

**IN THE FEDERAL CAPITAL TERRITORY AREA COUNCIL ELECTION PETITION
APPEAL TRIBUNAL
HOLDEN AT NYANYA, ABUJA ON THE 19TH DAY OF NOVEMBER, 2018**

BEFORE THEIR LORDSHIPS:

1. **HON. JUSTICE U.P. KEKEMEKE - CHAIRMAN**
2. **HON. JUSTICE O.A. ADENIYI - MEMBER**
3. **HON. JUSTICE Y. HALILU - MEMBER**

TRIBUNAL CLERKS: ALLEN EBI & ORS.

APPEAL NO: FCT/ACEAT/01/2018

PETITION NO: FCT/ACEPT/EP/03/2016.

BETWEEN:

1. HON. ABUBAKAR JIBRIN GIRI
 2. ALHAJI USMAN MUSA NAKAKA
 3. ALL PROGRESSIVES CONGRESS (APC)
- }APPELLANTS

AND

1. ADAMU MUSTAPHA DANZE
 2. ALL PROGRESSIVES GRANDALLIANCE
 3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)
- } RESPONDENTS

JUDGMENT

By a Notice of Appeal dated 20th day of February 2018 but filed on the 26th, the Appellants being dissatisfied by the Judgment of the FCT Area Council Election Petition Tribunal delivered on 14/02/18 doth hereby appeal to the FCT Area Council Appeal

Tribunal (hereinafter referred to as 'This Tribunal') upon the following grounds:

GROUND 1: The Lower Trial Tribunal erred in law in failing and or refusing to abide by the Orders in the Judgment of the FCT Area Council Appeal Tribunal delivered on the 30th November, 2018 wherein it held thus at Page 31 (*'For the totality of reasons given, the appeal succeeds.'*)

1. The Rulings and Judgment of the Lower Tribunal delivered on the 14th November, 2016 and 2nd February 2017 respectively are hereby set aside. The appeal is hereby allowed.
2. The application to count ballot papers and ticked Voters Register in Exhibits P125 – P191-206, P207 – 222, P223- 236 AND P237 – 247 (Ballot Boxes and Voters Register of Dobi, Staff Quarters, Paiko, Ibwa and Gwagwalada Central Wards) which Appellants tendered through their Witnesses is hereby granted as prayed.

3. The case is hereby remitted back to the Trial Tribunal.
4. The Tribunal shall thereafter record the result of the counting and deliver a considered Judgment within a reasonable time.

The particulars of errors as stated on the Notice of Appeal include:

- i. The Lower Tribunal embarked on a self-voyage thus abandoning the Order of the Appeal Tribunal.
- ii. That the trial Tribunal by its procedure decided the Petition in favour of the Respondent before considering the effect of the result of physical counting of ballot papers and accredited voters as ordered.
- iii. The Lower Tribunal did not give a considered Judgment in its decision of 14th February 2018.
- iv. That Lower Tribunal was required by the Order of Court to count and tabulate the result of physical counting of ballot papers

from Dobi, Staff Quarters, Paiko, Ibwa and Gwagwalada Central Wards with Votes in the undisputed five (5) Wards of Kutunku, Tungan-Maje, Zuba, Ikwa and Gwako in the Judgment.

GROUND 2:

The Lower Tribunal erred in law and misconstrued the decision of this Tribunal dated 30th November 2017 wherein it set aside the earlier rulings and Judgment of the Lower Tribunal, granted the application for counting of ballot papers and ticked voters from Dobi, Staff Quarters, Paiko, Ibwa and Gwagwalada Central Wards with an Order to the Lower Tribunal to deliver a considered Judgment.

The particulars of error are in the Notice of Appeal.

GROUND 3:

The Lower Tribunal misdirected itself and came to a wrong conclusion when it held at Pages 37-38 of its

Judgment that the results of the election including INEC Form EC8C of Tunga – Maje, Zuba, Gwako and Ikwa Wards were not pleaded in the Petition nor in the Respondents' Reply.

Particulars of misdirection:

- i. At paragraph 85 of the Petition dated 1/05/16 and filed on 3/06/16, the Petitioners pleaded INEC Form EC8C amongst other election results and materials.
- ii. In the same paragraph, Petitioner/Appellant gave INEC (3rd Respondent) Notice to produce the entire documents.
- iii. That INEC failed to produce the said result.

GROUND 4:

The Lower Tribunal erred in law and thereby came to a wrong conclusion when after computing and analysing the result of physical counting of ballot papers and accredited voters in Gwagwalada Central, Staff Quarters, Ibwa, Dobi and Paiko Wards,

it held at Pages 37-38 of Judgment that it will not reckon with or use the result of votes realised by the parties in the remaining six Wards which are not in dispute.

Amongst other particulars of misdirection are that the Petitioners and Respondents did not challenge the result of election in the five Wards of Tunga Maje, Zuba, Ikwa, Gwako and Kutunku. That admitted facts need no further proof.

1st and 2nd Respondents rested their case on that of the Petitioners at the trial. That by resting their case on that of the Petitioners, the 1st and 2nd Respondents' Pleadings are deemed abandoned.

GROUND 5:

The Lower Tribunal erred in law when it held at Page 20-21 of the Judgment that the Petitioners Witnesses did not prove the ground of non-compliance Polling Unit by Polling Unit and that the evidence of PW15

and PW16 has completely knocked down the bottom out of the Petitioners' case.

GROUND 6:

The Lower Tribunal erred in law and breached Appellants' right to fair hearing when it relied on the result announced by 3rd Respondent (INEC) in Form EC8C (summary of results) from all the 10 Wards that make up Gwagwalada Area Council in declaring and returning the 1st and 2nd Respondents as the winners of the Chairmanship Election of Gwagwalada Area Council held on the 9th and 13th April 2016 but failed to reckon votes in the undisputed Five Wards of Kutunku, Tunga-Maje, Zuba, Ikwa and Gwako thereby occasioning miscarriage of justice.

Amongst other particulars of misdirection Appellant states that the Lower Tribunal is bound to remain fair to all parties and maintain an equal balance in considering or reviewing admitted or judicially

noticed evidence in its decision. That Appellants were entitled to be given adequate time and facilities to prosecute their Petition. That Appellants' right to fair hearing was breached and infringed upon.

GROUND 7:

The decision of the Lower Tribunal is against the weight of evidence. The Appellants therefore prays this Court for the following reliefs:

- (i) To allow the appeal.
- (ii) To set aside the Judgment of the Lower Tribunal delivered on the 14th February 2018.
- (iii) To invoke the general powers of the FCT Area Council Appeal Tribunal to hear and determine the Petition by relying on the compiled record of appeal to add the result of physical counting of valid ballot papers realised from Dobi, Ibwa, Gwagwalada Central, Staff Quarters and Paiko with the undisputed result of the election from the

remaining Wards of Ikwa, Gwako, Kutunku, Tungan-Maje and Zuba.

- (iv) To declare and return the 1st Petitioner/Appellant as the winner of the Gwagwalada Area Council Chairmanship Election held on the 9th and 13th April 2016, having scored the majority of lawful votes cast in the election.

In accordance with the Electoral Act 2010 as amended and the rules and guidelines made thereunder, parties filed and exchanged their brief of arguments.

The Appellants brief of argument dated 20/04/18 was filed on 23/04/18. Learned Senior Counsel to the Appellants adopted same as his argument in this appeal. The appellant distilled two issues for determination.

1. Considering the Order of this Appeal Tribunal to the Lower Tribunal to count ballot papers in

Dobi, Paiko, Ibwa, Staff Quarters and Gwagwalada Central Wards (where the election was challenged) and deliver a considered Judgment, whether the Lower Tribunal was not bound to collate and sum up votes realised from the counting of the disputed five Wards with votes scored by the parties in the undisputed Wards of Kutunku, TungaMaje, Zuba, Ikwa, Gwako in determining and declaring the winner of the Gwagwalada Area Council Chairmanship Election held on the 9th and 13th April 2016 having scored the majority of lawful votes cast in the election.

2. Given the peculiar facts and circumstances of this appeal, whether the Appellants/Petitioners were still required to call Witnesses from each and every Polling Units in the affected Wards to prove their grounds of non-compliance/irregularity even when the result of

counting of ballot papers cast and testimonies of Petitioners Witnesses have established same.

Learned Senior Council to the appellant noted that the votes declared in INEC Form EC8C (which is also gazetted as official government public record) from the five Wards/ Registration Areas of Tungan Maje, Zuba, Ikwa and Gwako Wards were not challenged by any of the parties at the trial of the Petition.

That no evidence was led at the trial in respect of the above five Wards because 1st and 2nd Respondents that earlier objected to the results of the election later abandoned their objections.

That appellant led documentary and oral evidence in proof of their case as it relates to the inflation of votes and the allegation of non compliance in the conduct of the 9th and 13th April, 2016 Chairmanship Election in Gwagwalada Area Council of the FCT. That contrary to the decision of the Lower Tribunal as

contained in Pages 1255-1256, 1258-1259 of Volume 3 of the records of appeal, the record of appeal revealed:

1. That the Lower Tribunal embarked on a self-voyage by abandoning the order of the appeal Tribunal.
2. That the Lower Tribunal decided the Petition in favour of the Respondents before considering the effect of physical counting.
3. That the Lower Tribunal did not give a considered Judgment in its decision of 14th February 2018.
4. That the votes from the physical counting ought to have been tabulated with the results of votes in the undisputed five Wards.
5. That at paragraph 85 of the Petition dated 1/05/16 but filed on 3/05/16, the Petitioners/Appellants pleaded INEC Form EC8C amongst other election results and materials.

6. That Notice to produce the said materials was given to INEC.
7. That 3rd Respondent honoured the Appellant notice to produce but omitted and or refused to include INEC Form EC8C containing the summary of result from the 10 Wards that made up Gwagwalada Area Council.
8. That if the result of the physical counting and result of the remaining five Wards are collated, the 1st Appellant would have won the election.

That the Petitioners/Appellants have satisfied the requirement of the 1999 Constitution and the Electoral Act 2010 (as amended). That this Tribunal has power to compute and collate results based on evidence in the printed records before the Court.

That the Lower Tribunal erred in law and breached Appellants' right to fair hearing.

On Issue 2, Learned Counsel submits that with the physical counting of votes in the Wards where result

of the election was challenged, the Appellants were no longer required to call Witnesses from each and every Polling Units in the affected Wards to prove inflation of votes/irregularity even when the result of ballot papers cast and testimonies of Petitioners Witnesses have established same.

That the judgement of the Lower Tribunal was a nullity having been set aside

Referring to the Judgment of the Lower Tribunal in Pages 992-993 of Volume 4 of the records, Learned Senior Counsel to the Appellants submits that Appellants led relevant legally admissible evidence that would have justified a Judgment in their favour.

That Appellants proved their allegation of inflation of votes by calling 14 Witnesses. That documentary evidence tendered and admitted as Exhibits P1-P247 lends credence to the oral testimonies of PW1- PW14.

That from the bundle of records before the Court, the Petitioners/Appellants led documentary and oral evidence in proof of their ground of non-compliance in the conduct of the 9th and 13th April 2016 Chairmanship Election in Gwagwalada Area Council.

Learned Counsel urges the Court to resolve Issue two in Appellants' favour. He finally urges the Court to allow the appeal.

The 1st and 2nd Respondents also adopted their Final Written Address dated and filed on the 11th of June 2018. The Learned Senior Counsel to the 1st and 2nd Respondents raised two issues for determination:

1. Whether the 1st and 2nd Respondents won the election of 9th and 13th April, 2016 into the office of the Chairman, Gwagwalada Area Council by majority of lawful votes cast and in particular, whether the Lower Tribunal complied with the

order of this Tribunal delivered on the 30th day of November, 2017.

2. Given the peculiar facts and circumstance of this appeal, whether the Appellants/Petitioners were still required to call Witnesses from each and every Polling Units in the affected Wards to prove their grounds of non-compliance/irregularity.

On the first Issue, Learned Senior Counsel to the 1st and 2nd Respondents reproduced the order of Court contained in Pages 1210-1211 Volume 3 of 3 of the records of appeal and argued that pursuant to the above directions of the Lower Tribunal, the counting took place and on the 3rd of February 2018, the Secretariat reported back to the Tribunal. Refers to Pages 1213-1214 of records of appeal Volume 3.

Parties were therefore ordered to file Written Addresses. That from the counting, the 1st

Respondent won by majority of lawful votes in the said 5 Wards. That Appellants added a radical twist to the proceedings to the effect that the result of the 5 Wards be added to the result of Kutunku, Tunga Maje, Zuba, Ikwa and Gwako Wards which were not pleaded. No single evidence be it documentary or oral was adduced.

That the Lower Tribunal was right when it rejected the invitation by the Appellants to add the result of the counting to votes cast in Tunga Maje, Zuba, Ikwa and Gwako Wards which were not before the Tribunal and which did not form part of the records of appeal.

Learned Senior Counsel urges the Court to resolve the issue in favour of the 1st and 2nd Respondents.

On the 2nd Issue, Learned Senior Counsel argues that Appellants failed to understand the impact of the recount. That a recount cannot take the place of

hard evidence required where a party is alleging ballot stuffing, multiple voting and falsification. That the entire proceeding of the Lower Tribunal was not set aside and that was why the Court ordered that after the recount, a considered Judgment should be written within a reasonable time.

That the Lower Tribunal did exactly that, by examining all the Witnesses called and the quality of their evidence and came to the conclusion in Pages 1235-1241 of the record of appeal Volume 3 of 3.

That where the Petitioner/Appellant predicates his Petition on non-compliance as in this case, the position of the law is that the Petitioner has a duty to prove the non-compliance alleged based on what happened at each Polling Unit. That the Petitioner must also prove that the non-compliance affected the result of the election.

Refers to Section 139(1) of the Electoral Act. Learned Senior Counsel submits that the results of the election were tendered from the bar and admitted as Exhibits P1 – P14. The 16 Witnesses called neither linked nor identified any of the documents tendered. This is dumping, in law.

That throughout the length and breadth of the proceedings before the Lower Tribunal, the Witnesses who testified for the Petitioners neither referred to any Exhibits nor demonstrated before the Lower Tribunal during their testimonies that those results and other documentary Exhibits tendered from the bar relate to the election. It will therefore amount to mere speculation for the Lower Tribunal to assume such conclusion and apply same to the case before it.

Learned Senior Counsel to the 1st and 2nd Respondents further submits that in a situation where documents are only tendered and left

unexplained, they will be considered as dumped on the Lower Tribunal. The Court of law is not an errand boy.

The Appellants woefully failed to prove the allegations in the Petition. That on the contrary, from the Witnesses called, the election was free and fair. Refers to the evidence of PW15 and PW16.

That when a Petitioner is alleging that the Respondent is not elected by majority of lawful votes, he ought to plead and prove the votes cast at the various Polling Stations, the votes illegally credited to the winner, the votes which ought to have been credited to him and also the votes which should be deducted from that of the supposed winner in order to see if it will affect the result of the election. Where this is not done, it will be difficult for the Court to effectively address the issue.

See **NADABO VS. DUBAI (2011) 7 NWLR (PT.1245) 155 AT 177.**

The Appellants have failed woefully to prove anything at the trial. The Learned Senior Counsel urges the Court to affirm the decision of the Lower Tribunal.

The 3rd Respondent's Counsel was not in Court to adopt his written brief. We take the said brief dated 11/06/18 but filed on 12th day of June 2018 as having been argued. He raised four Issues for determination:

1. Whether the law allows evidence to be led on unpleaded facts and whether facts pleaded can be sustained without evidence.
2. Whether the Appellants have led substantial evidence in proof of allegations of non-compliance in the conduct of the election to the office of Chairman Gwagwalada Area Council held on 9th and 13th April 2016.

3. Whether there is any evidence of recount of used ballot papers and ticked voters register before the Court.
4. Whether the law allows a party to approbate and reprobate over the same issue.

Learned Counsel submits that there is no foundation in the entire case of the Appellants to warrant the areas having not been pleaded to be included as the golden rule of pleadings applies to the effect that one cannot place something on nothing. That the argument of Counsel that the new areas now sought to be added are undisputed is untenable because those areas are not pleaded. Learned Counsel submitted that there was no link between the Witnesses and the Exhibits.

That Exhibits P1-P245 were dumped on the lower Court without explaining their essence. Learned Counsel further submits that the Lower Tribunal in its

quest to do substantial justice and in compliance with the directive of this Court took a holistic review of the entire case before delivering a concise Judgment.

That on the issue of the Respondents' refusal to call Witnesses, the law is that in election cases which are declaratory in nature, a Petitioner is required to succeed on the strength of his case and not on perceived weakness of the Respondents. The Appellants failed to prove their case with credible evidence. That Appellant failed to tender the result of the counting. That the outcome of the recount constitutes evidence and evidence is only useful to a party when tendered and admitted in evidence. Learned Counsel canvasses that there is no evidence of any used ballot papers and ticked voters register before the Court but what Counsel did was to address the Court in respect of the recount which was submitted but does not amount to evidence.

Learned Counsel to the 3rd Defendant finally urges the Court to dismiss the appeal for being unnecessary and frivolous.

The Appellants filed a reply brief to 1st and 2nd Respondents' brief of argument dated and filed on the 12/06/18 and 3rd Respondent's brief dated 31/07/18 but filed on 6/08/18.

We have equally read same with the issues raised. The issues raised by all parties to this appeal are similar in substance. We shall therefore decide this appeal based on the issues raised by parties.

- i. Considering the Order of this Appeal Tribunal to the Lower Tribunal to count ballot papers in **Dobi**, Paiko, Ibwa, Staff Quarters and Gwagwalada Central Wards where the election was challenged and deliver a considered Judgment, whether the Lower

Tribunal was not bound to collate and sum up votes realised from counting in the disputed 5 Wards with votes scored by the parties in the undisputed Wards of Kutunku, Tunga Maje, Zuba, Ikwa and Gwako in determining and declaring the winner of the Gwagwalada Area Council Chairmanship Election held on 9th and 13th April 2016.

- i i . Given the peculiar facts and circumstances of this appeal, whether the Appellants/Petitioners were still required to call Witnesses from each and every Polling Units in the affected Wards to prove their ground of non-compliance/irregularity even when the result of counting of ballot papers cast and testimonies of Petitioners Witnesses have established same.

Before we go into the above two issues thrown up by this appeal, we shall go briefly into the history of this case particularly as it relates to the judgment of this

Appeal Tribunal delivered on the 30th day of November 2017. It is contained in Pages 1041-1072 of the record of appeal Volume 3 of 3.

This Court distilled three issues for determination in the earlier appeal as raised by the Counsel. The issues are contained in Page 1057 of Volume 3 of 3 of the record of appeal for the purpose of clarity, we shall reproduce same.

- (1) ***Whether by the binding authorities of INEC VS. OSHIOMOLE (2009) 4 NWLR (PT.1132) 607 at 662.664 Paragraphs D-H and AGAGU VS. MIMIKO (2009) 7 NWLR (PT.1140) 320 at 401 PARAGRAPHS A-E*** which were cited to the Lower Tribunal whether it was not wrong in holding that an application for counting of ballot papers must be by formal application in writing while a witness is in the witness box.
- (2) By the peculiar fact and circumstances of the Appellants' application filed on 29/11/16,

whether the ruling of the Lower Tribunal in refusing the application and foreclosing the Appellants/Petitioners did not amount to a denial of fair hearing.

- (3) From the totality of evidence led by the Petitioners/Appellants, whether the Lower Tribunal was right in holding in its Judgment that the Petitioners/Appellants failed to prove non-compliance.

This Tribunal found in favour of the Petitioners/Appellants in Issues 1 and 2 as contained in paragraph 1, Page 1065 and last paragraph of Page 1070 in Volume 3 of 3 of the records of appeal.

In Page 1071, first paragraph of Volume 3 of 3 of records, the Court stated:

“Having come to this conclusion, it will be an academic exercise to go to the 3rd issue.”

This Court made the following orders:

1. The rulings and Judgment of the Lower Tribunal delivered on 14th November 2016 and 2nd February 2017, respectively are hereby set aside. The appeal is allowed.
2. The application to count ballot papers and ticked voters register in Exhibits P175 – P190, P191-206, P207 – 222, P223-236 and P237-247) Ballot Boxes and voters Register of Dobi, Staff Quarters, Paiko, Ibwa and Gwagwalada Central Wards which Appellants tendered through their Witnesses is hereby granted.
3. The case is remitted back to the trial Tribunal.
4. The Tribunal shall thereafter record the result of the counting and deliver a considered Judgment within a reasonable time.

From the above, it is clear that what this Appeal Tribunal did was to deal with the issues of fair hearing raised by the Petitioner/Appellant in their former appeal which necessitated the Order for recount.

We shall now take the two issues raised by the Petitioners/Appellants in this appeal. Considering the Order of this appeal Tribunal to the Lower Tribunal to count ballot papers in Dobi, Paiko, Ibwa, Staff Quarters and Gwagwalada Central Wards where the election was challenged and deliver a Considered Judgment, whether the Lower Tribunal was not bound to collate and sum up votes realised from counting in the disputed 5 Wards with votes scored by the parties in the undisputed Wards of Kutunku, Tunga Maje, Zuba, Ikwa and Gwako in determining and declaring the winner of the Gwagwalada Area Council Chairmanship Election held on 9th and 13th of April, 2016.

We have earlier reproduced the submission of Learned Counsel on this issue. We shall not repeat same. The Order of this Tribunal is also clear. We have also reproduced same in this Judgment. All the

trial Tribunal was ordered to do is to count the ballot papers and ticked voters register which are Exhibits before the Court in the affected areas, record the result of the counting and deliver a considered Judgment

This was to remedy the perceived injustice the Petitioners/Appellants would have suffered for the refusal of the Lower Tribunal to count the said ballots.

There is nowhere in the order of this Court it is stated that there must be addition of the said votes with votes scored in the undisputed areas. It is not contained in the Order of this Court. However, if the said results of the remaining undisputed Wards are before the Court, they should be added to deliver a considered Judgment.

The Appellant's Counsel in his brief at Page 33 stated that the votes declared in INEC Form EC8C (which is gazetted as official government public record) from the five Wards/Registration Areas of Tungan Maje,

Zuba, Ikwa and Gwako Wards were not challenged by any of the parties at the trial of the Petition.

That this Court should dispense with the result declared by INEC from Gwagwalada Central, Staff Quarters, Ibwa, Dobi and Paiko Wards and use the result realised after the physical counting of ballot papers of actual votes cast at the election.

We have looked at the length and breadth of the Petition. The INEC Form EC8C of Tunga-Maje, Zuba, Gwako and Ikwa were not tendered. In Page 33, paragraph 81 of the Record of Appeal Volume 1 of three, the Appellant gave Notice to the 3rd Respondent to produce the Forms EC8A, 8B, 8C and 8D (statement of results of Polling Units, Ward Result, Area Council Result and Statement of Chairmanship Election for Gwagwalada Area Council.) No further steps were taken, it ended there.

Aside this general averment, there was no further pleadings. No evidence was accordingly led in respect of the said Wards.

The Learned Senior Counsel mentioned a government gazette containing the aforementioned result. The date of the said gazette was not afforded the Lower Tribunal. It is trite law that parties and the Court are bound by pleadings. Therefore, it is not open to a Court to violate the pleadings of the parties and make a case for them contrary to their pleadings.

See **ADELEKE VS. IYANDA (2001) 13 NWLR (PT. 729) 1 SC.**

ADENIRAN VS. ALAO (2001) 18 NWLR (PT.745) 361 SC.

NGIGE VS. OBI (2006)14 NWLR (PT.999)1 CA.

Parties are strictly bound by their pleadings and they are not allowed to make a case that is at variance with their pleadings.

See **OKOLO VS DAKOLO (2006) NSCQR (VOL. 27) 259.**
MAKINDE VS. AKINWALE (2000) 1SC 89.
UKAEGBU VS. UGOJI (1991) 6 NWLR (PT 196) 127 SC.
BUHARI VS. OBASANJO (2005) 2 NWLR (PT.910) 241, 13
NWLR (PT.841) 1 SC.

Where a trial is conducted on the basis of pleadings as in this case, all relevant allegations in the pleadings must be proved by evidence and such must be in line with the pleadings.

In otherwords, the Plaintiff or Petitioner must prove his case as pleaded, and must prove the contents of the paragraph of the pleading in support of the reliefs sought in order to obtain Judgment. If the Plaintiff fails to prove his case on the pleadings to the satisfaction of the Court, his case crumbles. Thus a Petitioner who asserted that he was denied fair hearing in the proceeding has the duty to lead

evidence to prove his assertions otherwise the assertions will remain mere allegations.

See ***ALAMIEYESEIGHA VS. IGONIWARE (No.2) (2007) 7 NWLR (PT.1034) 524.***

Unfortunately, or do we say fortunately, the votes sought to be added to the result of the counting ordered were not pleaded; What is contained in the Appellant's Counsel's Address as a tabulation ought to be evidence. We agree with the Lower Tribunal that an Address of Counsel cannot take the place of evidence. There were also no pleadings to that effect. Little wonder, no evidence was led in that regard.

We have read the Judgment of the Lower Tribunal contained in Pages 1257-1259 of Volume 3 of 3 of the records on this issue, we align ourselves with its reasoning. We find no reason to disturb same.

Issue 1 is therefore resolved in favour of the Respondents against the Appellant.

On Issue 2, whether given the peculiar facts and circumstances of this appeal, the Appellants/Petitioners were still required to call witnesses from each and every Polling Units in the affected Wards to prove their ground of non-compliance and irregularity even when the result of counting and testimonies of witnesses have established same.

Learned Senior Counsel to the Appellants have submitted that with the physical counting of votes in the Wards where result of the election was challenged, that the Appellants/Petitioners were no longer required to call Witnesses from each and every Polling Units in the affected Wards to prove inflation of votes/irregularities even when the result of counting of ballots papers cast and testimonies of Petitioners Witnesses have established same.

That the Lower Tribunal failed to highlight the report of the counting exercise in many Wards and Polling Units where 1st and 2nd Respondents lost election or indulged in irregularities during election.

The 2nd and 3rd Respondents submitted that a recount is not and cannot take the place of hard evidence, where a party is alleging ballot stuffing, multiple voting and falsification. That it was the Judgment of the Lower Tribunal that was set aside and not the entire proceedings.

The 3rd Respondent's Counsel's argument succinctly is that the testimony of PW1- PW14 was shattered under Cross-Examination. That the evidence of the Witnesses suggests due compliance with the law.

That only 16 Witnesses testified in respect of the 60 Polling Units of the five Wards complained of which fell short of the requirement of the law for being

either uncertain or hearsay or not far reaching as the Polling Unit were not covered. That there was no link established between the Witnesses and the Exhibits. That there was substantial compliance with the provisions of the law in the conduct of the election in question. That PW15 and PW16, called by the appellant confirmed the credibility of the election. The law is trite that the burden is on the Petitioner/Appellant to prove that malpractices and non-compliance were the reasons why he could not win the election.

In ***OLOFIN & ANOR VS. SARAKI & ORS (2014) LPELR – 41205 CA.***

The Court of Appeal held:

“The question here is whether the Appellants discharged the burden on them of proving the irregularities, over-voting and non-compliance with the provisions of the Electoral Act 2010 as amended such as would have entitled them to a rebuttal by the Respondents and Judgment quoting the case of PDP

VS. INEC (2014) 17 NWLR (PT.1437) 525 at 569, the Supreme Court observed:

“Where a Petitioner complains of non-compliance with the provisions of the Electoral Act 2010 as amended, he has a duty to prove it Polling Unit by Polling Unit, Ward by Ward. He must establish that the non-compliance was substantial that it affected the result of the election. It is only then that the Respondents are to lead evidence in rebuttal.

In the instant case, the Appellant failed woefully to prove its case. Therefore, the 1st Respondent though had tendered some documents in proof of its case, had no business rebutting as nothing was there to rebut.”

Also referred to ***UCHA VS. ELECHI (2012) 13 NWLR (PT.1317) 330.***

CHIME VS. ONYIA (2009) 2 NWLR (PT.1124)

BUHARI VS. OBASANJO (2000) 13 NWLR (PT.941).

The Appellant made no effort whatsoever to call evidence Polling Unit by Polling Unit and Ward by

Ward to establish the irregularities, over voting and non-compliance.

Similarly in **EKPO & ANO VS. KANU & ORS. (2012) LPELR – 8035 CA**, the Court held:

“To predicate an election Petition on the ground of non-compliance with the provisions of the Electoral Act is equivalent to saying that the votes attributed to the person declared elected were either falsely obtained or were unlawfully procured. That the majority of votes upon which the declaration was made was either false or unlawful.”

In **NWOBODO VS. ONOH (1984) 15 NSCCI at 23**, Bello JSC as he then was, held:

“A Petitioner must not only prove the results collated by the assistant returning officers but must also prove the votes counted by the presiding officers and the scores of each candidate at the Polling booths which were the basis of the collation. Production of the result of the Poll counted by the Presiding Officers and the scores of each candidate at the polling

booths is an essential element of the burden of proof under the circumstances of the Petition.”

It is clear from the above authorities that a recount ordered by the Court cannot take the place of the burden placed on the Petitioners/Appellants to prove their case in accordance with the law.

The Appellants failed woefully to prove their case in accordance with the law, this appeal Tribunal therefore cannot be of any help.

In our respectful view, the Learned Senior Counsel to the Appellant misconstrued the Judgment of this Court. The clear Orders of this Appeal Tribunal is for the Lower Tribunal to recount and deliver a considered Judgment.

The Proceedings were not set aside, if they were, with what will the Lower Tribunal deliver a considered Judgment.

We have read the Judgment of the Lower Tribunal at Pages 1235-1242 Volume 4 of 4 of the record. In our humble view, it is in tandem with the position of the law. It is unassailable. We have no reason to fault their findings and conclusion. We also resolve the Issue 2 in favour of the Respondents.

In totality, the appeal fails for lack of merit and it is accordingly dismissed.

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HON. JUSTICE O.A. ADENIYI
(MEMBER)

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HON. JUSTICE Y. HALILU
(MEMBER)

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HON. JUSTICE U.P. KEKEMEKE
(CHAIRMAN)