architect and employee of Amazon Web Services. She stated that she is not only a member of the Labour Party, the 2nd petitioner herein, but she contested election as its candidate for Member House of Representatives for Ogoja/Yala Federal Constituency of Cross River State. She stated that for an IT Application, the SDLC includes requirement gathering, analysis and design, development/ implementation, testing the code, staging the software and deployment. She stated that she was aware that at the process of testing and staging of software (code), any problem/challenges with the software will usually show and/or be flagged. She stated that each function is supposed to be tested and any issues flagged ought to be remedied before deploying the software. She stated that if a software/application has any glitch, such a glitch will pop up (be flagged) at the testing stage. She stated that from her preliminary review of the public viewing facing IReV website, she is aware that the polling unit results images are stored in Amazon S3 (an AWS storage service). She stated that as an employee of AWS, the AWS has a Service Level Agreement (SLA) with its customers which

is accessible to the public on docs aws.amazon.com, and that by the SLA for S3 service, it is designed to provide 99.999999999% durability and 99.99% availability of objects stored over a year.She said this is accessible to the public on *http://docs.aws.amazon.com/AmazonS3/latest/userguide/Data Durability.html.* She stated that the AWS Cloud Servers are hosted in 33 regions and the health status of AWS Cloud Services for all regions for the past twelve months from date is accessible to the public on http://health.awS.amazon.com/health/status. She stated that the health status of each service in each region on February 25th, 2023 indicated that there were no glitches on any of the AWS Cloud Servers. She stated that from the Post-Event Summary (PES) by AWS, the last time a significant outage occurred on the AWS Cloud Servers was on December 10, 2021 which was an internal connectivity issue that affected EC2 API and Container API, among other service access issues impacting only one region (US-EAST-1)., She said this is available to the public on *http://aws.amazon.com/premiumsupport/technology/pes/.* PW7 stated that she was aware that a glitch in a software means a malfunctioning as a result of which the application is not able to perform properly, and that fixing a glitch in a software/application by the creation of patches refers to series of changes made into the system by writing small codes which is imputed into the software to change its current state and thereby function properly.

On cross examination by the 1st respondent, PW7 admitted that she missed post production maintenance which is an important element of software development lifecyle. She denied that glitches occur at post production maintenance stage and stated that it appears at the testing stage. She stated that she was aware of Personal Heath Dashboard but stated that the 1st respondent's Personal Health Dashboard is not before the court. She admitted that the AWS adopts a shared responsibility model in which AWS play its part while the customer play its own part when it comes to security. She admitted that the report she tendered only shows the health status of all AWS Services in all regions in terms of the infrastructure and not security. She admitted that in order to know what happened on applications deployed on AWS infrastructure by a customer it is not necessary to get a technical report. PW7 also stated that she is familiar with AWS Cloud Trail and that there is a Cloud Trail for every AWS account and for every API action made

on that account. She admitted that she did not produce the Cloud Trail for INEC deployed Application before the Court. She denied that the Cloud Trail is the best account of what transpired on INEC deployed application but did not state the best way to know what transpired. She stated that it is highly unusual for glitches to occur for primary functions of applications in production. She stated that she was not aware that glitches happened with the Central Bank of Nigeria e-Naira project or the one that happened with the MTN Momo PSG. She admitted that she was a candidate for the Labour Party at the last election. She also admitted that the subpoena under which she came to court was served on her personally and not on Amazon Web Services.

Also, on cross examination by the 2nd and 3rd respondents, PW7 admitted that exhibit PCJ2 which she presented as her employment verification letter was not signed by anyone, but insisted that there is the name of "Employment Resource Centre" written on it. She also admitted that she had been attending the court and watching the proceedings before the day of her testimony. She admitted that the report she presented before the court is public information hosted by Amazon and that it is available and accessible to the public. She however insisted that the report is hers because she was the one who downloaded it and brought same to the court.

PW7 also admitted under cross-examination that she won primary election for her Constituency under Labour Party, the 2nd petitioner, and that she even filed an action against INEC because she was not placed on the final list of candidates published by INEC. She admitted that her complaint was because she tried several times to upload her information on INEC site but all her efforts failed because of network failure. She admitted that network failure can happen at either end of an application. Even as she disagreed that there was a glitch on INEC site, she admitted that in her affidavit she stated that INEC site crashed. PW7 also stated that she was aware that AWS experienced outage of several hours on Tuesday, 28/02/2017 and that as at 2021, AWS was reported to have suffered more than 27 outages. She also admitted that what was sent to IReV was the image of the Form EC8A.

On cross examination by the 4th respondent, PW7 stated that she did not know about password protocols and cannot speak about password protocols to modify the applications of INEC. She admitted that the open access information she downloaded in her

report cannot be amended by her. In fact, she admitted that she was not representing Amazon Web Services (AWS) in this case. She however insisted that she is an expert. She stated that she was aware of glitch which affected Japan Brokers in September, 2021 but stated that the last one she was aware of was in December, 2021.As to whether glitches can happen again, she stated that anything is possible.

In his evidence, PW8, Dr. Chibuike Ugwuoke, another expert witness called by the petitioners, stated that he is a Cyber Security and Risk Advisory Consultant, and that he was approached by the Labour Party to provide expert evidence in this petition. He said he had read the Electoral Act, 2022, the INEC Regulations and Guidelines for the Conduct of the Elections, 2022 and the INEC Manual for Election Officials, 2023 with particular attention to the relevant provisions dealing with uploading and transmission of election result from the polling units using the BVAS to IReV Portal. He said that he has also read the petition as well as the reply to the petition filed by the 1st respondent. He stated that from his reading of those documents and processes, when a software/application undergoes the required minimum testing before deployment, any functionality error/bug will be flagged. He stated that the purpose of testing is to remedy/resolve all such errors before the application is deployed to production.

On cross-examination by the 1st respondent, PW8 stated that he was approached on 10th March, 2023 and he finished his work sometime in May, 2023. He said that he did his preliminary report on 17th and 18th March, 2023 and concluded the final report at the end of May, 2023. PW8, who stated in paragraph 14 of his adopted witness statement that he read the petition and the 1st respondent's reply to the petition in doing his work, stated that he could not recall whether he read the petition. But when his attention was drawn to paragraph 14 of his statement, he agreed that he had read those pleadings. He admitted that it is not impossible for errors to occur after deployment of technology or application. When referred to paragraphs 22 and 23 of his statement, he stated that he referred to the Meta Data on the IReV in 3 polling units to establish that it is possible to show Meta Data. He stated that there were errors in those polling units and he did not have to examine the physical copies of the Forms EC8A of those polling units. He stated that from the tabulation of the Meta Data he could not tell that whether

the results stated in those polling units were collated. He stated that all the work he did was on his computer. He confirmed that the AWS security model is a shared responsibility model between AWS and the Client. He stated that he was aware of the Cloud Trail and confirmed that the Cloud Trail will explain the availability of the application of INEC on the AWS infrastructure. PW8 who insisted that there was an electronic collation system only pointed to an upload at the last paragraph of exhibit PCK2 and stated that it means an electronic collation system.

When cross-examined by the 2nd and 3rd respondents, PW8 denied that it was part of his brief to assist the Labour Party to respond to the respondent's Replies. He admitted that he did not inspect any of the BVAS machines and did not interrogate Festus Okoye whose statements he referred to. He confirmed that exhibit A which he attached to his report is the Meta Data of 23 pages showing multiple uploads. He denied that it contains information which are coded and not explained and insisted that the information he provided are decrypted and readable. He admitted that he supplied some links in some paragraphs of his Report but stated that he did not expect the court to go and browse, access and download the information contained from those links.

When cross examined by the 4th respondent, PW8 admitted that he downloaded the 12 polling units results he attached to his Report from the IReV and he did not interact with the Presiding Officers of those polling units and did not see the hardcopies of those results. He could not also tell whether those results have been collated.

Starting with the evidence of PW7, it is evident that she is a person who has an interest to serve in this petition being a member of the 2nd petitioner under whose platform she contested election for House of Representatives. Her interest in this petition is further underscored by her admission that she has been attending court and watching the proceedings prior to making her statement on oath and testifying as a witness. Her testimony therefore, was essentially a demonstration of her support and loyalty to the 2nd petitioner. Her claim to being an employee of Amazon Web Services (AWS) is also suspect as she produced no credible evidence to that effect. Exhibit PCJ2 which is the paper she presented as evidence of her employment by AWS is obviously a worthless paper. It has no author, although she insisted that the author is “Employee Resource

Center". The paper was also not signed. Her evidence adds no value to the petitioner's case because she stated that her evidence relates to the health status of AWS in terms of infrastructure and not in terms of security. She had admitted that the "Expert Report"' in exhibit PCJ3A- F which she brought to court are actually documents publicly available on Amazon Website which she downloaded, and her only claim to its ownership is that she was the one who downloaded it and brought it to court. She even admitted that she could not add or subtract anything from the reports. Those reports are obviously not her own. She also admitted that the health status of the 1st respondent's Application hosted on the AWS is not before the court. My conclusion on the totality of the evidence of this witness is that it is devoid of any probative value.

As for PW8, he has demonstrated that he worked to an answer. Not only did he admit that he read the petition and reply of the 1st respondent in the course of his commissioned work, he also stated that he read the Electoral Act and INEC Regulations and Manual for Election Officials. On the authority of *Ladoja v. Ajimobi* (supra), the evidence of this witness is also not of any probative value.

Apart from the above, other witnesses of the petitioners, especially PW4, PW9, PW10, PW12 and PW13 all stated that they voted and everything went well in their respective polling units. In particular, PW4, PW10 and PW13 all stated that their polling unit results were taken to collation centres. Therefore, even the evidence of the petitioners' witnesses show that the polling units results were physically taken to the Registration Areas/Ward Collation Centres. The petitioners have led no evidence to establish the existence of any other collation centre to which the Presidential election results were to be electronically transmitted for collation.

On the part of the 1st respondent, RW1 testified that the failure to upload some of the results of the Presidential election to the IReV real time on 25th February, 2023 was due to a technical glitch experienced on their e-Transmission system. RW1, through whom the 1s respondent tendered exhibits RA6 and RA7, stated that at the end of the polls in some Polling Units on the 25th February, 2023 it was observed by the 1st respondent that Polling Unit results being uploaded to the INEC's e-Transmission system by the Presiding Officers were pushed to the Senate and House of Representatives Modules on the IReV, but the results of the Presidential election were not being pushed to the Presidential Module on the IReV. That

based on threat levels and reports by security agencies that the 1st respondent's servers may be subjected to attacks on election day, the 1st respondent's first course of action was to investigate whether the servers were being attacked. That preliminary investigations showed there was no attack, but the issue was a HTTP 500 error from within the application which are mostly errors due to problems of configuration, permissions or failure to create application resources correctly. That a thorough investigation revealed that the e-Transmission was unable to map the uploaded results of the Presidential election to any specific State, and that the Presidential folder structure which was meant to organize the uploaded result sheets in order of Election/State/LGA/Ward/Polling Unit was causing the application to crash and return a server error whenever it tried to create the folder structure for the Presidential election.

RW1 explained that creating a folder structure to organize the uploaded results in the hierarchy of Election/State/LGA/Ward/Polling Unit was a new feature introduced as an improvement in the e-transmission system, and that the old system randomly saved uploaded result by time stamps, making it difficult to download result sheets by election or by State. He stated that the deficiency was observed after the Osun Governorship elections in 2022. RW1stated that during the election of 25th February, 2023 the application was able to query and detect the base States for the Senatorial districts and Federal constituencies based on the mapping of all senatorial districts and federal constituencies to their respective States, and that this mapping still exists in the database, and the upload was successful because it was able to identify the State and build the folder hierarchy for the results organization. But for the Presidential election, the application crashed because the Presidential election does not belong to any State on the 1st respondent's database and any attempt by the application to build a folder structure to organize the election results failed with a HTTP error response. RW1stated that since these were live servers that were being used for the election, extra care was taken not to cause a complete outage, and four application patches/updates were created and deployed immediately with the aim of fixing the HTTP error. He stated that the first Presidential election results was successfully uploaded at 8:55 pm on the 25th February, 2023.He further stated that to confirm that the glitch actually happened as well as the time that all patches to fix the error were created and deployed can be viewed on AWS

Cloud Trail, an AWS functionality that allows enabling operational and risk auditing. He added that all actions taken to fix the error are recorded as events in the Cloud Trail logs. He stated that the technological glitch experienced on the e-transmission system was not a ploy to manipulate the election, and the glitch did not affect the results of the election. He then tendered exhibits RA6 and RA7, the Cloud Trail log and its Certificate of Compliance with section 84 of the Evidence Act, 2011 and identified same as the documents he referred to in his witness statement on oath.

Under cross-examination by the petitioners, RW1 confirmed that testing was carried out on the e-Transmission system of the 1st respondent on the 4th of February, 2023 before it was deployed and a Report was issued. When shown a report produced on subpoena, he identified same as a Report on Vulnerability Assessment and Penetration Testing dated 22nd February, 2023, but stated that it was not the Report of Testing carried out on the e-transmission system on 4th February, 2023. The petitioners then tendered the Report of Vulnerability Assessment and Penetration Testing through this witness which was admitted as exhibit XI.

From the evidence adduced on this point, it is clear that, the petitioners are unable to substantiate their contention, the burden of proof of which was on them by virtue of section 131(1) of the Evidence Act, 2011.They have failed to establish that the 1st respondent had deliberately failed to upload the results of the Presidential election to the IReV in order to manipulate the results in favour of the 2nd respondent. The 1st respondent on the other hand has offered credible evidence in the form of exhibits RA6 and RA7 to show that its e-Transmission Application hosted on the Amazon Web Services, which is supposed to upload the results of the Presidential election to the IReV, had suffered a glitch on the Election Day on 25th February, 2023. On the preponderance of evidence, I am convinced that the petitioners have failed to establish their assertion that the 1st respondent had deliberately failed to upload the results of the Presidential election to the IReV in order to manipulate the results in favour of the 2nd respondent.

As I stated earlier, the electronic transmission of results of an election is not expressly stated anywhere in the Electoral Act, but was only introduced by the 1st respondent in its Regulations and Guidelines, 2022 and in the INEC Manual for Election Officials, 2023. By section 134(2) of the Electoral Act, 2022 only an act

or omission which is contrary to the Electoral Act, 2022 can be a ground for questioning an election. Thus, complaints relating to non-compliance with provisions of the Regulations and Guidelines or the Manual of Election Officials are not legally cognizable complaints for questioning an election. In interpreting section 138(2) of the Electoral Act, 2010, which is similar to section 134(2) of the extant Electoral Act, 2022, the Supreme Court held in *Nyesom v Peterside* (supra), at page 66-67, paras. F-C, as follows:

> "The above provisions appear to be quite clear and unambiguous. While the Electoral Commission is duly conferred with powers to issue regulations, guidelines or manuals for the smooth conduct of elections, by section 138(2) of the Act, so long as an act or omission regarding such regulations or guidelines is not contrary to the provisions of the Act itself, it shall not of itself be a ground for questioning the election."

See also: *Jegede v. INEC* (2021) LPELR-55481(SC) at 25-26 at paras. A-D; (2021) 14 NWLR (Pt. 1797) 409.

Since, as shown above, the electronic transmission of election results is not specifically provided for in the Electoral Act, 2022, but was only provided in the Regulations and Guidelines for Conduct of Elections, 2022 and INEC Manual for Election Officials, 2023, the failure to electronically transmit election results cannot be made a ground for challenging an election under section 134(1) (b) of the Electoral Act, 2022.

The petitioners also alleged in paragraph 59 of the petition that the 1st respondent failed to record in the prescribed forms the quantity, serial numbers and other particulars of result sheets, ballot papers and other sensitive electoral materials on the prescribed forms EC25A, EC25A(I), EC8B and EC8B(I)- that is to say, electoral materials received for LGA, electoral materials distribution for RA, electoral materials receipts/reverse logistics and polling units materials receipts/distribution in respect of the States where the 2nd respondent purportedly won. The petitioners further alleged that following the order of court for inspection, they applied through their campaign organization and lawyers for the forms, but the ls respondent refused to give/issue those forms and refused to allow the inspection of the forms despite the order.

In response to the petitioners allegations, the 1st respondent countered that its officials duly recorded in the prescribed Forms the

quantity, serial numbers and other particulars of result sheets, ballot papers and other sensitive electoral materials in the prescribed Forms EC25A, EC25A (I), EC8B, and EC8B (I) in respect of the States where the 2nd respondent duly won the election as done in the States where the petitioners won the election, as the procedure adopted in the election across all States of the Federation are uniform and the same. The 1st respondent further stated that it duly complied with the order of inspection granted by the honourable court and the petitioners were not denied access to the Forms EC25A, EC25A (I),EC8B,and EC8B(I) as alleged by the petitioners.

It was the submission of the learned senior counsel for the petitioners that having regard to the state of the pleadings, and the issue of fact in contention, the onus is on the 1st respondent to prove that there was indeed due compliance with the provision of section 73(2) of the Electoral Act, since the petitioners are asserting the negative while the respondents are asserting the positive. He relied on the decisions of this court in *First Bank of Nigeria Plc v. Adeosun Business Investments Ltd. & Ors* (2020) LPELR-51203 (CA); and *Royal United Nigeria Ltd. v. Sterling Bank Plc* (2018) LPELR-50839(CA). He submitted that the 1st respondent did not lead any evidence in proof of their positive assertion that there was compliance with the said provision of section 73(2) of the Electoral Act.

Learned counsel submitted that on the part of the petitioners, they have led evidence through PW12 that the petitioners obtained order of this court for inspection of documents but the 1st respondent had refused to produce the Forms, despite several letters demanding the Forms from the petitioners, which were tendered as exhibits PCQ1 to PCQ6. He added that the petitioners have also served subpoena *duces tecum* on the 1st respondent to produce the said Forms but the officer of the 1st respondent, a Deputy Director, Certification, Complaints and Legal Drafting, who came to Court in answer of the subpoena on 20th June, 2023, failed to bring the Forms. Counsel urged the court to invoke the provision of section 167(d) of the Evidence Act against the 1st respondent and hold that the Forms if produced would have been unfavourable to the 1st respondent. He cited O*kpokam v. Treasure Gallery Ltd. & Anor* (2017) LPELR-42809(CA). He further submitted that the non-compliance with section 73(2) of the Electoral Act has been established which has invalidated the election in those states which the 2nd respondent was

declared to have won, namely-Benue, Borno, Ekiti, Jigawa, Kogi, Kwara, Niger, Ogun, Ondo, Oyo, Rivers and Zamfara States, which are shown in the Form EC8D(A), admitted in evidence as exhibit PBF. He pointed out that section 135(1) of the Electoral Act. 2022only deals with non-compliance generally, but section 73(2) of the Act has provided a specific effect of non-compliance with its provisions. Relying on *Kraus Thompson Organisation v. National Institute for Policy and Strategic Studies Ltd.* (2004) 17 NWLR (Pt.901) 44, he urged the Court to hold that substantial non-compliance has been established by the petitioners.

Arguing per contra, learned senior counsel for the 1st respondent referred the court to section 135(1) of the Electoral Act, 2022 and submitted that the petitioners' complaint of non-utilisation of prescribed forms, even though not proved, cannot without showing the effect on the election be a basis to void an election. He submitted that the attempt by the petitioners to exclude section 73(2) of the Act from the ambit of section 135(1) is a non-starter, because the non-compliance referred to in section 135(1) is with the provisions of the Act and no part of the Act was excluded by the section. He posited that for non-compliance with section 73(2) of the Act to void an election, it must have substantial effect on the election and the petitioners have neither proved such noncompliance nor shown that it has substantially affected the result of the Presidential Election. He urged the court to so hold.

The petitioners have contended that since they are alleging that the 1st respondent had failed to record in the prescribed forms the quantity and particulars of the materials used in the elections, they are alleging the negative and as such the burden is on the 1s respondent to establish that they have duly complied with the provisions of section 73(2) of the Electoral Act. They have relied on the decisions of this court in *First Bank of Nigeria Plc. v. Adeosun Business Investments Ltd. & Ors* (supra); and Royal *United Nigeria Ltd v. Sterling Bank Plc* (supra).

Whilst it is true that the burden of proof is generally on the party that asserts the affirmative of an issue and not on the party who asserts the negative, there is an exception to that general principle. Where a negative assertion forms an essential part of the party's case, the burden is on him to establish that fact. This position was clearly stated by the Supreme Court in the case of *Buhari v. INEC* (supra) at page 80, paras. C-D, when Tobi, JSC held thus:

> "A negative allegation must not be confounded with the mere traverse of an affirmative one. The true meaning of the rule is that, where a given allegation, whether affirmative or negative, forms an essential part of a party's case, the proof of such allegation rests on him."

Again, this court in *Dashe & Ors v. Durven & Ors* (2019) LPELR-48887 (CA) at pages 14-17, paras. E - E, espoused this legal position when Ugo, JCA held thus:

> "I am in no doubt that this argument of appellants about negative and positive assertions is misconceived, for while it is true that the burden of proof is generally on the person who substantially asserts the positive of an issue, and not on the person who makes a negative assertion, there is a caveat to that principle to the effect that where a negative assertion forms an essential part of a plaintiff's case (as it evidently is in the case of the appellants) the burden of proof of such allegation rests on him. The law on this point was lucidly stated by Bowen L.J. in *Abrath v. N.E. Railway Co.* 11 QBD 440 at 457 when he said that: "Now in an action for malicious prosecution, the plaintiff has the burden throughout of establishing that the circumstances of the prosecution were such that the Judge can see no reasonable and probable cause for instituting it. In one sense that is the assertion of a negative, and we have been pressed with the proposition that, when a negative is made out, the onus of proof shifts. That is not so. If the assertion of a negative is an essential part of a plaintiff's case, the proof of the assertion still rests upon the plaintiff. The terms negative and affirmative are after all, relative, and not absolute."

In the instant case, the petitioners have made their allegation of noncompliance with section 73(2) of the Electoral Act, 2022 by the 1st respondent as an essential part of their case in challenging the results of the election declared by the 1st respondent. Not only are the petitioners statutorily required by section 135(1) of the Electoral Act to establish substantial non-compliance with the provisions of the Act, they are required to show how such non-compliance has substantially affected the results of the election. As rightly observed by the learned senior counsel for the 1st respondent, the

non-compliance that will not invalidate an election under section 135(1) unless it is shown to be substantial and to have substantially affected the result of the Election, encompasses non-compliance with all provisions of the Electoral Act, including section 73(2) thereof. In other words, section 73(2) is not derogated from the ambit of section 135(1) of the Act.

Indeed, in *Buhari v. INEC* (supra), Tobi, JSC, while considering section 145(1) of the old Electoral Act, similar to section 135(1) of the extant Electoral Act, 2022, had held at page 48, paras. B-D, that:

> "A petitioner who files a petition under section 145(1) of the Electoral Act has the burden to prove the ground or grounds. This is because he is the party alleging the grounds and he has a duty to prove the affirmative. He is the party who will lose if no evidence is given on the grounds. If the petitioner does not prove his case under section 145(1) of the Act, the action fails."

Therefore, the petitioners who have alleged non-compliance with section 73(2) as part of their cause of action have the burden to establish such non-compliance in accordance with the requirements of the section 135(1) of the Act.

The petitioners have relied on the evidence of PW12 and on exhibits PCQ1 to PCQ6 also tendered through PW12.The exhibits are acknowledged copies of letters dated 6th March, 2023, 14th March, 2023, 16th March, 2023 and 20th March, 2023, all written by the petitioners or their Solicitors to the Chairman of the 1st respondent demanding for inspection of documents and for certified true copies of the electoral forms. The petitioners also relied on subpoena *duces tecum* served on the 1st respondent to produce the said forms. In his testimony at paragraphs 58 to 60 of his adopted witness statement on oath, PW12 merely stated that the petitioners made several applications through its campaign organization and Solicitors for certified copies of election documents and data relating to the Presidential election, but they were denied by the 1st respondent and that the 1st respondent had failed to record in the prescribed forms the quantity, serial numbers and other particulars of result sheets, ballot papers and other sensitive electoral materials.

The record of proceedings of this court also shows that at the instance of the petitioners, Subpoenas dated 30" May, 2023 and 13th June, 2023 were issued on the Chairman of the 1st respondent

to produce some documents. The record also shows that on the 20th of June, 2023, one Olufunmilayo Taiwo, a Deputy Director, Certification & Complaints and Legal Drafting with INEC appeared on behalf of the 1st respondent in answer to the subpoena *duces tecum*. Whilst she produced some of the documents required of the 1st respondent in the subpoenas, she informed the Court that the documents listed in the subpoenas as items B, C, D and E are in the States and since the Subpoena was served on them just the previous day, it would take some time for the 1st responden to get them.

An examination of exhibits PCQ1-PCQ6 which were tendered by the petitioners through PW12, shows that all except exhibit PCQ4 are letters addressed to the Chairman of the 1st respondent by the petitioners and their solicitors requesting for inspection of documents and for certified copies of those documents. Exhibit PCQ4 is a Covering Letter addressed to the Resident Electoral Commissioner, Benue State from the law firm of Dr. Onyechi Ikpeazu, SAN & Co. notifying the Resident Electoral Commissioner of subsequent action on the Solicitors letter by the National Chairman INEC Headquarters, Abuja dated 6th March, 2023.

It is instructive to observe that section 74(1) of the Electoral Act, 2023 mandates the Resident Electoral Commissioner in a State where an election is conducted to within 14 days after an application is made to him by any of the parties to an election petition, cause a certified true copy of such document to be issued to the said party. Subsection (2) of that section even provides that any Resident Electoral Commissioner who fails to comply with subsection (1) commits an offence and is liable on conviction to a maximum fine of N2, 000,000.00 or imprisonment for a term of 12 months or both.

A look at the letters in exhibits PCQ1 - PCQ6 shows that they were all addressed to the Chairman of INEC instead of the Resident Electoral Commissioners in the States as required of the petitioners by section 74(1) of the Electoral Act, 2023. It is therefore clear that the petitioners have failed to follow the clear legal procedures of requesting for those documents. More so, when the record shows that the subpoenas which they claimed to have served upon the 1st respondent were also served on the Chairman of the 1st respondent and as stated by the Officer who answered the subpoena, same was served only the previous day to her appearance in court.

From his evidence, PW12 had stated that apart from voting at his Polling Unit 04 at Dawaki, Abuja, the only role he played in the 25th February, 2023 Presidential election was that he was a member of the 2nd petitioner's Situation Room, and on cross examination by the respondents he has stated that he was neither a polling agent nor a collation agent. His evidence that the 1st respondent had failed to record in the prescribed forms the quantity, serial numbers and other details of the electoral materials can only be hearsay evidence which has no probative value. Also, the mere production of exhibits PCQ1 - PCQ6 cannot establish an allegation of non-compliance with section 73(2) of the Evidence Act, 2022. Apart from the evidence of PW12 and exhibits PCQ1- PCQ6 tendered through him, the petitioners have produced no other evidence to substantiate their allegation that 1st respondent failed to comply with the provisions of section 73(2) of the Electoral Act, 2022.Rather, PW10, Kefas Iya, a Supervisory Presiding Officer (SPO) for Madagali Ward in Adamawa State who was subpoenaed by the petitioners to testify on their behalf, had stated in paragraphs 4 and 5 of his witness statement on oath that as SPO, he reported to the Local Government Area INEC Office in Gulak, Madagali Local Government Area in Adamawa State on the 24th of February, 2023 to collect the sensitive and non-sensitive materials for the 25th February Presidential and National Assembly Elections,and that after collecting the materials he proceeded together with security agents and other INEC Officials (Presiding Officers, Assistant Presiding Officers I, Assistant Presiding Officers II and Assistant Presiding Officers III) to Madagali Ward that evening to the registration Area. His evidence was also to the effect that on the day of the elections everything went well and after sorting and counting, the Presiding Officers did the entry and snapped the results with BVAS for the upload and transmission of the results to the INEC portal but were unable to upload and when they complained to him, he requested them to come to the Registration Area.

It is therefore clear from the above that the petitioners were unable to establish their allegation of non-compliance by INEC with section 73(2) of the Electoral Act, 2023. The evidence PW12 and exhibits PCQ1 to PCQ6 have not been able to rebut the presumption of regularity which enures to the 1st respondent under the law, which can only be rebutted with cogent and credible evidence. See: *A.P.C. v. Sheriff& Ors* (2023) LPELR- 59953(SC), at page 145 paras. B

-E; and *C.P.C. v. INEC & Ors* (2011) LPELR-8257 (SC) at page 57, paras. A-C; (2011) 18 NWLR (Pt. 1279) 493.

From the totality of the evidence adduced on this issue, I am of the considered view that the petitioners have failed to prove substantial non-compliance with the provisions of the Electoral Act, 2022. Issue 2 is also resolved against the petitioners and in favour of the respondents.

Issue 3

> Whether from the totality of the evidence adduced, the petitioners have proven that the presidential election held on 25th February, 2023 was invalid by reason of corrupt practices.

It was the submission of A. B. Mahmoud, SAN, on behalf of the 1st respondent referred to the petitioners of manipulation and suppression of votes and submitted that the settled position of the law is that a petitioner must plead and lead direct evidence to establish same. He cited *Obafemi & Anor v. P.D.P. & Ors* (2012) LPELR-8034 (CA). He pointed out that the petitioners did not lead any evidence through a witness conversant with the entries in all the electoral forms tendered in evidence by them. He submitted that although the petitioners pleaded that they will rely on forensic and statistical reports, what was tendered by PW4, the Professor of Mathematics fell short of requirement of the law.

On the petitioners' allegation of inflation and deflation of votes, learned Counsel submitted that the position of the law as stated in *Ajadi v. Ajibola* (2004) 16 NWLR (Pt. 898) 91, is that a petitioner alleging inflation of figures needs to prove his allegation by giving particulars of the inflated figures and show that if the inflated figures are removed from the votes credited to his opponent the results would have changed in his favour. He added that the petitioners to plead and lead evidence on their allegation which borders on crime and need to be proved beyond reasonable doubt.

As regards the petitioners' allegation of over-voting, he submitted that the extant position of the law is that direct record of accredited voters in the BVAS machines and the voters registers of the affected polling units are required to establish such allegation. He cited *Oyetola v Adeleke* (supra). He added that the petitioners only wanted the Court to act on the so-called expert opinion of PW4 who neither examined the voters' register for the affected polling units nor is acquainted with the data in each of the BVAS

machines. Counsel also pointed out that PW12 had stated under cross examination that he was relying on the report of PW4 for the details of the infractions he deposed in his statement on oath made on the 20th day of March, 2023 which preceded (exhibit PCD2) the report he said he was relying on.

Addressing the court on the probative value of the evidence of PW4, PW7 and PW8, counsel submitted that the position of the law it that evidence of expert of witnesses procured at the instance of parties to a petition must be treated with a pinch of salt. Relying on section 83(3) of the Evidence Act, 2011 and *Fayemi v. Oni* (2009)7 NWLR (Pt. 1140) 223 at 276 - 277; *Sa'eed v. Yakowa* (2013)7 NWLR (Pt. 1352) 124; and *Isiaka v. Amosun* (2016) 9 NWLR (Pt. 1518) 417, he argued that the evidence of those witnesses lack probative value because the evidence shows they were not in existence at the time they were purportedly pleaded.

On the petitioners' allegation of suppression of votes by uploading 18,088 blurred results on the IReV, counsel submitted that even if the results uploaded on the IReV were blurred as alleged by the petitioners there are duplicate copies in the possession of the petitioners' polling agents and they failed to present any of those results in order to show any discrepancy and establish their allegation of suppression. He added that their evidence amounts to mere speculation or conjecture. He cited *Nwaebili v. Onyeama & Ors* (2015) LPELR-40665 (CA) at pages 35-36, paras. A-A.

On the part of the 2nd and 3rd respondents, Chief Olanipekun, SAN submitted that the report presented by PW4 is not accurate, same having covered only two out of the 36 States of the Federation and the FCT. He stated that PW4 had admitted under cross examination that the totality of the polling units in both Rivers and Benue States which he claimed to have considered in his report would not amount to 18,088 polling units. He added that PW4, a Professor of Mathematics is not competent to determine whether INEC had complied with the provisions of the Electoral Act and the Regulations and Guidelines and INEC Manual, as it is only the court that can do so. He further submitted that PW4 had admitted that it is only the image of the Form EC8A that is uploaded on the IReV.

Learned counsel pointed out that the polling units forming part of the purported report of PW4 were not pleaded thus making his entire evidence irrelevant. He referred to the case of *I.N.E.C.*

v. Abubakar (2009) 8 NWLR (Pt. 1143) 259 at 289; and *Akpoti v. I.N.E.C.* (2022) 9 NWLR (Pt. 1836) 403 at 428. Learned counsel submitted that the evidence of PW12 is basically hearsay since he was neither a polling unit agent nor a collation agent for his party on the day of the election.

L.O. Fagbemi. SAN, on behalf of the 4th respondent submitted that no witness of the petitioners disputed the validity of the results released at their various polling units and showed how the results were manipulated as not the represent what was declared at those polling units. He contended that allegations of corrupt practices are criminal in nature and must be specifically pleaded and proved beyond reasonable doubt. He cited *P.D.P. v. I.N.E.C.* (2014) 17 NWLR (Pt. 1437) 525 at 561-562, paras. E-A. He submitted that the allegations of corrupt practices in paragraphs 61, 64, 66 and 68 of the petition ranging from suppression of electoral results, mischief, falsification, misrepresentation of results, use of alteration and fictitious results and reduction are impuned by the faucity of relevant facts, hence lack of merit. He submitted that evidence led in respect of facts not pleaded goes to no issue, and cited *Buhari v. I.N.E.C.* (2008)4 NWLR (Pt.1078) 546 at 629, paras, F-H; *Odom v. PDP* (2015) 6 NWLR (Pt.1456) 527 at 565, paras. C-D. He added that the petitioners failed to demonstrate through their pleadings and by credible evidence how the allegation of corrupt practices has affected the overall results against their interest, as none of the petitioners witnesses stated that corrupt practices occurred during the election. He submitted that the petitioners' petition clearly lacks merit and urged the court to apply section 135(1) of the Electoral Act, 2022 and dismiss the petition.

Responding on behalf of the petitioners, Dr. Ozoukwu, SAN submitted that the 1st respondent had, in response to the request by the petitioners for certified copies of electoral documents including Forms EC8A issued CTCs of 18,088 blurred electoral forms and blank papers and irrelevant images which they certified as the result of the election. He submitted that since the 1st respondent manually collated the result of the elections with hardcopies of the EC8As, the 1st respondent should have certified the hardcopies and issued them to the petitioners. He cited the cases of *Dick v our and Oil Co. Ltd.* (2018) 14 NWLR (Pt. 1638) 1; and *Uzoma v Adadike* (2009) LPELR-8421 (CA), on certification of documents. He submitted that the Data Analysis of PW4 for the 18,088 of the

Forms EC8A shown that the number of accredited voters and voters who collected their PVCs in those polling units were 2,565,269 and 9,165,191 respectively. He added that the above figure of 2,565,269 votes cast by accredited voters (or 9,165,191 voters who collected their PVCs) in those 18,088 polling units is far more than the purported margin of lead in the INEC announced result of the election, between the 2nd respondent and the 1st petitioner, and as such the election is invalidated and ought to be nullified. He further argued that the unchallenged Data Analysis of PW4 further confirmed that the purported result of the election in the polling units in Form EC8As in 39,546 polling units were inaccessible on the IReV and in those polling units 23,119,298 registered voters collected their PVCs, while 5,532,553 voters were accredited to vote in those polling units. He added that those figures of 23,119,298 and 5,532,553 are far more than the purported margin of lead in the INEC announced return of the elections, and for that reason, the election ought to have been declared inconclusive, invalid and or null and void.

Learned counsel also submitted that the Data Analysis Report produced by PW4 has shown that on a proper and accurate computation of the result of the election in Rivers and Benue States, using the Forms EC8A uploaded on the IReV, and the certified true copies of the same forms given by the 1st respondent to the petitioners, the petitioners won the Presidential election in Rivers and Benue States. He argued that by that unchallenged evidence, the number of States won by the petitioners will now be 13 States and the FCT, while the States won by the 2nd and 4th respondent would be reduced by those two States. On that argument, learned counsel urged this court to declare the return of the 2nd and 3rd respondent as the winners of the Presidential election held on 25th February, 2023 invalid and nullify the said election.

On the 1st respondent's argument that the evidence of PW8 was concluded and made after the institution of the petition, counsel submitted that the evidence of PW8 was positive that he started his work on 10th March, 2023 and submitted a preliminary report on 17th March, 2023 which dates were before the filing of the petition. As for the 1st respondent's argument that the evidence of PW4 fell short of the requirement of law, because the witness had admitted he was not conversant with the entries in either a genuine or manipulated result, and that all he utilized in his analysis

were the secondary copies of the results uploaded on IReV portal, counsel countered that PW4 had clearly indicated that his analysis of the 18,088 polling unit results was based on the Labour Party Agents' EC8As and the CTC of EC8As supplied by INEC. Counsel urged the court to refer to the 18,088 blurred copies of the purported results in exhibits PCE1-PCE4 and draw inference from the proven fact. He added that the court is entitled to draw inferences from the proven fact. He relied on: David v. INEC (2020) 4 NWLR (Pt.1713) 188 at 202-203.

In addition, learned counsel submitted that there are 8,123 blurred results also issued and certified by INEC, the details of which cut across 14 States and 168 Local Government Areas. He submitted that the 18,088 blurred results downloaded by the petitioners from the IReV and the 8,123 blurred results, blank sheets and images of persons that are part of the IReV reports which the 1st respondent certified have a combined total figure of 26,211 blurred results. He argued that even the 8,123 results are substantial.

On the 1st respondent's argument that the claim of over-voting is incorrect because Polling Unit 002 of Ward 7 Degema, Rivers State which forms part of exhibit PCD2 shows that the analysis of over-voting was incorrect, counsel submitted that the 1st respondent had failed to relate the report of PW4 on over-voting as per Appendix G with the unchallenged evidence of BVAS accreditation which showed 0 accreditation for Polling Unit 002 of Ward 7 Degema. He relied on *Oyetola v. INEC* (supra), and submitted that there could not have been any legitimate voting in that polling unit.

In response to the 2nd and 3rd respondents, the learned senior counsel for the petitioners made essentially the same submissions to those he made in response to the 1st respondent. He added that the CTCs of the blurred results debunk the claim of RW1 that the hard copies of Forms EC8As were used to collate the results of the election. Relying on *Danladi v. Dangiri* (2015) 2 NWLR (Pt. 1442) 124 at 159, para. D, he submitted that the 1st respondent ought to have certified the hardcopy in their possession.

On the evidence of PW4, counsel submitted that the witness was not cross examined on his evidence and that since his evidence is unchallenged, the court has no choice but to rely on same. He cited *U.B.A. Plc v Unisales Int'l Nig Ltd.* (2014) LPELR-24283(CA)at page 41,para. B. Counsel submitted that the when the court places the evidence of PW2, PW3, PW4, PW5, PW6, PW7, PW8, the

petitioners' expert/special witness on the one side of the imaginary scale and that of the 2nd and 3rd respondents on the other side of the scale it will find that number of States which the petitioners have won in the Presidential election will now be thirteen States and the FCT while the 2nd, 3rd and 4th respondents will have their number of States reduced by two States. He urged the court to hold that the petitioners have established substantial noncompliance and that the non-compliance had substantially affected the results of the election.

Again, the petitioners made essentially the same submissions in response to the 4th respondent's address on this issue. He added that the failure of the 1st respondent to upload and transmit the results of the election from polling units to IReV as mandated by law substantially affected the outcome of the election, in that the integrity and credibility of the entire election process were compromised and cannot be guaranteed. He urged the court to so hold and nullify the election.

In his reply to the petitioners' submissions, A. B. Mahmoud SAN observed that the petitioners made no attempt to contend that the petitioners scored the highest number of votes cast at the election or to at least justify the prayers sought in that the petitioners be declared as having scored the highest number of votes. He argued that the implication is that they have conceded to the arguments of the respondents. He cited *Ochigbo v. Ameh* (2023) LPELR-59616 (CA) at pages 9-10, paras. E- C; and *Nwankwo v. Yar 'adua* (2010) 12 NWLR (Pt. 1209) 518.

Learned counsel further submitted that it is a misconception of the burden of proof for the petitioners to suggest that the 1st respondent has a burden to tender hardcopies of the results used in the collation process, since the results enjoy the presumption of regularity and the petitioners have not made out a case to warrant a shift of the burden of proof. He relied on *Ucha & anor v. Elechi & ors* (2012) LPELR – 8429 (CA).

Learned counsel referred to page 6 of exhibit PCDI tagged “IReV Scores Investigation" wherein it was stated that 10,038 results were uncovered using the LP Agents copies of Form EC8A results and CTCs of Forms EC8A results supplied by INEC. He pointed out that the CTCs referred which were used by PW4 to arrive at the outcome indicated were not produced before the court by the petitioners. He wondered why the petitioners continue to

harp on an allegation that 18,088 polling unit results were blurred when the petitioners have stated through-PW4 that they uncovered 10,038 of those 18,088 polling units and saw the scores with the aid of the CTCs supplied by the 1st respondent and their copies given to their Party Agents. He submitted that a party cannot be allowed to approbate and reprobate at the same time. He relied on *Forte Oil v. Fidelity Finance Co. Ltd. & ors* (2021) LPELR-55877(CA).

Learned counsel also stated that at the material time of filing pleadings in this petition, the petitioners did not give particulars of the 18,088 polling units said to have blurred results on IReV and that they only alluded to spreadsheet contained in the report of PW4 which was not even concluded at the material time of filing the petition. He stated that with that failure on the part of the petitioners they cannot turn around and cast the blame at the feet of the 1st respondent.

Learned counsel further submitted that the petitioners' effort at shifting the burden of proof to the 1st respondent by arguing that the RW1 had withheld evidence is misconceived as the burden of proof is on them to prove their allegation of non-compliance and the 1st respondent which has no burden cannot be alleged to have withheld evidence. He urged the court to hold that the petitioners have failed to prove their allegations.

In his reply to the petitioners address, Chief Olanipekun, SAN submitted that petitioner cannot be heard to complain that they did not tender evidence because the 1st respondent did not supply them with top copies of Form EC8As in the polling units, when by section 74(1) and (2) of the Electoral Act they are supposed to apply to the Resident Electoral Commissioner (REC) in the particular involved and not to the INEC Chairman as they did in this case. He added that the petitioners have failed to point to any specific Form EC8A which is caught up by the vices of mutilations, cancellations and outright swapping of votes as alleged by them, the figures concerned and how the figures affected their votes.

Learned counsel pointed out that the petitioners who submitted blurred copies of exhibits tendered by them have argued that those documents cannot by described by any stretch of imagination as authentic documents. He stated that by their submission, the petitioners have crippled their case can the court should conclude that authentic evidence has not been adduced by them since the court cannot speculate on what is on those blurred documents. He

cited *Seismograph Limited v. Ogbeni* (1976) 4 SC 84; and *State v. Aibangbee* (1988) 1 NWLR (Pt. 84) 548 at 577.

On the part of the 4th respondent, Fagbemi, SAN submitted that the argument of the petitioners that exhibits PCA14, PBS19, PBS21, PBZ9, PCA25, PCA26, PCA28, PCA29 and the supposed 18,088 polling units forms admitted as exhibits PCE1 - PCE4 were blurred and the court should rely on them in making its findings is fallacious and not supported by law. He stated that the said documents were not demonstrated before the court and this court lacks the vires to peruse same in the comfort of its chambers. He relied on *Andrew v. INEC* (2018) 9 NWLR (Pt. 1625) 507.He submitted that the petitioners have not proved that non-compliance exists not to talk of how it substantially affected the result of the election. He relied on *Buhari v. INEC & ors* (2009) 4 EPR 623 at 840.

Resolution of Issue 3:

In their petition, the petitioners made allegations of suppression of scores; unlawful reduction and inflation of results; uploading of fictitious results, misrepresentation and manipulation of results where no election took place; over-voting and wrong computation of results. These allegations are contained in paragraphs 60-78 of the petition.

Petitioners Allegation of Fictitious Uploading of Results and Suppression/Inflation and Reduction of Scores:

In paragraphs 60, 61, 62, 64, 65, 68 and 69 of the petition, the petitioners alleged that due to the 1st respondent's refusal and neglect to upload and transmit the result of the election to the IReV on the day of the election, the 1st respondent suppressed the actual scores obtained by the petitioners. According to them, the suppression of the 1st petitioners' scores which occurred in 18,088 (Eighteen Thousand and Eighty Eight) Polling Units was orchestrated by the 1st respondent deliberately uploading unreadable and blurred Forms EC8As on the IReV; and thereby, suppressed the lawful scores obtained by the petitioners in the said Polling Units. They further alleged that in Rivers State during the collation exercise, the 1st respondent announced scores of the petitioners as 175,071 votes and the 2nd and 3rd respondents as having 231,591 votes, when in actual fact the petitioners' lawful votes are 205,110 while that of the 2nd and 4th respondents ought to be 84,108. They similarly alleged that in Benue State the 1st respondent suppressed the lawful votes obtained

by the petitioners when it announced their votes as 308,372 and that of the 2nd and 4th respondents as 310,468, when the actual votes of the petitioners were 329,003, and that of the 2nd and 4th respondents were 300,421. The petitioners also alleged that the 1st respondent whilst purporting to upload the result of the Presidential election on the IReV, embarked on massive misrepresentation and manipulation by uploading fictitious results in Polling Units where there were no elections as well as uploading incorrect results. They stated that if the results of Polling Units, Wards, Local Governments, and States are properly tabulated and calculated as required by the Electoral Act and the Regulations and Guidelines for election, the overall results of the election and the percentages scored by the Political Parties will show that the petitioners won the Presidential election of 25th February, 2023. They stated that the petitioners shall rely on a Report of Inspection of the Electoral Materials.

In the earlier ruling of this court on the preliminary objections raised by the respondents on the propriety of the averments contained in the petition, we held that apart from the allegations of inflation and reduction of votes in Rivers and Benue States where the petitioners have stated the figures alleged to be inflated and reduced, the other allegations of the petitioners are nebulous and bereft of the material particulars. We held that the said averments contain no particulars of the polling units where the alleged infractions took place or the figures alleged to have been inflated or reduced. We had struck out those paragraphs for offending Paragraph 4(1) (d) and (2) of the 1st Schedule to the Electoral Act, 2022. See: *Belgore v. Ahmed* (supra); and *PDP v. INEC & 3 ors* (supra), where the strict legal requirement of material particulars in election petitions were stressed.

Indeed, apart from the strict requirement of stating material particulars in election petitions, it is also trite that in civil litigations including election petitions, whenever fraud or any other crime is alleged, material facts of such allegation of fraud or other crime must be pleaded and clearly set out. See: *Omoboriowo & ors v Ajasin* (1984) LPELR-2643(SC), (1984) 1 SCNLR 327; *Bessoy Ltd. v. Honey Legon (Nig.) Ltd & anor* (2008) LPELR-8329 (CA)at page 26, paras. D - E; (2010) 4 NWLR (Pt. 1184) 300 C.A.; and *Olurin & ors v. Sangolana & ors* (2021) LPELR-56280 (CA) at page 38, paras.C-E.

The petitioners' allegations of suppression of votes, inflation and reduction of votes, massive misrepresentation and manipulation

By uploading fictitious results all amount to falsification of results of an election. In *Sabija v. Tukur* (1983) 11 SC 109, the Supreme Court held that allegation of inflation with non-existing votes is another way of alleging falsification of results.

Indeed, in *Haruna v. Modibbo* (2004) 16 NWLR (Pt. 900) 487at 542, paras. A-C, the Supreme Court held that:

> "Where a petition is based on allegation of incidents of fraudulent acts, mutilation of results or falsification of results, that allegation is criminal in nature and evidence required in proof thereof must be clear and unambiguous. In other words, the proof must be beyond reasonable doubt."

See also section 135(1) of the Evidence Act, 2011 and *Buhari v. Obasanjo* (2005)13 NWLR (Pt.941) 1 at 200-201; and *Emmanuel v. Umanah* (2016) LPELR-40037(SC) at pages 17 -18,reported as *Udom v. Umana* (No.1) (2016) 12 NWLR (Pt. 1526) 179; *Ikpeazu v. Otti* (2016) LPELR- 40055(SC) at pages 15-16,paras.B-A,(2016) 8 NWLR (Pt. 1573) 38; *Abubakar & ors v. Yar'adua* (2008)LPELR-51(SC) at page 126,paras. C-D; *Omisore v. Aregbesola* (2015) LPELR-24803(SC) at pages 175-176, paras.E-C, (2015)15 NWLR (Pt. 1482) 205 and *Magaji v. All Progressives Congress (APC) & Ors* (2023) LPELR-60356(SC) at pages 48-49, para. E.

In order to establish falsification of election result, the petitioner must produce in evidence two sets of results; one genuine and the other false. See: *Kakih v. P.D.P. & ors* (2014) LPELR-23277(SC) at pages 51-52, paras. C-C; (2014) 15 NWLR (Pt. 1430) 374 and *Nwobodo v. Onoh* (1984) LPELR-2120(SC), (1984) 1 SCNLR 1.Indeed, in *Adewale v. Olaifa* (2012) 17 NWLR (Pt. 1330) 478 at 516, this court held that:

> "To prove falsification of results of an election, two sets of results one genuine and the other false must be put in evidence by the party making the accusation. After putting in evidence the two sets of results, a witness or witnesses conversant with the entries made in the result sheets must be called by the party making the accusation of falsification or forgery of results of the election to prove from the electoral documents containing the results of the election how the results of the election were falsified or made up."

See also: *Chima Anozie v Dr Ken Obichere & ors* (2005) LPELR-7478(CA): (2006) 8 NWLR (Pt.981) 140, per Dongban-Mensem, JCA (as he then was, now PCA); Joseph *Olujimi Kolawole Agbaje v. Bazbatunde Raji Fashola (SAN) & ors.* (2008) LPELR-3648 (CA); (2008) 6 NWLR (Pt. 1082) 90, per Galinje, JCA (as he then was) at pages 71~76, paras. E -A; and *Okechukwu & anor v. Onyegbu & ors.* (2008) LPELR-4711(CA), per Saulawa, JCA (as he then was, now JSC) at pages 53-54, paras.G-D.

To prove their petition, the petitioners who indicated during pre-hearing that they will call 50 witnesses, called only 13 witnesses. These are:

PW1 - Lawrence Ukechukwu Nnanna Nwakaeti, a lawyer;

PW2 - Anthony Chinwo, a Software Engineer and Architect;

PW3 - Lucky Obewo-Isawode, a Senior Reporter with Channels Television;

PW4 - Prof. Eric Uwadiegwu Ofoedu, a Professor of Mathematics;

PW5 - Lummie Edevbie, a staff Arise TV, Abuja;

PW6 - Ijeoma Osamor, a staff of Darr Communications, owners of AIT Television;

PW7- Mpeh Clarita Ogar, a Cloud Engineer/Architect;

PW8 - Dr. Chibuike Ugwuoke, a Cyber Security & Risk Advisory Consultant;

PW9- Onoja Uloko Sunday, a staff of Women & Child Rescue Initiative, and an Election Observer;

PW10- Kefas Iya, an INEC Supervisory Presiding Officer;

PW11- Barr. Emmanuel Edet, Deputy Director/Head, Legal Services & Board Matters Unit, National Information Technology Development Agency (NITDA);

PW12- Yunusa Tanke, Chief Spokesman of the Labour Party Presidential Campaign Council & its Director of Media; and,

PW13- Peter Emmanuel Yari an INEC Presiding Officer for Polling Unit 035, Open Field,Ward 04 of Jikun Local Government Area of Kaduna State.

Of the above thirteen 13 witnesses, only three (3) had their witness statements on oath filed along with the petition. These are PW1, PW2 and PW12. In our ruling on the respondent's objection to the competence of the petitioners' witnesses at the beginning of this judgment, we have struck the evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 on the ground that their witness statements on oath were not filed along with the petition as mandatorily required by Paragraph 4(5) (b) of the 1st Schedule to the Electoral Act.

However, even if the statements of those witnesses of the petitioners were to be considered, the question is are those testimonies cogent and credible to establish the petitioners' allegations stated above?

PW1's testimony was only on the alleged double nomination of the 3rd respondent and forfeiture proceedings which I have already determined above. Even as he stated that he voted in his polling unit during the elections he stated that he did not play any other role in the elections beyond exercising his civic responsibility. As for PW2, who said he was a software engineer, he stated that upon his reading of the relevant provisions of the Electoral Act and INEC Regulations, he is aware that the Presiding Officer in a Polling Unit is mandated to electronically transmit or transfer the result of the election direct to the collation system as prescribed by INEC and to also use the BVAS to upload a scanned copy of the Polling Unit result sheet to the INEC Result Viewing Portal (IReV) as prescribed by INEC. He said from his knowledge of software engineering and computer operations, IReV is a server and is accessible to the public. He said he was aware that the information or data generated/inputted in the BVAS whether operating online or offline were transmitted to the INEC servers, including virtual servers hosted on AWS Cloud.

On cross examination by the 1st respondent however, the witness admitted that his opinion was based purely on his reading of the Electoral Act and INEC Guidelines and that he was not familiar with the applications and operations of the BVAS machine. He stated that he did not play any role in the elections. Indeed, as admitted by the witness, his statement particularly at paragraphs 10-13, is a virtual reproduction of section 38 of the Electoral Act, 2022. On cross-examination by the 4th respondent, he admitted that he did not state his educational or professions qualifications or experience

in his statement on oath. He also stated that his investigations was based on publicly available application programme interface (API) and collected information through it like Form EC8As. He said he did not have the documents and forms he used and that everything was in his Laptop.

Contrary to the speculation of the petitioners that INEC was not prepared to conduct the promised credible, authentic and transparent election or that it deliberately or mischievously allowed a compromised IT infrastructure to be deployed for the conduct of the Presidential election, PW2 confirmed that Amazon Web Services is the most secure service providers in the World, and that it is used by corporations, companies, individuals and governments that are most concerned with security. In his entire evidence, PW2 did not talk about the contents of any result. Instead of supporting the petitioners' allegations, the evidence of this witness supports the case of the 1st respondent.

As for PW3, PW5 and PW6, they merely tendered flash drives containing speeches of the INEC Chairman Mahmoud Yakubu and INEC National Commissioner Festus Okoye wherein they gave assurances that results of the election will be transmitted to the IReV for public viewing. Being mere assurances, the evidence of these witnesses had no utilitarian value in establishing allegation of corrupt practices made by the petitioners in this case.

In his evidence, PW4 tendered exhibits PCD1, PCD2 and PCD3 which he claimed to be the report of his analysis of the Presidential Elections. The witness also tendered four boxes containing what he called 18,088 blurred Polling Unit results downloaded from the IReV portal which were also admitted as exhibits PCE1- PCE4. However, in the earlier ruling of this court on the respondent's objection, we have struck out exhibits PCD1, PCD2 and PCD3 as well as exhibits PCE1, PCE2, PCE3 and PCE4, along with the witness statement on oath of PW4 which was not filed along with the petition, since the documents were tendered through the incompetent witness.

The witness claimed in his evidence that from his investigations, the scores on Form EC8As of 39,546 polling units were inaccessible as they contain uploads not connected with Presidential election, and that the number of accredited voters affected by the 18,088 blurred results was 2,565,269, while the number of voters who collected their PVCs was 9,165,191. According to him this signified that the

votes of 5,532,553 accredited voters were discountenanced by the 1st respondent. He added that 23,119,298 registered voters collected their PVCs in those 39,546 polling units and concluded that both the number of accredited voters of 5,532, 553 and number of voters who collected their PVCs of 23,119,298 in the 39,546 polling units far exceeded the margin of lead from the 1st respondent's announced result of 1,807,206 over the first runner-up, and 2,693,193 over the second runner-up.

PW4 also stated that in Benue State, neither the results he obtained from the IReV nor the CTCs of Form EC8As matched the results of the 1st respondent. He stated that the INEC CTCs of Form EC8As showed that LP got 272,468 votes and APC got 256,086 votes, while the results from the IReV portal showed that LP got 260,795 votes while APC got 268,630 votes. He added that the INEC announced result showed that LP got 308,372 votes and APC got 310,468 votes. He concluded that adding uncovered votes and deducting votes affected by over-voting, mutilation and alteration in Benue State, LP got 281,426 votes, while APC got 258,683 votes.

A look at the 18,088 blurred polling unit results which the witness claimed to have downloaded from the IReV portal, shows that they were not certified by 1st respondent. Being secondary evidence of public documents, they are clearly inadmissible. See: sections 89(e) and 90(c) of the Evidence Act, 2011 and *Emeka v Ikpeazu & Ors* (2017) LPELR- 41920 (SC), (2017) 15 NWLR (Pt.1589) 345. Of note is that PW4 admitted under cross examination by the 1st respondent that the primary source of the data he used in his investigation is from the IReV Portal. This clearly means that he based his investigation on inauthentic data since the essence of certification of public document is to ensure authenticity of public documents. See: *Egbue v. Araka* (2003) LPELR-532(SC) at pages 16-17, paras. D-A; (1988)3 NWLR (Pt.84) 598 and *Emmanuel v. Umana* (2006) LPELR-40037(SC) at pages 49-51, paras.B-A,reported as *Udom v. Umana* (No.1) (2016) 12 NWLR (Pt. 1526) 179.

Also under cross examination, PW4 stated that his reference to Form EC8A and the result on IReV portal are not the same thing and that Form EC8A is a paper, while the result on the IReV is a copy of it. He particularly admitted that by his reference to blurred Form EC8As on the IReV, he was not suggesting that the hard

copies of Forms EC8As are also blurred. This admission by PW4 has dealt a death-knell to the allegation made by the petitioners in paragraph 60 of the petition that lithe 1st respondent suppressed the 1st petitioner's scores in 18,088 polling units by deliberately uploading unreadable and blurred Forms EC8As on the IReV."

In fact, PW4 had under cross examination completely rubbished his own report when he admitted that the IReV portal is not capable of collating and tabulating the election results, and that it is the image of the Form EC8A that is transmitted to IReV while the hardcopy of the Form EC8A is taken to the collation centre, which he stated is collated at the Ward, Local Government, State and National collation centres. He also admitted that since the result in the Form EC8As is taken to the Collation Centres, the failure to transmit its image in IReV or that image transmitted is blurred will not change the result already entered in Form EC8A. Again, the witness admitted under cross examination that his report in exhibits PCD1, PCD2 and PCD3 only covered the two States of Rivers and Benue and that he worked on only available data and that if he had more data his report would have been different. He further admitted that his report (Exhibits PCD1, PCD2 and PDC3) is not a product of expertise as any secondary school student can do the simple arithmetic involved in it. This admissions by PW4 effectively rubbishes his entire report as inconclusive and manifestly unreliable. On the whole, the evidence of this witness, even if it were to be considered is devoid of any probative value.

As for the evidence of PW7, we have earlier analysed and evaluated her testimony and found that she was not only a person interested in this petition, the report in exhibits PCJ3A- F which she brought to court purportedly as an expert witness was merely downloaded by her from an AWS site which was openly accessible to the public. Her evidence is also of no probative value.

With regard to the evidence of PW8, I have earlier analysed and evaluated his evidence while resolving issue 2. Suffice it for me to state that I had found that PW8 having admitted that in the course of his commissioned work he had read the petition and the 1st respondent's reply, as well as the Electoral Act and INEC Regulations and Manual, and that he finished his final report in May, 2022 during the hearing of this petition, PW8 had practically worked to a pre-determined answer and his evidence was of no probative value. See: *Ladoja v Ajimobi* (supra).

PW9, who gave evidence as an accredited observer of the election, had stated that everything about the election in the polling unit which he observed went, as accreditation and voting took place, the votes were counted and the results were announced and recorded on Form EC8A but was not uploaded on the IReV at the polling unit. Under cross examination by the respondents, he restated that from his observation, the election went on smoothly in his polling unit and that the election officials complied with INEC regulations. He stated that the result was taken to the collation centre by the election officials. Rather than support the petitioners' case, the evidence of this witness actually reinforced the respondents' case that the election was conducted in substantial compliance with the Electoral Act and INEC Regulations and Guidelines.

PW10 stated that he acted as an ad-hoc Supervisory Presiding Officer for Madagali Ward and that on Election Day he collected the materials with security agents and other INEC ad hoc Presiding Officers, Assistant Presiding Officers and moved to Madagali Ward. He stated that voting went on well until 6:30 pm, and all voters who were on cue by 2pm duly voted at Unit 004 Dissa. He stated that after sorting and counting of the votes, the Presiding Officers did the entry and snapped the results with the BVAS but were unable to transmit and upload same to the INEC IReV portal after the result of the National Assembly elections was uploaded.

He stated that when the Presiding Officers complained to him, he asked them to come to the Registration Area where he requested them to meet the Registration Area Centre Tech who asked them to submit the BVAS to him for transmission, but was unable to upload.

On cross examination by the 1st respondents' counsel, PW8, stated that apart from the small issue between agents of APC and PDP which was satisfactorily resolved, everything went well and the results were entered into Form EC8As in the units and were properly announced. He added that the physical copies of the Form EC8As were taken to the Ward Collation Centre. On cross examination by 2nd and 3rd respondents, the witness confirmed that notwithstanding the difficulty in uploading the results, the collation of the Forms EC8A took place in the Ward. The evidence of this witness also supports the case of the respondents rather that of the petitioners.

PW11, the Head of Legal Services of National Information Technology Development Agency (NITDA) merely stated that he was subpoenaed to produce and tender the following documents:

(a) Correspondence/Document/letters/Emails sent by/from Independent National Electoral Commission (INEC) to National Information Technology Development Agency requesting for the IT clearance/approval of the IT Infrastructure to be deployed and/or deployed by INEC for the conduct of the 2023 general elections;

(b) The Certificate of clearance/approval issued by NITDA to INEC pursuant to any request in (a) above;

(c) Report submitted by INEC to NITDA containing Certification for the testing/review of the IT Infrastructure deployed for the conduct of the 2023 General Elections. He stated that they don't have any of the documents in their office. Under cross examination, by 2nd and 3rd respondents he stated that the NITDA Act does not contain Cyber Security Standards. He also stated under cross examination by the 4th respondent that their Supervising Ministry is Ministry of Communications and Digital Economy, and that the Minister stated that there were 16 million attempts to hack the INEC IT infrastructure on the day of the elections. The evidence of this witness is of no assistance to the petitioners.

PW12, the petitioners' star witness, whose evidence was merely a copy of the averments in the petition, stated that on the day of the election he voted at his polling unit at Dawaki, Abuja, after which he went to the Situation Room of his party, the 2nd petitioner. He stated that apart from his polling unit and the Situation Room, he was not present physically at any other place on the day of the election. He stated that he was not a collation agent or polling agent in any polling unit or collation centre. His evidence-in-chief was therefore mostly laced with hearsay. It is settled that hearsay evidence is inadmissible and has no probative value. See: *Ladoja v. Ajimobi* (2016) LPELR-40658(SC) at page 75, paras. B-D, (2016)10 NWLR (Pt. 1519) 87 and *Okereke v. Umahi* (2016) LPELR-40035(SC) at page 55, paras, B-C, (2016) 11 NWLR (Pt. 1524)438.

Apart from his evidence in chief being inadmissible hearsay, exhibit X1, a certified true copy of judgment of the Federal High Court, Abuja in suit no. FHC/ABJ/CS/1454/2022 was tendered through him under cross examination by the 1st respondent, and he read out a portion of the judgment of the court which was to the effect that the 1st respondent was under no mandatory obligation to electronically transmit or collate results of the election. He also admitted that he did not state in his statement on oath any figure unlawfully ascribed to the 2nd and 3rd respondents by the 1st respondent. He also stated that his party had agents throughout the Federation with over 133,000 agents. When asked by the 2nd and 3rd respondents' counsel to state the score of the Labour Party, the witness stated that he would not know scores of the Labour Party because the results are still being uploaded on the IReV. He added that he would not know the unlawful votes credited because he is not an expert and that the wasted votes are part of the statement made by the expert. When cross examined by the 4th respondent, PW12 said he was not aware that INEC Chairman had given a statement that INEC will not transmit results electronically. When confronted by the 4th respondent's counsel, he confirmed that his statement on oath wherein he stated that he will rely on the evidence of forensic expert was made on 20th March, 2023 while the final expert report he was relying on was made in May, 2023. It is clear that PW12 relied on an expert report that was not in existence at the time he made his statement. It is obvious that the evidence of this witness lacks credibility and is therefore manifestly unreliable.

PW13 was the only Presiding Officer called by the petitioners in this Petition. His evidence was that in his polling unit 035 at Open Field, Ward 04, Chikun Local Government Area of Kaduna State, the election went well and that thereafter all efforts to upload the Presidential election results as captured in Form EC8A failed except the National Assembly results. That when all efforts failed, he proceeded to the Collation Centre with other ad-hoc staff. When cross examined by 1st respondent's counsel, he stated that he recorded the results manually and the only problem he had that day was the uploading of the result and that when he could not upload the result, he called his supervising officer who told him to take the result to the Ward Collation Centre which he did. On cross examination by 2nd and 3rd respondent's counsel he confirmed that after recording the result manually, he signed and the party agents

also signed. When cross examined by the 4th respondent, he stated that after signing the result he gave copies to party agents. The evidence of this witness actually supports the case of the respondents that the election was conducted in substantial compliance with the Electoral Act, 2022.

In *Buhari v. INEC & ors* (2008) LPELR-814(SC), (2008) 4 NWLR (Pt. 1078) 546 the Supreme Court clearly stated the law at pages 172-173, paras. E-D, that:

> "A petitioner who contests the legality or lawfulness of votes cast in an election and the subsequent result must tender in evidence all the necessary documents by way of forms and other documents used at the election. He should not stop there. He must call witnesses to testify to the illegality or unlawfulness of the votes cast and prove that the illegality or unlawfulness substantially affected the result of the election. The documents are amongst those in which the results of the votes are recorded. The witnesses are those who saw it all on the day of the election; not those who picked the evidence from an eye witness. No. They must be eye witnesses too. Both forms and witnesses are vital for contesting the legality or lawfulness of the votes cast and the subsequent result of the election. One cannot be a substitute for the other. It is not enough for the petitioner to tender only the documents. It is incumbent on him to lead evidence in respect of the wrong doings or irregularities both in the conduct of the election and the recording of the votes; wrong doings and irregularities which affected substantially the result of the election. Proving an election petition or proof of an election petition is not as easy as the Englishman finding coffee on his breakfast table and sipping it with pleasure; particularly in the light of section 146(1) of the Electoral Act. A petitioner has a difficult though not impossible task."

See also: *Mohammed & anor v. Danladi & ors* (2019) LPELR-49138(CA) at pages 49-53, paras. F-D.

In this petition, where the petitioners have labelled several allegations against the 1st respondent such as suppression of scores; unlawful reduction and inflation of results; uploading of fictitious

results, misrepresentation and manipulation of results where no election took place; and wrong computation of results, it is evident from the above that the petitioners have not led any credible evidence to substantiate those allegations. Of the 13 witnesses they called, only two are presiding officers who were present at their polling units. Hence the petitioners have not been able to establish any of those malpractices which they alleged. The evidence of the witnesses which the petitioners called as experts to try establish that the 1st respondent is mandatorily required to transmit election results for purposes of collation or to link the delay in the upload of the Presidential Election results to IReV by the 1st respondent to any of the malpractices which they alleged are devoid of any value. The petitioners' allegations have remained mere speculations and unfounded accusations. The petitioners have failed to establish beyond reasonable doubt the corrupt practices which they alleged, as required of them under section 135(1) of the Evidence Act, 2011.

Petitioners' Allegation of Over-Voting:

On the petitioners' allegation of over-voting, learned counsel for the 1st respondent contended that to prove over-voting, the direct record of accredited voters in the BVAS machines are required alongside the Voters Register of the affected polling units. He pointed out that the petitioners failed to produce the BVAS machines and the Voters Register. He submitted that the petitioners want this court to rely only on the expert opinion of PW4 which is not credible. He submitted that when PW4 was confronted with the results in Polling Unit 002 of Ward 7 of Degema LGA, Rivers State which was part of his report on over-voting in exhibit PCD2he stated that there was no over-voting as the number of votes cast was 40 while number of accredited voters was also 40. He relied on *Oyetola v. INEC* (2023) LPELR-60392 (SC), (2023) 11 NWLR (Pt.1894) 125 and urged this court to discountenance PW4's evidence on over-voting. The other respondents did not make any submission on this point.

In his respondent to the 1st respondent's submission, learned counsel for the petitioners submitted that the attempt by the learned counsel for the 1st respondent to discredit the evidence of PW4 by alluding to PW4's evidence on Polling Unit 002 of Ward 7 Degema, Rivers State which forms part of exhibit PCD2 was made to mislead the Court as the learned counsel for the 1st respondent did not relate the report on over voting in Appendix G of exhibit PCD2 with the

Unchallenged BVAS accreditation for the polling unit in question which shows that there was no accreditation. He submitted that the record shows there was no legitimate voting at that polling station. He relied on *Oyetola v. INEC* (supra).

The petitioners' allegation of over-voting is contained in paragraphs 72, 76 and 77 of the petition which are:

> "72. The petitioners plead that votes cast in a Polling Unit should not be more than the total number of accredited voters in the BVAS. The petitioners shall rely on the Forensic Reports of the election materials showing that the votes cast in the Polling Units in Ekiti State, Oyo State, Ondo State, Taraba State, Osun State, Kano State, Rivers State, Borno State, Katsina State, Kwara State, Gombe State, Yobe State and Niger State exceeded the number of voters accredited on the BVAS in those States."
>
> 76. The petitioners further contend that when the purported scores recorded in the polling units where the above instances of over-voting occurred are deducted from the alleged votes obtained by the 2nd respondent and on which the 1st respondent based the hurried declaration of the 2nd respondent as the winner of the election, the margin of the purported lead between the 2nd respondent and the petitioners will be far less than the number of voters who ought to legitimately vote in those polling units. The petitioners plead and shall rely on Form EC40G (iii) issued by the 1st respondent.
>
> 77. The petitioners state that instances of over-voting in the conduct of the Presidential election held on 25th February, 2023 occurred in more places than stated on the Form EC40G (iii). The petitioners hereby also plead and shall rely on the Report of the BVAS Accreditation in the polling units, which Report listed below and which is incorporated as part of this petition."

In the earlier ruling of this court, the respondents' various preliminary objections to the competence of the above averments of the petitioners' allegation of over-voting were upheld and the court had struck out the said paragraphs for being vague, nebulous and imprecise, having failed to disclose the specific polling units in the States where the over-voting is alleged to have occurred, the

number of votes affected, the alleged margin of lead, etc. Indeed.in that ruling. I had observed that the Forensic Report containing the details of the polling units and other information which the petitioners said they have incorporated to the pleadings by reference were not filed along with the petition as to be part of the pleadings. See: *Belgore v. Ahmed* (supra); and *PDP v INEC & 3 ors* (supra).

In proof of their above allegation of over-voting however, the petitioners solely relied on the evidence of PW4, a subpoenaed expert witness, as well as the Forensic Report made by him which is contained in exhibits PCD1, PCD2 and PCD3. PW4's evidence was basically that from his investigation in exhibits PCD1, PCD2and PCD3, he discovered that there was over-voting in 4,457 polling units which affected 2,317,129 voters who had collected their PVCs. He stated that this also exceeds the margin of lead of 1,807,206 over the first runner-up. He also stated that from his analysis of Rivers State results, the 1st respondent announced results which were inconsistent with those uploaded on the IReV portal.PW4 also stated that from the Form EC8As downloaded from the IReV portal, there is evidence of mutilations and alterations in favour of APC and against the Labour Party (LP). He stated that from the results on the IReV portal, LP got 208,564 votes, while APC got 118,999 votes in Rivers State, as against 175,071 votes for LP and 231,591 votes for APC. He concluded that when the unlawful figures are deducted, it will amount to 205,110 votes for LP and 84,108 votes for APC.

In the ruling on objections to witnesses and documents made in the earlier part of this judgment, the witness statement on oath of PW4 was one of those struck out for offending Paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022,same not having been filed along with the petition. With the statement of PW4 struck out for being incompetent, exhibits PCD1, PCD2 and PCD3, the Forensic Report tendered by him were also struck out for being inadmissible.

As stated earlier, the oral evidence of PW4 contained in his witness statement on oath and his report in exhibits PCD1, PCD2 and PCD3 are the only evidence adduced by the petitioners to establish their allegation of over-voting. With the witness statement on oath of PW4 having been struck out for being incompetent and the Forensic Report in exhibits PCD1, PCD2 and PCD3 also struck out for being inadmissible, there was no other evidence to

Substantiate the petitioners' allegation of over-voting. The petitioners have therefore failed to prove their allegation of over-voting. Issue 3 is also resolved against the petitioners.

Based on all the foregoing, it is evident that the petitioners have failed to establish their allegations of corrupt practices and over-voting. In consequence, issue 3 is also resolved against the petitioners and in favour of the respondents.

Issue 4

> Whether from the evidence adduced the petitioners have established that the 2nd respondent was not duly elected by majority of lawful votes cast at the election.

On this issue, all the respondents referred to paragraphs 80-82 of the petition and submitted that the contention of the petitioners that for a candidate to be declared a winner of Presidential election he must score not less than one-quarter of the votes cast in the Federal Capital Territory (FCT) is misconceived. He submitted that this issue being one of interpretation of the provisions of section 134(2) of the Constitution, the Supreme Court had admonished against an interpretation of stultifying narrowness and encouraged a more liberal and broad interpretation. He cited *Rabiu v. State* (1981) 2 NCLR 293; *Global Excellence Comm. Ltd v. Duke* (2007)16 NWLR (Pt. 1059) 22 at 41- 42; A.-G., of *Bendel State v. A.-G., of the Federation & ors* (1982) 3 NCLR 1; and *Maihaja v. Gaidam* (2018)4 NWLR (Pt. 1610) 454 at 492, para. B.

Learned counsel cited section 134(2) (b) of the 1999 Constitution and contended that to suggest that scoring at least one-quarter of the votes in the FCT is a mandatory requirement before a candidate can be declared winner of a Presidential election will be to ignore other salient provisions of that section all of which must be read together to find the intention of the legislature. They pointed out that the provisions of section 132(4) of the Constitution states that for the purpose of an election to the Office of the President the whole of the Federation shall be regarded as one constituency, while section 318 has defined the Federation as the Federal Republic of Nigeria, which by section 2 of the Constitution is one indivisible and indissoluble sovereign entity consisting of States and a Federal Capital Territory.

Learned counsel then referred to section 299 which provides that the provisions of the Constitution shall apply to the Federal Capital Territory as if it were one of the States of the Federation.

They submitted that section 299 of the 1999 Constitution has been interpreted and the status of the FCT, Abuja has been clearly determined. They cited *Sulaiman v A.P.C.* (2023) 5 NWLR (Pt.1877) 211 at 255; *Bakari v. Ogundipe* (2021)5 NWLR (Pt, 1768)1at 31; *Baba-Panya v President, FRN* (2018) 15 NWLR (Pt. 1643)395; and *Okoyode v F.C.D.A.* (2006) AII FWLR (Pt. 298) 1200 at 48-50, paras. D-E. They submitted that if the provisions of sections 134(2)(b) and 299 of the Constitution are read together, it will be clear that the intendment of section 134(2)(b) in specifying "all the States in the Federation and the Federal Capital Territory, Abuja" is not for the Federal Capital Territory, Abuja to be considered separately as requiring that a candidate must score not less than one quarter in the Federal Capital Territory, Abuja before he is declared winner in a Presidential election. They added that the word "and", as used in section 134(2) (b) of the Constitution, has been judicially interpreted, citing the cases of *Buhari v. INEC & ors* (2008) LPELR-814(SC) at 77-78, paras. E-B, (2008) 4 NWLR (Pt.1078) 546; and *Dasuki v. Director General*, *State Security & ors* (2019) LPELR-48113(CA); (2020) 10 NWLR (Pt.1731)136.They argued that the provisions of section 134(2)(b) as it relates to the requirement of having not less than one-quarter of the votes in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja ought to be taken as an aggregate of all the States in the Federation and the Federal Capital Territory, Abuja, comprising of the 36 States plus the FCT, Abuja, making the 37th State. He urged the court to so hold and discountenance the petitioners' contention on this issue.

Arguing *per contra*, learned senior counsel for the petitioners referred to paragraph 81 of the petition, wherein the petitioners have averred that the 2nd respondent besides not scoring a majority of lawful votes cast at the election, he did not obtain at least one quarter of the votes cast in the Federal Capital Territory, Abuja and ought not to have been declared and returned elected. Learned counsel for the petitioners submitted that when examining section 134(2) (b), section 299 of the Constitution must be considered. He submitted that the word "and" as used in section 134(2) (b) of the Constitution is conjunctive as judicially interpreted in a litany of cases. He cited *Abubakar v Yar'adua* (2008) 19 NWLR (Pt. 1120) 1. According to him, the language of the Constitution is clearly to the effect that for a candidate to be declared the winner of the Presidential election,

that candidate must secure at least one quarter of the votes cast in two thirds of the entire 36 States of the Federation, which is 24 States,and that candidate must also secure not less than one quarter of the votes cast in the Federal Capital Territory, Abuja. He argued that the conditions in section 134(b) are conjunctive and must be interpreted as such.

Learned counsel for the petitioners referred to the decisions of this court in *Okoyode v. FCDA* (supra); and *Panya v. President, FRN & ors* (supra), which were cited by the respondents. He submitted that those decisions were only on section 299 and none of them interpreted section 299 together with section 134(2) and they cannot wholly guide the interpretation on the combined effect of those provisions. Counsel argued that the purposive interpretation of the provisions of sections 134(2) and 299 is that obtaining 25% votes in the FCT is an additional stand-alone requirement for election into the office of the President, more so, as section 3 and Part II of the Second Schedule of the Constitution list the States of the Federation and FCT is not included as a State.

It was also the argument of the petitioners' counsel that the provisions of section 299 which states that the provisions of the Constitution shall apply to the FCT as if it were one of the States of the Federation is for the purpose of enjoying executive, legislative and judicial powers vested in the State. He submitted that the provision of that part of section 299 cannot be read in isolation of its remaining part which relate to the executive, legislative and judicial powers, since the Constitution must be read together with its surrounding provisions. He cited *Iwuchukwu & anor v. A.-G., Anambra States & anor* (2015) LPELR-24487(CA); *Grand Systems Petroleum Ltd v. Access Bank Plc* (2015)3 NWLR (Pt.1446) 317 at 346, paras. E-H.

Counsel further submitted that section 299 which states that FCT is to be treated as a State is a general provision, while section 134(2)(b) is a specific provision on the conditions for declaration of a Presidential Candidate as winner of the election. He contended that a special provision cannot be derogated from a general provision. He cited *Kraus Thompson Organisation v. Nationail Institute for Policy & Staregis Studies* (2004) LPELR-1714(SC) at page 18, paras. D- E, (2004) 17 NWLR (Pt. 901) 44; *Martins Schroeder & Co. v. Major & Co. Ltd.* (1989) 2 NWLR (Pt. 101) 1 (SC); *Kabo A. Limited v. De O. Corporation* (2022) LPELR-58721(CA) at paras.

A-C and *Awolowo V. Shagari & Ors* (1979) FNLR Vol; 979)2.1. : (1979) 6-9 SC 1.

Learned counsel submitted that the approach adopted by the respondents to the interpretation of section 134(2) (b) is wrong and argued that the section ought not to be interpreted without recourse to sections 2(2) and 14(2) of the Constitution under Chapter II. He relied on O*kogie & Ors v. A.-G., Lagos State* (1981) 2 NCLR 337; *A.-G., Ondo State v. A.-G., Federation & ors* (2002) 9 NWLR (Pt.772) 222; and *Rabiu v. State* (supra); and *Buhari v. INEC & ors* (2008) LPELR-814 (SC), (2008) 4 NWLR (Pt. 1078) 546 and (2021) LPELR-54655. Counsel further submitted an important cannon of interpretation is that the express mention of one of two related things excludes that which is not mentioned, and the use of different phrases in one section confirms the difference between the two phrases. He argued that every provision in Part I, Chapter VIII of the Constitution such as section 299 relate only to that part and section 134 cannot be interpreted with reference to section 299 of the Constitution, bearing in mind section 3(5) of the same Constitution. He finally urged this court to discountenance the respondents' argument and resolve this issue in favour of the petitioners.

Resolution of Issue 4

This issue basically borders on the interpretation of section 134(2) (b) of the 1999 Constitution. The appropriate starting point for the resolution of this issue therefore, is to reproduce, for ease of reference, section 134(2)(a) & (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the interpretation of which is in contention. It reads:

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

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

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

The contention is as to the interpretation to be accorded to paragraph (b) of subsection (2) of section 134 quoted above. In particular, the contention is whether or not by the wordings in that

paragraph a candidate must, in addition to scoring not less than one-quarter of the votes cast in at least two-thirds of the States in the Federation, also score one-quarter of the votes cast in the Federal Capital Territory Abuja (FCT) before he can be deemed to have been duly elected. In other words, whether in determining two-thirds of the States of the Federation the Federal Capital Territory is to be included and regarded as one of the States of the Federation, or its status is to be regarded as distinct from the other States of the Federation, such that scoring one-quarter of votes in the FCT is a mandatory requirement for a candidate to be deemed duly elected as President.

It is pertinent to state that unlike interpretation of statutes, the interpretation of Constitution has its own guiding principles. In *F.R.N. v. Nganjiwa*, which was cited by the petitioners as SC/794/2019, but which is reported as *F.R.N. v. Nganjiwa* (2022) LPELR-58066 (SC), (2022) 17 NWLR (Pt. 1660) 407 the Supreme Court has succinctly reviewed decided cases on interpretation of the Constitution and outlined these guiding principles:

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

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

(c) Where the words are clear and unambiguous, a literal interpretation will be applied, thus according the words their plain and grammatical meaning.

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

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

(f) If the words are ambiguous, the law maker's intention must be sought, first, in the Constitution itself, then in

other legislation and contemporary circumstances and by resort to the mischief rule.

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

See also on this: *Nafiu Rabiu v. State* (1980) 8-11 SC 130 at 148. (1981) 2 NCLR 293; A.-G., *Bendel State v. A.-G., Federation & ors* (1981) NSCC 314 at 372-373, (1982)3 NCLR 1; *Buhari v Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 281; *Savannah Bank Ltd. v. Ajilo* (1989) 1 NWLR (Pt. 97) 305 at 326; and *A.-G., Abia State v. A.-G., Federation* (2005)All FWLR (Pt.275)414 at 450, (2005) 12 NWLR (Pt. 940) 452 which were also referred to by the apex court.

In finding appropriate answer to this issue, I wish to observe, first, that with all due respect to counsel to the petitioners, their interpretation of section 134(2)(b) of the 1999 Constitution founded principally on a fixation with the word “and" appearing between the phrases “he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation," and "the Federal Capital Territory, Abuja,” is completely fallacious, if not out rightly ludicrous. Even their recourse to the case of *Abubakar v. Yar'adua* (2008) 19 NWLR (Pt.1120) 1, does not help their argument because Tobi, JSC made it clear that a purposive rule of interpretation will not be appropriate “... where the intention of the lawmaker is clear, precise and unequivocal, so much so that a person can say "Yes this is what the lawmaker has in his mind”.

Thus, in the interpretation of the Constitution, the principles upon which the Constitution was established rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions. See: *Global Excellence Communications Ltd. v. Donald Duke* (2007) 6 NWLR (Pt. 1059)22 at 41 -41 (SC); (2007) LPELR-1323 (SC) at pages 18-19;4.-G., *Bendel State v. A.-G., Federation* (1982) 3 NCLR 1; *Saraki v. F.R.N.*(2016)3 NWLR (Pt. 1500)531; *Skye Bank Plc v. Iwu* (2017)16 NWLR (Pt. 1590) 24; *Shelim v. Gobang* (2009) All FWLR (Pt.496) 1866 at 1878 (SC), (2009) 12 NWLR (Pt. 1156)435.

That, this is the position, is not at all open to doubt. In *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) LPELR-808 (SC), (1983)1 SCNLR 296 Nnamani, JSC, of blessed memory, speaking for the apex court, confirmed it when, after a painstaking analysis of the cases on the point, said at pages 30-32 that:

> "A Constitution is a living document (not just a statute) providing a framework for the governance of a country not only for now but for generations yet unborn. In construing it, undue regard must not be paid to merely technical rules otherwise the objects of its provisions as well as the intention of the framers of the Constitution would be frustrated.

As was stated in *Minister of Home Affairs v. Fisher* (1979) 2W.L.R.899, (1980) A.C. 319 @ 323, a constitutional requirement should not necessarily be construed in a manner according to rules which apply to Acts of Parliament. Although the manner of interpretation of a constitutional instrument should give effect to the language used, recognition should also be given to the character and origins of the instrument. Such an instrument should be treated as sui generis calling for principles of interpretation of its own suitable to its character without necessary acceptance of all the presumptions that are relevant to legislation of private law.

It has also been accepted by all our courts that a broad and liberal interpretation should prevail in interpreting the provisions of our Constitution although one has constantly to bear in mind the object which such provisions were intended to serve. Sir Udo Udoma, J.S.C, very aptly stated this in *Nafiu Rabiu v. The State* (1980) 8-11 SC 130@148, (1981) 2 NCLR 293 where the learned Justice said:

> 'My Lords, it is my view that the approach of this court to the construction of the Constitution should be, and so it has been, one of liberalism, probably a variation of the theme of the general *maxim ut magis valeat quam pereat*. I do not conceive it to be the duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accordance with the words and sense of such provisions will serve to enforce and protect such ends."

Some years down the line in *Global Excellence Communication Ltd. v. Donald Duke* (2007) LPELR-1323 (SC), (2007) 16 NWLR (Pt. 1059) 22 Onnoghen, JSC, later CJN, reiterated the relevant principles for interpretation of the Constitution, with His lordship saying, among others, at page 19,that:

> 'The principles upon which the Constitution was established, rather than the direct operation or literal meaning of the words used measure the scope and purpose of its provisions. The words of the Constitution are therefore not to be read with stultifying narrowness."

All these were further followed by this court recently in *Federal Republic of Nigeria v. Muhammadu Maigari Dingyadi* (2018) LPELR-4606 (CA), in the following way at page 33:

> "One main guiding post is that the principles upon which the Constitution was established rather than the direct operation or literal meaning of the words used measure the purpose and scope of its provisions: See *Global Excellence Communications Ltd. v. Donald Duke* (2007) 6 NWLR (Pt. 1059) 22 @ 41-41 (SC); Attorney-General of *Bendel State v. Attorney General of the Federation* (1982) 3 NCLR 1; *Saraki v. F.RN.*(2016) 3 NWLR (Pt. 1500) 531; *Skye Bank Plc v. lwu* (2017) 16 NWLR (Pt. 1590) 24. There is always a need for the fulfilment of the object and true intent of the Constitution. Therefore, the Constitution must always be construed in such a way that it protects what it sets out to protect and guide what it is meant to guide - *Adeleke v. Oyo State House of Assembly* (2006) 6 NWLR (Pt. 1006) 608. In interpreting the Constitution of a nation, it is the duty of the Court to ensure the words of the Constitution preserve the intendment of the Constitution- *Okogie v. A.-G., Lagos State* (1989)2 NCLR 337, *Abaribe v Speaker Abia State House of Assembly* (2002) 14 NWLR (Pt. 788) 466, *Marwa v. Nyako* (2012) LPELR-7837 (SC); (2012) 6 NWLR (Pt. 1296) 199. Every Constitution has a life and moving spirit within it and it is this spirit that forms the raison de'entre of the Constitution without which the Constitution will be a dead piece of document. The life and moving spirit of the Constitution of this country is

captured in the Preamble. It has been held that when a Constitutional provision is interpreted, the cardinal rule is to look to the Preamble to the Constitution as guiding star, and the directive principles of State Policy as the 'book of interpretation', and that while the Preamble embodies the hopes and aspirations of the people, the Directive Principles set out the proximate grounds in the governance of the country - *Thakur v. Union of India* (2008) 6 SCC 1. In other words, in interpreting the wordings of section 212(1)(a) of the 1999 Constitution (as amended), the Court should be guided by principles upon which the Constitution was established rather than by the direct operation or literal meaning of the words used in the provision, and where the literal meaning of the words used are not in consonance with the guiding principles, literal interpretation must be jettisoned for another approach that accords with the guiding principles of the Constitution- *Abaribe v. Speaker, Abia State House of Assembly* (supra), (2002) 14 NWLR (Pt. 788) 466;*Global Excellence Communications Ltd. v. Donald Duke* (2007) 6 NWLR(Pt. 1059) 22.The interpretation that would serve the interest of the Constitution and best carries out its objects and purpose must always be preferred- *Kalu v. State* (1988) 13 NWLR (Pt.583) 531."

Following these well-settled guidelines, our first port of call in unlocking the argument of the petitioners is the Preamble to the 1999 Constitution and the Directive Principles of State Policy contained therein all of which embody the principles of the Constitution. The Preamble to the 1999 Constitution loudly proclaims equality between citizens as its cornerstone among others, thus:

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

….

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

DO HEREBY MAKE AND GIVE TO OURSELVES the following Constitution:

For those who are not used to reading preambles. the Constitution still in its Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the Constitution, which this court aptly described as the 'road to construction' in *FRN v. Dingyadi* (supra), repeats this equality principle. Under its Social Objectives provision of that Chapter in section 17 thereof, it again proclaims that:

"(1) The State Social order is founded on ideals of Freedom, Equality and Justice.

(2) In furtherance of the social order-

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

Equality of rights in every citizen as stated in this provision cannot by any means be read to exclude equality of the weight and value of their votes. No, it includes it. Even more so, when the issue here is the right of every such citizen to elect with their votes their President whose policies are supposed to and will affect all of them equally regardless of which part of the country they reside or live.

So even stopping here, the futility and hollowness in the argument of the petitioners that the votes of the voters in the FCT, Abuja have more weight than other voters in the country, to the extent of their votes purportedly have a veto effect on other votes, is rendered bare. That notwithstanding, let us still proceed to consider, for whatever it is worth, their interpretation of section 134(2) (b) of the same 1999 Constitution, which incidentally centres around the word 'and' in that provision.

In the first place, the settled position of the law is that in interpreting a constitutional provisions the court should be guided by the principles upon which the Constitution was established, rather than by the direct operation or literal meaning of the words used in the provisions, and where the literal meaning of the words used are not in consonance with the guiding principles, literal interpretation must be jettisoned for another approach that accords with the guiding principles of the Constitution. It is quite clear that a calm reading of section 134(2) (b) of the Constitution will leave no one in doubt that the use of the word 'and' by the framers, between the words

"all the States in the Federation" and (the Federal Capital Territory, Abuja" indicates nothing more than the framers' understandable desire for consistency in referring to the Federal Capital Territory by that name, as it is done all through the Constitution whenever reference is made to the Federal Capital Territory. The word 'and' and 'Federal Capital Territory, Abuja' do not by any means imply the meaning imputed to it by the petitioners.

In any event, section 299 of the Constitution dispels any lingering doubt that may still be existing in anyone's mind by stating clearly that:

> "The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation; and accordingly-
>
> (a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja;
>
> (b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution.
>
> (c) the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be necessary to bring them into conformity with the provisions of this section."(Italics mine)

This provision states most unequivocally that the entire provisions of the Constitution shall apply to the Federal Capital Territory as if it were one of the States of the Federation. It is noteworthy that the punctuation mark employed by the framers immediately after the part of that provision ending with "Federation" emphasized by me, is a semicolon whose function in a sentence is to separate independent clauses of a compound sentence: See Meriam Webster's Online Dictionary which defines 'semicolon' as "a punctuation mark used chiefly in a coordinating function between major sentence elements (such as independent clauses of

a compound sentence)". Wikipedia also explains its use thus: “In the English Language, a semicolon is most commonly used to link two independent clauses that are closely related in thought, such as when restating the preceding idea with a different expression."

The point being made here is that, contrary to the position of the petitioners, by the express provisions of section 299 above, the provisions of the entire Constitution shall apply to the Federal Capital Territory as if it were one of the States of the Federation. This means that section 134(2) (b) of the same Constitution, requiring a presidential candidate to poll at least one quarter of the votes cast in two-thirds of the States of the Federation in order to be returned elected, means nothing more than that the Federal Capital Territory shall be taken into account in calculating the said two-third of the States of the Federation. In other words, the FCT is no more than one of the States of the Federation for the purpose of that calculation. Nothing more than that can be implied or inferable from section 134(2) (b) of the Constitution.

If anything, this position is confirmed in the cases of *Bakari v. Ogundipe* (2021) 5 NWLR (Pt. 1768) 1 at 38, where it was said by the apex court that

> “By virtue of the provisions of the section 299 of the Constitution it is so clear that the Federal Capital of Nigeria has the same status of a State; it is as if it is one of the States of the Federation."; and *Ibori v. Ogboru* (2009) 6 NWLR (Pt.920) 102 at 138,where it was confirmed by this court that "The Federal Capital Territory, Abuja is to be treated like a State by virtue of section 299 of the 1999 Constitution....If the Federal Capital Territory, Abuja, is to be treated like any other State, then it is not superior to or inferior to any other State in Nigeria.”"

It is also my considered view that if the framers had wanted to make scoring one-quarter of votes cast in the Federal Capital Territory, Abuja, a specific requirement for the return of a Presidential candidate, they would have made that intention plain by using words that clearly separate the scoring of one-quarter of votes in the Federal Capital Territory as a distinct requirement.

As expressly stated in section 299 of the Constitution, for the purposes of fulfilling the requirements of section 134(2) (b) of the Constitution for the return of a Presidential candidate as duly

Elected, the Federal Capital Territory, Abuja, is to be treated as one of the States in the calculation of two-third of the States of the Federation. Such that if the candidate polls 25% or one-quarter of the votes in two-thirds of 37 States of the Federation (FCT Abuja inclusive), the Presidential Candidate shall be deemed to have been duly elected, even if he fails to secure 25% of the votes cast in the Federal Capital Territory, Abuja, as the 2nd respondent did.

In conclusion, I hold, without any equivocation, that in a Presidential election, polling one quarter or 25% of total votes cast in the Federal Capital Territory of Abuja is not a separate precondition for a candidate to be deemed as duly elected under section 134 of the Constitution. In consequence, issue 4 is also resolved against the petitioners and in favour of the respondents.

It is trite law that there is a rebuttable presumption of regularity with respect to election results and it is for a petitioner who challenges that result to rebut such presumption with credible evidence. This settled principle was stated by the Supreme Court in *Buhari v. INEC* (supra), where at page 54, paras. D-F, Tobi, JSC held as follows:

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

Similarly, in *Nyesom v. Peterside & ors* (2016) LPELR-40036(SC), (2016)7 NWLR (Pt. 1512) 452 the apex court reiterated this position when His Lordship Kekere- Ekun, JSC held that:

The law is trite that the results declared by INEC enjoy a presumption of regularity. In other words, they are prima facie correct. The onus is on the petitioner to prove the contrary.

Indeed, in *Udom Gabriel Emmanuel v. Umana Okon Umana & ors* (2016) LPELR-40037(SC), reported as *Udom v. Umana* (No.1) (2016) 12 NWLR (Pt. 1526) 179 this legal position was driven home when the apex court stated at pages 37-38, paras. C-A, as follows:

> Surely, the presumption of regularity enjoyed by INEC's results are not rebuttable by presumptuous

> postulations or rhetorical questions, but only by cogent, credible and acceptable evidence... This must be so, for a court of law can only pronounce judgment based on credible evidence presented and properly established before it. It is, thus, not at liberty to go outside the evidence and search for extraneous evidence in favour of the parties.

See also on this: *Abubakar v. Yar'Adua* (2009) 19 NWLR (Pt. 1120) 1; and C.P.C. v. IN.E.C. (2011) LPELR-8257(SC), per Adekeye, JSC at 57, paras. A-C, (2011)18 NWLR (Pt.1279) 493; *Louis v. IN.E.C. & Ors* (2010) LPELR-4442(CA), per Augie, JCA (as he then was) at page 30, paras. A-D and *Ikiriko Odhuluma Hope v. Barrister Joseph Elleh & anor* (2009) LPELR-8520(CA), per Saulawa, JCA at page 19,paras.C-F.

From the foregoing, it is clearly evident that the petitioners have failed to discharge the burden of proof placed on them by law. They have failed to prove any of the three grounds contained in paragraph 20 of this petition. They have not been able to lead any cogent, credible and acceptable evidence to rebut the legal presumption of correctness of the results of the Presidential Election held on 25th February, 2023, as declared by the 1st respondent.

Having resolved all four issues in this petition against the petitioners, this petition is clearly unmeritorious.

ADAH, J.C.A.: I am in full agreement with the lead judgment delivered by my learned brother, Haruna Simon Tsammani, JCA in this three consolidated petitions which are petitions No: CA/PEPC/03/2023; CA/PEPC/04/2023; CA/PEPC/05/2023. These petitions were filed against the election into the office of the President of the Federal Republic of Nigeria, which election was conducted in Nigeria on 25th February, 2023.

I agree also with the consolidated rulings on the various objections and other interlocutory applications relating to the competence of witnesses and the documents tendered in the three petitions.

I also agree with the reasoning and the conclusions arrived at the rulings on the preliminary objections and the substantial issues raised therein.

In any concluded election, there are bound to be a winner and losers. While the winner celebrates victory, an aggrieved loser may come before the court to ventilate his grievances. This is made possible by the Constitution of the Federal Republic of Nigeria 1999 (as amended) which in section 6 empowers courts to determine disputes, including election disputes.

It is well settled that an election petition by nature is *sui generis*, of its own kind or class. It is not like going to court to make a claim of debt, contract or tort. It has its own character and it is unique by its nature. The slightest non-compliance with a procedural step which otherwise could either be cured or waived in ordinary civil proceedings could result in a fatal consequence to the petition.

See *Buhari v. Yusuf* (2003) LPELR-812(SC), (2003) 14NWLR (Pt.841) 446; *Hassan v. Aliyu* (2010) 17 NWLR (Pt. 1223) 547; *Pereworinimi v. Lokpobiri & Ors.* (2020) LPELR-49505, Reported as *Lokpobiri v. A.P.C.* (2021)3 NWLR (Pt. 1764) 538; *Oke & Anor.v. Mimiko & Ors.* (2013), (2014) 1 NWLR (Pt. 1388) 225; *Eze v. Umahi & Ors.* (2022) LPELR-59157 (SC); (2023) 6 NWLR (Pt.1880) 383; *Nyesom v. Peterside & Ors.* (2016) LPELR-40036(SC); (2016) 7 NWLR (Pt. 1512) 452.

Election petition as a special proceeding is specifically regulated by the Constitution of the Federal Republic of Nigeria 1999, the Electoral Act and other Rules of procedure such as the Federal High Court (Civil Procedure) Rules and Practice Direction of the Honourable President of the Court of Appeal for the hearing of the election petition and the election petition appeals.

By section 285(5) of the Constitution, an election petition shall be filed within 21 days after the date of the declaration of result of the election; and by section 285(6) thereof an Election Tribunal shall deliver its judgment in writing within 180 days. These time lines are sacrosanct and cannot be extended by the court.

It is trite that under the 1st Schedule of the Electoral Act, the election petition to be filed is well regulated. See paragraph 4(5), (6) of the Electoral Act, 2022 which provides as follows:

"(5) The election petition shall be accompanied by-

(a) a list of the witnesses that the petitioner intends to call in proof of the petition;

(b) written statements on oath of the witnesses; and

(c) copies or list of every document to be relied on at the hearing of the petition.

(6) A petition which fails to comply with subparagraph (5) shall not be accepted for filing by the Secretary.

(7) An election petition, which does not comply with subparagraph (1) or any provision of that subparagraph is defective and may be struck out by the tribunal or court."

The word 'shall' used in this Legislation makes it mandatory for a petitioner to comply with that provision of the law. Failure to comply is fatal.

Election petitions are fought on pleadings, competent and credible witnesses. Where a petition is deficient in pleadings and evidence, it is difficult to prove the petition. In the instant petitions, the petitioners' pleadings were deficient. While they complained of non-compliance with the Electoral Act against 1st respondent, their own petitions were massively deficient in compliance with the Act.

The lead judgment has elaborately dealt with these issues. When a court is called upon to determine an election dispute, he is called upon to do justice. Our notion of doing justice is not that of doing justice according to the whims and caprices of the Judges or the parties. It must be justice according to law. Justice according to law is also that which is neither based on technicality nor justice according to the suggestive clout of pressure groups, but such as substantially meets the demands of justice. This with all respect, is what we have done in the lead judgment.

I therefore concur with the leading judgment that these three consolidated petitions having not been proved are hereby dismissed.

I abide by the consequential orders as made in the lead judgment.

BOLAJI-YUSUFF, J.C.A.: I Have read the lead the rulings and the judgments of my learned brother, Haruna Simon Tsammani, JCA in the above consolidated petitions. I agree with his reasoning and conclusion in the ruling and judgment in each petition and adopt same as mine. I add a few words for emphasis.

Ground 1 of the petition is that the 2nd respondent was, at time of the election, not qualified to contest the election. The 1st complaint under this ground is that lithe purported sponsorship

of the 2nd and 3rd respondents by the 4th respondent was rendered invalid by reason of the 3rd respondent knowingly allowing himself to be nominated as the Vice-Presidential Candidate whilst he was still a Senatorial Candidate for the Borno Central Constituency. The controversy about the 3rd respondent knowingly allowing himself to be nominated in more than one constituency was the subject matter in *P.D.P. v. I.N.E.C. & Ors.* (2023) LPELR-60457(SC),(2023)13NWLR (Pt. 1900) 89.The Supreme Court per Okoro, JSC, Augie, JSC, Ogunwumiju, JSC and Agim, JSC in their concurring opinions held that the 3rd respondent having withdrawn his nomination and personally delivered the notice of the withdrawal to his party (4th respondent in this petition) on 6th July, 2022, he was no longer a candidate for the Borno Central Constituency Senatorial election and his subsequent nomination as the Vice-Presidential Candidate for the presidential election was not multiple nomination.

The opinion of the Supreme Court per Okoro, JSC, Augie, JSC, Ogunwumiju, JSC and Agim, JSC is not a comment or observation made in passing. It is an exposition of the law on withdrawal of a candidate from an election and the allegation that the 3rd respondent knowingly allowed himself to be nominated as the Vice-Presidential Candidate whilst he was still a Senatorial Candidate for the Borno Central Constituency. Concurring opinion forms part of the lead judgment and it is meant to complete same by way of addition or an improvement on the issues resolved in the lead judgment. See *Nwana v. F.C.D.A.* (2004) 13 NWLR (Pt.889)128 at (B-C); *Oloruntoba-Oju & Ors. v. Abdul-Raheem & Ors*. (2009) LPELR-2596 at 59-60(F-B); (2009) 13 NWLR (Pt. 1157)83. *Bot & Ors. v. Jos Electricity Distribution Plc* (2021) LPELR-55327(SC) at 19-20 (B-A);(2021) 15 NWLR (Pt. 1798) 53. The Supreme Court having rendered its considered and definite opinion on the validity of the nomination of the 2nd respondent as a Vice Presidential Candidate of the 4th respondent, attempt to re-open the issue in this court is a misadventure.

The 2nd complaint is that the 2nd respondent was at the time of the election not qualified to contest for the office of the president as he was fined the sum of $460,000.00 (Four Hundred and Sixty Thousand Dollars) for an offence involving dishonesty, namely narcotics trafficking by the United States District Court, Northern District of Illinois, Eastern Division, in Case No. 93C 4483 on 4/10/1993. The contention of the learned counsel for the petitioners

is that the order of forfeiture made by the court is a fine under section 137(1)(d) of the 1999 Constitution of the Federal Republic of Nigeria.

It is a settled principle of interpretation that where the words used in the provisions of the Constitution are clear and unambiguous, same must be given their plain and ordinary meaning unless to do so will lead to absurdity. See *Abegunde v. The Ondo State House of Assembly & Ors.* (2015) LPELR-24588 (SC) at 28-29 (D-B), (2015)8 NWLR (Pt. 1461) 314; *Saraki v Federal Republic of Nigeria* (2016) LPELR-40013 (SC) at 108 B-E), (2016)3 NWLR (Pt.1500) 531.The context in which the word “SENTENCE” is used in section 137(1)(d) of the Constitution connotes a formal pronouncement awarding punishment after conviction for an offence. Conviction is a finding of guilt after an indictment, arraignment and trial. See: *Koleosho v. F.R.N.* (2014) LPELR-22929 (CA). *Mohammed v. Olawunmi* (1990) 2 NWLR (Pt. 133) 458; *Ali Mohammed Modu v. Federal Republic of Nigeria* (2016) LPELR-40471 (CA) at 11 (CE).Therefore, the words "sentence", "imprisonment” and “fine" used in section 137(1)(d) of the Constitution definitely connotes only a punishment imposed on a defendant following an indictment, trial and conviction for an offence. See *Babangida Usman v. State* (2015) LPELR-40855 (CA) at 40-41; Sheriff v. F.R.N. (2016) LPELR-41632 (CA) at 17-19 (C-E).

In civil forfeiture or a Non-Conviction Based Forfeiture proceeding, the Government only needs to show by preponderance of evidence that the property is a proceed of crime or was used to facilitate a crime. Criminal forfeiture on the other hand is seizure of a property connected with a crime after obtaining conviction and as part of sentence or punishment for the crime. Civil forfeiture is not a conviction or verdict of guilt after an indictment, trial and conviction, See *Jonathan v. F.R.N* (2019) LPELR- 46944 (SC), (2019) 10 NWLR (Pt.1681) 533 where the Supreme Court per AKAAHS, JSC considered the provisions of section 17 of the Advance Fee Fraud and Other Related Offences Act and persuaded by the decisions of the various courts across the world held that civil forfeiture is an action in rem embarked upon when the interest of the Government is merely to recover the proceeds of unlawful activity. The court also held that an application for interim forfeiture of property that is not predicated on conviction of the owner of the property would necessarily be an action in rem because it is the recovery of the property that the law aims at.

A forfeiture order by a foreign court can only be accepted and recognized by a court in Nigeria for the purpose of section 137(1) (d) of the Constitution if it is made after an indictment, trial and conviction and properly proved as required by section 249 of the Evidence Act. In addition, the conviction and sentence must be shown to have been a product of due process of law, compliance with due process of law has to be determine by the procedure and standard set by section 36(5) and (6) of our Constitution. The forfeiture order being relied on by the petitioners has not been shown to be a result of a process similar to the one set by our Constitution for trial of a defendant for an offence.

The appellant's counsel relied on *Austin v. United States*, 509 U.S 602 (1993) and *Tims v. Indiana* decided on 20th February, 2019. The forfeiture proceedings in the two cases were instituted as part of criminal proceedings after the conviction of the defendants. Secondly, forfeiture was regarded as punishment for the purpose of protecting the constitutional right of the defendants against imposition or infliction of excessive bailor excessive fines or cruel and unusual punishments for an offence. Eight amendment provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted". In *United States v. Ursery* (1996) 518 U.S. 267, the United States Supreme Court considered the relationship between punishment and civil forfeiture. The court held that in rem civil property forfeiture did not constitute a "punishment" such as fines for purposes of double jeopardy clause of the Fifth Amendment. In *Abacha v. F.R.N*. (2014) LPELR-2201 (SC), (2014) 6 NWLR (Pt. 1402) 43 forfeiture was also defined in the context of the doctrine of double jeopardy. The appellant contended that the State could not indict and prosecute him for the offences of conspiracy, receiving stolen property dishonestly and concealing stolen money after forfeiting the properties listed under Forfeiture of Assets Etc. (Certain Persons) Decree No.53 of 1999. The rejection of the plea of double jeopardy means that the Court did not consider the forfeiture under Forfeiture of Assets Etc (Certain Persons) Decree No.53 of 1999 as punishment.

From all the above, it is clear that a Non-Conviction Based Forfeiture being civil in nature and an action in rem, can in no way be equated with a sentence of imprisonment or fine imposed for an offence involving dishonesty or fraud or for any other offence

To disqualify a person from contesting for election to the office of the President of Nigeria. An indictment, arraignment, trial and conviction are necessary preconditions for the disqualification of a person under section 137(1) (d) of the Constitution.

Ground 2 of the petition is that the election of the 2nd respondent was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act. The allegations are basically predicated upon electronic transmission of the results of the election.

A global reading of the Electoral Act, 2022 particularly sections 47(2), 60(1-5), 62(1) and 65(1-8) would show that what the Act provide for is manual transfer and manual collation of results by Collation Officers at various physical collation centres. There is no provision for electronic transmission or IReV or electronic collation of results in the Act. By Paragraphs 38 and 48(a) of the INEC Regulations and Guidelines for the Conduct of Elections, 2022, the 1st respondent made provision for electronic transmission and physical/manual transfer of election results from the polling units. However, Paragraph 48(c) provides that if no result has been electronically transmitted from the polling unit, the provision of Paragraph 93 shall be applied. Paragraph 92 categorically provide that at every level of collation, where the INEC copy of collated results from the immediate lower level of collation exists, it shall be adopted for collation. By Paragraph 93, where INEC hard copy and electronically transmitted results from the immediate lower level of collation do not exist, the Collation Officer shall use duplicate hard copies issued to the Nigeria Police Force and Agents of Political Parties to collate results. It is therefore not correct that it shall not be possible to collate results of the election where results have not been electronically transmitted.

By law, the INEC Regulations and Guidelines for the Conduct of Elections, 2022 is subordinate to the Electoral Act. Where a provision of the guidelines conflicts with Act, the Act prevails. See *Odeneye v. Efunuga* (1990) LPELR-2208 (SC), (1990) 7 NWLR (Pt. 164) 618 at 21 (A-C). *Nyesom v. Peterside* (2016) LPELR-40036(SC), (2016) 7 NWLR (Pt. 1512) 452. By section 134 (2)of the Act, any circular, press release, promise or stated intention of INEC that is in conflict with or expand the provisions of the Electoral Act cannot prevail over the Act. INEC Guidelines cannot be elevated above the provisions of the Electoral Act so as to

elevate electronic transmission of results over and above manual or physical transmission of hard copies and manual collation of results as provided for by the Act to the extent that non-compliance with the Regulation automatically invalidates an election.

PW4, the Professor of Mathematics presented to this court as an expert witness confirmed under cross-examination that IReV is not a collation system. He also confirmed that whether or not transmission to IReV failed or the image of result on the IReV is blurred will not change the result entered on the form EC8A at the polling unit level. Under cross-examination, PW12 stated that the petitioners had 133,000 agents. He was not a party agent at any of the INEC's designation polling units or collation centres. None of the 133,000 party agents was called to testify that there was a dispute regarding any collated result at the polling units, Registration ward, Local Government, State or National Collation Centres so as to enable the Collation Officers at the various levels of collation to activate the process prescribed under section 64(6) of the Act.

PW12 stated that the petitioners believed they would have won the election if the results had been uploaded. When asked about the score of the petitioners by which they claimed to have won the election, he answered rhetorically that how they are supposed to know the score when the results were still being uploaded on the IReV. So, this petition is about the belief of the petitioners that they would have won the election if results had been uploaded on the IReV. Election petition is a serious issue. A petitioner is not permitted to engage in fishing expedition or a roving enquiry as the petitioners herein did. It is clear from the pleadings and the evidence of PW12 that the petitioners were from the onset engaged in a wild goose chase and inquisitorial adventure. By Paragraph 9of the Regulation, a political party has a right to appoint one person as its polling agent for each polling unit, collation center and one representative at each point of distribution of electoral materials in the constituency where it is sponsoring candidate(s) for an election. According to PW12, the petitioners exercised that right and had 133,000 party agents in the election. I stated earlier that none of those 133,000 polling agents was called and not a single one of the result forms collected by any of the agents was tendered in evidence. Electoral Act provided a candidate who wishes to challenge any result declared by INEC with a potent material which are the

Forms on which results are entered, signed by the 1st respondent' officials and party agents and a duplicate copy of which is given to a party agent. Any serious candidate ought not to depend on INEC for materials to prosecute his petition. By section 167(d) of the Evidence Act, the failure of the petitioners to produce election result forms collected by their agents raises a presumption that if those forms had been produced, would have been unfavourable to the petitioners.

The 1st respondent in their pleadings and evidence through RW1 stated that the delay in uploading the results from the polling units to the IReV was due to a technical glitch which occurred on its transmission system and which was rectified within a few hours. All that the petitioners could do was to bring PW7, a member of their party who claimed to be a software engineer and an employee of Amazon Web services, Inc. She had the temerity and the audacity to claim authorship of a document, a word of which does not belong to her. The 1st respondent never claimed that the glitch which occasioned the delay in uploading the results to the IReV occurred on the AMAZON Server. It is obvious from PW4's evidence that the petitioners did not understand the explanation of the 1st respondent or they were just fixated on their believe that they won the election. They did not bother to place any cogent and credible evidence before the court. They expected the court to collect evidence from the market or be persuaded or intimidated by threat on social media. That is not the way of the court. See Tobi, JSC's admonition in *Buhari v. I.N.E.C.* (2008) LPELR-814(SC) at 174-178 (D-B); (2008) 19 NWLR (Pt. 1120) 246 in a situation like the instant case.

Thus, the petitioners not only failed to prove non-compliance with the Electoral Act, they failed to prove that the non-compliance substantially affected the result of the election declared by the 1st respondent. It is settled that even if noncompliance with the Electoral Act is established, if there is evidence that despite the non-compliance, the result of the election was not affected substantially, the petition must as a matter of law be dismissed. See *Abubakar & Ors v. Yar'adua & Ors.* (2008) LPELR-51 (SC) at 120 (C-D), 177 (F-A); (2008) 19 NWLR (Pt. 1120)1.

The 3rd ground of the petition is that the 2nd respondent was not duly elected by majority of lawful votes cast at the election having not obtained 25% of the votes in FCT.

The provisions of the Constitution must be read together to discover the intention of the framers of the Constitution. A court of law has no power to take away or limit the words of the Constitution or import into it what it does not say. See *Elelu-Habeeb & Anor The Hon. Att. Gen. of the Federation 7 Ors.* (2012) LPELR-15515(SC) at 119-122(B-E), (2012) 12 NWLR (Pt. 1318) 423. A narrow interpretation that would do violence to the provisions of the Constitution and fail to achieve the goal set by it must be avoided.

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

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

Based on the above and the fuller reasons lucidly explained in the lead judgment, I too dismiss the petition.

UGO, J.C.A.: I had earlier read in draft the rulings and judgments of my learned brother Haruna Simon Tsammani, J.C.A. in this consolidated petition numbers CA/PEPC/03/2023, CA/PEPC/04/2023 and CA/PEPC/05/2023. I am in complete agreement with His Lordship's reasoning and conclusions on all of them.

First, for petition No. CA/PEPC/04/2023, I am of the very fixed view that the issues agitated by the petitioner therein concerning 3rd respondent's alleged disqualification for the 2023 Presidential election by reason of matters connected to and surrounding his running mate's (4th respondent's) nomination and relinquishing of his earlier nomination by his party, the APC, for the Borno Central Senatorial District, having been settled on their merit by the Supreme Court in its judgment in Appeal No. SC/CV/501/2023: *People's Democratic Party v. INEC & Ors.,* reported in (2023) 13NWLR (Pt.1900) 89, in 3rd and 4th respondent's favour herein, with the apex court even holding that the said issues did not disqualify them, that decision constitutes issue estoppel. Being status-defining and so judgment in rem, it binds every person, including non-parties to the suit like the petitioner in Petition No. CA/PEPC/04/2023. See *Ikotun v. Oyekanmi* (2009) 10 NWLR (Pt.1094) 100 @115,119-120 (SC); *Sosan & Ors. v. Ademuyiwa & Ors*. (1986) 1 NSCC 673 @ 681, (1986) 3 NWLR (Pt. 27) 241. Furthermore, by the doctrine of stare decisis, it also binds this court. In fact, it will in my humble opinion amount to judicial heresy for this court to involve itself in inquiring, by whatever guise, into that same issue already settled by the apex court.

Coming to Petition Nos. CA/PEPC/03/2023 of *Peter Obi & Anor v. INEC & Others* and CA/PEPC/05/2023 of *Atiku Abubakar & Anor v. INEC & Others*, again I am of the very fixed view that the two sets of petitioners did not by any means discharge the burden on them of proving that the results of the presidential election of 25th February 2023 as declared by 1st respondent (INEC) are incorrect. Incidentally, their burden is even made heavier by the legal presumption that the results of an election declared by the official election organising body (INEC in this case) are correct and it is for the person asserting the contrary to prove it is not: see *Buhari v. I.N.E.C.* (2008) 19 NWLR (Pt. 1120)246@354.

Even their resort to 1st respondent's failure to keep to its initial promise to upload polling unit results of that election to its Result Viewing Portal IReV real time, which failure they alleged evidences election 'manipulation' does not help them. And specifically on

this allegation of manipulation of election results, the point must be made that, since it is their case in their petitions from the word go that the election results in issue were manipulated by 1st respondent (INEC) in favour of 2nd respondent, and specifically that the manipulation took the form (i) of programmed failure of the technological device (BVAS machines) by 1st respondent (INEC) by intercepting the results, quarantining, warehousing and filtering such results before releasing them to the IReV portal, (ii) INEC replacing its In-House I.T. expert at the eleventh hour with a rogue staff all in a bid to remotely control, monitor and filter data transmitted from the BVAS devices to the electronic system and the IReV Platform and (iii) that Globacom, the Internet provider for the BVAS and electronic system, was also disconnected by 1st respondent to enable it manipulate the results, with the petitioners in CA/PEPC/05/2023 even going further to undertake to call evidence to prove all those allegations (see paragraphs 33, 36, 42 of Petition No. CA/PEPC/05/2023 and paragraphs 53 and 60 of Petition No. CA/PEPC/03/2023), the burden of proof was on petitioners to prove those assertions and that is regardless of whether they are positive or negative. After all it is they who would have failed in the case if no evidence at all was adduced in their petitions. See on that section 131 of the Evidence Act, 2011 and the cases of *Buhari v. INEC* (2008) LPELR-814 (SC) 80, (2008) 19 NWLR (Pt. 1120)246 (Tobi, JSC); *Aladegbemi v. Fasanmade* (1988) 1 NSCC 1087@ 1105, (1988) 3 NWLR (Pt. 81) 129; *Elias v. Disu & Ors.* (1961)1 All NLR 214 @ 218; (1962) 1 SCNLR 361; my judgment in *Dashe & Ors. v. Durven & Ors.* (2019) LPELR-48887 (CA) 14-17; *Abrath v. N.E. Railway Co.* 11 QBD 440@457.I have taken all this time in making this point because of the argument of both sets of petitioners that they only made negative assertions in their petitions when they alleged there that there was nothing wrong with 1st respondent's e-transmission system and IReV, so they had no burden to prove it; that the burden of proof was on the respondents who they said positively asserted glitch in real-time transmission of their results. Petitioners who directly made manipulation of its e-transmission system by 1st respondent to favour 2nd respondent a pillar of their case cannot be heard to say it is respondents and not them that had the burden of proof in the case.

Incidentally, that assertion of petitioners - that INEC simply closed down or blocked its IReV and e-transmission system from

the public to enable it manipulate the presidential election results in favour of 2nd respondent - also takes me directly to the more important question in the petition, namely, whether that allegation is even worthy of belief given the results declared by INEC for them and the 2nd respondent in the election. To answer that million-Dollar question, I deem it necessary to resort to the probabilities arising from the facts of the case, otherwise called the probability test', which test highly celebrated Judge, Chukwudifu Akunne Oputa, J.SC, always maintained is "the surest road to the shrine of truth and justice". See *Dibiamaka & Ors. v. Osakwe & Ors.* (1989)2 NSCC 253 @ 260 lines 46-50, (1989) 3 NWLR (Pt. 107) 101(per Oputa, JSC) and *Ojegeze v. The State* (1988) 1 NWLR (Pt.71)404 @420 paragraph G-H. Here, the assertion of petitioners is that 1st respondent, INEC, merely used the excuse of glitch in its IReV portal to block the public from seeing its polling units results real time so that it could manipulate, and in fact did actually manipulate, the 25th February 2023 presidential election results in favour of 2nd respondent. It is their further contention that the manipulation of IReV by INEC with the said phantom glitch in favour of 2nd respondent was nationwide. The question is, do the results declared nationwide by INEC support that hypothesis? They say the taste of the pudding is in the eating. I shall therefore now try to walk us through some of these election results to see if that assertion of petitioners is supported by the results declared by INEC and so probable and worthy of belief. In doing that, I shall randomly pick on the results of some States of the Federation and the Federal Capital Territory. I shall be relying on the State Summary of Results (Form EC8D) declared by INEC and as also attached to their petition by the petitioners in CA/PEPC/05/2023, which result was also tendered by both sets of petitioners and respondents.

So, I take on, first, Abia State. There, 2nd respondent, the alleged favoured candidate of INEC, for which it was said to have shut down its IReV to manipulate results, only garnered a miserly 8,914 votes. That is as against the Labour Party which, by INEC's declaration, polled as many as 327,095 votes. Even the other set of petitioners, the PDP and its candidate, scored more votes in Abia than INEC's purported favoured candidate. They also scored 22,676 votes in Abia State and was so recorded by INEC. Those votes alone are close to three times the votes of 2nd respondent

for whom INEC was said to have manipulated results by closing down its IReV so that the public would not witness its manipulative activities in favour of 2nd respondent.

In Enugu State, the same 'favoured' candidate, 2nd respondent, was again declared/credited by INEC to have polled only 4,772votes in the entire State. Meanwhile, the Labour Party and its candidate were again declared by 'manipulative and unfriendly' INEC to have scored as much as 428,690 votes in that State. In the same Enugu State, PDP and its candidate also was declared by INEC to have polled 15,745 votes: a number that is also nearly three times the votes of the so-called favoured 2nd respondent.

In Anambra State, the same purported favoured candidate (2nd respondent) was declared by its alleged friend, INEC, to have scored only 5,111 votes. Meanwhile, the Labour Party, whose candidate, 1st petitioner in CA/PEPC/03/2023, I must take judicial notice of vide section 124 of the Evidence Act 2011, is from that State, again was declared to have polled as much as 584,621 votes. Again, like Enugu State, the PDP and its candidate was declared by INEC to have polled 9,036 votes, a number that is also nearly double the votes of 'INEC favoured' 2nd respondent.

In neighbouring Delta State, the same INEC-favoured candidate, 2nd respondent, was declared by INEC to have scored 90,180. That is as against the Labour Party and its candidate which is credited by the same 'biased' INEC to have scored as much as 179,917 votes. In that same Delta State, the PDP and its candidate scored 161,600 votes, again nearly double the votes of 2nd respondent.

In Adamawa State of the PDP and its candidate, the same 'favoured' 2nd respondent was declared by INEC to have scored only 105,648 votes while the PDP and its candidate were declared by the 'biased' INEC to have scored as much as 214,012 votes.

In Imo State, the same purported INEC favoured candidate (2nd respondent) was declared by INEC to have scored only 66,406 votes while the Labour Party and its candidate is declared by the same INEC to have polled as much as 360,495.

In Ebonyi State the Labour Party again scored as much as 259,738 votes. That is as against alleged INEC-favoured 2nd respondent, who, by INEC's declaration, again polled a relatively miserly 42,402 votes. The PDP is said to have scored 13,503 votes there too.

Even in Lagos State where 2nd respondent once held sway as elected Governor, the Labour Party and its candidate was again declared by 'biased' INEC to have beaten 2nd respondent with almost 10,000 votes. Labour Party was declared by INEC to have polled 582,455 votes, as against 572,606 polled by 2nd respondent and so declared by INEC.

It is a similar story in the Federal Capital Territory of Abuja where INEC has its headquarters and supposedly carried out/directed all its manipulative and biased activities in favour of 2nd respondent that petitioners claim it did in the election. Second respondent and his political party still lost there. In fact, by the result '2nd respondent friendly' INEC declared in the Federal Capital Territory of Abuja, 2nd respondent could not even make 25% of the total votes cast there. He was said to have only polled 90,902 votes. That amounts to just 18.991% of the total votes cast in the F.C.T., yet INEC declared that result. That is as against 281,717 votes, amounting to 58.856% of the total votes, the same INEC declared for Labour Party and its candidate.

There are also other States, including Katsina State of the immediate past President of this country, a member of 2nd respondent who was still in office at the time of the elections, a fact I shall again take judicial notice vide section 124 of the Evidence Act 2011.There again, 2nd respondent and his party, the A.P.C., which he shares of the then sitting President, was declared by the same INEC to have lost to the petitioners in CA/PEPC/05/2023.

If all these results declared by INEC for each of these States for the two sets of petitioners and 2nd respondent is anything to go by, then INEC must be an abysmally poor manipulator, if not even an imbecilic one. Surely, it would not go through all the trouble of closing down its IReV and blocking the public from seeing its manipulative efforts in favour of 2nd respondent, as alleged by the petitioners, only to still end up favouring the petitioners with jumbo votes and posting miserly figures for its favoured 2nd respondent.It is said that "All men stamp as probable that which they would have said or done under similar circumstances and as improbable that which they themselves would not have said or done under the same set of similar circumstances. Things inconsistent with human knowledge and experience are properly rated as improbable. "See Oputa, J.SC in *Onuoha v. The State* (1989) 1 NSCC 411@

418; (1989) 3 NWLR (Pt. 107) 101 and *Bozin v. The State* (1985) LPELR-799 (SC) p.9; (1985) 2 NWLR (Pt.8)465.

At any rate, why did any of the two sets of petitioners not tender even a single polling unit result issued by INEC to their polling unit agents to support their claim of manipulation of election results by INEC, even as they all agreed that they had agents in the polling units? I had thought that is the best and most effective way of proving the manipulation of election results alleged by them. After all, the polling unit is the only place where voting takes place and so also constitutes the building block of election results. See paragraph 91 of INEC Regulations and Guidelines for the Conduct of Elections, 2022 and the cases of *Nwobodo v. Onoh* (1984) 1SCNLR 1 and *Awuse v. Odili* (2005) 16 NWLR (Pt.952)416 @448.

In short, the allegation of the petitioners that INEC shut down its IReV to manipulate votes for 2nd respondent just does not add up for me. If anything, the probabilities arising from the results INEC declared nationwide as X-rayed above rather seem to me to eloquently support INEC's position that its inability to upload the polling unit results real-time as earlier promised was not deliberate but caused by technical issues outside its control that afflicted its e-transmission system, which issues it claims made it impossible for its e-transmission system to map the uploaded polling units results for the Presidential election to any specific State. That it claimed, is unlike the much smaller National Assembly elections that were conducted simultaneously with the Presidential election. It is that phenomena it describes as glitch that was giving it an 'HTTP 500' Error which resultantly delayed real time public viewing of the said polling unit results.

That conclusion also takes me to another big issue in this case, namely the evidential value of the European Union Election Observer Mission Report on the 2023 Presidential Election over which quite a mountain has been made of by both sets of petitioners. That report was tendered by the petitioners in Petition No. CA/PEPC/03/2023 as exhibit X2 and by the petitioners in Petition No. CA/PEPC/05/2023 as exhibit RA27. The impression given by both sets of petitioners is that the said report, which in any case has even been ruled inadmissible by us in Petition No.CA/PEPC/03/2023, is like gospel truth of what transpired in the election and so it must be accepted by this court and the conduct of

the Presidential election declared corrupt or at the very least below par, regardless of whether or not its authors presented themselves in court to defend their opinions. That stance, I am afraid, is a complete non sequitur. Without the makers of that report presenting themselves in court to face cross-examination to authenticate their opinions that report, and I dare to even add the ECOWAS report of the same elections tendered by 2nd and 3rd respondents in Petition Nos. CA PEPC/03/2023 and CA/PEPC/05/2023, are completely valueless and inadmissible for the purposes of authenticating the opinions expressed in them by their makers. See first on that the cases of *Nyesom v. Peterside* (2016) 7 NWLR (Pt. 1512) 452 @526 paragraph E and *Sa'eed v. Yakowa* (2013) All FWLR (Pt.692)1650 @ 1672; (2013) 7 NWLR (Pt. 1352) 124. It also makes no difference that the said Reports have been put in the form of print Books, it must be noted, cannot be cross-examined. On this, I find support in the celebrated case of *Idundun & Ors. v. Okumagba & Ors.* (1976)NSCC 443 @ 453; (1976)LPELR-1431 (SC) p.23 and 24,(1976)9-10 SC 227 where the Supreme Court had this to say:

> "As for the law involved, we would like to point out that it is now well settled that there are five ways in which ownership of land may be proved...
>
> "In our view, not only was the evidence of the witnesses called by the appellants rightly rejected by the learned trial Judge for good and sufficient reasons, we also think that he was right in not attaching any weight to the views expressed in the books cited in support of such traditional evidence. As Lionel Brett, JSC, (as he then was), rightly in our view, once pointed out in a learned address given by him at the University of Lagos to the Nigerian Association of Law Teachers:
>
> > The courts are not to be hypnotized by the authority of print. The crucial fact is that books cannot be cross-examined, either as to the opinion expressed, or as to the claims of the author to have special knowledge. If the author is living, there is no reason why he should not be tendered as an expert witness, when this difficulty would varnish.'
> >
> > ……..

> "Moreover, none of the authors of these books testified in support of the views stated therein and no explanation was given for the omission. For all these reasons, we share the apprehensions of the learned trial Judge about the value or weight of the traditional history as narrated by each of these authors, particularly as the authenticity and impartiality of the sources of their narratives cannot, for obvious reasons, be easily ascertained."

That is the exact same situation we are confronted with here as regards both the European Observer Mission Report and its sister ECOWAS Election Observer Report. For purposes of proving the opinions expressed in them by their makers, neither of them is of any higher value than the mere sheets of paper on which it is recorded.

And for those who like the petitioners are enamoured by the now very familiar patronising judgments passed on our elections by European Election Observer Missions every four years, even as the same Europeans have maintained a deafening silence on the never-ending complaints of former President Donald Trump that the year 2020 Presidential Election of the United States of America that saw him out of office was also a fraud, it may interest them to know that Sir (Justice) Lionel Brett, J.S.C., who made the comments cited approvingly by the Supreme Court in Okumagba's case was also a European.

I intend to stop here. I think I have said enough.

It is for these few additions but much more for the far more illuminating reasons advanced by my brother, Haruna Simon Tsammani, J.C.A., in his rulings and judgments, which reasons I concur with without reservation, that I also hold all three consolidated petitions not proved and hereby enter an order dismissing all of them and affirm the declaration of the 2nd respondent, Bola Ahmed Tinubu, by 1st respondent as the person duly and properly returned winner of the 25th February 2023 Presidential election of this country and duly elected President of the Federal Republic of Nigeria.

I also abide by all the other consequential orders, including that as to costs, contained in the leading judgment.

MOHAMMED, J.C.A.: I have read before now the draft of the lead judgment just delivered by my learned brother, Haruna Simon Tsammani, JCA in the three consolidated Petitions Nos.CA/ PEPC/03/2023, CA/PEPC/04/2023 and CA/PEPC/05/2023.I am in agreement with and I adopt all the reasons and conclusions stated therein, both in respect of the rulings on the objections and the merits of the three consolidated petitions.

CA/PEPC/03/2023 and CA/PEPC/05/2023

Although all the issues in Petitions Nos. CA/PEPC/03/2023 and CA/PEPC/05/2023, have been exhaustively resolved in the lead judgment, I deem it only pertinent to highlight a fundamental vice which has ab initio affected those two petitions, especially as it relates to the petitioners' essential contention or premise upon which they predicated those two petitions. In petitions Nos. CA/PEPC/03/2023 and CA/PEPC/05/2023, the petitioners have premised their ground that the Presidential Election conducted on 25th February, 2023 by Independent National Electoral Commission (INEC) is invalid by reason of corrupt practices and non-compliance. on their contention that by the provisions of the Electoral Act, 2022and the Regulations and Guidelines for Conduct of Elections, 2022, INEC is mandatorily required to electronically transmit election results to the collation system and to the INEC Results Viewing Portal (IReV). They contended that the 1st respondent had deliberately refused to comply with those mandatory provisions and had manipulated the results of the election through various corrupt practices which they alleged in those petitions. However, in both Petitions Nos. PEPC/03/2023 and PEPC/05/2023, exhibits X1 and X2 were tendered, respectively, to show that the Labour Party, which the 2nd petitioner in Petition No. is PEPC/03/2023, had before the elections approached the Federal High Court, Abuja by way of originating summons in suit No. FHC/ABJ/CS/1454/2022: *Labour Party v. INEC*, for a determination that

> "by the provisions of the Electoral Act, 2022, INEC, the 1st respondent has no power to opt for manual method other than the electronic method provided for by the relevant provisions of the Electoral Act" and for “An order of this honourable court directing/compelling

> the respondent to comply with the Electoral Act,2022on electronic transmission of result in the forthcoming general election."

In its judgment, the Federal High Court, Abuja Division had dismissed the suit and held that:

> "...there is nowhere in the above cited sections where the Commission or any of its agents is mandated to use an electronic means of collating or transferring of election result. If any, the Commission is only mandated to collate and transfer election results and number of accredited voters in a way or manner deemed by it."

Additionally, this court's attention was referred to the judgment of this court in appeal No.CA/LAG/CV/332/2023: *A.P.C. v. Labour Party & 42 Or*s, delivered on the 19th of June, 2023, in which this court set aside the judgment of the Federal High Court, Lagos Division in another Suit No. FHC/L/CS/370/2023: *Labour Party &Ors v. INEC*, again filed by the Labour Party (the 2nd petitioner in PEPC/03/2023) before the Lagos Division of the Federal High Court to obtain an order of mandamus compelling INEC to electronically transmit or transfer election results as provided in its Regulations, after losing in the Abuja Division of the same court.

In the judgment of this court of 19/07/2023 in Appeal No.CA/LAG/CV/332/2023, this court particularly held at pages 23-24 thereof that:

> "It is difficult for suit No. FHC/L/CS/370/2023 which gave rise to this appeal to escape the label of abuse of court process. I said so because the objective of the suit is to compel the 43rd respondent to adopt a particular way of transmitting or transferring the result of the election in Lagos State. This objective is not in any way different from what the objective the 1st respondent wanted to achieve in suit No. FHC/ABJ/ CS/1454/2022. Similar parties are the same in the two suits; the 2nd - 42nd respondents are members of the 1st respondent which litigated suit No. FHC/ABJ/CS/1454/2022, the 2nd - 42nd respondents' interest is the same with that of the 1st respondent so they are the 1st respondent's privies. Both suits are against the same defendant ie. the 43rd respondent herein and filed in the same court albeit different divisions of the court.

> The decision of Emeka Nwite, J. of Abuja Division of the lower court which dismissed the 1st respondent's suit holding that on the interpretation of the provisions of sections 60(5) and 62(2) of the Electoral Act, 2022, INEC the 43rd respondent herein is at liberty to prescribe or choose the manner in which election result shall be transmitted finally settles the issue. I therefore find in Suit No. FHC/L/CS/370/2023 which is herein being appealed against all the trademarks of a cause that is an abuse of judicial process."

Exhibits X1 and X2 tendered in petitions Nos. PEPC/03/2023and PEPC/05/2023, respectively, as well as the decision of this court in Appeal No. CA/LAG/CV/332/2023 (supra), are subsisting judgments of court which are not only binding on the parties, but which constitute issue estoppel in relation to the petitioners' essential contention in the these two petitions, which is, that the 1st respondent is by the Electoral Act, 2022 and the Regulations and Guidelines for Conduct of Elections, 2022 the 1st respondent is mandatorily required to electronically transmit and collate results of the Presidential election.

The doctrine of issue estoppel is that once an issue has been finally decided by a competent court, the issue will not be allowed to be relitigated by the same or even by different parties. See: *Ikotun v. Oyekanmi & Anor*: (2008) LPELR-1485(SC) at page 25, paras. A- B; (2008) 10 NWLR (Pt. 1094) 100; and *A.P.C. v. P.D.P. & Ors* (2015) LPELR-24587(SC) at 116; (2015) 15 NWLR (Pt.1481)1.Specifically, in *Ezewani v. Onwordi & Ors* (1986) LPELR-1214(SC), (1986) 4 NWLR (Pt. 33) 27, the Supreme Court, per Oputa, JSC held at page 47 paras. B-E, that:

> "Strictly speaking therefore, the concept and value of an estoppel is to bar a person from denying or asserting anything to the contrary of that which has,in the contemplation of law, been established as the truth either by the acts of judicial or legislative officers or by his own deed or representation, express or implied."

It is clearly evident that the decisions of the Federal High Court in exhibits X1 and X2 tendered in Petitions Nos. PEPC/03/2023 and PEPC/05/2023, respectively, as well as the decision of this Court in Appeal No.CA/LAG/CV/332/2023: *A.P.C. v. Labour Party & 42 Ors* (supra), have dealt a death knell to the petitioners' in the

two petitions, having finally decided the issue around which the petitioners have built their claim of non-compliance and corrupt practices in those two petitions, namely - that the 1st respondent is by the provisions of the Electoral Act, 2022 and the Regulations and Guidelines for Conduct of Elections, 2022, mandatorily required to electronically transmit election results to the collation system and the INEC Result Viewing Portal (IReV).

In addition to this obviously fundamental deficiency which I have highlighted above, the lead judgment just delivered had exhaustively considered all the other issues and rightly concluded that the petitioners in Petitions Nos. CA/PEPC/03/2023 and CA/PEPC/05/2023 have failed to establish all the allegations contained in their Petitions, I adopt all those reasons and conclusions stated therein in also finding the two petitions devoid of merit.

Petition dismissed.