**IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY ELECTION TRIBUNAL**
**HOLDEN AT YENAGOA**

**ON THURSDAY 17TH JUNE 2021**

**BEFORE THEIR LORDSHIPS:**

**HON. JUSTICE OLUKAYODE A. ADENIYI (CHAIRMAN)**
**HON. JUSTICE IHEANACHOR P. CHIMA (MEMBER 1)**
**HON. JUSTICE STEPHEN KIBO MANYA (MEMBER 2)**

**PET. NO: EPT/BY/SEN/03/2020**

**BETWEEN**

1. CHIEF ABEL EBIFEMOWEI
2. ALL PROGRESSIVES CONGRESS (APC)

PETITIONERS

**AND**

1. MOSES CLEOPAS ZUWOGHE
2. PEOPLES' DEMOCRATIC PARTY (PDP)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

RESPONDENTS

# JUDGMENT

Bye-election into the Bayelsa Central Senatorial District of Bayelsa State was held on 5th December, 2020. The said election was contested by the 1st

Petitioner, on the ticket of the 2nd Petitioner; and the 1st Respondent, on the ticket of the 2nd Respondent; amongst other candidates. On 6th December, 2020, the 3rd Respondent, the body statutorily charged with the responsibility of conducting the said election, declared the 1st Respondent as the winner thereof, having polled **120,019 (One Hundred and Twenty Thousand and Nineteen)** votes. The 1st Petitioner polled a total of **18,947 (Eighteen Thousand, Nine Hundred and Forty-Seven)** votes cast at the said election, to come a distant second.

The Petitioners, being aggrieved with and dissatisfied by the outcome of the said election, filed the instant Petition at this Tribunal on 21/12/2020, on the sole ground set out as follows:

> ***That the 1st Respondent, Hon. Cleopas Moses Zuwoghe, was, at the time of the election, not qualified to contest the election, being a public***

***servant and had not resigned, withdrawn or retired from his position or employment 30 (thirty) days before the date of the said election as required by Section 66(1) (f) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).***

On the basis of this sole ground, the Petitioners have prayed this Tribunal for the declaratory and other reliefs set out as follows:

1. ***A declaration that the 1st Respondent was not duly elected and returned as the Senator to represent the Bayelsa Central Senatorial District in that he was a person not qualified to contest the Bayelsa Central Senatorial Bye-Election held on 5th December, 2020.***

2. ***A declaration that the election and return of the 1st Respondent as the winner of the Bayelsa Central Senatorial District Bye-Election on December 5th, 2020, is null and void as it is/was contrary to section***

***66(1) (f) of the Constitution of the Federal Republic of Nigeria (as amended).***

3. ***An Order setting aside the Certificate of Return issued to the 1st Respondent by the 2nd Respondent (sic) in respect of the Bayelsa Central Senatorial District Bye-Election, into the Senate of the Federal Republic of Nigeria, he (1st Respondent) was not qualified to contest the election.***

4. ***An Order declaring the 1st Petitioner, Chief Abel Ebifemowei as the winner of the Bayelsa Central Senatorial District Bye-Election held on 5th December, 2020 with majority lawful votes cast at the election.***

5. ***An Order directing the 3rd Respondent to immediately issue the 1st Petitioner, Chief Abel Ebifemowei, with a Certificate of Return as the winner of the Bayelsa Central Senatorial District Bye-Election held on 5th December, 2020.***

***6. OR IN THE ALTERNATIVE, an Order directing the 3rd Respondent to conduct a fresh bye-election for the Bayelsa Central Senatorial Election to the exclusion of the 1st and 2nd Respondents.***

The respective sets of Respondents joined issues with the Petitioners by filing their Replies to the Petition, as prescribed by the **First Schedule** to the **Electoral Act**. Thereafter, the Petitioners further filed Replies to the Respondents' Replies.

Pursuant to the provisions of *paragraph 18* of the **First Schedule** to the **Electoral Act,** Pre-hearing sessions were held on 25/02/2021 and 23/03/2021 respectively, at which all the parties participated, through their learned counsel.

At the plenary trial, the 1st Petitioner testified in person for the Petitioners; and called no other witness(es). He tendered in evidence six (6) sets of documents which were all provisionally admitted

subject to the Tribunal's ruling on the prospective objections raised thereto by the respective learned counsel for the respective sets of Respondents, who indicated that they shall argue the objections in their final submissions.

The respective Respondents, in turn, indicated to the Tribunal, through their respective learned counsel, their option not to call evidence in support of the Replies they filed to the Petition; that they opted to rest their case on the case of the Petitioners.

Upon conclusion of plenary trial, parties filed and exchanged their final written addresses in compliance with the provisions of the *paragraph 46* of the **First Schedule to the Electoral Act.**

The Petitioners, rather strangely, filed two separate written addresses in one. Both, dated and filed on 19/05/2021, were intended to tackle the defences

set up by the 1st and 2nd Respondents on the one hand; and that of the 3rd Respondent on the other.

The Petitioners, through their learned counsel, **Fedude Zimughan, Esq.**, raised a sole central issue in the two addresses they filed, namely:

> ***Whether, in the circumstances of this case where the 1st and 2nd Respondents/3rd Respondent did not call any evidence, oral or documentary, but rested their case on that of the Petitioners at the hearing of the Petition, the Petitioners have not discharged the burden of proof on the balance of probabilities or preponderance of evidence?***

On their parts, the 1st and 2nd Respondents filed their final written address on 25/05/2021, wherein their learned counsel, **Reuben Egwuaba, Esq.**, raised two issues as having arisen for determination in this suit, set out as follows:

1. ***Whether from the circumstances of this case, the challenge to the eligibility of the 1st Respondent's participation in the Bayelsa Central Senatorial District Bye-Election conducted on the 5th of December, 2020, by the Petitioners on the content of INEC Form EC13C and EC9 which was obtained from INEC by the Petitioners on the 14th of October, 2020, does not render the entire case a pre-election matter?***

2. ***Whether the Petitioners have been able to establish through credible and admissible evidence that the 1st Respondent was a person employed in the public service of the Federation or of any State and has not resigned, withdrawn or retired from such employment thirty days before the election on the 5th of December, 2020, when Bayelsa Central Senatorial District Bye-Election was conducted?***

The 3rd Respondent, through its learned counsel, **A. S. Emakitor, Esq.,** filed its final address on

25/05/2021, wherein learned counsel raised a sole issue for determination, namely:

> ***Whether the Petitioners have proved their case so as to be entitled to the reliefs sought?***

The Petitioners further filed Replies to the respective final addresses of the two sets of Respondents on record, on 28/05/2021.

On the basis of the pleadings of parties, the totality of the evidence adduced on record and arguments canvassed by the respective learned counsel in their respective final addresses, our view is that the issues formulated by learned counsel for the 1st and 2nd Respondents, which apparently subsume the issues formulated by the respective learned counsel for the Petitioners and the 3rd Respondent, adequately capture the field of dispute in this Petition. As such, the Tribunal hereby adopts the issues as formulated

by the 1st and 2nd Respondents' learned counsel in determining this Petition.

In proceeding to determine the issues as set out, the Tribunal has given proper consideration to and taken due benefits of the written final addresses of the respective learned counsel; and whenever it is considered necessary in the course of this Judgment, we shall endeavour to make reference to their respective submissions.

**ISSUE ONE**:

> ***Whether from the circumstances of this case, the challenge to the eligibility of the 1st Respondent's participation in the Bayelsa Central Senatorial District Bye-Election conducted on the 5th of December, 2020, by the Petitioners on the content of INEC Form EC13C and EC9 which was obtained from INEC by the Petitioners on the 14th of***

***October, 2020, does not render the entire case a pre-election matter?***

It is to be recalled that in the Reply filed by the 1st and 2nd Respondents to the Petition on 04/02/2021, they raised an objection to the competence of the Petition on the ground, essentially, that the Petitioners' Petition and the sole ground upon which the same is presented, makes it a pre-election matter pursuant to the provision of **s. 285(14) (b)** and **(c)** of the **Constitution**; and as such is not competent to be heard by this Tribunal.

Even though learned counsel for the 1st and 2nd Respondents made no direct reference whatsoever to the objection contained in the 1st and 2nd Respondents' Reply to the Petition; nevertheless it is to be noted that the totality of the arguments canvassed with respect to issue (1) formulated by learned counsel in his final address are apparently devoted

to the objection raised in their pleadings. As such, the Tribunal considers that a resolution of issue one, as set out, would have effectively determined the 1st and 2nd Respondents' objection to the competence of the Petition.

We would not belabour this objection. The sole ground upon which the Petitioners have presented the instant Petition is as set out in *paragraph 11* of the Petition. It is reproduced as follows:

> ***"11. The sole ground upon which your Petitioners have brought this Petition is: The 1st Respondent, Hon. Cleopas Moses Zuwoghe, was, at the time of the election, not qualified to contest the election, being a public servant and had not resigned, withdrawn or retired from his position or employment 30 (thirty) days before the date of the said election as required by Section 66(1)(f) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)."***

The Petitioners proceeded, in *paragraphs 12-15* of the Petition, to state and enumerate the facts they have relied upon in support of the said sole ground of the Petition.

We have carefully considered the objection of the 1st and 2nd Respondents; the crux of which is that the instant Petition and the ground upon which it is filed bothered on a pre-election issue. The grouse of the 1st and 2nd Respondents is that the facts relied upon by the Petitioners to contend that the 1st Respondent was not qualified to have contested for the election were obtained from documents tendered by the 1st Petitioner as **Exhibit P5** series, which is the INEC Form for Nomination of Member of Senate and the Affidavit in Support of Personal Particulars, filled and deposed to by the 1st Respondent and submitted to the 3rd Respondent, as a requirement to contest for

the election into the Senate seat for the Bayelsa Central Senatorial District of Bayelsa State.

According to learned counsel for the 1st and 2nd Respondents, these Forms were submitted by the 1st Respondent to INEC on 12th September, 2020 and that pursuant to the provision of **s. 31(4)** of the **Electoral Act,** the 3rd Respondent had issued copies of the Forms to the Petitioners on 14th October, 2020, upon application, which, according to learned counsel, was about **84 days** prior to the date of the election. Learned counsel therefore contended that the Election Tribunal is not the proper forum for the Petitioners to contend as to whether or not the 1st Respondent gave false information in the said Forms that he was a Public Servant; and that a case built on alleged false information as contained in **INEC Form EC9** and **EC13C** is a pre-election matter pursuant to the

provisions of **s. 31(5)** of the **Electoral Act** and **s. 285(14)(c)** of the **Constitution**.

By our understanding, the argument of learned counsel for the 1st and 2nd Respondents is that since the facts relied upon by the Petitioners to ground the instant Petition were obtained from the **INEC Forms EC 13C** and **EC9**; that the action ought to have been commenced as a pre-election matter.

Learned counsel further argued that even if the Tribunal could entertain the suit as it is constituted, that, being a pre-election matter, the action ought to have been filed within **14 days** of the accrual of the cause of action, citing the well known provision of **s. 285(9)** of the **Constitution** (introduced by the **4th Alteration Act No. 21 of 2017**). Learned counsel contended that the allegation that formed the basis of the instant Petition occurred more than **84 days**

prior to the filing of the Petition and as such, the Petition is statute barred.

Learned counsel therefore submitted that the instant Petition is a pre-election matter over which this Tribunal had no jurisdiction to entertain; and even if the Tribunal had jurisdiction to entertain the same, it had become statute barred. Learned counsel therefore urged the Tribunal to dismiss the Petition.

On his part, the Petitioners' learned counsel had contended that the 1st and 2nd Respondents' learned counsel misconceived the Petitioners' case as formulated in the Petition filed on 21/12/2020. According to learned counsel, the Petitioners' case does not bother on false information but simply that the 1st Respondent was still a Public Servant as at the 5th December, 2020, when the questioned election was held; and that having not resigned as required

by the **Constitution,** he was disqualified from contesting the election.

The Petitioners' learned counsel further relied on the provisions of **s. 285(14)(a)-(c)** of the **Constitution** for the definition of "pre-election matter" and submitted that the instant election Petition does not come within the purview of a pre-election matter; and as such that the instant objection does not avail the 1st and 2nd Respondents in the circumstances of the present case.

Learned counsel for the Petitioners further contended that the 1st and 2nd Respondents' learned counsel misconceived the law by supposing that issues relating to information disclosed in Election Forms submitted to INEC must be confined to pre-election actions; and argued that so long as a ground for questioning an election (in this case, non-qualification of the 1st Respondent), falls within the purview of **s. 138(1)** of the **Electoral Act** and such ground is recognized under

**Ss. 65** and **66(1)(f)** of the **Constitution,** it would not matter what evidence is adduced to establish the ground. Learned counsel relied on the authority of *Salisu Vs. Mobolaji [2016] 15 NWLR (Pt. 1535) 242 @ 287*, for his submission.

Learned Petitioners' counsel therefore urged the Court to hold that the allegations of incompetence of the Petition and lack of jurisdiction of the Tribunal to determine the same on its merit are not made out.

## RESOLUTION

Now, the grounds or basis upon which an election petition could be presented is statutorily circumscribed and as such is not subject to any conjecture or speculation. The provision of **s. 138** of the **Electoral Act** is crystal clear on this point. It states as follows:

***"138 (1) An election may be questioned on any of the following grounds, that is to say-***

***(a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election;***

***(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;***

***(c) that the respondent was not duly elected by majority of lawful votes cast at the election; or***

***(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election."***

See also *Al-Alhassan Vs. Ishaku [2016] 10 NWLR (Pt. 1520) 230(SC).*

A further perusal of the Petition leaves no one in doubt that the Petitioners' sole ground of the Petition

is predicated on the ground provided for in **s. 138(1)(a)** of the **Electoral Act,** by which they contend that the 1st Respondent was not qualified to have contested for the election.

The Petitioners, not intending to leave anyone in doubt as to the focus of their sole ground of the Petition, contended specifically that the 1st Respondent breached one of the constitutional requirements for qualification for the election in focus, as provided for in **s. 66(1) (f)** of the **Constitution,** which is reproduced as follows:

> ***"66. (1) No person shall be qualified for election to the Senate or the House of Representatives if:***
>
> ***(a)…***
>
> ***(b)…***
>
> ***(c)…***
>
> ***(d)…***

***(e)…***

***(f) he is a person employed in the public service of the Federation or of any State and has not resigned, withdrawn or retired from such employment thirty days before the date of election…"***

The Petitioners then proceeded, in *paragraphs 12-15* of the Petition to set out facts they relied upon in support of the sole ground of the Petition.

Again, cases constituting pre-election matters have been clearly defined by the provision of **s. 285(14)(a)-(c)** of the **Constitution,** cited *supra* by the Petitioners' learned counsel. The provision is reproduced as follows:

***"s. 285:***

***(14) For the purpose of this section, "pre-election" means any suit by-***

*(a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct or primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election;*

*(b) an aspirant challenging the actions, decisions and activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participation in an election; and*

***(c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election."***

By our understanding; and as correctly argued by the Petitioners' learned counsel, the instant Petition does not bother on any of the scenarios enumerated in the above-cited provision of the **Constitution**. The Petitioners' case had nothing to do with the conduct of primaries of any political party; neither does it complain of or challenge the decisions or activities of

the 3rd Respondent with respect to the participation of the Petitioners in any election. The Petitioners' case also has nothing to do with a challenge of the 3rd Respondent as to the disqualification of the 1st Petitioner from participating in any election. We so hold.

It would seem to us that the 1st and 2nd Respondents, by the instant objections, seek to make for the Petitioners, a case they have not made before this Tribunal. The Petitioners' case is very clear and straightforward for anyone to understand. The novelty in their case must also be pointed out and understood, which is that whereas in most instances, adverse parties have always relied on INEC Forms filled by candidates jostling for elective positions conducted by INEC, to support allegations that such candidates supplied false information in such Forms and on the ground of which their candidacies are

challenged. In the instant case, however, the Petitioners have not contended that the 1st Respondent gave any false information in his **INEC Form EC 13C** or **EC9**. Rather, they are simply seeking to rely on the Forms to pin him down to the truth (as it were) of the information he supplied therein to the extent that he was a Public Servant as at the time he contested the election; on which basis, according to them, the 1st Respondent stood disqualified from contesting the election by the clear and express provision of **s. 66(1)(f)** of the **Constitution**.

However, whether or not reliance on the INEC Forms filled by the 1st Respondent wherein he stated that he was a Public Servant is sufficient evidence to sustain the Petitioners' contention that he was disqualified from contesting the election is a different matter entirely; which could only be determined upon

assessment of evidence placed before the Tribunal by the Petitioners.

We must also add that the fact that the Petitioners have sought to rely on the INEC Forms filled by the 1st Respondent and submitted to INEC, which Forms were said to have been obtained long before the election, to support or establish the ground of their Petition would not render their Petition a pre-election matter. As we have held earlier on, it would be presumptuous, at the stage of determining a preliminary objection, to attempt an assessment of the quality of evidence the Petitioners adduced at trial.

The instant Petition would indeed have constituted a pre-election matter by virtue of the provision of **s. 31(5)** of the **Electoral Act** and **s. 285(14)** of the **Constitution** if the ground of the Petition is that the 1st Respondent had made a false statement in the said INEC Forms that he was a Public Servant when

he was not. But then, we had carefully examined the entirety of the Petition and nowhere did the Petitioners make any such allegation against the 1st Respondent.

The issue at hand is to be made clearer if it is considered that before the Petitioners could even rely on the provision of **s. 66(1)(f)** of the **Constitution** that the 1st Respondent had not resigned from public service as at the time he contested for the questioned election; as a ground to question his election under **s. 138(1)** of the **Electoral Act**; it is obvious that the said election must have been held before the ground could be available to be canvassed. This therefore removes such a ground from the realm of a pre-election matter. We so hold.

In *Al-Hassan Vs. Ishaku (supra @ page 264)*, the Supreme Court made it clear that a person's disqualification or non-qualification based on or

arising from the domestic nomination exercise of his political party is a pre-election matter over which the election tribunal has no jurisdiction. In the instant Petition however, as has been clearly made out, the ground upon which the Petitioners have premised the 1st Respondent's alleged non-qualification has nothing to do with his party's domestic nomination exercise, but upon an alleged infraction of a provision of the **Constitution**.

In the circumstances and on the basis of the foregoing analysis, therefore, we hold that the 1st and 2nd Respondents clearly misconstrued and misconceived the ground upon which the Petitioners have presented the instant Petition to suppose that it is a pre-election matter. Clearly, there are no elements or features of a pre-election action in the Petition. The Petition is predicated strictly on a valid and statutorily recognized ground upon which the election of a

candidate in an election could be questioned, pursuant to the provisions of **s. 138(1)(a)** of the **Electoral Act** and **s. 66(1)(f)** of the **Constitution**. As such, we hereby overrule the 1st and 2nd Respondents' preliminary objection to the instant Petition and we also resolve issue one, as set out, against them.

**ISSUE TWO**:

> ***Whether the Petitioners have been able to establish through credible and admissible evidence that the 1st Respondent was a person employed in the public service of the Federation or of any State and has not resigned, withdrawn or retired from such employment thirty days before the election on the 5th of December, 2020, when Bayelsa Central Senatorial District Bye-Election was conducted?***

We now proceed to determine issue two which deals with the merits of the Petition.

As we had noted from the onset, the respective sets of Respondents, even though they cross-examined the 1st Petitioner in the course of trial; however opted not to call any evidence in support of the Replies they filed. As a preliminary point, therefore, it is pertinent to restate the legal implication of the option of the respective sets of Respondents not to call evidence in support of the Replies they filed to the Petitioners' Petition; which is that the Respondents are deemed to have abandoned their defence; and they are bound by the evidence called in support of the case for the Petitioners; and further that the case must be dealt with on the basis of the evidence as it stands on the record. See *Mobil Producing (Nigeria) Unlimited Vs. Monokpo [2003] 13 NWLR (Pt. 852) 346.*

In *Newbreed Organization Limited Vs. Erhomosele [2006] 5 NWLR (Pt. 974) 499,* the Supreme Court made the point more expansively when it held that

the implication where a defendant rests his case on that of the claimant postulates one of three things or the three of them at once, namely:

(a) that the claimant has not made out any case for the defendant to respond to; or

(b) that the defendant admits the facts of the case as stated by the claimant; or

(c) that the defendant has a complete defence in law in answer to the claimant's case.

See also *Mezu Vs. C. & C.B. (Nig.) Plc [2013] 3 NWLR (Pt. 1340) 188(SC)* (cited by learned counsel for the 3rd Respondent); *Administrators/Executors of the Estate of Gen. Sani Abacha (deceased) Vs. Eke Spiff & Ors [2009] 2-3 SC (Pt. II) 93; NEPA Vs. Olagunju [2005] 3 NWLR (Pt. 913) 602; Akano Vs. Alao [1989] 3 NWLR (Pt. 109) 118.*

It is equally pertinent to note that the Petitioners have claimed substantive declaratory reliefs by their Petition; which further makes it imperative to be mindful of the well settled principle of law, as correctly canvassed by the respective learned counsel for the Respondents, that declaratory reliefs sought in an action are granted principally on the evidence adduced by the claimant without necessarily relying on the evidence called by the defendant. The burden of proof on a claimant in establishing a declaratory relief to the satisfaction of the Court is somewhat heavy in the sense that such relief is not granted even on the admission of the defendant, as the claimant must lead credible evidence in proof of the declaration of right he has invited the Court to make in his favour. In other words, even though it is an elementary rule of pleadings that what has been admitted requires no further proof, exceptions to that rule are that a declaratory relief cannot be granted

without evidence; and it is not granted based merely on default of defence or on admission by the adverse party. Declarations are granted upon proof by cogent and credible evidence adduced by the claimant. See the cases of *Motunwase Vs. Sorungbe [1988] 5 NWLR (Pt. 92) 90; Kwajaffa Vs. B. O. N. Ltd. [2004] 13 NWLR (Pt. 889) 146; Ogolo Vs. Ogolo [2006] 5 NWLR (Pt. 972) 163; Dumez Nigeria Ltd. Vs. Nwakhoba [2009] All FWLR (Pt. 461) 842.*

Proceeding on the footing of the legal principles espoused in the foregoing therefore, the task before the Tribunal now is to examine the evidence on record as adduced by the 1st Petitioner; and the law applicable thereto, in order to determine whether or not such evidence has satisfied the requirement of proof imposed on the Petitioners by the provisions of **Ss.131(1)** and **132** of the **Evidence Act** (as

amended), to substantiate the reliefs they claim in the instant Petition.

The case of the Petitioners seems straightforward, as we had noted earlier on. It is as pleaded in *paragraphs 1-15* of their Petition. In summary, the Petitioners have contended that the 1st Respondent, who was declared by the 3rd Respondent as winner of the Bayelsa Central Senatorial District Bye-Election held on 5th December, 2020, after polling the highest votes cast, of **120,019**, was, at the time of the election, not qualified to contest the election, in that he was a public servant and did not resign, withdraw or retire from his position or employment 30 (thirty) days before the date of the said election as required by the provision of **s. 66(1)(f)** of the **Constitution** of the Federal Republic of Nigeria, **1999** (as amended).

The Petitioners averred positively in *paragraph 1* of the Petition that the 1st Respondent was a public

servant at the time the Bayelsa Central Senatorial District Bye-Election was held and that on that ground he was not qualified to contest the election as required by law.

Now, in support of the Petitioners' case, the 1st Petitioner, who testified as the sole witness, adopted from the witness box, his *Statement on Oath*, which he deposed to on 21/12/2020, as his evidence-in-chief. It is to be noted that the 1st Petitioner's *Statement on Oath*, is essentially a verbatim repetition of the averments in the Petition.

In support of his allegation or contention that the 1st Respondent was a public servant and someone in Government employment and did not resign, withdraw or retire from his position or employment 30 (thirty) days before the date of the questioned election, the 1st Petitioner tendered in evidence a number of documents which are listed as follows:

- Purported CTC of INEC Form EC 8E(1)-Declaration of Results-dated 6/12/2020 – **Exhibit P1**.
- Purported CTC of INEC Form EC 8D(1)-Collation of Results at Constituency Level-dated 06/12/2020 – **Exhibit P2**.
- Purported CTC of 2 INEC Forms EC 8C(1)-Collation of Results at Local Government Area Level for Kolokuma/Opokum and Yenagoa Local Government Areas both dated 05/12/2020-**Exhibits P3** and **P4** respectively.
- Purported CTC of bundle of documents being INEC Form EC 13C (4 pages) and Form EC9 (12 pages) filled by Cleopas Moses Zuwoghe (1st Respondent); with a covering note dated 23/10/2020 titled

ISSUANCE OF CERTIFIED TRUE COPIES OF DOCUMENTS – **Exhibit C5**.

- Photocopy of INEC Official Receipt dated 18/12/2020 for payment of ₦100.00 (One Hundred Naira) only for CTC of Election documents (Form EC 8C; EC 8D and EC 8E for Bayelsa Central Senatorial Bye-Election) – **Exhibit P6**.

Now, the respective learned counsel for the 1st and 2nd Respondents on the one hand; and the 3rd Respondent on the second hand, had both objected to the admissibility of the documents listed above, tendered by the 1st Petitioner in the course of trial. The summary of the 1st and 2nd Respondents' learned counsel's objections, as encapsulated in his written address, is basically that the entirety of the documents, **Exhibits P1 – P6,** were inadmissible in evidence for the reason that being secondary

evidence of public documents, the documents did not satisfy all the requirements of certification as provided for by law. According to learned counsel, there is no evidence of payment of the prescribed legal fees for the purported certified documents, as mandatorily required by the provision of **s. 104(1)** of the **Evidence Act** and **s. 31(4)** of the **Electoral Act**.

Learned counsel further argued that the documents, **Exhibits P1-P4,** and **P6** bear no relevance to the case put forward by the Petitioners; and that by virtue of the provisions of **s. 1** and **s. 6** of the **Evidence Act,** the documents are inadmissible.

Learned counsel cited a gamut of authorities in urging the Court to reject the documents, including *Tabik Investment Ltd. Vs. GTB [2011] LPELR-3131(SC); Adeyefa & Ors Vs. Bamgboye [2013] LPELR-19891(SC); Biye Vs. Biye [2014] LPELR-24003(CA);*

*Ogu Vs. M.T & M.C.S. Ltd. [2011]* & *Abubakar Vs. Chuks [2007] LPELR-52(SC).*

Learned counsel for the 3rd Respondent, on his part, canvassed more or less the same arguments in urging the Tribunal to reject the documents provisionally tendered in evidence by the 1st Petitioner. Learned counsel contended that all the documents, purporting to emanate from INEC (3rd Respondent), were bereft of the mandatory requirement for certification, in that they did not contain evidence of payment of the prescribed fees, as required by **s. 31(4)** of the **Electoral Act** and **s. 104(1)** of the **Evidence Act**.

Learned counsel also contended that **Exhibits P1-4** and **P6** are irrelevant in determining the constitutional qualification of the 1st Respondent to have contested the questioned election and as such failed a major condition for admissibility under **s. 1** and **s. 6** of the **Evidence Act**. Learned counsel equally cited more or

less the same authorities referred to in the foregoing, in support of his contentions.

Learned counsel for the Petitioners, in turn, contended that the objections of the respective learned counsel for the respective Respondents were unfounded and without legal basis. Learned counsel contended that **Exhibit P6** is the evidence of payment for certification of **Exhibits P1-P4**; and that **Exhibits P1-P4**, as shown on them, were stamped, dated and signed by ***Peter Otafu***, the Electoral Officer who certified them.

Learned counsel further contended that **Exhibits P1-P4** are relevant in that they were result sheets, which were to establish that the 1st Respondent not only contested for the Bayelsa Central Senatorial Bye-Election of December 5, 2020, but won the same. Learned counsel further argued that **Exhibits P1-P4** were tendered to establish relief (4) prayed for in

the Petition, that it be declared that the 1st Petitioner won the questioned election by majority of lawful votes.

With respect to **Exhibit P5**, learned counsel for the Petitioners argued that the bundle of documents substantially complied with the requirements for certification, in that the documents bear the stamp, name and signature of the INEC staff that certified the same and that the same were duly dated, as required by **s. 104(2)** of the **Evidence Act**. In support of his arguments, learned counsel cited the authorities of *Buhari Vs. INEC [2008] LPELR-84(SC); Ndayako Vs. Mohammed [2006] 17 NWLR (Pt. 1009) 676 & Tabik Investments Ltd. Vs. GTB Plc (supra)*.

Learned Petitioners' counsel further argued that the Respondents in turn frontloaded the same exhibits in contention in their respective Replies and that the 3rd Respondent was equally served with Notice to

produce the same at the trial; that they cannot turn around to question the same documents.

Flowing from arguments canvassed by the respective learned counsel, it is not in doubt that all parties were *ad idem* that the documents whose admissibility have been challenged by the respective Respondents were public documents, all emanating from the 3rd Respondent, a public office. Secondly, parties were also not in doubt that none of the documents is primary evidence of its contents. As such, parties were quite clear that in order to tender secondary evidence of the contents of the said public documents, they must be certified in the manner prescribed by the provision of **s. 104** of the **Evidence Act**.

The question, therefore, is whether or not the documents provisionally admitted in evidence as **Exhibits P1 – P6** were tendered by the 1st Petitioner, from the witness box, in the manner and form

prescribed by the **Evidence Act** in order for them to be admissible in law.

The conditions for admissibility of certified true copy of secondary evidence of a public document, particularly under the provision of **s. 104** of the **Evidence Act** (which amended the provision of **s. 111** of the old/repealed **Evidence Act**) was restated by the Supreme Court in *Emeka Vs. Chuba-Ikpeazu & Ors. [2017] LPELR-41920(SC)*, where it was held, *per* **Nweze, JSC,** as follows:

> ***"The drafts person of Section 104 of the Evidence Act, 2011, split its provisions into three subsections unlike the erstwhile Section 111 of the repealed Evidence Act which had just one long-winded provision. This is what the Act has made of the certification provision:***
>
> ***104 (1) Every public officer having custody of a public document which any person has a right to inspect shall give that person on demand a copy of***

*it on payment of legal fees prescribed in that respect, together with a certificate written at the foot of such copy that it is a true copy of such document or part of it as the case may be.*

*(2) The certificate mentioned in Subsection (1) of this section shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.*

*(3) An officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section [Italics supplied for emphasis].*

*From the phraseology of the italicized clauses of Subsection (2) (supra), a document can only be called a certified copy of a public document if, in addition to the "payment of legal fees prescribed in that respect, together with a certificate written at*

***the foot of such copy that it is a true copy." [Sub-section 1 supra], it [the certificate] "is..... dated and subscribed by such officer with his name and his official title.."***

From this decision, it is deduced that the provision of **s. 104** of the **Evidence Act** makes it imperative that all the conditions in **subsections (1)** and **(2)** combined together must be fulfilled before it could be said that a public document is properly certified in law, that is, there must be evidence of payment of the "legal fees prescribed"; and in addition of supplying the evidence of such payment, the document sought to be certified must also bear a certificate written at the foot thereof containing the date it is certified, the name, official title and signature of the officer that certified the document.

Now, regarding the document tendered by the 1st Petitioner; **Exhibit P6**, to start with, which purports to

be the official receipt purportedly issued by the 3rd Respondent on 18/12/2020, as evidence of payment of prescribed legal fees for purported certification of the election results contained in **Exhibits P1-P4.** The said official receipt, is no doubt, itself, a public document of which the only admissible secondary evidence thereof is a certified true copy. However, the said receipt is a mere photocopy. In the course of tendering the same, the 1st Petitioner explained that he misplaced the original and that all diligent search for the same proved unsuccessful, hence he tendered the photocopy.

It is obvious that on the face of it, **Exhibit P6** is not certified at all, let alone in the manner prescribed by the provision of **s. 104** of the **Evidence Act**. On that score alone, the document is inadmissible and it is on that score rejected and it shall be so expunged from the records.

Now, with respect to **Exhibits P1-P4,** we agree with the Petitioners' learned counsel that each of the documents bear at their foot, a certificate with the date it was certified, being 18/12/2020, the name, designation and signature of the INEC staff that certified the same. However, none of the documents bear any endorsements showing that the prescribed legal fee for certification was paid. Neither is there any official receipt on record also showing that the prescribed official fees were paid.

In *Biye Vs. Biye (supra)*, cited by learned counsel for the 1st and 2nd Respondents, the Court of Appeal, considered the issue as to whether evidence of payment of prescribed official fee is an integral requirement for the admissibility of a document purporting to be a certified true copy of a public document; and the Court held as follows:

*"The Respondent not having paid legal fees for the certification of the three documents, Exhibits A, B and C, the certification process was not complete and the documents did not yet qualify as certified copies at the time they were admitted by the Lower Court. What the Lower Court ought to have done was to have directed the Respondent to go and make the payment of the legal fees before admitting the documents in evidence. The documents were not legally admissible evidence at the point they were admitted by the Lower Court. They ought not to have been admitted as they were by the Lower Court.*

*In effect, any document that falls below the above mandatory threshold is inadmissible as a certified copy of a public document. Omisore Vs. Aregbesola and Ors [2015] 15 NWLR (Pt. 1482) 205, 294; Ndayako Vs. Mohammed [2006] 17 NWLR (Pt. 1009) 676; Tabik Investment Ltd Vs. Guaranty Trust Bank Plc [2011] LPELR- 3131*

*(SC); Nwabuoku Vs. Onwordi [2006] All FWLR (Pt. 331) 1236, 1251 -1252."*

On the strength of the authorities cited in the foregoing, it becomes clear that evidence of payment of the prescribed fee is an integral requirement for admissibility of secondary evidence of a public document purporting to be a certified true copy. We reject the arguments of the Petitioners' learned counsel who contended that the certification inscribed on the documents substantially complied with the requirements of **s. 104** of the **Evidence Act**. The authorities cited made it abundantly clear that evidence of payment of the prescribed fees is a mandatory requirement for admissibility of a purported certified true copy of a public document; which requirement cannot be waived.

In the present case, the situation could have been different if the Petitioners' learned counsel, at the

point of tendering the documents, realized that he needed to provide evidence of payment of the prescribed certification fees for the documents his witness sought to tender, had sought leave of the Tribunal, to take an adjournment to produce the receipt for payment of the prescribed fees. But he chose to join issues with learned counsel for the respective Respondents, who objected to the admissibility of the documents.

On the issue of relevancy raised by the learned counsel for the 1st and 2nd Respondents, we disagree that **Exhibits P1-P4** are not relevant to the Petition at hand. We agree, on this point with the submissions of the Petitioners' learned counsel, that the documents are relevant to establish that both the 1st Petitioner and the 1st Respondent participated as candidates at the questioned election; and that the 1st Respondent scored the highest votes and was so declared winner

by the 3rd Respondent. As correctly noted by learned counsel for the Petitioners, one of the reliefs claimed by the Petitioners is that the Tribunal declares the 1st Petitioner as the winner of the election with majority of lawful votes cast at the election.

On the ground of relevancy, therefore, we hold that **Exhibits P1-P4** are admissible in evidence. However, having been shown that the documents were not duly certified in the manner prescribed by law, we hold, on that ground that the documents were inadmissible and accordingly they are hereby rejected and expunged from the records.

We have also considered the objections with respect to **Exhibit P5,** which is a bundle of **Forms EC 13C** and **EC9 –** Form for Nomination of Member of Senate and Affidavit in support of Personal Particulars sworn to by the 1st Respondent. We need not belabour the point. The documents have the same defects as the

expunged **Exhibits P1-P4**. They bear no endorsement of payment of the prescribed official legal fees for certification as required not only by the provision of **s. 104** of the **Evidence Act;** but also specifically by the provision of **s. 31(4)** of the **Electoral Act** cited by the respective learned counsel for the respective Respondents.

With respect to the argument of the Petitioners' learned counsel that the Petitioners gave notice to produce to the 3rd Respondent to produce the originals of all the documents frontloaded in their petition at trial, and that failure to produce the documents entitled the Petitioners to tender copies thereof.

With due respect, the Petitioners' learned counsel clearly misconceived the position of the law with respect to notice to produce. It is not in doubt that the primary purpose of the tool of notice to produce, as

provided for by **s. 91** of the **Evidence Act**, is to pave the way for the person giving the notice to tender secondary evidence of the document in question. The exception to that provision, however, is that where the document is a public document and notice to produce has been served on the government department which fails to produce it, only a certified copy duly certified by that department, and no other form of secondary evidence, can be admissible in evidence. See *Oluyemi Vs. Asaolu [2008] LPELR-4772(CA)*.

Without any much ado therefore, we hereby also hold that **Exhibit P5** is inadmissible in evidence and it is hereby accordingly rejected and expunged from the records.

Now, in the course of answering questions under cross-examination by learned counsel for the respective Respondents, the 1st Petitioner made it clear that he was relying solely on the information

contained in the expunged **Exhibit P5** as his evidence to establish that the 1st Respondent, was, at the time of the questioned election, not qualified to contest the election in that he was a public servant and had not resigned, withdrawn or retired from his position or employment thirty (30) days before 5th December, 2020, when the election was held.

Specifically, under cross-examination by the 1st and 2nd Respondents' learned counsel, the 1st Petitioner testified as follows:

> ***"I am aware that as at December, 2020, after the elections, the 1st Respondent has not resigned his employment as a public servant as indicated in his Voter's Card issued to him in 2011.***
>
> ***"…I rely on the 1st Respondent's Voter's Card, Form EC 13C and EC9 as evidence that the 1st Respondent was a public servant. He made the declaration under oath that he was a public servant in those documents."***

Again, under cross-examination by the 3rd Respondent's learned counsel, he repeated his testimony as follows:

> ***"The evidence I rely on that the 1st Respondent was public servant and that he had not resigned 30 days prior to the election is as contained in Exhibit P5 – the INEC Forms he filled."***

Now, the effect of the rejection of **Exhibit P5**, the only documentary evidence sought by the Petitioners to rely upon to establish their case is that the Petitioners have adduced no credible or admissible evidence in support of or to establish the sole ground upon which their Petition is predicated. That being so the Petition no longer has any legs to stand. It must crumble and fail. We so hold.

The matter does not end here. In the event that we are otherwise held to be wrong that the rejected and expunged **Exhibit P5** is admissible in evidence and

ought to have been considered in determining the merit of the Petitioners' Petition, we have proceeded, for purposes of academic adventure only, to evaluate the said document in order to determine if it indeed substantiates the ground upon which the Petition is predicated.

By the provision of **s. 131(1)** of the **Evidence Act**, the Petitioners are duty bound to adduce cogent and credible admissible evidence to establish the sole ground upon which they have presented the instant Petition.

In this regard, the 1st Petitioner, in his testimony under cross-examination by the 1st and 2nd Respondents' learned counsel, stated that he was relying on the copy of the 1st Respondent's **Voter's Card** included as part of supporting documents attached to **Form EC9** in **Exhibit P5**, as evidence that he was a public

servant and that he had not resigned as one, as at the date of the election.

We note, on the one hand, that in the course of his testimony, the 1st Petitioner failed to demonstrate how the **Voter's Card** supported the case he sought to make. On the other hand, we had taken the pains to examine the said **Voter's Card**. It bears the name, the image and date of birth of the 1st Respondent. Underneath the caption **"OCCUPATION"** on the **Card** is printed the words **"PUBLIC SERVANT"**.

We had further examined the said **Voter's Card**. The date it was issued is not contained on its face. The point that must be made here is that in order for the Tribunal to accept the document as evidence that the 1st Respondent, as a public servant, had not resigned, retired or withdrawn his services as at the date of the election; the Petitioners, who alleged, must adduce clear evidence as to the name of the 1st Respondent's

employers; and that as at 5th December, 2020 or within thirty (30) days of the date of the election, the 1st Respondent was still in the service of his named employers. In the absence of such evidence, it will be speculative for the Tribunal to accept the mere inscription on the 1st Respondent's **Voter's Card,** whose date of issuance is not stated thereon, as cogent and credible evidence that the 1st Respondent was still a public servant within thirty (30) days of the date of the election. We so hold.

In the same vein, we have considered the content of **Form EC 13C,** further relied upon by the Petitioners for the contention that the 1st Respondent was a public servant and had not retired from service as at the date of the questioned election.

Now, the 1st Respondent filled the Form in long hand on 10/09/2020. In the column captioned **"Occupation;"** the 1st Respondent wrote **"Public**

**Servant."** Apart from this, no other information is contained in the Form as to the name of the employers of the 1st Respondent; the date he joined the service; his designation; and any other information relevant to public service he rendered at the material time he filled Form.

Now, as we had noted in the foregoing, the 1st Respondent filled the Form on 10/09/2020. The Petitioners failed to adduce any other or further evidence that the 1st Respondent's employment status remained the same, that is, as a public servant, as at 10/09/2020, which was apparently over (30) days from 05/12/2020, the date the election was held. An attempt to place a blanket reliance on the 1st Respondent's employment status as at 10/09/2020, without adducing further evidence to show who his employers were and whether or not he remained in employment of his employers within a period of thirty

(30) days prior to the date of the election, would amount to making a mere statement that carries no significant evidential value. We so hold.

We had further noted the testimony of the 1st Petitioner, under cross-examination by the 1st Respondent's learned counsel, where he stated as follows:

> ***"I know about two or three other places the 1st Respondent had worked. I am aware that he once worked as Coordinator of the Bayelsa Volunteers between 2002-2003. The Bayelsa Volunteers is a security outfit established by the Bayelsa State Government. He was also an employee of the Bayelsa State Universal Primary Education Board (UPEB) around 2004. I also know that the 1st Respondent was a one-time Chairman of PDP (2nd Respondent) in Bayelsa State.***
>
> ***… I do not know the date the 1st Respondent left office as PDP State Chairman before he contested***

***the Senate election. I am also aware that someone else had taken over from him as Chairman of PDP in Bayelsa State before he contested.***

***…I am aware that the office of a political party Chairman is that of a registered association not regulated by the Civil Service Rules."***

However, we note that the testimony of the 1st Petitioner extracted under cross-examination is with respect to facts and matters not pleaded by any of the parties. It is trite law that evidence elicited in cross-examination is inadmissible in as much as it is not supported by the pleading of either party. See *Okwejiminor Vs. Gbakeji [2008] All FWLR (Pt. 408) 405; Dina Vs. New Nigeria Newspapers Ltd. [1986] 2 NWLR (Pt. 22) 353.*

Accordingly, the aspect of the testimony of the 1st Petitioner relating to the places where he claimed the 1st Respondent had worked prior to the date of the

election, as reproduced in the foregoing, is hereby expunged.

We further hold that even if the testimony of the 1st Petitioner in this respect had related to facts pleaded by any of the parties, the position remains that the evidence has not donated any benefit to the Petitioners in that rather than establishing that the 1st Respondent was a public servant as at the date or within thirty (30) days of the election, it proved on the contrary, that the 1st Respondent occupied the office of Chairman of PDP in Bayelsa State, which position the 1st Petitioner also agreed is not one subject to the civil service rules, prior to the election.

We further refer to the authority of *Registered Trustees PPFN Vs. Shogbola [2004] 11 NWLR (Pt. 883) 1 @ 20*, cited by learned counsel for the 1st and 2nd Respondents, which set out who qualifies as a public officer or servant as defined by or within the

meaning of **s. 318(1)** of the **Constitution**. See also Ojonye Vs. Onu *[2018] LPELR-61287(CA)*, which decided the issue, *inter alia*, that someone who is not a public servant within the meaning of "*public service*" as enumerated in **s. 318(1)** of the **Constitution**, cannot be brought within the purview of **s. 66(1)(f)** of the **Constitution**.

The finding of the Tribunal, on the basis of the totality of the evidence adduced on record by the Petitioners is that they have failed to adduce any iota of evidence to support the ground of the Petition that the 1st Respondent, was, at the time of the election, a public servant and had not resigned, withdrawn or retired from any such public office thirty (30) days before the date of the said election. As such, it has not been established that the 1st Respondent was in breach of the provision of **s. 66(1)(f)** of the **Constitution** and cannot thereby be said to be

disqualified from contesting the said election. We so hold.

We had also considered the arguments of the Petitioners' learned counsel to the extent that the respective Respondents have admitted the case of the Petitioners, having not adduced evidence in support of the Replies they filed or in rebuttal of the Petitioners' case. Learned counsel therefore argued that the Petitioners' case is unchallenged, uncontroverted or uncontradicted.

As we had stated earlier on in this judgment, where a party claims declaratory reliefs, the burden rests heavily on him to adduce cogent and credible evidence to support his claim to the declarations sought. This position remains sacrosanct even where the adverse party admits the case of the claimant or defaults in defending the action. See *Omisore Vs.*

*Aregbesola (supra); Andrew Vs. INEC [2018] 9 NWLR (Pt. 1625) 507(SC).*

The provision of **s. 131(1)** of the **Evidence Act** also states clearly that:

> ***"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist."***

See also *Abubakar Vs. INEC [2020] 12 NWLR (Pt. 1737) 37(SC)*, cited by learned counsel for the 1st and 2nd Respondents, where the Supreme Court held that it is the duty of the party that makes an allegation to call or adduce credible evidence to back up such allegation.

In the instant case, the Petitioners assert the fact that the 1st Respondent was a public servant who failed to relinquish that position within thirty (30) days of the date of the questioned election. In their bid to prove

this allegation, the Petitioners merely mouthed the content of INEC **Form EC 13C,** filled by the 1st Respondent where he stated his occupation to be a public servant; and also as indicated on a copy of his **Voter's Card** attached to **Form EC 9**.

It must be understood that the fact of the 1st Respondent being a public servant as stated in the Forms relied upon by the Petitioners are relevant for and relative to the times the documents were made. With respect to the **Voter's Card,** it bears no date. As for **Form EC 13C,** it was made on 20/09/2020.

As such, in order for the contents of the said Forms to be relevant to prove the fact that the 1st Respondent remained a public servant as at the date of the election or within thirty (30) days thereof, the Petitioners have a bounden duty to adduce further evidence, outside those Forms, to establish that the 1st Respondent's employment status, as stated in **Form**

**EC 13C** and on his **Voter's Card** attached to **Form EC9**, has not been altered as at 5th December, 2020, when the election was held or within thirty (30) days prior to that date. We so hold.

The Petitioners, having, therefore, failed to produce any such evidence, cannot rightly contend that they have made out any case that the Respondents needed to respond to. We so hold.

We agree with the submissions of the 1st and 2nd Respondents' learned counsel that the Petitioners' learned counsel misconceived the law in contending that since the respective Respondents did not call evidence or have rested their case on that of the Petitioners, they have no evidence before the Tribunal. Indeed, the circumstances of the instant case are apposite to those in the authority of the Supreme Court in *Akomolafe Vs. Guardian Press Ltd. [2010] 3 NWLR (Pt. 1181) 338 @ 351*, cited by the Supreme

Court in the later case of *Andrew Vs. INEC*, *(supra)*, where it was held as follows:

> ***"Evidence elicited from a party or his witness under cross-examination, which goes to support the case of the party cross-examining, constitutes evidence in support of the case or defence of the party. If at the end of the day the party cross-examining decides not to call any witness, he can rely on the evidence elicited from cross-examination in establishing his case or defence. One may however say that the party called no witness in support of his case, not evidence, as the evidence elicited from his opponent under cross-examination which are in support of his case or defence constitute his evidence in the case. …***
>
> ***The exception is that the evidence so elicited under cross-examination must be on facts pleaded by the party concerned for it to be relevant to the determination of the question/issue in controversy between the parties."***

In the present case, if anything, the respective learned counsel for the respective Respondents were able to establish, when cross-examining the 1st Petitioner, that apart from **Exhibit P5**, the Petitioners have no other evidence or material before the Court, on which they rely in support of their sole ground of the Petition.

On the basis of the totality of the foregoing analysis, we hold that even in the face of the documents tendered in evidence, the Petitioners have failed to discharge the burden of proof placed on them by law to adduce credible and cogent evidence in support of the sole ground upon which the instant Petition is predicated. As such, there is nothing for the Respondents to rebut.

The result is that issue two, as set out, must be and it is hereby resolved against the Petitioners. Whichever angle the instant Petition is viewed from, it is bound to

fail, the same being speculative and bereft of evidence. It must be and it is hereby accordingly dismissed. We order parties to bear their respective costs of this Petition.

**HON. JUSTICE O. A. ADENIYI**
**(CHAIRMAN)**

**HON. JUSTICE I. P. CHIMA** **HON. JUSTICE S. K. MANYA**
**(MEMBER 1)** **(MEMBER 2)**

***Legal Representation:***

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**A. S. Emakitor, Esq.** – *for the 3rd Respondent*