1. **ALHAJI ADAMU MAINA WAZIRI**
2. **PEOPLES DEMOCRATIC PARTY**

V.

1. **ALHAJI IBRAHIM GEIDAM**
2. **ALL PROGRESSIVES CONGRESS**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
4. **THE RESIDENT ELECTORAL COMMISSIONER, YOBE STATE**
5. **ASP. ZAKARI DEB A**

SUPREME COURT OF NIGERIA

SC. 13/2016

WALTER SAMUEL NKANU ONNOGHEN. J.S.C. (*Presided*)
NWALI SYLVESTER NGWUTA, J.S.C.
MARY UKAEGO PETER-ODILI. J.S.C. (Read the Leading Judgment)
MUSA DATTIJO MUHAMMAD, J.S.C.
CLARA BATA OGUNBIYI J.S.C
JOHN INYANG OKORO. J.S.C.
AMIRU SANUSI, J.S.C.

MONDAY, 15TH FEBRUARY 2016

APPEAL - Ground of appeal - Particulars of - Purpose of - Where inelegantly drafted - Effect.
APPEAL - Ground of appeal - Particulars of-Where argumentative

and repetitive - Effect.

APPEAL - Ground of appeal - Where inelegantly drafted - What court consolers in determining competence of.

APPEAL – Record of appeal – Late compilation and transmission of contrary to Supreme court Election appeals Practice direction, 2011 – Effect of.

APPEAL - Concurrent findings of two lower Courts - Attitude of Supreme Court thereto.

COURT- Technicalities -Attitude of Supreme Court to technicalities.

ELECTION - Election tribunal - Jurisdiction of to try electoral offences

ELECTION - Electoral offences - When deemed committed by candidate at election - Section 124(6), Electoral Act, 2010.

ELECTION - Non-compliance with provisions of Electoral Act, 2010 - Nature of non-compliance that will invalidate election - Section 139, Electoral Act, 2010 considered.

ELECTION PETITION - Election appeal - Record of appeal - Late compilation and transmission of contrary to Supreme Court Election Appeals Practice Direction, 2011 - Effect of.

ELECTION PETITION - Election petition - Parties thereto - Who may file and against whom may be presented - Section 137, Electoral Act, 2010 considered.

ELECTION PETITION - Non-compliance with provisions of Electoral Act. 2010 - Nature of non-compliance that will invalidate election - Section 139, Electoral Act, 2010 considered.

ELECTION PETITION - Proof - Allegation of crime and corrupt practices at election - Standard of proof required of in election petition - Elements need to be established.

ELECTION PETITION - Proof - Allegation of non-compliance

with provisions of Electoral Act, 2010 - Onus of proof of - On whom lies - How established.

EVIDENCE - Proof - Allegation of crime and corrupt practices of election - Standard of proof required.

EVIDENCE - Proof - Allegation of non-compliance with provisions of Electoral Act. 2010 - Onus of proof of - On whom lies – How established.

EVIDENCE - Proof - Suspicion - Whether amounts to proof.

JURISDICTION - Election tribunal - Jurisdiction of to try electoral offences.

JUSTICE - Technicalities - Attitude of Supreme Court thereto.

PRACTICE AND PROCEDURE - Appeal - Ground of appeal Particulars of - Purpose of - Where inelegantly drafted Effect.

PRACTICE AND PROCEDURE - Appeal - Ground of appeal Particulars of - Where argumentative and repetitive - Effect.

PRACTICE AND PROCEDURE - Appeal - Ground of appeal Where inelegantly drafted - What court considers in determining competence of.

PRACTICE AND PROCEDURE - Appeal - Concurrent findings two lower courts - Attitude of Supreme Court thereto.

PRACTICE AND PROCEDURE - Election appeal - Record appeal - Late compilation and transmission of contrary Supreme

Court Election Appeals Practice Direction, 201 Effect of.

PRACTICE AND PROCEDURE - Evidence - Proof- Evidence suspicion - Whether amounts to proof.

PRACTICE AND PROCEDURE - Proof - Allegation of crime and corrupt practices at election - Standard of proof required of in - election petition - Elements needed to be established

PRACTICE AND PROCEDURE - Proof - Allegation of non-compliance with provisions of Electoral Act, 2010 - Onus of proof of - On whom lies - How established.

Issues:

1. Whether the Court of Appeal was right when it held that the 5th respondent was not a proper party to the appellants' petition.
2. Whether the Court of Appeal was right in its decision that the evidence before the tribunal merely showed that moneys were deposited into the bank accounts of the 4th respondent and that absence of evidence showing how the deposits influenced the outcome the election was fatal to the appellants.
3. Whether the Court of Appeal correctly held that the appellants failed to prove before the trial tribunal that elections did not hold in the six local governments of Bade, Fune, Tarmuwa, Gulani, Yunusari and Jakusko.

Facts:

Governorship Election was conducted on 11th April 2015 by the 3rd respondent, the Independent National Electoral Commission (INEC) in Yobe State. At the said election, the 2nd appellant, Peoples Democratic Party, (PDP) sponsored the 1st appellant, Alhaji Adamu Maina Waziri, as its candidate, while the 2nd respondent, the All Progressives Congress (APC) sponsored the 1st respondent, Alhaji Ibrahim Geidam, as its candidate.

At the close of the polls, the 3rd respondent declared the 1st respondent as the duly elected Governor of Yobe State having polled the majority of lawful votes cast at the election. Having scored the majority of the lawful votes cast and satisfied the requirements of the Constitution, the 3rd respondent declared the 1st respondent as e winner of the said election and accordingly returned him as elected.

The appellants, being dissatisfied with the election and return the 1st respondent, filed a joint petition challenging the election of the 1st respondent on the grounds that the election and ret of the 1st respondent was invalid by reasons of corrupt practice and or non-compliance with the provisions of the Electoral Act 2010 (as amended) and they prayed the tribunal to declare the 1st appellant as the winner of majority of lawful votes cast during Yobe State governorship election or alternatively that fresh election be conducted.

At the trial, the appellants called a total of 27 witnesses, while the 1st and 2nd respondents called a total of 7 witnesses. The 3rd, and 4th respondents opted not to call any witnesses of their own but placed reliance on the oral and documentary evidence already proffered by the other parties. In an unanimous judgment, the tribunal dismissed the petition as lacking in merit and upheld the election and return of the 1st respondent as the duly elected Governor of Yobe State. The appeal of the appellants to the Court

of Appeal was similarly dismissed hence their further appeal to the Supreme Court.

The appellants at the Supreme Court challenged the finding of the two lower courts that the 5th respondent was not properly joined as party to the petition and also contended that there was evidence before the court showing that election did not hold in certain local government areas and that the 5th respondent who was an appointee of the 1st respondent gave financial inducement to the 4th respondent culminating in the return of the 1st respondent as the winner of the election.

On their part, the respondents contended that the 5th respondent was not a proper party to the petition and that the appellants did not prove the alleged malpractices alleged as required by law.

At the hearing of the appeal, the 1st and 2nd respondents raised objection to the competence of ground 2 and its particulars contained in the appellants' notice of appeal filed on the 31rd December 2015 by the appellants while the learned counsel to the 5th respondent also raised a preliminary objection to the competence of the appeal on the ground that the supplementary record of appeal was not transmitted within the time prescribed by the rules of court.

Held (*Unanimously dismissing the appeal*):

1. *On Functions of particulars of grounds of appeal* -

The functions which particulars to a ground of appeal are required to perform are to highlight the grouse of the appellants against the judgment on appeal. They are specifications of errors and misdirection which show the complaint the appellants is screaming about and the

line of thought the appellants are going to canvass in their brief of argument. What is fundamental is that in the ground of appeal and the particulars, which are really explanatory notes, what is in contest is left open and exposed so that there is no attempt at an ambush or at giving of room to which the respondent would say he was left in the dark of what he was to defend on appeal or that they are unable to understand or appreciate the complaint in the said ground. In the instant case, perusing the particulars of ground 2 of the grounds of appeal, there is verbosity, inelegance, even a degree of untidiness not to talk of a showcase of repetitiveness leading to their being properly classified as argumentative. However, such presentations cannot be used for punitive measure of a striking out of the ground 2 as it would mean visiting the error or inelegance of counsel on a hapless litigant. [*Osasona v. Ajayi* **(2004) 14 NWLR (Pt. 894) 527**; *Diamond Bank Ltd. v. P.I.C. Ltd***. (2009) 18 NWLR (Pt. 1172) 67**; *Omisore v. Aregbesola* **(2015) 15 NWLR (Pt. 1482) 205 referred to.]** (P. 256, paras. A-E)

2. *On Whether inelegant drafting will render ground of appeal incompetent* -

The current mood of the Supreme Court to technicalities been obvious. The courts are now encouraged to make the best they can out of a bad or inelegant ground of appeal in the interest of justice. Consistent with this libertarian trend, the position now is that it is not every failure to attend, to grounds of appeal with the fastidious details prescribed by the

rules of court that would render such as incompetent. That is particularly so where sufficient particulars can be gleaned from the grounds of appeal in question and adversary and the court are left in no doubt the particulars on which the grounds are founded Hence, bad or defective particulars in a ground of appeal would not, necessarily, render the ground itself incompetent. [*Ukpong v. Comm., Finance Economic Development* **(2006) 19 NWLR (Pt.1013**); *Hambe v. Hueze* **(2001) 4 NWLR (Pt. 703)** *Dakolo v. Rewane-Dakolo* **(2011) 16 NWLR 1272) 22;** *Omisore v. Aregbesola* **(2015) 15 NWLR (Pt. 1482) 205 referred to.**] (Pp. 256-257,paras. E-A; 281, paras. B-E)

3. *On Whether inelegant drafting will render ground of appeal incompetent* -

The fact that a ground of appeal is argumentative or repetitive is not sufficient to deny the appellate his right of appeal when on the face of the ground of appeal notable issue arises for consideration by the court. The principal duty of the court is to do justice. The Supreme Court will always make the best that it can, out of a bad or inelegant ground or brief, the interest of justice. In the instant case, although' the grounds were inelegantly couched and prolix the substance of the appellants' complaints were clear, and were against the ratio of the judgment of the Court of Appeal. [*Dakolo v. Rewane Dakolo* **(2011) 16 NWLR (Pt. 1272) 22 referred to.]** (P. 257, paras. B-H)

4. *On Whether failure of Registrar to compile and transmit record of appeal within time prescribed will render appeal incompetent –*

Paragraph 4 of the Supreme Court Election Appeals Practice Direction, 2011 stipulates that the Registrar shall within a period of not more than 10 days of the receipt of the notice of appeal, cause to be compiled and served on all the parties, the record of proceedings and transmit same to the Supreme fundamental as it would vitiate all the steps taken at the trial, rendering all a nullity. However, non-compliance by an officer of court, without fault on a litigant, will not have a sanction visited upon the innocent litigant who had done his part as provided for either in the particular legislation or practice direction. The appellants in this case, having fulfilled the conditions of appeal as imposed by the Registrar of the lower court at the settlement of record, it is taken that the appellants had completed their part, the duty of transmitting the record lies squarely within the domestic affair of the registry of the court whose decision was appealed against. There was no foundation on which the prayer of the respondent to strike out the appeal could be granted, especially as the objector was seeking a visitation of a grave penalty on a litigant when the mistake was that of the registrar of the court. [*Nwana v. F.C.D.A.* **(2007) 11 NWLR (Pt. 1044) 59;** *N.N.B. Plc v. Denclag Limited* **(2001) 1 NWLR (Pt. 695) 542;** *Oyegun v. Nzeribe* **(2010) 7 NWLR (Pt. 1194) 577**; *Famfa Oil Ltd. v. A.-G., Fed.* **(2003) 18 NWLR (Pt. 852) 453 referred to.]** (Pp. 258-259, paras. A.-G.,)

5. *On Who may present election petition -*

By virtue of section 137 of the Electoral Act, 2010 (as amended) an election petition may be presented by one or more of the following persons -

(a) a candidate in an election;

(b) a political party which participated in the election.

A person whose election is complained of is referred to as the respondent.

If the petitioner complains of the conduct of an Electoral Officer, a Presiding or Returning Officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the Commission shall, in the circumstances be made a respondent; and deemed to be defending the petition for itself and on behalf of its office other persons. In this case, the 5th respondent, ASP Zakari Deba, the *aide-de-camp* **of the 1st respondent who had been made a party was wrongly joined in the petition as he did not fall within the category of persons eligible to be so joined in an election petition. There was no relief sought against him and the appellant had not shown the basis of holding the 1st respondent vicariously liable for the alleged criminal acts of the 5th respondent**. [*A.P.C. V P.D.P* **(2015) 15 NWLR (Pt. 1481) 1**; Oke v. Mimiko **(2014) 1 NWLR (Pt. 1388) 332;** Yusuf v. Ohasanjo **(2005) NWLR (Pt. 956) 96**; J .P. v. I.N.E.C. **(2004) 12 NWLR (Pt. 886) 140 referred to**.] (Pp. 263-264, paras. C-F 276-277, paras. C-B; 278-279, paras. **H-F; 284, para. G. referred to.]** .

Per PETER-ODILI, J.S.C. at page 265, paras. C-F:

> "**I have no difficulty in going along with the submissions of the respective counsel for the respondents that section 137(2) and (3) of the Electoral Act 2010 has no room for the joinder of the 5th respondent who neither won the election nor performed any role as an electoral officer or agent of the 3rd respondent in the election petition challenging the m of such an election and even no relief was claimed against the said 5th respondent and indeed, he had nothing to gain or lose in the petition aforesaid. Also, the jurisdiction of the Election Petition Tribunal is circumscribed and *sui generis* or unique in nature and 5th respondent being outside those expel within the limited provisions of the Electoral Act cannot be brought in as a party under guise.**"

6. *On Who may present election petition* -

Section 137(1) of the Electoral Act 2010, as amended, makes provision for persons who are entitled to present election petitions. In addition to stating who may present an election petition, the section also limits the respondents to such petition to the person whose election is questioned, electoral officers, a presiding or returning officer. These officers or persons are agents of the Commission and their disclosed principal, the Commission, which shall be made a respondent will be deemed to defend the petition for itself and its named agents. The agents for whom the Commission will

defend the petition will include "such other persons" as the Commission may have engaged in the conduct of the questioned election. In the instant case, the 5th respondent was not the person whose election was questioned, nor was he an electoral officer, a presiding or returning officer or was among "such other persons" on behalf of whom the Commission shall be deemed to defend the petition. [*A.P.C. v. P.D.P.* **(2015) 15 NWLR (Pt. 1481) 1 referred to.]** (*P. 279, paras. C-H*)

Per NGWUTA, J.S.C. at page 280 paras. AC:

> **"If the facts the appellant alleged against the 5"' respondent are true, then the matter can be addressed by section 124(4) of the Act (***supra***) subsection 4:**
>
> > **'any person who commits the offence of bribery is liable on conviction to a maximum fine of N500,000.00 or imprisonment for 12 months or both." This is a matter for the regular courts as the 5th respondent is neither the person whose election is questioned nor among those on behalf of whom the Commission, a necessary respondent, shall be deemed to defend the petition. If he is among "such other persons" within the terms of section 137(3)(a) of the Act** *(supra***), it is not necessary to join him as the Commission shall defend the petition for itself and "such other persons".**

7. On When a candidate deemed to have com electoral

offence –

Section 124(6) of the Electoral Act, 2010 provides that for the purpose of the Act, a candidate shall be deemed to have committed an offence if was committed with his knowledge and consent or the knowledge and consent of a person who is acting under the general or special authority of the candidate with reference to the election. (*Pp. 264-265, paras. H-A*)

8. *On Nature of non-compliance that will invalidate election* - **By virtue of section 139(1) of the Electoral Act, 2010, as amended, an election shall not be liable in be invalidated by reason of non-compliance with the provisions of the Act if it appears to the election tribunal or court that the election was conducted substantially in accordance with the principle of the Act and that the non-compliance did substantially affect the result of the election. Thus the burden remained on the appellants to prove that not only were the elections invalidated by reasons of non-compliance, but that the non-compliance with the Electoral Act was so substantial that the results of the election had been affected thereby. In the instant case, the appellants have failed to show the linkage between the alleged misconduct of the 4th and 5th respondents and the said election or how the 1st respondent was connected with the lodgment of the funds or how they affected the outcome of the election in favour of the 1st respondent or that 1st respondent even authorized, the said corrupt practice. The allegation of financial inducement of the 4th respondent was not proved beyond reasonable doubt**

by law. The concurrent findings of the lower courts in this regard were unassailable. [*Doma v. INEC* **(2012) 13 NWLR (Pt. 1317) 297**; *Nwobodo v. Onoh* **(1984) 1 SCNLR 1**; *Gundiri v. Nyako* **(2014) 2 NWLR (Pt. 1391) 211**; *Omisore v. Aregbesola* **(2015) 15 NWLR (Pt. 1482) 205 referred to.]** (Pp. 270-271, paras. C-G; 284, para. A)

9. *On Onus of proof of allegation of corrupt practices at election -*

In election petitions, where allegation of corrupt practices are made, the petitioner making these allegations must lead cogent and credible evidence to prove them beyond reasonable doubt because they are in the nature of criminal charges. Being criminal allegations, they must be proved beyond reasonable doubt and they cannot be transferred from one person to another. It is personal. Thus, it must be proved as follows:

(a) that the respondent whose election is being challenged personally committed the corrupt acts or aided, abetted, consented or procured the commission of the alleged corrupt practices;

(b) where the alleged acts were committed through an agent, that the agent was expressly authorized to act in that capacity or granted authority; and

(c) that the corrupt practice substantially affected the outcome of the election and how it affected it.

In this case, from the record, it is clear that appellants did not satisfy all the requirements stated above and there was no reason whatsoever to disturb the concurrent finding of facts in that respect by the lower courts as same had not been

demonstrated satisfactorily to be perverse. [*Omisore v. Aregbesola* **(2015) 15 NWLR (Pt. 1482) 205;** *P.D.P. v. INEC* **(2008) LPELR-8597 referred to.]** (*Pp.277-278, paras. E-B; 284-285, paras. H-C)*

10. *On Onus of proof of allegation of non-compliance with Electoral Act -*

By the provision of Section 139(1) of the Electoral Act 2010 (as amended), the petitioners are to prove not only the evidence of the non-compliance but further that it substantially affected the rest election. In the instant case, for the appellants to succeed in their allegation of non-compliance, they must plead clearly in their petition, the head of non-compliance, give cogent and credible evidence of such non-compliance and also demonstrate the effect thereof on the election. (Pp. 283, paras. B-D)

11. *On Onus and standard of proof of allegation of" practices at election -*

Even in election petition, allegation of bribery or corruption must be proved by the accuser beyond reasonable doubt. Evidence must be led to show that the voters were bribed. In the instant case, the evidence led was short of proof of such allegation beyond reasonable doubt. [*Nyako v. Balewa* **(1965) NMLR 257**; *Alega v. Edun* **(1960-98) LRECN 214 referred to.]** (*P. 286, paras. E-F)*

12. *On Necessary parties to election petition –*

If a petitioner complains of the conduct of an electoral

officer or presiding officer, or returning officer or any person who took part in the conduct of the election, such officer or person shall be deemed to be a respondent and shall be joined in the election petition in his official status or as a necessary party. There is no gain saying that the 5th respondent was not a proper or necessary party since he did not participate in the conduct of the election held on 11th April 2015. As could be seen from the record of appeal, the 5th respondent was not sued in official capacity and that pre-supposes that he not a necessary party. [*Obasanjo v. Yusuf* **(2004) 9 NWLR (Pt. 877) 144;** *Buhari v. Obasanjo* **(2005) 13 NWLR (PL 941) 1 referred to.]** (*P. 286, paras. B-D*)

13. *On Whether suspicion amounts to proof* -

Mere suspicion no matter how strong it may be, cannot take the place of legal proof. [*State v. Ogbubunjo* **(2001) 2 NWLR (Pt. 698) 576;** *Njovens v. The State* **(1972) 1 NMLR 331;** *Williams v. State* **(1992) 8 NWLR (Pt. 261) 515 referred to.]** (Pp. 270-271, paras. H-A)

14. *On Effect of argument not predicated on ground of appeal* -

The contention of the appellants is that there was non-compliance in the conduct of the election because of an alleged non-use of the card reader. The issue of card reader did not stem from any specific ground of appeal attacking a specific finding of both lower courts on the card reader. It was a matter just floating without anchor of any sort and could not be of assistance to the appellants in their attempt to prove substantial non-compliance with the Electoral Act. [*Akeredolu v. Mimiko*

(**2014) 1 NWLR (Pt. 1388) 402 referred to.]** *(Pp. 274, paras. B-D; 283, paras. F-H)*

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

From the grounds of appeal filed by the appellants, it is obvious that the substratum of their complaints was related to the concurrent findings of both the tribunal and the Court of Appeal. The law is trite in favour of such findings which are not to be interfered with except on exceptional reasons. In the instant case, the findings of the two lower courts are unassailable. (*Pp. 270, paras. C-E; 280-281, paras. H-A)*

Nigerian Cases Referred to in the Judgment:

Akeredolu v. Mimiko (2014) 1 NWLR (Pt. 1388) 402

Alega v. Edun (1960 -98) LRECN 214

Anazodo v. Audu (1999) 4 NWLR (Pt. 600) 530

A.P.C. v. P.D.P. (2015) 15 NWLR (Pt. 1481) 1

Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360

Audu v. INEC (No. 2) (2010) 13 NWLR (Pt.1212) 456

Bassil v. Fajebe (2001) 11 NWLR (Pt. 725) 592

Buhari v. Obasanjo (2005) 13 NWLR (Pt.941) 1

Buhari v. Yusuf (2002) 14 NWLR (Pt. 841) 446

Dakolo v. Rewane-Dakolo (2011) 16 NWLR (Pt. 1272) 22

Diamond Bank Ltd. v. P.I.C. Ltd. (2009) 18 NWLR (Pt. 1172) 67

Doma v. I.N.E.C (2012) 13 NWLR (Pt. 1317) 297

Egolum v. Obasanjo (1999) 7 NWLR (Pt. 611) 423

Famfa Oil Ltd. v. A.-G., Fed. (2003) 18 NWLR (Pt. 852) 453

Gbafe v. Gbafe (1996) 6 NWLR (Pt. 455) 417

Gbileve v. Addingi (2014) 16 NWLR (Pt. 1433) 394

Gundiri v. Nyako (2014) 12 NWLR (Pt. 1391) 211

Hambe v. Hueze (2001) 4 NWLR (Pt. 703) 372

Ukpong v. Comm., Finance and Development (2006) 19 NWLR (Pt. 1013) 187

LP. v. INEC (2004) 12 NWLR (Pt.886) 140

Kalu v. Chukwumerije (2012) 12 NWLR (Pt.1315) 425

N.N.B. Plc v. Denclag Limited (2001) 1 NWLR (Pt. 695) 542

Njovens v. State (1972) 1 NMLR 331

Nwana v. F.C.DA. (2007) 11 NWLR (Pt. 1044) 59

Nwankwo v. Yar'Adua (2010) 12 NWLR (Pt. 1209) 518

Nwobodo v. Onoh (1984) 1 SCNLR 1

Nwole v. Iwuagwu (2005) 16 NWLR (Pt. 952) 543

Nwosu v. Board of Customs & Excise (1988) 5 NWLR (Pt. 93) 225

Nyako v. Balewa (1965) NMLR 257

Obasanjo v. Yusuf (2004) 9 NLWR (Pt. 877) 144

Ogu v. Ekweremadu (2006) 1 NWLR (Pt. 961) 225

Oke v. Mimiko (No. 2) (2014) 1 NWLR (Pt. 1388) 332

Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205

Oruwari v. Osier (2013) 5 NWLR (Pt. 1348) 535

Osasona v. Ajayi (2004) 14 NWLR (Pt. 894) 527

Oyegun v. Nzeribe (2010) 7 NWLR (Pt. 1194) 577

P.D.P. v. I.N.E.C. (2008) LPELR - 8597

State v. Ogbubunjo (2001) 2 NWLR (Pt. 698) 576

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

Williams v. State (1992) 8 NWLR (Pt. 261) 515

Yusuf v. Obasanjo (2005) 18 NWLR (Pt. 956) 96

Yusufu v. Obasanjo (2003) 16 NWLR (Pt. 847) 532

Nigerian Statutes Referred to in the Judgment:

Electoral Act, 2010 (as amended) Ss. 126(6), 137 (1) (2) (3), 139(1), 149

Supreme Court Act, Cap. S.15, Laws of the Federation of Nigeria, 2004, S. 22

Supreme Court Election Appeals Practice Direction, 2011, paragraph 4

Nigerian Rules of Court Referred to in the Judgment:

Supreme Court Rules, O. 2 r. (1) (2) (4) (7); O. 8 rr. 1, 2(2), (3), (4),(7)

Appeal:

This was an appeal against the judgment of the Court of Appeal which affirmed the decision of the trial Yobe State Governorship Election Tribunal dismissing the petition of the appellants. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the case:

Supreme Court:

Names of Justices that sat on the appeal: Walter Samuel Nkanu Onnoghen, J.S.C. (Presided); Nwali Sylvester Ngwuta, J.S.C; Mary Ukaego Peter-Odili, J.S.C. *(Read the Leading Judgment*); Musa Dattijo Muhammad, J.S.C; Clara Bata Ogunbiyi, J.S.C; John Inyang Okoro, J.S.C; Amiru Sanusi, J.S.C.

Appeal No.: SC. 13/2016

Date of Judgment: Monday, 15th February 2016

Names of Counsel: Chief Adeniyi Akintola, SAN; Abiodun Owonikoko, SAN (*with them*., Folashade Aofolaju; O. J. Aboje, Esq.; Oladele Oyelami, Esq.; Christian Okoh, Esq.; Matthew W. Opukumo, Esq.) - *for the Appellants*

Yusuf Ali, SAN; Adebayo Adelodun, SAN; K. K. Eleja, SAN (with them, A. K. Adeyi, Esq.; Prof. Wahab Egbewole; A. I. Ishaku, Esq.; A. Y. Idriss, Esq.; Salisu Ahmed, Esq.; Ayo Olanrewaju, Esq.; S. A. Oke, Esq: Wahab Ismail, Esq.; Dr. M. T. Adekilekun; Alex Akoja Esq.; K. T. Sulyman-Hassan [Mrs.]; Habeeb Oredola Esq.; P. I. Ipkegnu [Mrs.]; K. O. Lawal, Esq.; Safinat Lamidi [Miss]; A. O. Usman, Esq.; A. B. Eleburuike Esq.; C. N. Akuneto, Esq.; Tejumola Opejin [Miss] Musa Ahmed, Esq.; Adaobi Ike [Miss]) -for the 1st and 2nd Respondents

E. O. Sofunde. SAN, (with him, I. O. Akangbe, Esq; J. K, Kolawole, Esq.; M. B. Gana, Esq.; D. O. Olaleke, Esq; [Miss]) - *for the 3rd and 4th Respondents*

Chief Titus Olasupo Ashaolu, SAN, (*with him*, Hassan T. Fajimite, Esq.; Ayodeji Acquah, Esq.; Tunde Olomu Esq.; Ashaolu Gbenga Ayoola, Esq.; O. G. Arinde, Esq.; C. G. Ike-Okafor, Esq.; Chinasa Sandra Ogba, Esq.) *for the 5th Respondent*

Court of Appeal:

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

Names of Justices that sat on the appeal: Amina Adamu Augie, J.C.A. (*Presided*); Joseph Tine Tur, J.C.A; Ita. George Mbaba, J.C.A.; Stephen Jonah Adah, J.C.A; Amina Audi Wambai, J.C.A.

Appeal No:. CA/A/EPT/731/2015

Date of Judgment: Friday, 18th December 2015

Names of Counsel: Prince Folasade Aofolaju (*with him*, Oladele Oyelami, C. Emeka Izima and Christian Okoh) - *for the Appellants*

Ayo Olanrewaju (*with him,* Idris Sulaiman) - *for the 1st and 2nd Respondents*

A.A. Shehu Kassim (*with him,* O. Lawal Safimat Lamidi (Miss.), A. O. Usman, A.B. Eleburuike, F. Q. Arifagun and Moses Gana) - *for the 3rd and 4th Respondents*

Babatunde Olomu (*with him,* O. O. Owulo, A.A. Nkeoye (Miss.) C.G. Ike-Okafor and A.O. Onah (Miss.) - *for the 5th Respondent.*

Election Tribunal:

Name of the Election Tribunal: Governorship Election Petition Tribunal, Abuja

Name of the members: Hon. Justice Dada, (Chairman); Hon. Justice A. O. Bako - Member, Hon. Justice A.A

Fasanmi - Member

Petition No; EPT/YB/GOV./01 /2015

Date of Judgment: Wednesday, 21st October 2015

Counsel:

Chief Adeniyi Akintola, SAN; Abiodun Owonikoko, SAN : (*with them,* Folashade Aofolaju; O. J. Aboje, Esq.; Oladele Oyelami, Esq.; Christian Okoh, Esq.; Matthew W. Opukumo, Esq.) - *for the Appellants*

Yusuf Ali, SAN; Adebayo Adelodun, SAN; K. K. Eleja, SAN (*with them,* A. K. Adeyi, Esq.; Prof. Wahab Egbewole; A. 1. Ishaku, Esq.; A. Y. Idriss, Esq.; Salisu Ahmed, Esq.; Ayo Olanrewaju, Esq; S. A. Oke, Esq.; Wahab Ismail, Esq.; Dr. M. T. Adekilekun; Alex Akoja, Esq.; K. T. Sulyman-Hassan [Mrs.]; Habeeb Oredola, Esq.; P. I. Ipkegnu [Mrs.]; K. O. Lawal, Esq.; Safinat Lamidi

[Miss]; A. 0. Usman, Esq.; A. B. Eleburuike, Esq.; C. N. Akuneto, Esq.; Tejumola Opejin [Miss]; Musa Ahmed, Esq.; Adaobi Ike [Miss]) - for the 1st and 2nd Respondents

E. O. Sofunde, SAN, (*with him*, I. O. Akangbe, Esq; J. K. Kolawole,Esq.; M.B. Gana,Esq.; D.O.Olaleke,Esq. [Miss]) *-for the 3rd and 4th Respondents*

Chief Titus Olasupo Ashaolu, SAN, (with him, Hassan T. Fajimite, Esq.; Ayodeji Acquah. Esq.: Tunde Olomu, Esq.; Ashaolu Gbenga Ayoola, Esq.; O. G. Arinde, Esq.; C. G. Ike-Okafor, Esq.; Chinasa Sandra Ogba, Esq.) - for the 5th Respondent

PETER-ODILI, J.S.C. (Delivering the Leading Judgment): The judgment, which reasons are being proffered today was delivered on the 2nd day of February, 2016 after hearing the submissions of counsel, consideration of the record of appeal and the briefs of argument and the court had no difficulty in dismissing the appeal.

This is an appeal against the decision of the Court of Appeal, Abuja Division, Coram; Amina Adamu Augie, Joseph T. Tur, I. T. Mbaba, S. J. Adah, A.A. Wambai **JJCA** delivered on the 18"' day of December, 2015 in which judgment the Court of Appeal dismissed the appeal against the judgment of the trial tribunal.

Facts Relevant to the Appeal:

Governorship Election was conducted on 11th April, 2015 by the 3rd respondent, the Independent National Electoral Commission (INEC) in Yobe State. At the said election, the 2nd appellant sponsored the 1st appellant, Alhaji Adamu Maina Waziri, as candidate, while the 2nd respondent, the All Progressives Congress (APC) sponsored the 1st respondent, Alhaji Ibrahim Geidam. As its candidate. Other political parties also sponsored candidates that

also took part in the election as contestants.

At the close of the polls, the 3rd respondent, the Independent National Electoral Commission (INEC), declared the 1st respondent as the duly elected Governor of Yobe State having polled the majority of lawful votes of 334,847 votes to defeat the 1st appellants who polled a paltry 179,700 votes, to a second position. Having is scored the majority of the lawful votes cast and satisfied the requirements of the Constitution to be declared as elected, the 3rd respondent declared the 1st respondent as the winner of the said election and accordingly returned him as elected.

The appellants, being dissatisfied with the election return of the 1st respondent, filed a joint petition which ultimately culminated into this appeal on the 1st May, 2015. The grounds of the petition are set out in paragraphs 43, 44 and 45 of the petition thereof contained on pages 18-20 of volume 1 of the record as follows:

"43. Your petitioners state that:

i. The 1st respondent was not duly elected by majority of lawful votes cast at the election.

ii. The election and return of the 1st respondent is invalid by reasons of corrupt practices and or non- compliance with the provisions of the Electoral Act, 2010 (as amended) on the conduct of the 11th April, 2015 governorship election in Yobe State.

iii. The 1st petitioner was the winner of majority, of lawful votes cast during the Yobe State Governorship election held on 11th April, 2015 and had not less than one-quarter of lawful votes cast in at least two-thirds of all local

government areas and ought to be returned as a winner of the election.

44. Your petitioners state that the 1st petitioner scored the majority of lawful/valid cast in the local government where election was held and his score measured up to the minimum requisite constitutional threshold and spread across the local government areas of Yobe State; and ought therefore to have been returned by the 3rd and 4th respondents as winner of the election.

45. Your petitioners further state that the declaration made on 1st April 2015 by the 3rd respondent that the 1st respondent won the said election and thereby returned him as elected is a clear violation of the provisions of the Electoral Act, 2010 (as amended) because the 1st respondent did not score a majority of lawful votes cast and that in the Local Government Areas where elections did not take place or where the elections were clearly and brazenly mis-collated by the 1st - 4th respondents, assisted by officers of the Nigeria Police Force, votes were credited or allocated to the 1st respondent in a manner that suits their whims and caprices and in brazen and flagrant violation of the provisions of the Electoral Act, 2010 (as amended)".

Flowing from the grounds reproduced above, the appellants asked the trial tribunal for the following reliefs which are set out on paragraph 54 on pages 28-29 of the record.

"54. Whereof your petitioners pray as follows:

i. That it may be determined and thus declared that the result announced and the return of the 1st respondent, Alhaji Ibrahim Geidam, as duly elected Governor of Yobe State pursuant to the election

held on 11th April 2015 are void and liable to be nullified by reason of substantial non-compliance with the Electoral Act, 2010 and INEC Election Guidelines, 2015 which non-compliance substantially affected the result of the election.

ii. That it may be determined and thus declared that the result announced and returned of the 1st respondent, Alhaji Ibrahim) Geidam, as duly elected Governor of Yobe State pursuant to the election held on 11th April 2015 are vitiated and liable to be nullified by reason of corrupt practices to wit-monetary inducement of the 3rd and 4rd respondents and their officials by the 1st respondent acting through his official subordinates as an incumbent Governor of Yobe State through lodgments of money into personal accounts of officials of INEC charge with the conduct of the election in Yobe State when the election process was already ongoing.

iii. That it may be determined that going by the lawful votes cast at the said election, the 1st petitioner ought to have been returned and should be returned as the duly elected Governor of Yobe State pursuant to the election conducted by the 3rd and 4th respondents on 13 April 2015.

iv. In addition and/or in the alternative, that the 1st petitioner be declared as the winner of the Yobe State Governorship election held on 11th April, 2015, judging by the results and/or votes obtained thereat.

v. That the elections in the local governments wards,

units and/or centres characterized or marred by electoral malpractices and/or irregularities during the conduct of the Yobe State election held on 11th April, 2015 be voided and/of set aside and a fresh election ordered by this honourable tribunal.

vi. That a fresh election be ordered throughout the affected polling units in the local government areas where election did not take place as depicted above namely, in accordance with the provisions of the Electoral Act, 2010, as amended.

vii. That it be determined consequentially that the fresh/ supplementary election to be conducted pursuant to prayers i, ii, v, vi shall not includes the 1st and 2nd respondents as participants, and shall not be supervised by the 4th respondent".

The 1st and 2nd respondent incorporated preliminary objections 3 in their joint reply to the petition asking for the striking out and/or the dismissal of the petition. It was mutually agreed that all the objections would be considered alongside the substantive petition. Hence, the objections were duly considered in the final judgment of the tribunal.

At the conclusion of pre-trial, the petitioners called a total of 27 witnesses, while the 1st and 2nd respondents called a total of 7 witnesses. The 3rd and 4th respondents opted not to call any witnesses of their own but placed reliance on the oral and documentary evidence already proffered by the other parties. Written addresses ere subsequently filed, exchanged, adopted and adumbrated upon y the learned counsel to the parties, after which judgment was served in the case.

In a unanimous and well considered judgment, the tribunal dismissed in its entirety, the case of the petitioners for lacking in

merit and upheld the election and return of the 1st respondent as the duly elected Governor of Yobe state based on the 11th April, 2015 Governorship Election held in the State. The judgment of the tribunal would be found at pages 1448-1520 of volume 11 of the record.

The petitioners dissatisfied with the judgment of the trial tribunal appealed to the Court of Appeal or lower court or court below for short. The court below delivered its judgment on the 18th day of December, 2015 in which it dismissed the appeal. Aggrieved -further, the appellants have come before the Supreme Court to -ventilate their grievances.

On the date of hearing of the appeal being 2nd day of February, 2016, learned counsel for the appellants, Chief Adeniyi Akintola SAN adopted their briefs of argument filed on the 15/1/2016, reply brief to 1st and 2nd respondents filed on 22/1/2016, reply brief to 3rd & 4th respondents filed on 27/1/2016 and reply brief to 5th respondent filed on 27/1/2016.

In the appellants' brief of argument were distilled three issues for determination, viz:

Issue No. 1

> Whether the Court of Appeal rightly held that the 5th respondent is not a proper and necessary party to the petition of the appellants at the trial tribunal, in the face of the overwhelming and specifically particularized allegations of corrupt practices against him and in view of this honourable court's decision in *APC v. Ayodele Fayose* (2015) LPELR Vol. 24587 (SC) 94; reported as *A.P.C. v. P.D.P*. (2015) 15NWLR (Pt. 1481) 1.

Issue No. 2

> Whether the judgment of the Court of Appeal upholding the dismissal of the appellant's petition on

ground of corrupt practices is not perverse, having regard to the facts of corrupt enrichment of 1st respondent, by the 5th respondent acting as an agent of the 1st respondent, during the governorship election process held on 11th April, 2015 and which corrupt practice was confirmed by EFCC to be for the purpose of influencing the election and further supported with unassailable documentary and oral evidence adduced at the trial tribunal in proof of the allegations.

Issue No. 3

Whether the one sided oral and documentary evidence (particularly the admission against the interest by the 3rd respondent (INEC) Administrative Secretary PW4) led by the appellants did not satisfy the evidential burden that election did not hold in the following 6 Local Government Areas of Bade, Fune, Gulani, Jakusko, Tramuwa and Yunusari, so as to warrant this honourable court to invoke section 22 of the Supreme court Act, LFN, 2004, to nullify the Yobe State Governorship Election held on 11th April. 2015 for substantial non-compliance?

Learned counsel for the Is' and 2nd respondents, Yusuf Ali, SAN adopted their brief of argument filed on the 21/1/2016 and in it was argued their preliminary objection. He crafted three issue for determination which are stated hereunder, viz:

1. Whether the Court of Appeal was not correct in its decision that the 5th respondent who did not take any part in the election either as candidate or official was not a proper party and thereby struck out his name from the case, especially having regard to the decision of this Honourable Court in the case of APC v. PDP (2015) 15

NWLR (Pt. 1481) 1. (Ground 1).

2. Whether the court below was not right in upholding the decision of the trial tribunal on the various heads of corruption and corrupt practices and the impact of same (if any) on the conduct of the 11th April, 2015 governorship election especially having regard to the concurrent findings of the two lower courts that they were not proved and that the alleged monies could have been paid by anybody. (Grounds 2 & 3).

3. Whether the court below did not act rightly in upholding the various findings of fact made by the trial tribunal on the failure of the appellants to prove non-compliance and allegation of electoral malpractices made in the petition and in also agreeing with the trial tribunal that the appellants failed to prove non-holding of election in six (6) local government areas. (Grounds 4 & 5). E. O. Sofunde, SAN, learned counsel for the 3rd & 4th respondents adopted their brief of argument filed on the 22/1/2016. He identified three issues for determination which are thus:

   i. Whether the Court of Appeal was right in its decision that the 5th respondent ought not to have been joined in the petition (From ground 1 of the notice of appeal).

   ii. Whether the Court of Appeal was right in its decision that the evidence before the tribunal merely shows that moneys were deposited into the bank accounts of the 4th respondent and that absence of evidence showing how the deposits influenced the outcome of the election was fatal to the appellants? (Grounds 2 & 3 of the notice of

appeal).

iii. Whether the Court of Appeal correctly held that the appellants failed to prove before the trial tribunal that election did not hold in the six local governments of Bade, Fune, Tarmuvva, Gulani, Yunusari and Jakusko (Ground 4 of the notice of appeal).

Learned counsel for the 5th respondent, Chief Titus Ashaolu, SAN adopted his brief of argument filed on the 22nd day of January, 2016 and in it, were identified two issues for determination which are as follows:

1. Whether the Court of Appeal was right in its decision when it held that the 5th respondent was not a proper party to the appellants' petition No. EPT/YB/GOV/01/2015? (Distilled from ground 1).
2. Whether the Court of Appeal was right to have affirmed the decision of the trial tribunal that the appellants did not prove the allegation of corrupt practices against the 4th and 5th respondents beyond reasonable doubt? (Distilled from grounds 2 and 3).

The learned counsel to the 5"1 respondent also raised a preliminary objection argued in the brief of argument.

It needs be said that the two preliminary objections of the 1st respondent and that of the 5th respondent would be tackled firstly before anything else.

Notice of Preliminary Objection

Take notice that the 1st and 2nd respondents shall at the threshold of hearing of the appeal raise objection to the competence of ground 2 and its particulars contained in the appellants' notice of appeal filed on the 31st of December, 2015 and shall on the premises urge the honourable court to strike out the said ground and the issue for

determination formulated therefrom, together with the argument canvassed in support of the appellants' brief of argument on the following grounds:

Grounds of Objection

i. The ground and particulars in support of ground 2 are argumentative, narrative and unwieldy.

ii. Particulars subjoined to the ground are at variance with the said ground and qualifies as independent grounds of appeal on their own.

iii. The ground and especially the particulars subjoined thereto offend the mandatory provisions of the Rules of this honourable court especially Order 8 rule 2 (3), (4) and (7) of the Rules of this honourable court.

iv. Ground 2 and its particulars subjoined thereto are liable to be struck out for incompetence.

The preliminary objection of the 5th respondent is centred on the competence and validity of the supplementary record of appeal compiled, transmitted and served by the appellants.

The arguments in the two objections shall be taken together. In their objection, learned counsel for the 1st and 2nd respondents submitted that the complaint of the appellants has to do with the alleged closure of the Court of Appeal's eyes to the documentary evidence on record which allegedly led it to a perverse decision n the issue of corrupt practices That the particulars of the said ground two of the notice of appeal and particulars thereof were argumentative and so contrary to the of the Supreme Court specifically Order 8 rules 1, 2, (1), (2) (3), (4) and (7).

The preliminary objection of the 5th respondent is anchored on the lack of competence and validity of the supplementary record

of appeal compiled, transmitted and served by the appellants. That it as compiled on the 11th day of January, 2016 and filed out of time in gross non-compliance with paragraph 4 of the Supreme Court Election Appeals Practice Direction, 2011. He cited *Nwankwo & Ors v. Alhaji Umaru Yar'Adua* (2010) 12 NWLR (Pt. 1209) 518 e.t.c.

Responding to the objection of the 1st and 2nd respondent, earned counsel for the appellants stated that ground 2 of the appellants' notice of appeal did not flout any of the rules of the Supreme Court while particulars A, B, F, G,I, J, K,L, M, N, P, S,T, V and W are not argumentative. Also that the ground is not contrary to the dictates of the Rules of this court specifically Order 8 rule 1, rule 2(1), (2), (3), (4) and (7) of the Supreme Court Rules. That the particulars supplied the necessary information as to the nature of the error complained about under ground 2. He cited *Osasona v. Ajayi* (2004) 14 NWLR (Pt. 894) 527; *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 257. That even if the ground of appeal is argumentative or repetitive, it is not sufficient to deny the appellant his right of appeal. He cited *Dakolo v. Rewane-Dakolo* (2011) 16 NWLR (Pt. 1272) 22 at 53.

In reply to the 5th respondent's objection, learned counsel for the appellants stated that the prescriptions of paragraph 4 of the Supreme Court Election Appeals Practice Direction, 2011 is that the duty of compiling and transmitting the record of appeal lies solely with the registry of the lower court manned by the Registrar. That what is required of the appellant is to make provisions for the production of the record, by fulfilling the conditions of appeal which in the instant appeal, the appellants complied with and so to reject the supplementary record before this court is to lay the blame of failure of the registrar of the lower court on the appellant. He cited *N.N.B. Plc v. Denclag Limited* (2001) 1 NWLR (Pt. 695)

542 at 552.

In respect of the preliminary objection of the 1st and 2nd respondents with respect to their grouse to ground 2 of the notice of appeal, which learned counsel asserts the particulars went off the complaint and was argumentative and therefore defective. ground 2 shall be quoted hereunder thus:

> "*Ground Two*
>
> 'The Court of Appeal erred in law when it closed its eyes to the documentary evidence on the record thereby reached a perverse decision on the issue of practices alleged against the 4th and 5th respondent"

The functions which particulars to a ground of appeal required to perform are to highlight the grouse of the appellant against the judgment on appeal. They are specifications of errors and misdirection which show the complaint the appellant is screaming about and the line of thought the appellants are going to canvass in their brief of argument. What is fundamental is than ground of appeal and the particulars which are really explanatory notes what is in contest is left open and exposed so that there is no attempt at an ambush or a giving of room to which the respondent would say he was left in the dark of what he was to defend on appeal or that they are unable to understand or appreciate the complaint in the said ground. That said 1 would not leave it unsaid that clearly perusing the said particulars of the said ground 2, there is verbosity, inelegance, even a degree of untidiness not to talk showcase of repetitiveness leading to their being properly classified as argumentative. However, such presentations cannot be used for punitive measure of a striking out of the ground 2 as it would mean visiting the error or inelegance of counsel on a hapless litigant In this, I rely on *Osasona v. Ajayi* (2004) 14 NWLR (Pt. 894) 527 *Diamond Bank Ltd. v. Partnership Invest Co. Ltd. &*

Anor (2009) 18 NWLR (Pt. 1172) 67 at 88; my learned brother, Nweze, JSC had in *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 207 paras. B-F with illumination stated thus:

> "The answer to the objectors' invitation is predictable. The current mood of this court to technicalities has been depicted above. Consistent with this libertarian trend, the position now is that it is not every failure to attend, to grounds of appeal with the fastidious details' prescribed by the rules of this court that would render such as incompetent. That is, particularly, so where sufficient particulars can be gleaned from the grounds of appeal in question and the adversary and the court are left in no doubt as to the particulars on which the grounds are founded, *Ukpong & Anor v. Commissioner for Finance and Economic Development & Anor* (2006) LPELR- 3349,(2006) 19 NWLR (Pt.1013) 187; citing *Hambe v. Hueze* (2001) 4 NWLR (Pt. 703) 372; …….. Even then, courts are now encouraged to make the best they can out of a bad or inelegant ground of appeal in the interest of justice. *Dakolo & Ors v. Dakolo & Ors* (2011) LPELR- 915, (2011) 16 NWLR (Pt. 1272) 22. Hence ….. bad or defective particulars in ground of appeal would not, necessarily, render the ground itself incompetent".

In an earlier decision of this court in *Dakolo v. Rewane-Dakolo* (2011) 16 NWLR (Pt. 1272) 22 at 53,paras. E-H Adekeye, JSC had stated the position of the Court in the following words:

> "Grounds of appeal to be differentiated from their particulars. *The fact that a ground of appeal is*

> *argumentative or repetitive is not sufficient to deny the appellant his right of appeal when on the face of the ground of appeal-notable issue arises for consideration by the court ... the principal duty of the court is to do justice*. The grounds of appeal and the particulars in the instant appeal might appear to be argumentative and repetitive; they equally raised triable issues which would sustain the appeal". The respondents' preliminary objection was therefore overruled and struck out.

In support of Adekeye, JSC is the dictum of Galadima, J.S.C. in the same Dakolo (*supra*) pages 58 paras. G-H as follows:

> "The Supreme Court will always make the best that it can, out of a bad or inelegant ground or brief, in the interest of justice. In the instant case, although the grounds were inelegantly couched and prolix, the substances of the appellants' complaints were clear, and were against the ratio of the judgment of the Court of Appeal".

As I stated earlier, the said particulars are inelegant, verbose and far from attractive, that would certainly not translate to incompetence of the ground 2 since the substance of the complaint is available and not opaque or unclear in what the grievance is. The technicality which this preliminary objection is seeking to enthrone to the detriment of substantial justice is a bait that just will not, catch a prey. It flies off the handle and the appellants meeting the requirements of Order 8 rule 1 and rule 2(1), (2), (3), (4) & (7) of the Supreme Court Rules, the objection is dismissed for lacking in merit.

Now, to the preliminary objection of the 5th respondent -is sitting on the lateness of the filing of the supplementary record for

which, learned counsel for the 5th respondent is calling on this court to reject that record. I shall refer to paragraph 4 of the Supreme Court Election Appeals Practice Direction, 2011. It stipulate as follows:

> "The registrar shall within a period of not more than 10 days of the receipt of the notice of appeal, cause to be compiled and served on all the parties, the record of proceedings and transmit same to the Supreme Court."

I agree with learned counsel for the 5th respondent that because of the nature of election petition proceedings, the effect of non-compliance with the practice direction is fundamental as it would vitiate all the steps taken at the trial rendering all a nullity. However, can a non-compliance by an officer of court without fault on a litigant have a sanction visited upon the innocent litigant who had done his part as provided for either in the particular legislation or practice direction. My answer would be a resounding NO. This is because the appellants as in this case having fulfilled the conditions of appeal as imposed by the Registrar of the lower court at the settlement of record, it is taken that the appellants having completed their part, the duty of transmitting the record lies squarely within the domestic affair of the registry of the court whose decision is appealed against and in this case, the Court of Appeal. In similar presentation Chukwuma-Eneh, J.S.C. had in *Nwana v. FCDA* (2007) All FWLR (Pt. 376) 611 at 627; (2007) 11 NWLR (Pt. 1044) 59 @ pages 79-80 paras. H-A stated thus:

> "However, with respect, the respondent has total! misconceived the impart of Rules 13 and 21(5)-Orders 3 of the Court of Appeal Rules, 2002, *which have specifically imposed on the trial court the duty to transmit the record of appeal to the court below*

after preparing it in accordance with the provisions of Order 3 rule 9 of the Court of Appeal Rules, 2002".

He stated further at pages 28 and at the NWLR page 80 paras. D-G:

"The appellant having done all that he is required under the Rules, the rest is left to the trial court to carry out its responsibility of transmitting the record and the said exhibits to the court below. Anything more will be onerous ... *The failure to transmit the exhibits is entirely that of the trial court and the blame should not be visited on the appellant. This being the case, the appellant should not be made to bear the brunt of the trial Court's failure in this regard*".

See also *N.N.B. Plc v. Denclag Limited* (2002) 1 NWLR (Pt. 695) P. 542 at 552, paras. A-B per Muhammad JCA, as he then was aid:

"*What is paramount in the process of compilation of record of appeal is for the appellant to make provision for the production of the record. Once he has done so, what remains is within the domestic affair of the registry of the court whose decision is appealed against. In their instant case, going by the conditions of appeal laid down by the registrar of the trial court, the applicant, having satisfied all the conditions imposed on him, had successfully complied with the conditions imposed on him, had successfully complied with the conditions of the appeal"*.

Having the support of the precedents above in apposite

situations and taking along what is before us, the appellants having done their part in fulfilling the conditions of appeal and the supplementary record complained of by the 5th respondent containing the documents tendered in evidence and admitted as exhibit before the trial tribunal which the Registrar of the court below failed to transmit with the earlier volumes 1 and 2 of the record of appeal, it stands to reason that there is no foundation on which what is sought by the 5th respondent in this preliminary objection can be taken with favour, especially as what the objector is seeking is a visitation of a grave penalty on a litigant when the mistake is that of the registry of the court. It is an administrative error of the registrar of the court and cannot be described as anything else..See *Oyegun v. Nzeribe* (2010) 7 NWLR (Pt. 1194) 577 at 596 per Muhammad, JSC (as he then was) and the case of *Famfa Oil Ltd. v. A.-G.. Federations*

(2003) 18 NWLR (Pt. 852) 453 at 469 per Belgore, JSC (as he then was).

From the foregoing, this preliminary objection has no to stand on and I have no difficulty in dismissing it. It is her« dismissed.

I shall now proceed to the appeal which is properly before court.

1 shall utilise the issues as crafted by the appellants for ea reference and convenience. *Issue No. I:*

> This issue raises the question as whether the Court of Appeal was right in its decision when it held that 5th respondent was not a proper party to the appellants' petition.

Chief Akintola, SAN, for the appellant submitted that bymmjkk virtue of section 137(2) of the Electoral Act, 2010 (as amende the only mandatory statutory' respondents to an election petition INEC and the party as well as the candidate whose return

is challenged and so officials of INEC need not be joined to prove acts that are statutorily charged to be performed by the electoral umpire through its officials and staff including ad hoc staff. However, where an agent who did not participate in the conduct of the election as an official but is alleged to have committed corrupt practices in the conduct of the election is impleaded his non-joinder will lead to breach of fair hearing as the tribunal will be handicapped and deprived of jurisdiction to determine his culpability in absentia and without being heard. Learned senior counsel cited the case of *APC* v. *PDP & Ayo Fayose* (2015) EPELR vol. 24,58794; reported as *A.P.C.* v. *P.D.P.* (2015) 15 NWLR (Pt. 1481) 1; (2015) 15 NW (Pt. 1481) 1; *Egolum v. Obasanjo* (1999) 7 NWLR (Pt. 611)4 *Kalu* v. *Chukwumerije* (2012) 12 NWLR (Pt. 1315) 425 at 459.

Chief Akintola, SAN said it is for compliance to the principle of fair hearing that the 5th respondent was a necessary party and so the court below was wrong to hold otherwise considering the facts and circumstances proffered in evidence through PW2 and PW3 which proved corrupt practices. He cited *Yusufu v. Obasanjo* (2013) 16 NWLR (Pt. 847) 532.

For the 1st and 2nd respondents Yusuf Ali, SAN contended that the list of persons qualified to be made respondents is not at large and so appellants' argument on the principle of fair hearing is misplaced since no person is put on trial in an election petition and no adverse relief to the interest of a non-party on record can be granted by an election tribunal or court dealing with an election. That the *sui generis* nature of an election petition has made reliefs grantable limited by statute just like parties that can sue and be sued. He relied on *Buhari v. Yusuf (2003)* 14 NWLR (Pt. 841) 446 at 508; *APC v. PDP* (2015) 15 NWLR (Pt. 1481) 1 at 60-61.

That the forum to probe the alleged conduct of the 5th

respondent is the regular court within the dictates of the law and so the court below was right in its decision that the 5th respondent was not a necessary party.

Learned counsel for the 3rd and 4th respondents argued along the same lines as 1st and 2nd respondents on the ground that 5th respondent was not a necessary party. He cited section 124(6) of the Electoral Act, 2010 (as amended); *Yusuf v. Obasanjo* (2005) 18
NWLR (Pt. 956) 96 e.t.c.

Chief Titus Ashaolu, SAN, learned counsel for the 5th respondent submitted that the appellants foray into the principle of fair hearing or constitutional right to fair hearing to justify 5th respondent being made a party is misconceived and untenable in law as the jurisdiction of an Election Petition Tribunal is circumscribed and *sui generis.* He cited *Oke v. Mimiko & Ors* (2013) LPELR-0645 (SC); *(No. 2)* (2014) 1 NWLR (Pt. 1388) 332. That where a statute has specifically prescribed parties to an action, the common law principle of joinder of a necessary or desirable party takes back seat.

Faced with the question above posed, the court below or lower court stated at pages 1903 - 1905 as follows:

> "The question is whether the 5th respondent was properly joined in the proceedings in the tribunal in view of the provisions of section 137 of the Electoral Act, 2010 as amended which reads as follows: "137(1) An election petition may be presented by one or more of the following persons:
>
> a. A candidate in an election;
> b. A political party which participated in the election.

2. A person whose election is complained of is. in this bill,

referred to as the respondent.

3. If the petitioner complains of the conduct of electoral officer, a presiding or returning Officer, it shall not be necessary to such officers or persons notwithstanding the nature of the complaint and the Commission shall, in this instance, be:

a. Made respondent; and

b. Deemed to be defending the petition for itself and on behalf its officers (sic) or such other persons".

There are many judicial interpretations of the above provisions. In the case of *PDP v. APC* (2015) LPELR 29340 (CA), the issue whether Inspector General of Police and Chief of Army Staff, who were joined in the case (because of the unsavoury roles of some Policemen and Army Officers in the conduct of the election) were proper parties in the case, was resolved in the negative. Even when it was held that soldiers played some unsavoury roles in the election, the joinder of the Inspector General of Police and Chief of Army Staff were held to be improper and the decision to strike out their names properly taken by the tribunal. See pages 76-78 thereof. See also *Yusuf v. Obasanjo* (2005) 18 NWLR (Pt. 956) 96.

Appellants may have thought that the joinder of 5th respondent in this suit was crucial, because of the infamous role he played in paying questionable monies into the accounts of the 4threspondent about 3 days to the conduct of the April 11, 2015. Elections (maybe to give him opportunity to defend himself over the accusation), but that did not and could not have made the

5th respondent a credible and necessary party in the suit, going by the Electoral Act which delimits who can be a respondent in election matters. The 5threspondent is not a staff of the commission. Neither did the appellants show that he voted or participated at the election held on 11, April, 2015. The 5th respondent ought not to have been joined in the petition. If the appellants had any grievances, the tribunal was not the forum to probe the conduct of the 5th respondent. The preliminary objection and the cross-appeal by the 5threspondent are hereby struck out."

The matter of the surfacing of the 5th respondent in the petition and all the way here is because the petitioners and now appellants is at the corrupt practices pointed against the 5th respondent which appellants say they have established are because the 5th respondent as agent of 1st respondent is deemed to have been perpetuated by the 1st respondent himself under section 124(6) of the Electoral Act, 010 (as amended). In fact, it is based on that, that the appellants are invoking Section 149 of the Electoral Act to have the Supreme Court under section 22 of the Supreme Court Act LFN 2004 to ehear the petition and do that which the tribunal and Court of Appeal should have done.

Rejecting that position, 1st and 2nd respondents are of the view that the lower court was right in holding that the 5th respondent was not properly joined as a party to the petition. The instance is similar to that of the 3rd and 4th respondents and acceptable to the 5th respondent.

In taking a position, I shall first go to the provisions of section 137 of the Electoral Act, 2010 (as amended) as

to who qualifies as a party to an election petition. It provides:

Section 137:

1. An election petition may be presented by one or more of the following persons -

a. a candidate in an election;
b. a political party which participated in the election.

1. A person whose election is complained of is, in this Act, referred to as the respondent.

2. If the petitioner complains of the conduct of a electoral officer, a presiding or returning officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the Commission shall, in this instance, be -

(a) Made a respondent; and
(b) Deemed to be defending the petition for itself and on behalf of its officers or such other persons

In this case, the 5th respondent, ASP Zakari Deba, the aid-de-camp of the 1st respondent has been made a party. The court below held he was wrongly joined in the petition as he did not fall within the category of persons eligible to be so brought in an election petition. This court refused a joinder in the case of *APC v. PDP* (2015) 15 NWLR (Pt.1481) 1 where the Chief of Army Staff and the Inspector General of Police were made respondents in an election even though allegations of wrong doing had been leveled against certain soldiers and police officers challenging the result of the June 21st 2014 election in Ekiti State.

My learned brother, Ngwuta, J.S.C. had held thus at pages 61, 62, paras. G-B, F-H thus:

"In my view, the 4thand 5th respondents (Chief of Army Staff and Inspector General of Police) are not within the class of the commission's officer or "such other persons" who may have been employed as permanent staff or ad hoc staff in the commission. In other words, the 4th and 5th respondent's at all material times were neither "officers" of the commission nor were they "such other persons" engaged by the commission and it therefore follows that they are not necessary or even parties to the petition challenging the result of the June 21st 2014 election in Ekiti State. But assuming without conceding that the 4th and 5th respondents are necessary parties to the petition what is the claim against them? *The issue of relief sought against either or both of them does not arise in view of the fact that in election, the usual relief is an order to declare the petitioner winneri or to nullify the election and order a fresh election f the area involved.*

.....

Appellant has not shown the basis of holding the 4th and 5th respondents vicariously liable for the criminal acts of the un-named soldiers. But as I said earlier, the respondents in an election petition under the Electoral -Act, 2010 as amended are those persons who are officers and such other persons in the service of the commission. The 4th and 5th respondents are neither "officers" nor "such other persons" employed by the Commission for the conduct of the election". Indeed, those views well stated in *APC v. PDP (supra)* gwuta, J.S.C. are adopted for my purpose herein as they explain clear terms what section 137 of the Electoral Act has stipulated and what is expected as to who the proper parties should be. It even explains what has been provided for in section 124(6) of the same Electoral Act as to the culpability of the main man or

the candidate an election petition where allegations of offences committed in the course of the disputed election arise. It provides thus:

"Section 124(6) -

"For the purpose of this Act, a candidate shall be deemed to have committed an offence if it was committed with his knowledge and consent or the knowledge and consent of a person who is acting under the general or special authority of the candidate *with reference to the election ".*

Taking that section alongside what the court below stated at page 1905 thus:

"The 5th respondent is not a stuff of the commission. Neither did the appellants show that he voted or participated at the election held on 11th April, 2015. The 5th respondent ought not to have been joined in the petition. If the appellants had any grievances, the tribunal was not the forum to probe the conduct of the 5th respondent".

From the above, I have no difficulty in going along with the submissions of the respective counsel for the respondents that section 137(2) and (3) of the Electoral Act 2010 has no room for the joinder of the 5th respondent who neither won the election nor performed any role as an electoral officer or agent of the 3rd respondent in the election petition challenging the result of such an election and even no relief was claimed against the said 5th respondent and indeed, he had nothing to gain or lose in the petition aforesaid. Also, the jurisdiction of the Election Petition Tribunal is circumscribed and *sui generis* or unique in nature and so, 5th respondent being outside those expected within the limited provisions of the Electoral Act cannot be brought in as a party under any guise. See *Oke & Ano v. Mimiko & Ors* (2013) LPELR-

20645; *(No. 2)* (2014) 1 NWLR (Pt.1388) 332; *Yusufu v. Obasanjo* (2003) 16 NWLR (Pt. 847) 532 at 617; *Justice Party v. INEC* (2006) All FWLR (Pt. 339) 907 at 940; (2004) 12 NWLR (Pt. 886) 140.

It is for the above reasons that I see no basis to fault what the court below did in its finding that 5th respondent was not a necessary party within the applicable law and having his name struck -This issue is resolved against the appellant.

Issues 2 & 3:

These issues raise the poser whether the Court of Appeal was right to have affirmed the decision of the trial tribunal that the appellants did not prove the allegation of corrupt practices against the 4th and 5th respondents beyond reasonable doubt. Also if the admission against interest by the PW4 did not justify the nullification of the election for substantial non-compliance.

Learned senior counsel for the appellant stated that it is trite that the Supreme Court will not normally disturb the concurrent findings of two lower courts except it shown that it has occasioned miscarriage of justice or it is perversely arrived at. He cited *Gbileve & Anor v. Adinai & Anor* LER (2014) SC 193/2012; (reported as *Gbileve v. Addingi* (2014) 16 NWLR (Pt. 1433) 394. He contended that the judgment being contested is one awash with improper-evaluation of evidence and so needs this court's intervention. He referred to the evidence PW2, PW3, PW25 and PW27 and other pieces of evidence. He cited *Oruwari v. Osier* (2013) 5 NWLR (Pt. 1348) 535 at 545; *Bassil v. Fajebe* (2001) 21 WRN 68; (2001) 1 1 NWLR (Pt. 725) 592; *Ramonu Atolagbe v. Korede Olayemi Shorn* Vol. 16 (1985) NSCC (Pt.l) 472, (1985) 1 NWLR (Pt. 2) 360.

Chief Akintola, SAN for the appellant contended that the use of the card readers for accreditation is crucial and exhibit AA50 is

the report on which validity of result was tested against failure of accreditation as well as AA48 (the INEC Guideline) which makes the use of card readers mandatory. That card readers are the only valid way of accrediting voting during the 11th April Governorship Election. That in this, the respondents failed to justify accreditation and the votes touted but the majority of lawful votes is not enough to return the 1st respondent as governorship.

For the 1st and 2nd respondents, Yusuf Ali, SAN contended that the two courts below were correct in their findings that the appellants did not prove beyond reasonable doubt that the alleged monies in issue were paid into the account of 4th respondent by the 5th respondent and also that the alleged payment influenced the outcome of the election in any way to lead to a nullification of the election of the 1st respondent. That there was no basis for the interference of this court in those concurrent findings. He cited *Gbafe v. Gbafe* (1996) 6 NWLR (Pt. 455) 417 at 436; *Nwosu v. Board of Customs & Excise* (1998) 12 SC (Pt.l 121) 77 at 88; (1988) NWLR (Pt.93)225.

That it was not shown that 1st respondent authorised, approved for the alleged deposit be made into the account of the 4th respondent for whatever purpose.

Learned senior advocate further submitted for the 1st and 2nd respondents that the evaluation of the evidence and ascription of probative value to same is pre-eminently the responsibility of the trial court because of its peculiar advantage of seeing and hearing the witnesses testify and where this has been properly done as in this case an appellate court ought not to embark on an unnecessary exercise of re-evaluating that even if this court is to re-evaluate the evidence led on the allegation of corrupt practice, it would be seen that the testimonies of PW2, PW3, PW25 and PW27 together with the exhibits did not prove the allegation

beyond reasonable doubt. He cited *Omisore v.Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 323

Yusuf Ali, SAN went on to contend that the appellants as petitioners failed to clearly plead with particulars the allotment of votes as an act of electoral malpractice in an election petition. That allegation of allocation of votes is criminal in nature and so must be proved beyond reasonable doubt. He referred to *Ogu v. Ekweremadu* (2006) 1 NWLR (Pt. 961) 225. That the appellants needed to call witnesses to give direct oral evidence in support of the allegation that election did not hold in the polling units and wards of the six Local Government Areas to prove substantial noncompliance. He cited section 139 of the Electoral Act, 2010 (as amended); *Doma v. INEC* (2012) 13 NWLR (Pt. 1317) 297 at 327; *Ucha v. Elechi* (2012) 13 NWLR (Pt. 1317) 330 at 358 etc.

That the tribunal found and supported by the record that the vidence of PW4 confirmed that election held in the six Local overnment Areas alluded to. Also, that the appellants failed to show by credible evidence that card readers were not used.

It was further submitted for 1st and 2nd respondents that assuming there was any form of infraction of the provisions of the Electoral Act, the appellants failed to establish that the alleged non-compliance was substantial to be used as a basis for nullification of the election. He relied on *Akeredolu v. Mimiko* (2013) LPELR - 21413 SC; (2014) 1 NWLR (Pt.1388)402.

Mr. E. O. Sofunde, SAN of counsel for the 3rd and 4th respondents made submissions tallying with those for the 1st and 2nd a respondents contending that the corrupt practices alluded to were not shown to involve the 1st respondent or ratified by him or shown that it substantially affected the outcome of the election. He cited *Audu v. INEC & 2 Ors* (No. 2) (2010) 13 NWLR (Pt. 1212) 456 at 544; *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 23.

For the 5th respondent. Chief Titus Ashaolu, SAN submitted that the conclusion reached by the Economic and Financial Crimes Commission (EFCC) in exhibit AA44 compounded the woes of the appellants as it showed that apart from being inchoate and inclusive, nothing in the report established any attempt to bribe the 4th respondent and the AA44 did not link the 1st respondent to the alleged deposit of money by the 5th respondent into the account of the 4th respondent. That it is trite that a party alleging corrupt practices has an added obligation to prove; affected the outcome of the election and in this, the appellants failed. He relied on *Nwole v. Iwuagwu* (2006) All FWLR (Pt. 316) 325 at 343 - 344; (2005) 16 NWLR (Pt. 952) 543; *Obun v. Ebu* (2006) All FWLR (Pt. 327) 429 at 450; *Anazodo v. Audu* (1999) 4 NWLR (Pt. 600) 530 at 546.

That the appellants failed to discharge the burden of proof of the particular facts alleged.

The issue herein has to do with the lodgment of the sum of fifteen million naira (N15, 000,000.00) into the accounts of 4th respondent by the 5th respondent around the critical period of the election in dispute. Also, that the 4th respondent had withdrawn part of the money. The court below had its reaction captured at pages 1929 - 1934 of the record, thus:

> '"From PW2's evidence, one may arrive at the conclusion that any other person apart from the 5th respondent would had access to these account preparatory to the eve of the election of 11th April, 2015 could have deposited the monies into those accounts for whatever purpose. The intention could be to frame it on any of the respondents so as to disqualify the 1st and 2nd respondents from participation at the election.
>
> The purpose could also be to smear or tarnish the name

and image of the 3rd and 5th respondents". (See pages 1929 to 1930, volume 11 of the record).

That court further held:

> "The evidence further shows that any other person can deposit money in an account since the identity of the depositor may not be known, that is to say, any person could have deposited the monies into the two accounts and pretend to be the 5th respondent or the depositor could be the 5th respondent".

The position of the appellants that those facts of the lodgment of the said amount and the fact of the 4th respondent making a withdrawal from the said monies established the corrupt practices upon which a nullification of the election of the 1st respondent would be supported. The finding of the Court of Appeal did not agree with that opinion as put across by the appellants and it said so in these words and as follows at page 1043:

> "The concept of election denotes a process constituting accreditation, voting, collation, recording of all relevant INEC forms and declaration of results. See the case of *Fayemi & Anor v. Oni & Ors.* (2010) LPELR - 4145 where this court added that the collation of all results of the polling units making up the Wards and the declaration of results are the constituent elements of an election known to law. If we may ask, at what point did the 4th respondent influence or tamper with any of these processes constituting an election. Obviously, there is no evidence whatsoever to link the said undue influence on the part of the 4th respondent in any of the stages of the said election".

Clearly, the finding and conclusion of the court below in affirmation of that of the trial tribunal are such as cannot be

interfered with in the prevailing circumstances. This is because of the provisions of section 124(1) of the Electoral Act, 2010 (as amended) which prescribed thus:

"Any person who does any of the following -

(a) directly or indirectly by himself or by any other person on his behalf gives, lends, or agrees to give or lend, or offers any money or valuable consideration;

(b) directly or indirectly, by himself or by any other person on his behalf, corruptly makes any gift, loan, offer, promise, procurement or agreement to of for any person in order to ... person to procure or to endeavor to procure the return any person as a member of a legislative or to an elective office or the votes of any at any election;

(c) upon or in consequence of any gift, loan, offer, promise, procurement or agreement corruptly procures or engages or promises or endeavor to procure the return of any person as a member of a legislative house or to an elective office or the vote of any voter at an election;

(d) advances or cause to be paid any money to or for the use of any other person with the intent that such money or any part thereof shall expended in bribery at any election, or who knowingly pays or causes to be paid any moneys to any person in discharge or in repayment of any money wholly or in part expended in bribery at any election".

Indeed, those concurrent findings are unassailable as the appellants have failed to show the linkage between the alleged misconduct of the 4th and 5threspondents and the said election c how the 1st respondent was connected with the lodgement of the, funds or how they affected the outcome of the election in favour of the 1st respondent or that 1st respondent even authorized, the said

corrupt practice. See *Nwobodo v. Onoh* (1984) 1 SCNLR 1 at 27 - 28; *Gundiri v. Nyako* (2014) 2 NWLR (Pt. 1391) 211 at 255; *Omisore & Ors v. Aregbesola &* Ors (2015) 15 NWLR (Pt. 1482) 205 at 281.

Of note is that the tribunal found and the court below agreed that the allegation of financial inducement of the 4th respondent was not proved beyond reasonable doubt by law. This is buttressed by the fact that there were even conflicting evidence as to who exactly made those payments into the 4th respondent's account. Also, there was no proof that the 4th respondent was compromised or subverted as alleged by the petitioners. Furthermore, the pieces of evidence floating on the said deposited monies raised more questions than they answered such as the identity of the depositor, a situation which left the court with speculations as to what actually took place in relation to the said deposits. This has not helped clear the point as to how the said money was in any way connected with the election in dispute and if connected, how it affected the outcome of the result. This produces nothing other than mete suspicion which is now settled no matter how strong the suspicion may be, it cannot take the place of legal proof. I rely on *State v.* Ogbubunjo (2001) 2 NWLR (Pt. 698) 576 at 607; *Njovens v. The State* (1972) 1 NMLR 331; *Williams v. State* (1992) 8 NWLR (Pt. 261) 515 at 521.

The corrupt practices allegation alluded to by the appellants in relation to the deposited monies whether Fifteen Million Naira (N15, 000,000.00) or Twenty One Million Naira (N21, 000,000.00) as alleged at same point have remained not proven.

On the matter of the assertion by the appellants of elections not holding in six local government areas as a support for the allegation of non-compliance with the Electoral Act for which the

election should be nullified, the said six Local Government Areas are Tarmuwa, Jakusco, Yunusari, Bade, Gulani and Fune.

Section 139(1) of the Electoral Act, 2010 (as amended) has provided that an election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it 'appears to the election tribunal or court that the election was conducted substantially in accordance with the principle of this Act and that the non-compliance did not substantially affect the result of the election.

That section above has been interpreted in some cases before this court such as the following, *Doma v. INEC* (2012) 13 NWLR (Pt. 1317) 297 at 327 paras. D-F thus:

> "All the same, the burden remained on the appellants to prove that not only were the elections invalidated by reasons of non-compliance, but that the noncompliance with the Electoral Act was so substantial that the results of the election had been affected thereby. This requirement of proof vested on the appellants is in line with the decisions of this court in several cases of this court including *Buhari v. INEC* (2008) 4 NWLR (Pt.1078) 546; *Abubakar v. INEC* (2004) 1 NWLR (Pt. 854) 207 and *Buhari v Obasanjo* (2005) 2 NWLR (Pt. 910) 241 .The court below was therefore on very strong grounds in coming to the conclusion that the appellant have failed to prove their case to justify granting, them the reliefs sought". See also the Supreme Court q& of *Uche v. Elechi* (2012) 13 NWLR (Pt. 1317) 3; 358,361,363.

The court below at pages 1505 - 1507 of the record held:

> "Contrary to the submission of the learned silk for the petitioners that PW4 gave evidence that election did not take place in six local government areas, what he said was that he could not produce the EC25 Forms in respect of Bade,

Tarmuwa, Fune, Gulani, Yunusair and Jakusco Local Government Area. The witness had explained that this EC25 series are forms filled by Presiding Officers for election and returning election materials and that Form ECSA series are products of EC25 series that generate the ECSA. Without the EC25 series, there could be no ECSA series. The petitioners themselves have already tendered the ECSA forms in respect of these six Local Government areas;

i. BADE .....Exhibits A628-A705
ii. FUNE ……. Exhibits A1036-A1201
iii. TARMUWA ..... Exhibits A 104-A11
iv. GULANI ..... Exhibits A845-A944
v. YUNUSARI.....Exhibits A287-A389
vi. JAKUSCO .....Exhibits A 1 1 2-A211

PW27 also in exhibit AA49 listed five of these LGAs as areas where he saw the electoral material used and the reason he could not see the others was for time constraint. The only one of these six local government areas not analyzed in exhibit AA49 is Tarmuwa. The presumption weighs heavily against contention that there was no election in these six local government areas. PW4 stated that the gubernatorial election for Yobe State was free and fair and conducted in accordance with the electoral guidelines….. This finding is further fortified by the last document tendered from the bar by the petitioners, to wit exhibit A850 being the Card Reader Print-out of INEC for the April 2015 Yobe State Governorship Election. Contrary to the submission of the learned silk for the petitioners that exhibit A850 did not capture the six local government areas, it clearly captures then and shows that election actually took place in all these Local Government Areas and can be found thereon as

follows:

i. BADE ..... Pages 1-3
ii. FUNE .....Pages" 12-17
iii. GULANI.....Pages 23-26
iv. JAKUSCO.....Pages 26-29
v. TARMUWA.....Pages 46-47
vi. YUNUSARI .....Pages 47-50

It cannot therefore be submitted that election did not take place in these Local Government Areas and that some people were disenfranchised".

The Court of Appeal had stated further at pages 1937 - 1939 id 1928 as follows:

"The evidence of PW4 completely destroyed the petition presented by the appellants in the tribunal. The evidence further rubbished paragraphs 8 to 12 of the petition that election did not hold in "many" or "most" of the polling units in the 17 local government areas in Yobe State".

The evidence of PW4, PW25 and PW27 further destroyed completely the appellants' case in the tribunal that election did not hold in many or most of the local Government areas in Yobe State".

"Pleaded facts do not constitute evidence. Oral or documentary evidence is the source or foundation for proving pleaded facts. Paragraphs 8-12 of the petition tabulates the votes credited to the appellants and the 1st and 2nd respondents at the election held on the 11th April 2015. The question any reasonable person reading paragraphs 8 to 12 of the petition may ask is: Where did the appellants obtain the votes and result forms pleaded from paragraphs 8 to 12 of their joint petition if election

> did not hold in "many" or "most" of the polling units in the 17 Local Government Areas of Yobe State? That is the poser. There is no answer. Every petition constitutes an advance notice of the case an appellant intends to canvass in the tribunal. See *Obmiami Brick and Stones Ltd v. A.C.B. Ltd.* (1992) 3 SCNJ at 35; (1992) 3 NWLR (Pt. 229) 377 and *A-G.*, (1986) 1 NWLR (Pt.16) 303 at 317. My humble opinion is that the election held in all the seventhsLocal Government Areas in Yobe State. If election did not hold, the appellants could not have pleaded the votes secured by each candidate and his political party that sponsored him at the election held on the 11th April 2015".

It is difficult to go against what the lower court found in line with those of the trial tribunal in that there were no supporting evidence on the pleaded facts of the areas where the elections were allegedly not held. Therefore, the conclusion available is that the appellants could not make out a case of non-holding of the election in the said six local government areas.

On the matter of the appellants' contention that there was non-compliance in the conduct of the election because of an alleged non-use of card reader, I am inclined to the position of the 1st and 2nd respondents' counsel that the card reader issue did not stem from any specific ground of appeal attacking a specific finding of both Lower Courts on the card reader. In fact, it is a matter just floating without anchor of any son and cannot be of assistance to the appellants in their attempt to prove substantial non-compliance with the Electoral Act. See *Akeredolu v. Mimiko* (2013) PLELR[J]* 21413; (2014) 1 NWLR (Pt.1388) 402 a judgment of the Supreme Court per Alagoa, J.S.C.

In the end, the appellants have failed to discharge the placed

on them by law on this allegation of non-holding of election in the six local government areas. I also find these issues resolved against the appellants.

With all issues effectively resolved against the appellants, is with ease that I found this appeal unmeritorious for which it was dismissed on the 2nd day of February 2016 and I have now stated the reasons for that decision.

ONNOGHEN, J.S.C.: On the 2nd day of February. 2016, we heard tins appeal and in a lead Judgment delivered by my learned brother, Peter-Odili, JSC, the appeal was dismissed with an order that parties bear their costs. The reasons for the judgment was adjourned to today. Below, therefore, are my reasons for agreeing that the appeal -has no merit and should be dismissed.

My learned brother Peter-Odili, JSC has dealt, in detail, with the facts of the case and issues for determination. I will not repeat the facts herein except as may be needed for the point being made by me.

The issues for determination are as follows:

1. Whether the Court of Appeal rightly held that the 5th respondent is not a proper and necessary party to the petition of the appellants at the trial tribunal, in the face of the overwhelming and specifically particularized allegations of corrupt practices against him and in view of this honourable court decision in *APC* v. *PDP* and *Ayodele Fayose* (2015)) LPE Vol. 24587 (S.C.) 94; reported as *A.P.C. v. P.D.P.* (2015) 15 NWLR (Pt. 1481)1.

2. Whether the judgment of the Court of Appeal upholding dismissal of the appellants' petition on ground of corrupt practices is not perverse, having regard to the facts of corrupt enrichment of the 4th respondent, by the 5th

respondent acting as an agent of the 1st during the governorship election process held on 11th April, 2015 and which corrupt practice was confirmed by EFCC to be for the purpose of influencing the election and further supported with unassailed documentary and oral evidence adduced at the trial tribunal in proof of the allegations.

3. Whether the one sided oral and documentary evidence (particularly the admission against interest by the 3ul respondent (INEC) Administrative Secretary - PW4) led by the appellants did not satisfy the evidential burden that election did not hold in the following 6 local government areas of Bade, Fune, Gulani, Jakuoko, Tramuwa and Yunusari, so as to warrant this honourable court to invoke section 22 of the Supreme Court Act, 2004, to nullify the Yobe St Governorship Election held on 11th April. 2015 for substantial non-compliance?" ' :

On issue 1, learned senior counsel for appellants submitted that though section 137(2) of the Electoral Act, 2010, as emended provides for the mandatory parties to an election petition, the respondent, who does not fall within the parties so listed, is made a party in the petition because allegations of corrupt practice were made against him in the conduct of the election and if he were not joined, the non-joinder would lead to breach of the rules of fair hearing and the tribunal would be deprived of the jurisdiction to determine his culpability - relying on *APC v. PDP supra;* that 5th respondent is an agent of 1st respondent and his acts are attributable to 1st respondent making him a necessary party in the proceeding that 4th respondent was financially induced by the 1st responded acting through 5threspondent, to manipulate the conduct and result the election in issue in favour of 1st & 2nd respondents.

It is not in dispute that the 5threspondent did not participate in

the election in question either as a contestant or an officer of 1NEC assigned any role to play in the election nor did he participate in the said election as an agent of any political party that took part in the said election.

Section 137 of the Electoral Act, 2010, as amended, provide for persons entitled to present election petitions or be made parties therein as follows:

> "(ii) An election petition may be presented by one or more of the following persons -
>
> a. a candidate in an election;
> b. a political party which participated in the election
>
> 1. A person whose election is complained of is, in this Act, referred to as the respondent.
> 2. If the petitioner complains of the conduct of an electoral officer, a presiding or returning officer, it shall not be necessary to join such officers or persons, notwithstanding the nature of the complaint and the commission shall, in this instance, be -
>
> a. made a respondent; and
> b. deemed to be defending the petition for itself and on behalf of its officer or such other-persons."

It is clear from the submissions of learned senior counsel on this issue that he concedes that the 5th respondent does not fall within the province of section 137 of the Electoral Act, 2010, as Blended. His contention, however, is that the 5th respondent was lined because there were allegations of corrupt practices against him which could not be proved in his absence as a party in the proceedings because to do so would breach 5th respondent's

right to fair hearing. It is clear that 5th respondent not having been recognized as a necessary party under the provisions of section 137 of the Electoral Act, 2010, as amended, supra, for the purpose of an election petition proceedings, he remains a non-party or necessary party particularly as no relief was claimed against him, as can be seen from the record of proceedings I hold the considered view that the argument on breach of fair hearing in relation to 5th respondent does not exist at all as 5threspondent is not a recognized party in the proceedings and there is no claim against him neither was he put on trial before the tribunal.

From the facts of the case, the petition can be decided by the tribunal effectively without the presence of the 5th respondent thereby making him not to be a necessary party in the proceedings *L* See *A.P.C. v. P.D.P* (2015) 15 NWLR (Pt. 1481) 1 at 60 - 61. Having regard to the state of the law, I am of the strong view that the lower court was right in holding that the 5th respondent was not are necessary party in the proceedings.

In respect of issue 2, it is the case of appellants that the 5th{respondent induced the 4th respondent financially by depositing certain sums of money in the 4th respondent's bank account with a view to induce him to influence the election in favour of the 1st respondent, who was his boss. The tribunal found that the allegation was not proved beyond reasonable doubt, which finding was affirmed by the lower court. The lower court also held that appellants failed to show how the money deposited in the said account of the 4th respondent influenced the outcome of the election in question and that the failure was fatal to the case of

appellants which holding cannot be faulted. In the case of *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 234 - 235), this court has this to say:

> "I need to emphasize that in election petitions, where allegation of corrupt practices are made, the petitioner making these allegations must lead cogent and credible evidence to prove them beyond reasonable doubt because they are in the nature of criminal charges. Being criminal allegations, they cannot be transit from one person to another. It is personal. Thus, it must be proved as follows:
>
> (1) that the respondent whose election is challenged personally committed the corrupt acts or aided, abetted, consented or procured the commission of the alleged corrupt practices. "
>
> (2) that where the alleged acts was committed through an agent, hat the agent was expressly authorized to act in that capacity or granted authority; and
>
> (3) that the corrupt practice substantially affected the outcome of the election and how it affected it."

From the record, it is clear that appellants did not satisfy all the requirements stated supra and I have no reason whatsoever to disturb the concurrent finding of facts in that respect by the lot courts as same had not been demonstrated satisfactorily to be perverse.

It is for the above reasons and the more detailed reasons contained in the lead reasons for the judgment delivered by my learned brother Mary Ukaego Peter-Odili, J.S.C, that I too find merit whatsoever in the appeal and consequently dismissed same.
I abide by the consequential orders made therein including order as to costs.

Appeal dismissed.

NGWUTA, J.S.C: On the 2"[d] February, 2016 the court heard t appeal and on the same day my learned brother, Mary Ukaego Peter-Odili, JSC delivered his lead judgment in which His Lordship dismissed the appeal, reserving reasons for the judgment on 15/2/2016.1 also delivered my judgment concurring with the lead judgment and reserved my reasons for the same date 15/2/2016.

Here are my reasons. I read before now the comprehensive reasons adduced by my learned brother for dismissing the appeal and affirming the concurrent findings of fact by the trial tribunal and the court below. I adopt in their entirely the well-articulated lead reasons as my reasons for concurring with the lead judgment.

In addition to the reasons I have adopted and at the risk of repeating what has been adequately dealt with in the lead reasoning, I wish to chip in a word or two on the propriety *vel non* of joinder of the 5[th] respondent in the election petition.

Section 137(1) of the Electoral Act 2010, as amended, makes provision for persons who are entitled to present election petitions. It is hereunder reproduced:

"S. 137(1): An election petition may be presented by one or

\ more of the following persons:

(a) a candidate in an election;

(b) a political party which participated in the election.

1. A person whose election is complained of is, in this Act, referred to as the respondent.

2. If the petitioner complain of the conduct of an electoral officer, a presiding or returning Officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the Commission shall in this instance be,

a. made respondent; and

b. deemed to be defending the petition of its officers, or such other persons."

In addition to stating who may present an election petition, the 'Section also limits the respondents to such petition to the person whose election is questioned, electoral officers, a presiding, or returning officer.

Theses officers or persons are agents of the Commission and their disclosed principal, the Commission, which shall be made a respondent will be deemed to defend the petition for itself and its named agents. The agents for whom the Commission will defend the petition will include "such other persons" as the Commission may have engaged in the conduct of the questioned election.

The 5th respondent, is not the person, whose election is questioned, nor is he an electoral officer, a presiding or returning officer or is among "such other persons" on behalf of whom the Commission shall be deemed to defend the petition.

In APC v. PDP (2015) NWLR (Pt. 1481) p. 1 at 61 paras. G-H, this court held (per Ngwuta, JSC) that:

"In my view the 4th and 5th respondent (Chief of Army Staff and Inspector-General of Police) are not within the class of the Commission's officers or 'such other persons' who may have been employed as permanent or *ad hoc* staff in the Commission. In other words, the words the 4th and 5th

respondents at all material terms were neither officers of the Commission not were they ‘such other persons' engaged by the Commission' it therefore follows that they are not necessary, or parties to the election ..."

The dictum was cited and relied on by the learned senior counsel for the 3rd and 4th respondent, rightly in my view. If the facts the appellant alleged against the 5th respondent are true, then the matter can be addressed by section 124 of the Act *(supra)* subsection 4:

> "Any person who commits the offence of bribery is liable on conviction to a maximum fine of N500, 00 imprisonment for 12 months or both."

This is a matter for the regular courts as the 5th respondent neither the person whose election is questioned nor among those on behalf of whom the Commission, a necessary respondent, shall deemed to defend the petition. If he is among "such other persons within the terms of section 137(3)(a) of the Act *(supra),* it is not necessary to join him as the Commission shall defend the petition; for itself and "such other persons".

The above and the fuller reasons adduced by my learned brother, Mary Ukaego Peter-Odili, JSC are my adopted reasons for also dismissing the appeal and affirming the judgment of the court below.

MD. MUHAMMAD, J.S.C.: I read in draft the lead judgment of my learned brother, Odili, JSC, whose reasoning and conclusion, I hereby adopt in dismissing the unmeritorious appeal. I abide by the consequential orders made in the lead judgment.

OGUNBIYI, J.S.C.: This court heard and dismissed the appeal in the lead judgment of my learned brother, Peter-Odili, JSC on February 2, 2016 with no order made as to costs. The court also promised to give its reasons for doing so on February 15, 2016 and in my contribution to the judgment, I hereby proffer my reasons for dismissing same as follows:

The facts of the case are all stated in the lead judgment. The appellants' petition was contested principally on grounds of:

(1) Failure of P' respondent to win majority of votes cast at the election.

(2) Predicated on allegations of corrupt practices and noncompliance with the Electoral Act 2010 (as amended) which substantially affected the result of the election.

From the grounds of appeal filed by the appellants, it is obvious that the substratum of their complaints relate to the concurrent findings of both the tribunal and the lower court. The law is trite in favour of such findings which are not to be interfered with except 'on exceptional reasons.

There are three issues formulated by the appellant for determination and reproduced in the lead judgment of my brother which I will not repeat.

The 1st and 2nd respondents raised a preliminary objection on the competence of grounds (i) - (iv) of the grounds of appeal and which resolution should in my view be overruled. This I say because as rightly submitted by the appellant's counsel, the particulars given in support of the grounds had sufficiently supplied the information in stating the nature of the error complained of by the appellant which should suffice in the interest of justice. Courts should (avoid technicalities and determine causes on the merit. Defect in particulars should not necessarily translate to the entire ground and rendering same incompetent; the question

is, whether the ground of appeal communicates a complaint arising from the *ratio decidendi* of the judgment. In a nutshell, the defects alluded to ground 2 of the appellant's ground of appeal should not operate so as to render the said ground incompetent. The preliminary objection is, in my view, overruled. *Issue I Resolution*

The lower court in its judgment held that the 5th respondent was not a proper or necessary party to the petition and therefore ought not to have been joined as a party thereto. The 5th respondent's joinder is in respect of the corrupt practices pleaded in the petition. The tribunal dismissed the objections to the joinder and he cross appealed. Court of Appeal in its judgment found merit in the objection and related extensively to section 137 of the Electoral Act 2010 (as amended), as to who qualifies respondent in an Election petition. The said 5th respondent was struck out accordingly. It is pertinent to state that the allegation against 5th respondent was his purported influence on the 4th respondent the conduct of the election. There was no relief sought against said respondent in the petition, either personally or on behalf of t other person. The allegation against him is also criminal in nature and in respect of which the tribunal has no jurisdiction to try him!

The communal reading of the evidence of PW1, PW2. PW3 and even PW25 relied upon by the appellant did not disclose any criminal allegation against the 1st respondent who is alleged to be the principal actor. The appellant as rightly submitted by 1st and 2nd respondents have not established the various allegations of corrupt practices and financial inducement of the 4th respondent by the 5th respondent herein.

The 5threspondent I hold cannot in the circumstance be a proper party as rightly held by the lower court and I so hold. Issues 2 & 3 were taken together by the appellants.

The appellant in proof of the allegation of corrupt practices

sought to rely on the evidence of PW2, PW3, PW25 and PW27.

The two lower courts held concurrently that the allegation of financial inducement of the 4th respondent allegedly by the 5th respondent was not proved as required by law. In other words there must be a connection or linkage between the 1st respondent on alleged act of inducement and that the alleged inducement affected^ the outcome of the election.

The appellants relied extensively on the evidence of PW4 and PW27 at pages 1346 & 1420 of vol.2 of the record to prove that the result declared was affected substantially by irregularities in election did not hold in Six Local Government Areas of Yobe state to wit: Bade, Fune, Jakusco, Gulani, Tarmuwa and Yunusari. It is intriguing to say further that notwithstanding this weighty allegation of non-election, the appellants still went ahead to tender results of the election especially forms EC8A, EC8B and EC8C from the said same local government areas complained of. See pages 1334 - 1335,; of the record which shows that 4,276 Manual Voters' Register for Bade local government area was tendered as exhibit V; 6,288 for Fune was admitted as exhibit Y; 2,975, Manual Voters' Register for Gulani LGA as exhibit AA2; 3,884, manual voters' register for Jakusco admitted as Exhibit. AA3; 1,445 9for Tarmuwa admitted as Exh. AA8 and 3,788 also admitted as Exh. AA9 for Yunusari LGA.

Also page 1330 of the record of appeal shows that form EC8A for all the LGAs of Yobe State inclusive of the ones for the Six LG As complained of were tendered by the appellants'. Senior counsel and admitted as exhibits before the commencement of trial. A perusal of pages 1330 - 1331 of the record will reveal that forms EC8B and EC8C for the LGA in issue were also tendered and admitted by the tribunal.

With all said and done, it is not correct to say that election was

not held in all the LGA of Yobe State of Nigeria.

Appellants placed heavy reliance on the evidence of PW27 and the charts/table produced by him; also the evidence of PW4 especially his inability to produce some forms EC25A for the said LGAs and construed same as an admission of non-holding of election in the said LGAs.

For the appellants/petitioners to succeed on their allegation of non-compliance, they must plead clearly in their petition, the heads of non-compliance, give cogent and credible evidence of such noncompliance and also demonstrate the effect thereof on the election. Section 139(1) of the Electoral Act 2010 (as amended) is in support.

By this section, the petitioners are to prove, not only the evidence of the non-compliance but further that it substantially affected the result of the election. The judgment of the tribunal is apt at pages 1505 - 1507 of the record where it rejected the appellants' submission which rated PW4's evidence as an admission. The lower court while endorsing the trial tribunal "s findings held in tandem that the evidence of PW4 did not, in any way, constitute an admission of non-holding of election in the six LGAs of Yobe State contrary to the submission by appellants' counsel. Consequently, the reliance placed on PW27 and Exh. AA49 are not helpful to the appellants. This is because the witness was confined within Potiskum LGA, on the day of election. Any evidence outside the area is Therefore a hearsay, with Exh. AA49 also predicated thereon.

Alleged Non-Use of Card Reader

Appellant argued extensively that there was non-compliance in the conduct of election because of an alleged non-use of card reader. As rightly submitted by the 1st and 2nd respondents, the argument advanced pertaining to non-use of card reader cannot be

countenanced in this appeal because there is no specific ground of appeal complaining against the specific findings of the two lower courts. In taking the argument further, even if the use of card reader is countenanced, the onus lies on the appellants to show by credible evidence that card readers were not infact used. There was certainly no evidence in this wise. Furthermore, neither PW26 nor the document exhibit AA50 tendered by the appellants attempted to prove this assertion

Appellants on the totality did not prove before the two lower courts and also this court that there was substantial non-compliance in the conduct of the elections complained of or that the alleged non-compliance substantially affected the elections

The concurrent findings of the two lower courts are in my view unassailable and I hereby affirm same and also dismiss this appeal as lacking in merit in terms of the lead judgment of my learned brother, Peter-Odili, JSC inclusive of the order made as to costs.

OKORO, J.S.C.: Judgment in this appeal was delivered on 2nd February, 2016 immediately the appeal was heard by my learned brother, Mary Ukaego Peter-Odili, JSC, this appeal was adjudged unmeritorious and dismissed. An order that parties should their respective costs was also made. I agreed entirely with the lead judgment and promised to give reasons today for coming to that conclusion. I shall now proceed to give reasons for dismissing the appeal.

I was obliged before now the lead reasons for judgment just given by my learned brother, Peter-Odili, JSC. The law Lord has meticulously and quite efficiently resolved all the salient issues in this appeal. My Lords, I beg to adopt the reasons given in lead

judgment as mine. Let me however make a few comments to strengthen the judgment.

The main contention of the appellants as petitioners in case is that the 5th respondent induced the 4th respondent who was_the Resident Electoral Commissioner for Yobe State by depositing certain sums of money into his account with a view to causing him to influence the election in favour of the 1st respondent.

Apart from the fact that by section 137 of the Electoral Acts 2010 (as amended), the 5th respondent, ASP Zakari Deba is not one of the persons who should be made a party in an election petition as held by this court in *APC v. PDP* (2015) 15 NWLR (Pt. 1481) I, the appellants failed to prove that the payments had any link with the conduct of the election. Secondly, the said allegation, being criminal in nature should be proved beyond reasonable doubt. This, die failed to do. I need to emphasize that to bribe an INEC official in order to induce a favourable result in an election is a criminal offence. It must be established beyond reasonable doubt that the 1st respondent perpetrated it or that he clearly authorized it. See *PDP v. INEC* (2008) LPELR - 8597; *Omisore* v. *Areghesola* (2015) 15 " 'WLR (Pt. 1482) 205 at 234 - 235.

In this case, the appellants failed to show how the payments affected the result of the election. For me, the issue concerning the payments did not help the case of the appellants at all as the said payments (if any) was not shown to have been unknown by 1st respondent or that it affected the outcome of the election.

Based on the above reasons and the further ones enunciated in the lead reasons for judgment, that 1 also dismiss this appeal. I abide by the consequential orders made therein, that relating to costs, inclusive.

SANUSI, J.S.C.: I delivered judgment in this appeal on 2nd February, 2016 when we heard the appeal and dismissed the appeal for want of merit. I, on that day, promised to deliver my reasons for dismissing the appeal today, Monday the 15th day of February, 2016.

Before now, I was availed with the reasons for judgment advanced by my learned brother, Mary Ukaego Peter-Odili, JSC. I am in entire agreement with the reasons she advanced therein, to buttress the fact that this appeal is devoid of merit and deserves to be dismissed. I adopt her reasons for judgment dismissing the appeal. I "hall however comment on some of the salient issues canvassed by parties learned senior counsel in this appeal. My noble Lord Mary Ukaego Peter-Odili, JSC had summaries the facts which gave rise to this appeal and the submissions of learned counsel to the parties, hence they need not be reproduced here again.

Three issues for determination were raised in the appellant's and 1st and 2nd respondent's joint briefs which are apt for the determination of this appeal. They have also been extensively reproduced in the lead reasons for judgment and to avoid being repetitive I will also not bother to reproduce them here again. I must say that the said issues for determination of appellant's and other respondents are also similar except the difference in the word in which they were couched.

The first issue queries whether the 5th respondent was a proper party or necessary party that ought to be joined in the petition. The law is settled, that if a petitioner complains of the conduct of an electoral officer or presiding officer, or returning officer or any person who took part in the conduct of the election, such officer person shall be deemed to be a respondent and shall be joined in the election petition in his official status or as necessary party. There is no gain

saying that the 5th respondent is not a proper or necessary party since he did not participate in the conduct of the election on 11th April, 2015. As could be seen from the record of appeal, 5th respondent was not sued in his official capacity and that pre-supposes that he was not a necessary party. See *Obasanjo v. Yusuf* (2004) 5 SC (Pt. 1) 27; (2004) 9 NWLR (Pt. 877) 144; *Buhari v. Obasanjo* (2007) 7 SC (Pt. 1) 1; (2005) 13 NWLR (Pt. 941) l. The 5th respondent was therefore not a necessary party.

Another ground for the petitioner/appellant against the respondent had to do with allegation of corruption and corrupt practices. Here it must be emphasized. That even in election petition, allegation of bribery or corruption must be proved by the accuser beyond reasonable doubt. Evidence must be led to show that the voters were bribed. In this instant case, the evidence led is short of proof of such allegation beyond reasonable doubt. See *Nyako v. Balewa* (1965) NMLR 257; *Alega v. Edun* (1960-98) LRECN 214

Thus, with these few comments and for the fuller reasons advanced in the lead reasons for judgment of Mary Peter-Odili, J.S.C, I also see no merit in this appeal. I accordingly dismiss it and affirm the decision of the court below which had also dismissed the appeal against the judgment of the trial tribunal. I abide by the consequential order made therein, including one on costs.

Appeal dismissed