

**IN THE AREA COUNCIL ELECTION TRIBUNAL OF THE
FEDERAL CAPITAL TERRITORY
HOLDEN AT FCT HIGHT COURT JABI-ABUJA**

**PETITION NO: FCT/ACET/EP/03/2019
ON THE 16TH DAY OF OCTOBER, 2019**

BEFORE

- | | | |
|----|---|-------------------|
| 1. | HON. SAMUEL EBIYE-KHIMI IDHIARHI | - CHAIRMAN |
| 2. | HON. MOHAMMED ZUBAIRU | - MEMBER |
| 3. | HON. A. A. MOHAMMAD | - MEMBER |

BETWEEN:

- | | | |
|-----------------------------------|---|-------------------|
| 1. ADAMU IBRAHIM DAKWA | } | ----- PETITIONERS |
| 2. PEOPLES DEMOCRATIC PARTY (PDP) | | |

AND

- | | | |
|----------------------------------|---|-------------------|
| 1. MUSTAPHA TANKO | } | ----- RESPONDENTS |
| 2. PEOPLE DEMOCRATIC PARTY (PDP) | | |
| 3. INEC | | |

JUDGMENT

By a petition dated and filed on 29th March 2019, the Petitioners who participated in the election into the office of councilor Kubwa Ward of Bwari Area Council conducted by the 3rd Respondent on the 9th March, 2019 were aggrieved by the outcome of the election wherein the 1st Respondent was declared winner and returned elected.

The petitioners pray before this tribunal to grant the following reliefs:

- (a) An order of the tribunal for the production of the votes cast in the entire Polling Units of Kubwa Ward of Bwari Area Council, Abuja for RECOUNTING of all the valid votes cast and crediting/validating the votes which were unlawfully and wrongly rejected to be counted for the benefit of the 1st Petitioner herein, who contested under the

- platform of the 2nd Petitioner and also nullifying/invalidating the votes unlawfully and wrongly credited to the 2nd Respondent for the benefit of the 1st and 2nd Respondents and declaring therefore the Petitioners as having scored the majority of lawful votes and return him accordingly as councilor under the platform of the 2nd petitioner.
- (b) A declaration that the 1st Respondent did not have the majority of lawful votes and therefore ought not to be returned as the winner of the 9th March, 2019 election in Kubwa Ward Bwari Area Council, Abuja.
 - (c) A declaration that the 1st Petitioner is the winner of the election into the office of councilor of Kubwa Ward of Bwari Area Council being the candidate with the 2nd highest number of votes cast.
 - (d) An order directing the 1st Respondent to refund to the 1st Petitioner all salaries/allowances received throughout the period of occupation of the office of councilor Kubwa Ward of Bwari Area Council up to the time of the determination of this petition.

The ground upon which this petition is predicated is contained in paragraph 8 of the petition, thus;

That the election of the 1st Respondent Mustapha Tanko, the person, whose election is questioned, was invalid by reason of non compliance with the provision of the Electoral Act 2010 and CFRN 1999 as amended.

The petition was duly served on all the Respondents and expectedly, all the Respondents filed their respective replies to the petition in accordance with the provision of the Electoral Act 2010. The Petitioners elected not to file any petitioners' reply to the Respondents' reply.

All preliminary issues were dealt with at the pre-hearing conducted on 22/05/2019 while hearing of the petition commenced on 29/07/2019 when the petitioners opened their case. They called 2 witnesses and closed their

case. However, before the hearing commenced, the petitioners tendered from the Bar 16 electoral documents which were admitted and marked as Exhibits KB1 to KB16. While two more documents were tendered through the 1st petitioners' witness.

All the three Respondents through their learned counsel informed the tribunal that they would rely on the evidence of the Petitioners' witnesses elicited during cross-examination as according to them enough evidence has been elicited to support their cases.

The tribunal therefore, ordered the parties to file and exchange the final written address as all the parties complied and adopted their written addresses on 18/09/2019.

Learned counsel to the petition Y. G. Haruna Esq. formulated two issues for determination, namely;

- (a) Whether a careful perusal of the figures allotted by the 3rd Respondent to the various political parties as shown in Exhibit KB 1 will not reveal the petitioners as the actual winner of the Polls conducted into Kubwa Ward councillorship election of Bwari Area Council held on 9/3/2019.
- (b) Whether if the result of Dakwa Village Square Polling Unit code 011 which was excluded is added to the general result declared by the 3rd Respondent in Exhibit KB 1 across board will not show the petitioners to be the outright winner by majority of lawful votes cast into Kubwa Ward councillorship election of Bwari Area Council.

While, learned counsel to the 1st Respondent Gabriel Okpata Esq. in his final written address raised two issues for consideration by this tribunal;

- (a) Whether the substantial alteration of the Petition by the petitioners without formally amending the petition in line with the clear provision of the Electoral Act renders the petition incompetent and liable to be struck out.
- (b) Whether the petitioners have discharged the burden placed on them by establishing substantial non compliance that affected the result of this elections.

Mrs. Chinelo Nnadi Esq. on behalf of the 2nd Respondent identified in her final address 3 issues for determination;

- (a) Whether the Petitioners have discharged the burden of proof placed on them to establish that the Respondent was duly elected by majority of lawful votes cast at the election of 9/3/2019 for the office of Councilor Kubwa Ward Bwari Area Council.
- (b) Whether the Petitioners have proved by credible and convincing evidence that the return of the 1st Respondent as Councilor Kubwa Ward for the election held on 9/3/2019 was in substantial compliance with the Electoral Act.
- (c) Whether the Petitioners have proved beyond reasonable doubt all allegations of corrupt malpractice (which are in the realm of criminal offences) alleged against the 1st Respondent in his agent in the Petition.

The third Respondent through its legal representative Grace Ogbonna Esq. formulated a sole issue for determination which is;

- (a) Whether the Petitioners have discharged the burden of proof placed on them to establish that the 1st Respondent was duly elected by majority of lawful votes cast at the election of the 9th March, 2019 for the office of the Councilor for Kubwa Ward, Bwari Area Council, Abuja.

Well, ready carefully through all the issues formulated by all the parties in this petition, we are of the Opinion that the sole issue formulated by the 3rd Respondent, the 3 issues formulated by the 2nd Respondent can be narrowed down and conveniently dealt with under issue No. 2 formulated by the 1st Respondent. Consequently we strongly believe that the issues formulated by the Petitioners and 1st Respondent are apt and germane for the determination of this petition as such we adopt those issues as issues beg for our determination.

Before we do that, it is imperative to promptly address the issues that are in the nature of objection as raised by the Respondents in their respective

written submissions. For our convenience, we shall begin with the issue raised by the 3rd Respondent wherein learned counsel Grace Ogbonna Esq. contended that the petitioners final address is defective and incompetent and urge the tribunal to strike it out. Learned Ogbonna Grace Esq. submitted that the Petitioners' final address excluded the 3rd Respondent as a party to the petition while the 3rd Respondent is always a necessary and proper party to every election petition. Cited section 137 (3) of the Electoral Act 2010.

In his response to the above, learned Y. G. Haruna Esq. for the petitioners submitted that the omission of the 3rd Respondent's name was not deliberate but as a result of printer's devil which is an inadvertent of the learned counsel and urge the tribunal to discountenance the objection of the 3rd Respondent as sins of counsel cannot be visited on litigant.

There is no doubt from the face of the petitioners' final written address, the name of the 3rd Respondent (Independent National Electoral Commission) was conspicuously absent as a party to the Petition. By the provision of section 137(3) Electoral Act the electoral commission is a necessary respondent in all election petitions. It is clear that the omission of the name of a necessary party as in this case INEC from the names of the Respondents in the Petitioners' final address is an error on the part of the petitioners. The question is whether such error is fatal to the right of the petitioners to file written address or renders the address already filed liable to be struck out?.

Apart from this final address where the name of the 3rd Respondent was omitted, the name of the 3rd Respondent was properly described and written on all other documents and processes filed including the petition itself, witness Statement on Oath, list of witnesses and other processes of the respondents. So right from the onset, the 3rd Respondent has been and is still a party to this petition. It is therefore our conviction that this error of omitting the name of the 3rd Respondent in the Petitioners' written address does not affect the competence of the process. We consider this as an inadvertence of the counsel which should not be used to punish the

litigant. See HOPE DEMOCRATIC PARTY VS. INEC & ORS (2009) LPELR 1375 (SC).

Relying on the above authority therefore, we strongly hold that the objection of the 3rd Respondent on the competence of the petitioners' final written address lacks merit and is hereby dismissed. We, for emphasis, hold that the petitioners' final written address dated 27/8/2019 is proper before this tribunal.

Both the 1st and 2nd Respondents have raised concern on the propriety of the receptions in evidence of Exhibits KB 17 and KB 18 i.e INEC regulations and guidelines for the conduct of elections 2019 and INEC manual for election officials, 2019. The ground for the objection on this is the fact that PW1 through whom these document were tendered did not refer to them in his witness deposition on oath. Learned Counsel to the 2nd Respondent contended that those documents remain inadmissible and liable to be rejected.

On this they referred to paragraph 41 (3) of the 1st schedule to the Electoral Act 2010 where it states:

“There shall be no oral examination of a witness during his evidence in chief except to lead the witness to adopt his written deposition and tender in evidence all disputed documents or other Exhibits referred to in the deposition.”

Also in support of this position the authority of ANDREW VS. INEC (2018) 9 NWLR 1265 507 and urge the tribunal to hold that Exhibit KB 17 and KB 18 have nothing to do with the evidence of the PW1 and same is inadmissible”.

PW1 Mr. Audu Dorzhi a staff of the 3rd Respondent appeared before this court as a subpoenaed witness. Exhibit KB 17 and KB 18 were tendered through him. This witness, in compliance with the provision of ORDER 3 rules 2 and 3 of the Federal High Court Civil procedure rules, filed his witness Statement on Oath. The subpoena issued by this tribunal requires the witness to appear and produce documents and also give evidence. Among the documents to produce are Exhibit 17 and KB 18.

This tribunal has had cause to rule on this issue and held that those documents Exhibit KB 17 and KB 18 though not referred to by PW1 in his Statement on Oath but are those documents the tribunal summoned him to produce and they are of the nature of subsidiary legislation. We believe strongly that those Exhibits were properly received in evidence. It is our opinion that whether these documents (Exhibit KB 17 and Exhibit KB 18) are admitted as exhibits or not by the very nature of those documents this tribunal is obliged to take judicial notice of their existence and also make use of them. Therefore rejecting them will not make any difference.

INEC guidelines and manual for the conduct of election cannot be disregarded by any brilliant or sound argument as the guidelines and manual by rules of procedure have become part of the Electoral Act which vested the authority on the 3rd Respondent to make them for the purpose of giving effect to the Electoral Act. Section 153 of the Electoral Act empowers the 3rd Respondent to draw these guidelines and manual therefore they are subsidiary legislation which by Section 122 Evidence Act 2011 this tribunal must take judiciary notice of.

Having said this, it's our firm conviction that the objection of the Respondents on Exhibits KB17 and KB18 cannot be sustained and same is accordingly overruled. We shall in due cause address the issue of oral evidence of the PW1 and PW2.

Another important point that needs to be addressed now is the issue raised by learned counsel to the 1st Respondent Gabriel Okpata Esq that the substantial alteration of the petition by the Petitioners without amending the petition in line with provision of the Electoral Act renders the petition incompetent and same is liable to be struck out.

Learned counsel contended that the law on election petition is settled that by paragraph 14(2) of the 1st schedule to the Electoral Act no amendments shall be made introducing any of the requirements of subparagraph (1) of paragraph 4 of the schedule not contained in the original petition, or effecting a substantial alteration of the ground for or the prayer in the election petition. That the order of this tribunal granting the oral application of the Petitioners

to amend their petition was not allowed in law therefore the oral amendment is invalid and therefore no valid petition before the tribunal. Cited **OKE VS MIMIKO NO 1 (2014) 1 NWLR 1388 at 253.**

That since the Respondents have filed their reply to the petition within the stipulated period and the Petitioner failed to file any Petitioners reply within 5days after the filing of the Respondents' reply and also the answers to the pre-hearing questions the petitioners indicated that they desire not to amend the petition. This amounts to approbating and reprobating for the Petitioners to come up with any application for amendment cited **AG RIVERS STATE VS. AG AKWA IBOM STATE (2011) LPELR 633 SC.**

Learned counsel finally urged us to hold that there is no valid petition before the tribunal having predicated on an illegally altered or amended petition.

Mr. Y. G. Haruna Esq. for the Petitioners submitted that though the Petitioners had earlier indicated no amendment to the petition but when they realized typographical errors during the pre-hearing session oral application was made to correct these errors and same was granted by the tribunal. The tribunal further ordered that after the amended of the typographical errors a clean copy of the petition be filed and served on all the Respondents and this was complied with.

He further submitted that amendment of election petition will not be granted/allowed if:

- a) fresh prayer is introduced in the amendment;
- b) fresh ground is introduced
- c) Alteration of substance in or addition to the statement of fact pleaded to sustain the ground.

Mr. Okpata Esq. had earlier argued that the order of this tribunal for the Petitioners to file a fresh amended petition has not been complied with thereby making the Petitioners in disobedience of the order of the tribunal.

It is on record that at the commencement of this proceeding, a pre-hearing information sheet was issued and served on all the parties and the Petitioners

in their answers to those questions indicated that they do not intend to amend the petition. However, during the pre-hearing session precisely on 22/5/19 the Petitioners made an oral application before the tribunal to amend paragraph 13 and 17 of the petition by substituting the word “DAKWA” with “KUBWA” and figure “31” with “23” which the Petitioners described as typographical errors.

The tribunal did not see that amendment as substantial that affects the substance of the petition or introduces a new fact or grounds to the original petition and granted the amendment. The tribunal further ordered the Petitioners to effect the correction and file a clean copy of the amended petition and serve the other parties accordingly.

Mr. Okpata Esq. argued that the Petitioners, instead of doing what the tribunal ordered, fraudulently removed the affected pages of the petition and inserted into the original copy. That both the original petition and the “fraudulently altered petition” carry the same date i.e 29/3/2019 while the order of the amendment was 22/5/2019 therefore, the petition predates the order of amendment. Cited **UCHIU VS. SABO (2016) 16 NWLR 1538** and urge the tribunal to strikeout the petition.

Superior courts in the land have over the years held that amendment of a court process may entail a complete charge of the process, even by way of substitution. It can be a simple correction of some line(s) or paragraph(s), or by adding or deleting letter(s) or word(s) intended to bring out the real issue in controversy in the case for proper adjudication. It has also been held to embrace substitution. **KALU & ORS VS. KALU & ORS (2018) LPELR 44264.**

A petition or process of court is deemed duly filed when the process is brought to the registry, assessed and paid for within the time allowed for such filing and same is received by the proper court’s official assigned with the responsibilities of receiving same. **AKPAJI VS. UDEMBA (2009) LPELR 371 SC.**

From the record of this tribunal, a petition was filed on 27/05/2019 duly assessed and the necessary filing fees paid for and certified by the secretary

of the tribunal in line with paragraph 3 (3) of the 1st schedule to the Electoral Act 2010. This petition was filed 5 days after the order of amendment was granted meaning. It was filed within the time allowed by the tribunal. This is a clear evidence that a new petition was filed and the necessary filing fees paid in accordance with the law.

We completely reject the contention of Mr. Okpata Esq. that the Petitioners fraudulently removed the affected page of the petition. We further hold that the Petitioners duly complied with the order of this tribunal on 22/05/2019. The authority of **UCHIV VS SABO** will not be applicable in the present case and cannot be invoked. Since the facts and context in this case are distinguishable from the authority cited. In that case the party who was asked to file a clean copy of his process went outside the box and effected unauthorized amendment to his petition. And this is not the case here. Consequently we hold that there is a proper and valid petition before the tribunal. The objection of Mr. Okpata for the 1st Respondent is hereby overruled.

Having dealt with all the preliminary objections and having established that there is valid petition before the tribunal; I shall now proceed into the merit of the petition with a view to determining the issues involved. It is important to state at this stage that the only evidence available for consideration before this tribunal is the evidence presented by the petitioners as non of the Respondents adduced evidence before he tribunal.

It is an acceptable practice for a party in litigation to choose not to adduce evidence in proof of his defence in an elections petition. In a civil case to which election petition belongs, the only way to arrive at a final decision is by determining on which side the weight of evidence tilts. However, if a Respondent opts or chooses not to call or proffer any evidence the issue calling for determination will be proved by minimal of evidence. **AGAGU VS. MIMIKO CA/B/EPT/342A/08 NWABUOKU VS AG 01/OYO STATE (1961) ANCR 507.**

The petitioners have pleaded in paragraphs 7 to 14 of the petitioners that the 1st Respondent did not score the majority of lawful votes and that the 3rd

Respondent did not properly calculate and compute the appropriate scores of the parties at various Polling Units to get the correct result in Exhibit KB 1. The relevant paragraphs are:

7. The purported results of the election as declared by the 3rd Respondent are as follows:

- (1) Adamu Ibrahim Dakwa APC 2200 votes
- (2) Mustapha Tanko PDP 2,410 votes
- (3) Badamasi Basiru YPP 177 votes
- (4) Lawan Yahaya PPN 108 votes

8. The Petitioners are dissatisfied with the declaration as shown above and more particularly the number of votes credited to the 1st Respondent and the Petitioners and therefore filed this petition.

9. The Petitioners shall contend at the trial that once the votes of election in the 23 Polling Units of Kubwa Ward of Bwari Area Council held on 9/3/2019 as contained in FORM EC8B(1) are properly collated and counted the Petitioners would have emerged the winner of the said election.

10. The Petitioners aver that the 3rd Respondent wrongly calculated the figures as contained in FORM EC8B(1) and collated the figures to the Petitioners and Respondents as follows.

- APC = 2,200 VOTES
- PDP = 2410 VOTES

11. The Petitioners aver that the 3rd Respondent deliberately excluded the results of the votes cast at Dakwa Village Square Polling Unit code 011 where the petitioners scored 335 vote while the 1st and 2nd Respondent scored 47 votes the Petitioners hereby plead and shall rely on form EC8A(1) of the statement of results.

12. The Petitioners aver that if the figures scored at Dakwa Village square with Polling Unit code 011 and that of the figures scored by the 1st and 2nd

Respondents is properly calculated, the parties would have the following total number of votes.

- APC = 2,766
- PDP = 2,609

Mr. Sunday Ghazazhin was the returning agent of the petitioners in the councillorship election held on 9/3/2019 for Kubwa Ward. He testified as PW2. His evidence in chief as adopted in his written deposition is to the effect that at the conclusion of collation of results, the 3rd Respondent issued him summary of result in Form EC8B(1) and that Kubwa Ward has 23 Polling Units but it is only results of the two Polling Units were collated while result of Dakwa Village Square code 011 was not included.

It is the evidence of PW2 that the Petitioners scored 335 votes while the 1st and 2nd Respondents scored 47 votes in the election held at Dakwa Village Square Polling Unit code 011. That no reason was given why the result in code 011 was not included in the first result FORM EC8B (1) (Exhibit KB1) that if the result is properly computed and the results of Dakwa Village square Polling Unit code 011 is added, the Petitioners would have emerged winners of the election by majority of lawful votes.

Under cross examination, PW2 testified further that he was not a Polling agent in any of the Polling Units and does not know what transpire at the Polling Units. He also testified further that he neither made Exhibit KB 1. Nor signed same. That he did not sign Exhibit KB 1 because he noticed the result of Dakwa Village Square code 011 was not included and that the number of accredited voters are less than the total valid vote cast in Dakwa Village Square, Dakwa Babachikuri and Daidai/Sabon Dai-Dai Polling Units. He finally tested that the cancelation was done at the Collation Centre.

PW1 Mr. Audu Dorhiri also confirmed during cross-examination that there was case of over voting in the three Polling Units mentioned by PW2 above.

It is submitted by the Petitioners counsel that the result of the Kubwa Ward as shown in Exhibit KB1 was wrongly computed whereby the 3rd Respondent allotted figures contrary to the actual scores as per Exhibit KB1. That the

Petitioner allotted 2200 votes while the 1st and 2nd Respondents got 2410 votes. He further contended that the result of Dakwa Village Square code 011 was completely omitted by the 3rd Respondent in Exhibit KB1. He urges the tribunal to carefully analyze the figures in Exhibit KB1 and it will appear that the computation was totally wrong.

While Mr. Okpata Esq. of the 1st Respondent submitted that since the Petitioners complained about the result of a Polling Unit they have a duty to call eye witness who witnessed what happened at the Polling Unit. That both PW1 and PW2 testified during cross-examination that they were not at any of the Polling Units in Kubwa Ward during the election of 9/3/2019 their evidence cannot be countenanced to sustain complain on Polling Unit result. He further submitted that the failure of the Petitioners to call the Polling agents in respect of the purported affected Polling Unit results code 011 is very detrimental to their case cited **GUNDIRI VS. NYAKO (2012) 11 - 12 SC 62 @ 94** that evidence of the polling agent in respect of any complaints regarding the result of a Polling Unit is fundamental and urge the court to so hold.

Also the 2nd Respondent submitted that the alleged non compliance is a mere anomaly that cannot defeat the outcome of the election and such anomaly could be resolved at the Collation Centre cited Article 28(C) of the guidelines and section 139(1) of the Electoral Act.

The 3rd Respondent in its submission contended that the Petitioners have failed woefully to prove the non compliance alleged and thereby urge the tribunal to so hold.

Well, we have painstakingly read through the written submission of all counsel and carefully analyzed the evidence adduced both oral and documentary and hold strongly that the issue of wrong calculations of the figures in Exhibit KB1 was properly pleaded by the Petitioners. See paragraph 10 thereof. We also believe strongly that apart from the fact that the issue was pleaded in the petition, evidence was also adduced by the Petitioners as against the contention of the 1st Respondent that it is only raised in the Petitioners' final address.

PW2 in his written deposition on Oath has adduced evidence in support of that pleadings see paragraphs 8 and 9 thereof. It is therefore our opinion that the issue of wrongful calculation of the figures in EXB KB1 is really an issue calls for the intervention of this tribunal since the Petitioners have pleaded same and adduced evidence in support thereof. Moreso, non of the respondents cross examine PW2 on this evidence. It is the law that where evidence is given in respect of an issue and the adverse party who has the opportunity to cross examine the witness on that matter fails to do that is deemed to have accepted as truth what the witness testified on.

Where a witness adopted his witness Statement on Oath, all the facts deposed to therein become evidence of the witness in support of the pleaded fact as contained in the party's statement of claim. Thereafter, the respondents' counsel have the unfettered right to cross examine the witness. This, all the Respondents failed to do. The failure of the Respondents to cross examine PW2 on the issue of wrongful calculation of figure on Exhibit KB1 tantamount to admission. See EBOREIME VS. OLAGBEGI & ORS (2018) LPELR 44816 CA.

It is therefore our opinion that the issue of wrong calculation of figures in Exhibit KB1 is an issue admitted by all the Respondents therefore this tribunal is empowered to look into that with a view to resolving same. This we shall do.

Exhibit KB 1 is titled from EC8B(1) ***“Summary of Results from Polling Units Collation At Electoral Ward Level”***. From the look of it, Exhibit KB1 is the final result sheet which the 3rd Respondent prepared and used to declare the winner of the election to the office of councilor Kubwa Ward held on 9/3/2019. The 2nd Respondent under which platform the 1st Respondent contested the election of 9/3/2019 has scored 2410 votes while the Petitioners got 2200 votes. This figures the Petitioners alleged was not computed correctly and if calculated correctly, the Petitioners' votes will be more than what was credited therein.

Our examination of Exhibit KB1 particularly item 9 that is to say Dakwa Babachikuri Polling Unit code 011B, the 2nd Petitioner got 75 votes while the 2nd Respondent scored 9 votes and the total number of accredited voters

stood at 78 and all other political parties in the election did not get any vote except YPP who got 6 votes and the total valid votes from Exhibit KB 1 is 99 votes.

Also on item 15 code 010 Sabon Dai-Dai Polling Unit of the same Exhibit KB1, the total valid votes is 312 votes while the total number of accredited voters is 305. The 2nd Petitioner got 156 votes, the 2nd Respondent got 137 votes while ADC got 1 vote, LP scored 1 vote, PPN 7 votes, PT 5 votes and YPP 5 votes.

From the above, there is clear evidence of over voting going by the votes scored by individual parties that participated in the election and where over voting occurs, the 3rd Respondent will be justified not to reckon with the result of a Polling Unit affected. Paragraph 23 (b) of the INEC regulations and guidelines for the conduct of election provides:

“Similarly where the total number votes cast at a Polling Unit exceed the total number of accredited voters the outcome of the election shall be declared null and void and the report shall be made to the collation officer”.

We therefore hold that the 3rd Respondent while computing the scores of individual parties that participated in the election carefully removed the results of these 2 Polling Units Dakwa Babachukuri code 011B and Sabon Dai-Dai code 010 as the case of over voting actually occurred. The tribunal therefore taking all these into consideration arrived at the figures already arrived by the 3rd Respondent in Exhibit KB1 which means it was properly computed.

Consequently, it is our decision that the result of the scores of the 2nd Petitioner in Exhibit KB1 is actually 2200 while the scores of the 2nd Respondent stands at 2410 as originally arrived by the 3rd Respondent in Exhibit KB1. This issue is resolved against the Petitioners.

The Petitioners alleged non compliance with the Electoral Act, initially the 3rd Respondent did not include the result of Dakwa Village Square code 011 Polling Unit. That if the result is reckoned with and added with the result in Exhibit KB1 the result will be different.

It is the case of the Petitioners that the 3rd Respondent deliberately excluded the result of Dakwa Village Square code 011 where the Petitioners scored 335 votes while the 1st and 2nd Respondent scored 47 votes. That the exclusion of that result is against the provision of the Electoral Act thereby amounts to non compliance. The Petitioners further contended that Exhibit KB17 (manual for election officials 2019) makes provision for procedure of cancellation of election on the basis of over voting.

All the Respondents in their various submissions contended that the result of Dakwa Village Square code 011 Polling Unit was not excluded without reasons. It is the Respondents' submission that the 3rd Respondent cancelled the result due to over voting since the number of accredited voters is more than the total valid votes.

Exhibit KB3 is a result of Dakwa Village square code 011 form EC8A (1) VP. They are 4 documents. Meaning there are 4 voting points which made up of Dakwa Village Square Polling Unit code 011. Where voting points have been created in a Polling Unit, page 34 of Exhibit KB17 provides that the Assistant Presiding Officer shall enter the result on Form EC8A (VP) and submit to Presiding Officer who shall consolidate the result using Form EC8A and attach form EC8A (VP) thereto. That is Exhibit KB4 before this tribunal.

A carefully look at Exhibit KB3 and KB4 will show that same generated Exhibit KB1. All these documents are duly signed and stamped by the appropriate Officer and also certified as true copy of the original by the 3rd Respondent.

Both the 1st and 2nd Respondents argued that if all the votes credited to all the political parties that participated in the election at Dakwa Village Square code 011 are collated the total votes cast will exceed the number of accredited voters in the said Polling Unit. While the 3rd Respondent contended that it did not exclude the result of Dakwa Village square code 011 Polling Unit but the Petitioners scored 11 votes while the 1st Respondent scored 5 votes.

These are facts pleaded by all the three Respondents but no single evidence adduced in support of them.

It is the law that results declared by the 3rd Respondent are prime facie correct and the onus is on the Petitioners to prove the contrary. The Petitioners have tendered Exhibit KB1, Exhibit KB 3 and Exhibit KB4 to prove the scores of individual parties.

Exhibit KB4 is the statement of result of Poll from Polling Units Form EC8A (1) which comprises 4 voting points. For better appreciation, the following political parties participated and scored the following votes as per Exhibit KB4, thus:

1. Party A - One (1) vote
2. APC - 335 votes
3. PDP - 47 votes
4. PPN - 7 votes
5. PT - 7 votes
6. YPP - 10 votes

The total valid votes is 406 votes while the number of accredited voters is 417 and the number of voters on the register is 1996.

The 3rd Respondent, from whose custody Exhibit KB 4 was gotten, did not tender a single document to rebut or contradict what the Petitioners tendered. From the analysis of Exhibit KB4 there is obvious no case of over voting as alleged by the 1st and 2nd Respondent. The 3rd Respondent who prepares Exhibit KB4 did not say it cancelled the result but the parties scores different figures from what is contained in Exhibit KB4. As I said such result was never presented by the 3rd Respondent.

Looking carefully at Exhibit KB1, the result of Dakwa Village Square Polling Unit, the scores of all the political parties is not recorded to ascertain whether or not the total valid votes really exceeded the number of accredited voters as in the case of Dakwa Babachikuri code 011B and Sabon Dai-Dai code 010. The only entry in Exhibit KB1 as per Dakwa Village Square Polling Unit is number of registered voters as 1996, number of accredited voters as 390 and total valid votes on 406.

It is our conviction that Exhibit KB3 and KB4 having been duly signed and stamped by the appropriate Officers and certified by the 3rd Respondent are valid election results of the Councilor Kubwa Ward held on 9/3/2019. We further hold that the 3rd Respondent needed to do much more to offer explanation by convincing and cogent reason why the information of Exhibit KB 4 is not captured in Exhibit KB 1. Where such explanation is not offered the lawful presumption is that such result in Exhibit KB4 was actually excluded.

None of the Respondents especially 3rd Respondent was able to justify such exclusion of the results of Exhibit KB4 in Exhibit KB1. If the result was actually cancelled, the scores of the individual political parties should be known and evidence of the ground of cancellation be lead. However, where a result of a Polling Unit is collated and duly signed and stamped by the appropriate Presiding Officer a collation or returning officer has no power to exclude any lawful votes cast in an election from being included in the total votes cast in that election. See **MADUBUEZE VS. NWOYE (2015) LPELR 40448 (CA)**.

In the absence of any convincing reason why such result was not included in Exhibit KB1, we strongly hold that the results of Dakwa Village square code 011 Polling Unit as Exhibited on Exhibit KB3 and KB4 are lawful but unlawfully excluded and further hold that the 3rd Respondent had no justification for refusing to collate the result from the said Polling Unit in Exhibit KB1. And the law is settled law that in election Petition cases the decision of the court on who had the majority of lawful votes is largely based on documentary evidence mainly election result forms and the question of appraisal of the oral evidence or demeanor of the witnesses is not in issue. See **UZU VS. OGBU(2012) LPECR 9775 CA**.

Having held that the result of the Dakwa Village Square code 011 Polling Unit was lawful but wrongfully excluded from Exhibit KB 1, it follows therefore, that this tribunal in discharging its mandate has to reckon with the said result and determine the question of who scores the majority of lawful votes. In a while ago, we held that the Petitioners have 2200 votes and 1st and 2nd Respondents got 2410 votes.

Now an arithmetical calculation of the figures in Exhibit KB1 and KB4 will obviously resolve the question. The results is as follows:

APC's 2200 votes plus the 335 votes in Exhibit KB4 is 2535 votes while PDP's 2410 add with 47 votes in Exhibit KB4 is 2457 votes. Therefore the Petitioners have the majority of the lawful votes. This issue is resolved in favour of the Petitioners.

Consequently, the return of the 1st Respondent by the 3rd Respondent is hereby set aside. While the 1st Petitioner who contested under the platform of the 2nd Petitioner is accordingly declared the winner of the 9/3/2019 election in Kubwa Ward, Bwari Area Council as the candidate who scored the majority of lawful votes in the election.

It is further ordered that the 3rd Respondent to withdraw the certificate of return issued to 1st Respondent and issue a certificate to the 1st Petitioner forthwith.

The prayers of the Petitioners to order the 1st Respondent to refund all the salaries and allowances cannot be granted as same is not within the competence of this tribunal. Therefore the claim is hereby refused.

I make no order as to cost. Any party aggrieved with this decision may appeal against same.

HON. MOHAMMAD ZUBAIRU
MEMBER
16th October, 2019

PETITION NO: FCT/ACET/EP/03/2019

I concur with the lead Judgment

CHIEF MAGISTRATE SAMUEL E. IDHIARHI
CHAIRMAN
16TH October 2019

PETITION NO: FCT/ACET/EP/03/2019

I concur with the lead Judgment

HON. A. A. MUHAMMAD
MEMBER
16TH October, 2019

APPEARANCES:

- Sani Tijjani Esq., K. Ezenagu Esq., and. O. A. Omolase Esq., for petitioner's
- Gabriel Okpata Esq. and D.D Tunyan Esq. for 1st respondent
- Chinelo Nnamdi Esq. for the 2nd respondent
- Ogbona Grace Esq. and Franca Osagiede for 3rd respondent.