IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY ELECTION

TRIBUNAL, ABIA STATE

HOLDEN AT UMUAHIA

THIS TUESDAY THE 3RD DAY OF OCTOBER, 2023

BEFORE THEIR LORDSHIPS:

Hon. Justice Abubakar Idris Kutigi - Chairman

Hon. Justice Ahmad Muhammad Gidado - Member I

Hon. Justice Momsisuri Odo Bemare - Member II

PETITION NO. EPT/AB/SHA/22/2023

BETWEEN:

1. AZUBUIKE PETER CHIEDOZIE
2. LABOUR PARTY (LP) — **PETITIONERS**

AND:

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. PEOPLES DEMOCRATIC PARTY (PDP)
3. AKPULONU CHIJIOKE SOLOMON — **RESPONDENTS**

JUDGMENT

(DELIVERED BY HON. JUSTICE AHMAD MUHAMMAD GIDADO)

The 1st Petitioner was a candidate sponsored by the 2nd Petitioner at the election to the Office of Member State House of Assembly representing Obingwa East State

Constituency conducted by the 1st Respondent on 18th March, 2023. The 2nd respondent was the political party and platform under which the 3rd respondent contested the said election. This petition was filed on 8th April, 2023.

At the end of the exercise, the 1st Respondent, Independent National Electoral Commission (INEC), the statutory body charged with the responsibility of conducting the election declared and returned the **3rd respondent** as the winner into the Office of Member State House of Assembly representing Obingwa East State Constituency with a score of **7, 732 votes** as against the 1st Petitioners score of **1,636 votes**.

Dissatisfied with the conduct and indeed the outcome of the election, the petitioners filed this petition at this tribunal on 8th April, 2023 to challenge the result of the election upon the grounds as specified in **paragraph 26 (i) – (ii)** of their Petition as follows:

> **"That the 3rd Respondent did not score the majority of lawful votes cast at the election."**
>
> **"That the election was invalid by reason of non-compliance with the provisions of the Electoral Act".**

Upon these grounds the Petitioners prayed for the following reliefs:

(1) A declaration that the returns made by 1st respondent which declared the 2nd and 3rd respondents as winners of the election conducted on the 18th March, 2023 for the Office of Member House of Assembly, Obingwa East Constituency not have been made as the margin of lead is far below the number of disenfranchised voters in areas where the elections were cancelled and/or over voting occurred in line with the provisions of Section 47(2) and 52 (2) of the Electoral Act.

(2) An order setting aside and/or voiding the election and returns made in favour of the 2nd and 3rd respondents in its entirety which election was conducted on the 18th March, 2023 for the contested position of Member, House of Assembly Obingwa East Constituency.

(3) An Order nullifying or setting aside the Certificate of Return issued by the 1st Respondent to the 3rd respondent as the winner of the election to the Office of Member House of Assembly, Obingwa East Constituency held on 18th March, 2023.

(4) An order directing the 1st respondent to conduct a supplementary election in all the polling units where results were cancelled or tainted by over voting and/or was not conducted in compliance with the provisions of the Electoral Act, the Manual and Guidelines issued by the 1st respondent.

(5) Cost of the petition

(6) And for such Orders and further Orders as this Honourable Tribunal may deem fit to make in the circumstances.

The facts leading to this petition, as contained is paragraph 20 of the petitions, are that out of 5 wards which make up of 137 Polling Units in the Obingwa East Constituency, was that there were incidents of over voting and cancellation in some polling units which have implications of not making any lawful return possible. This is because the total number of PVCs issued in the affected polling units exceeded the actual margin of lead between the 3rd respondent and the petitioners. Paragraph 41of the petition explains the particulars of polling units where over voting occurred which resulted to non compliance with the Electoral Act in the affected polling units; wards 08, 09, and 011 as indicated in the face of form EC8B(i). However, there are many inconsistencies in the petitioners' averments, for example the complaint in paragraph 21was in respect of 28 polling units across the five wards; whereas in paragraph 58 the petitioners mentioned that the only affected result was in polling units 005 of 8 wards. The petitioners also set out the total number of PVCs issued in the said polling units, as averred in paragraph 59 of the petition, upon which the case is built on the margin of lead principle.

It is the case of the petitioners that if the result affected by the over voting is cancelled, no valid return could have been made by the 1st respondent based of the margin of lead principle. The petitioners plead that there were 9 affected polling units which result ought to be nullified as contained in paragraph 44 of the petition which allegedly stated that in ward 8 polling units 16 and 19 results were either cancelled or were not returned.

The fact supporting the case of the petitioners is that the scores of the petitioners were reduced at the point of being entered in the forms EC8B (i) series whereas those of the 3rd respondent were increased at the point of the being entered into the forms EC8b (i) series in a total of 8 polling units. The petitioners contended that the total number of votes reduced and increased to the votes of the 3rd respondent is 169 votes. The petitioners contended that if these votes were removed from the 3rd respondent's votes and added to the 1st petitioner's votes the actual scores of the parties would be that the total votes scored by the 3rd respondent would be 7,564 whilst the 1st petitioner's scores would be 1,805 as contained in paragraph 52 of the petition.

Upon receipt of the petition, the 1st respondent filed a reply to the petition on 26th April, 2023. However, the petitioners' reply to the 1st respondent reply raised a preliminary objection filed on 1st May, 2023 urging this tribunal to strike out the 1st respondent's reply to the petition. Consequent upon which the 1st respondent filed a

1st respondent reply to preliminary objection raised in the petitioners on 30th May, 2023. The 2nd and 3rd Respondents filed a two volume replies and incorporated preliminary objections, in their respective reply to the petition, filed on 29th and 30th April, 2023.

The petitioners' filed replies to the said 2nd and 3rd respondents' Notice of Preliminary Objections on 12th May, 2023. The preliminary objections were heard alongside the petition. Rulings, however, in respect of the preliminary objections and interlocutory applications heard at the pre-hearing session are reserved till the final determination of the Tribunal. The Pre-hearing was closed on 6th July, 2023.

The Respondents categorically and precisely joined issues with the Petitioners by filing their respective replies.

Basically, they denied all the allegations contained in the petition and put the petitioners to the strictest proof.

At the settlement of pleadings, Pre hearing sessions were held in accordance with the provisions of paragraph 18 to the 1st schedule of the Electoral Act at which all parties as represented by their counsel fully participated.

Interlocutory application

It is important to state that two interlocutory applications were filed by Respondents. These applications are as follows:

The first was a motion on notice filed, dated 29th May, 2023 and filed 30th May, 2023. Seeking the tribunal to strike out the petitioners' reply to 1st respondent's reply to the petition dated and filed 1st May, 2023 for being incompetent, scandalous, vexatious, embarrassing, abuse of court's process, lacking in *bonafide* for challenging the position of the 1st respondent as an impartial umpire and seeking to bring the 1st respondent into the fray of conflict.

The grounds on which this application is made are as follows:

(i) That the Petitioners filed this petition on the 7th April, 2023 challenging the election and return of the 3rd respondent in the election to the Abia State House of Assembly held on 18th March, 2023

(ii) That INEC was joined as the 1st respondent to the petition, being a necessary party by its statutory existence an independent body with Constitutional powers to conduct elections in Nigeria and for its role in the conduct of the 2023 **Obingwa East State Constituency** Election on 18th March, 2023.

(iii) That the 1st respondent filed a reply to the petition

(iv) That the petitioners on 23rd May, 2023 served on the 1st respondent a reply dated and filed 1st May, 2023 in which it raised a Preliminary objection to the 1st respondent's reply and challenged the 1st respondent's pleading for not disclosing facts and figures in disproof of the election.

(v) That the petitioners' reply to the 1st respondent's reply overlooks the position of INEC as an impartial umpire, seeks to draw INEC to the fray of the dispute and make the 1st respondent responsible to prove the case for the petitioners.

(vi) That the petitioners' reply to the 1st respondent's reply dated 1st May, 2023, is incompetent, lacking in bonafide and is not cognizable as it does not relate to the election to the House of Assembly for Obingwa East State Constituency held on 18th March, 2023

(vii) That the said petitioners' reply to the 1st respondent's reply filed on the 1st May, 2023, speaks contrary to the statutory position of the 1st respondent as an impartial umpire, it is embarrassing, vexatious, an abuse of Court process and should be struck out for being bad pleadings and offending the provisions of Order 13 Rules 4 and 20(b) of the Federal High Court (Civil Procedure) Rules, 2019.

The motion was supported by a 5 paragraph affidavit with accompanying written address and raised a sole issue for determination, viz.

> **Whether this Hon. Tribunal has the power to strike out the Notice of Preliminary Objection and Indeed the Petitioners/Respondent's reply to the petition filed on the respondent's reply to the petition filed 1st day of**

May, 2023 or any part thereof, on any of the grounds stated in order 13 rule 20 of the Federal High Court (civil procedure) Rules, 2019.

The summary of the submission as canvassed by the 1st respondent is that the petition was filed on 8th April, 2023 challenging the return and declaration of the 3rd respondent as being validly elected at the 2023 General Election for the seat of State Member House Assembly Abia Obingwa East Constituency. That the petitioners decided to filed an objection to the neutrality of the 1st respondent.

The petitioners filed a 7 paragraph counter affidavit dated 7th June, 2023 and filed the same date. The counter was supported by a written address and also raised a sole issue for determination, as follows.

Whether this application was not void and liable to be dismissed

The argument of the petitioners was that there was no notice of change of counsel contrary to paragraph 54 of the 1st schedule to Electoral Act, 2022 and Order 9 Rule 35(1) Federal High Court (Civil Procedure) 2019. They cited **Seaport Global Service Ltd v. MT Oryx Trader & Ors** (2021) LPELR – 56255 (CA).

Petitioners urged this tribunal to strike out the entire 1st respondent's reply. Because the records disclosed that the 1st respondent's substantive reply was settled by one Bertha Amadi whilst the instant application was settled by a totally different

counsel without having filing notice of change of counsel in line with the relevant rules of court.

In response, the 1st respondent, filed a further affidavit dated and filed on 18th June, 2023. The contention here is that contrary to the submission of the petitioners that the application was incompetent for want of notice of change of counsel. The petitioners stated that there was such notice dated 14th June, 2023; which forms part the record of the tribunal.

We have carefully, considered the complaint of the 1st respondent. The 1st respondent filed her response dated 25th April, 2023 and filed 26th April, 2023. Consequent upon which the petitioners filed a reply to the 1st respondent's reply dated and filed 1st May, 2023 for being incompetent. This is because the 1st respondent did not comply with paragraph 12(2) to the first schedule to the Electoral Act, 2023.

The 1st respondent therefore filed the extant application, urging the tribunal to strike the above application. The basis of the1st respondent's complaint is that the petitioners' reply is incompetent and not cognizable as it is not related to Election in question. The 1st respondent's reply speaks contrary to statutory position of being impartial umpire. The 1st respondent fails to disclose fact and figures to support the petition.

It is obvious from the above argument that is not the duty of the 1st respondent to disclose facts and figures for the petitioners; it is the duty of the petitioners to prove their case under the relevant procedural laws. The application of the petitioners must therefore fail.

However, the petitioners' reply to preliminary objection striking out the 1st respondent reply is contrary to fair hearing and the *sui generis* nature of election petition, thus the 1st respondent's reply to the petition is hereby sustained on ground of doing substantial justice to both side of the aisle.

This application is therefore struck out and completely expunged from the record of this court.

The second motion on notice was filed by the 3rd respondent on 17th June, 2023; seeking for striking out the name of the 1st petitioner from the petition, on the following grounds:

1. The petitioner is not a person whose name was submitted for the election by the 2nd petitioner to the 1st respondent.
2. The 2nd petitioner simply inserted the name of the 1st petitioner who was not involved in the electoral process as a co-petitioner in the petition.

3. The insertion of the name of the 1st petitioner into the petition renders the petition incompetent and outs the jurisdiction of the Hon. Tribunal to entertain same.

4. It will be in the interest of justice to grant the application of the applicant.

The motion on notice was supported by a 10 paragraph affidavit with 2 annexure and a written address wherein the 3rd respondent raised an issue for determination, viz.

Whether this application is meritorious?

The petitioners on their part filed a 6 paragraph counter affidavit with 3 annexure. They filed a written address and raised 2 issues for determination, as follows:

Issue 1

Whether this Hon. Tribunal has the jurisdiction to determine the merit of the application?

Issue 2

Whether the 1st petitioner does not have the *locus standi* to present this petition having been duly sponsored by the 2nd petitioner?

The 3rd respondent filed a 12 paragraph further affidavit in support of her motion denying paragraph 4 (i-vi). Stating that there was no withdrawal of the original candidate and there was no submission of the 1st petitioner as the candidate of the 2nd petitioner. The 3rd respondent also incorporated reply on point law to the effect that the tribunal has no jurisdiction to entertain the petition because the 1st petitioner lack *locus standi* to present the extant petition.

Arguments were canvassed where both sides quoted copious authorities; the 3rd respondent, *inter alia,* cited the case of **Citec Int'l Estates Ltd. Vs Francis** (2021)5 NWLR, pt. 1768 at 186 paras B-C. The court stated thus:

> ***Locus standi* connotes the legal capacity to institute an action in a court of law. It is threshold issue that affects the jurisdiction of the court to look into the complaints. Where the claimant lacks the legal capacity to institute the action, the court in turn will lack the capacity to adjudicate.**

The 3rd respondent finally submitted that the 1st petitioner is not a person qualified to be a candidate in the election and therefore not qualified to present this petition.

Notice of Preliminary Objection

The 2nd and 3rd respondents apart from the above motion have incorporated a Notice of Preliminary Objection in the first volume of their respondents' reply to the petition filed on 29th and 30th April, 2023 challenging the 1st petitioners' *locus standi* to present the petition.

The petitioners' reply to the 2nd and 3rd respondents' reply to the petition opposed the above Notice of Preliminary objections on 12th June, 2023.

The petitioners urged this tribunal to strike out or dismiss these preliminary objections for being incompetent.

It was indicated that in compliance with the law, that submissions on the preliminary objections raised in the replies of the Respondents be incorporated along with final addresses and that Rulings will be **delivered** along with the substantive judgment.

Ordinarily, we ought to now proceed to first deliver our Ruling on the second interlocutory application together with the preliminary objection which is similar in terms and substance. However, since the above interlocutory objection is substantially the same with the preliminary objection raised by the 2nd and 3rd respondents in their reply on the *locus standi* of the 1st petitioner to present the petition which directly affects the qualification and disqualification of the 1st

petitioner to contest the said election. These objections also affect the jurisdiction of this honorable court to entertain this petition.

Upon this bedrock, the application filed by parties in form of Motions on Notice and Notice of Preliminary of Objections, being substantially the same and interwoven; on ground that the 1st petitioner has no *locus standi* to present the petition. The determination of the applications will be delivered in the substantive judgment.

JUDGMENT ON THE MERIT

The facts in support of the petition, the grounds of the petition and the Reliefs sought have been set out at the beginning of this judgment.

In the course of the trial and in proof of the party's respective case, the parties called their respective witnesses.

Petitioners' case:

The petitioners in proof of their case called a total of 9 witnesses.

PW1 Azubuike Peter Chigozie (the 1st petitioner) whose evidence was on pages 34-55 of his deposition attached to the petition which he adopted on 8th April, 2023 and made additional deposition on pages 6-8 of the petitioner's reply of the 1st respondent which was equally adopted. PW1 tendered his voter's card and party's

membership card and marked as exhibit P1A and p1B. The petitioners also tendered through PW1 documents which were admitted and marked as exhibits P2 –P11, as follows: (1) the CTC statement of results for 5 wards (7-11 wards) (2) exhibits P2A –E. CTC of Forms EC8A(i) (3) exhibits P3 A-E, EC8B(i) (4) exhibits P4A-D, CTC voters' register ward 7 (5) exhibits P5 A-F, Receipt of payments (7) exhibits P6A and P6B, of CTC Voter Register, (6) exhibit P7 of List of candidates contesting election (7) exhibit P8, CTC of BVAS report (8) exhibit P9, receipt of payment P9A, P9B and P9C, (9) INEC certification, CTC of result uploaded from IRev back saver exhibits P10 A-C and (10) finally CTC PVCs of ward collected of Obingwa Constituency exhibit P11. PW1 tabulated the polling units affected by over voting, cancellation and other electoral malpractices and the total number of registered voters in paragraphs 44-48 at 47-49 of his deposition attached to the petition.

PW1 was fully cross examined by the counsels to respondents.

The evidence of PW1 is merely a repetition of the facts streamlined in the petition. The evidence of the PW1 again circumscribed the entire petition, since all the documents supporting the grounds of the petition were tendered through him. PW1 in line with his oath tendered series of certified true copies of documents concerning the conduct of the election from the Bar which are admitted and marked as exhibits P1 –P11.

PW2, Ihejirika, Nwokeoma Ihejirika, whose deposition is on pages 103 – 106 of the petition and adopted same. PW2 was a collation agent and said in his polling unit the election was freely and peacefully, conducted. PW2 tendered his copies of PVC, membership card issued to him by INEC which were admitted in evidence and marked as exhibits 12A-C. He was also cross examined. His evidence was mainly on how the election was held and that he has the opportunity to move freely on the day of the election. He stated that the election was successful but there were units where the election was not successfully done. He however, said he did not visit all the 17 polling units under his center and that he was not a polling unit agent.

The evidence of PW3 – PW9 were specific polling units' agents of the petitioners who all adopted their depositions and testified in line with their uniform statements on oath similar to the evidence of PW2. All the witnesses were duly cross examined. The evidence of these witnesses is confined to how the election was conducted in some of the polling units. And no documents relating to over voting or non compliance with the Electoral Act were tendered through any of PW2 – PW9.

The 1st respondent's case:

The 1st Respondent's witness **Kelechi Nkemjika Okere** (DW1) was the Electoral officer in Obingwa East State Constituency during the 2023 General election. He adopted his deposition and testified and maintained that election in his constituency was successful.

The 2nd Respondent's case:

The 2nd respondent called 3 witnesses, that is, DW2 – DW4. The adopted testimonies of DW2-DW3 are very identical they all registered voters and polling unit agents. They were all fully cross examined. The evidence of DW2 –DW4 was that the election was successfully conducted; and BVAS machine was used in the conduct of the election. **DW4 Solomon Ihediwa** who was a constituency agent of the 2nd and 3rd respondents specifically denied that there were cancellation of results in the polling units.

The 3rd respondent's case:

The 3rd respondent called 3 witnesses that is DW5 –DW7 all were polling units agents of the 2nd and 3rd respondent. They adopted their depositions they also testified to the effect that the election was successful and peaceful. Under cross examination they maintained that the election was held peacefully and successfully in their various polling units and that the results were equally generated at the said polling units.

DW7 (the 3rd respondent) who adopted his deposition and in line with his reply to the petition and tendered exhibits D18-D35 which are polling units results for 2023 General Election, Obingwa East State Constituency. DW7 under cross examination maintained that the election was conducted peacefully in all polling units of the constituency. He also stated that accreditation was done using BVAS machine and voters register.

At the conclusion of trial, parties filed and exchanged their final written addresses within time.

T**he final address of 3rd Respondent** was dated 29th August 2023 and filed on 30th August, 2023; three issues were raised as arising for determination as follows:

Issue 1

Whether the Honourable Tribunal has the Jurisdiction to entertain the Petition?

Issue 2

Whether the Petitioners are valid Candidates taking into cognizance the provisions of section 77 of the Electoral Act, 2022 to inure a l*ocus standi* to them to present this petition?

Issue 3

Whether the Petitioners proved their case to entitle them to judgment?

As regards the first issue:

Whether the Honourable Tribunal has the Jurisdiction to entertain the Petition?

The first issue as raised by the 3rd respondent arguing that since the issue of jurisdiction is fundamental to the proceeding it may be raise at any time. He therefore contended that the petition is statute barred. Consequently, the tribunal is the robbed jurisdiction to entertain same. This is because the petition was filed out of time.

Issue 2

Whether the Petitioners are valid Candidates taking into cognizance the provisions of section 77 of the Electoral Act, 2022 to inure a l*ocus standi* to them to present this petition?

The 3rd respondent also stated that the 1st petitioner lacks *locus standi* to present the petition as he offends section 77 (2) and (3) of the Electoral Act 2022. The 3rd

respondent submitted that the 1st petitioner was not validly sponsored by the 2nd petitioner. It was contended that since the 1st petitioner failed to comply with the mandatory provisions of the Electoral Act, he has no requisite interest in the petition.

Issue 3

Whether the Petitioners proved their case to entitle them to judgment?

On this last issue the 3rd respondent stated that the petition is devoid of merit as the petitioners led no credible evidence in proof of their claim.

Submissions were equally made on the above issues which formed part of the record of the tribunal which we have also carefully considered. Here too, the substance and summary of the submissions made is that the petitioners have no *locus standi* to present the extant petition. And that they did not discharge the burden placed on them in law to creditably prove the allegations made in the petition and accordingly that the petition must fail.

The **final address of 2nd Respondent** was dated 28th August, 2023 and filed on 30th August, 2023. In the address, one issue was raised as arising for determination as follows:

Whether having regards to the totality of the evidence adduced by the petitioners before this Honourable Tribunal, the Petitioners have discharged the burden of proof to be entitled to the relief sought?

Submissions were equally made on this issue which forms part of the Record of the tribunal and which we have carefully considered.

The summary and substance of the case made out by the 2nd Respondent is that on all the grounds upon which the petitioners have predicated the extant petition; they were not able to establish creditably any of the grounds of the petition. He also submitted that the 1st Petitioner was not even qualified to contest the election. Again ground one of the petition was incompetent because it offends section 134 (1)(c) of the Electoral Act, 2023. The ground in question upon which the petition is anchored reads as follows:

The 3rd respondent was not duly elected by majority of lawful votes cast at the election.

The ground as formulated by the petitioners is unknown under the Act; urging the tribunal to strike out ground one of the petition for being incompetent.

Further, that the petitioners have not established that the election was invalid by reason of substantial non compliance with the Electoral Act. It was finally

submitted that the 3rd Respondent was duly elected with majority of lawful votes cast at the election.

The 1st respondent also filed his final address dated 28th August, 2023 and filed 30th August, 2023.

The 1st respondent, therefore, raised a sole issue for determination, hereunder stated:

> **Whether the Election into the Office of Member, Abia State House of Assembly for Obingwa East State Constituency, held on the 18th day of March, 2023 was not done in substantial compliance with the provisions of the Electoral Act, 2022.**

The petitioners in reply to the 1st respondent reply raised an objection to competence of that reply. The ground of the objection was that the 1st respondent fails to defend the election by showing particulars of compliance with the provision of the Act. The 1st respondent therefore invoked the powers of the tribunal to strike out the preliminary objection and the reply to the 1st respondent reply. The 1st respondent further submitted that it maintains a neutral stance in all ligations in election petition.

The summary of 1st respondent's submission is to the effect that the petition is *ab-initio* incompetent as on the ground that the petitioners are accusing the 1st respondent of failing to defend the petition by showing particulars of compliance with the provision of the Act. The 1st respondent submitted that it is the duty of the petitioners to prove their case and that burden cannot shift on the respondents. Unless the petitioners discharged this burden and the petitioners have not done so.

The 1st respondent then urge the tribunal to strike out the petitioners' Notice of Preliminary Objection and the reply to the 1st respondent's reply filed on the 1st day of May, 2023.

In further response of the competence of the petition the 1st respondent contended that the petition failed to make any reference to the date of the declaration of result of the election. He submitted that by the provisions of sections 285(5) of the 1999 constitution and 132(7) of the Electoral Act, 2022 a petition must be filed within 21 days after the declaration of the result.

The 1st respondent also objected to the admissibility of exhibits P2 – P11 tendered by the petitioners. He submitted that the said documents are inadmissible because they did not come from proper custody. He said that PW1 is incompetent to tender those documents being not the maker of same. This is because exhibits P2-P11 are all public documents which 1st respondent officially having custody. He submitted

that PW1 did not play any role in making the documents and he was not an agent in any of the polling units, ward or constituency. He finally submitted that the exhibits P1 – P11 lack probative value and that no weight can be ascribe to them.

The Petitioners in response to these addresses filed **their final address** dated 8th September, 2023 and filed same date at the registry of the tribunal. The address isolated 2 issues raised as arising for determination as follows:

Issue 1

> **Whether the Respondents have proved that the 1st petitioner is not a Member of the 2nd Petitioner and was duly nominated by the 2nd Petitioner and whether the Issue of the qualification/nomination/sponsorship of the 1st petitioner is not a pre-election issue and thus statute barred.**

Issue 2

> **Whether upon a lawful compuation (sic) of the valid votes cast in the election, the 1st respondent ought to make a valid return having regard to the actua (sic) margin of lead between the 1st petitioner and the 3rd respondent without the conduct of a supplementary**

electio (sic) in the polling units where results were cancelled due to over voting or ought to have been cancelled due to due to over voting (sic)".

Submissions were equally made on the above issues which formed part of the Record of the tribunal which we have also carefully considered. The thrust and summary of the submissions made on the above issues followed the trajectory of the case the petitioners have made in the petition. On issue 1 the respondents contend that the 1st petitioner was not qualified to contest the election because he was not sponsored by the 2nd petitioner in contesting the seat of House of Assembly for Obingwa East State Constituency. Accordingly, the 1st petitioner was not validly sponsorship by 2nd petitioner (LP).

However, the petitioners in their joint reply contended that it appeared from the conduct of the respondents that issue has been abandoned since at trial the respondents led no evidence to vindicate the above assertion since the 1st respondent published the name of the 1st petitioner via exhibit P8. The same argument goes to the 2nd respondent who called the total of 3 witnesses in defence of the petition and none of the witnesses give evidence on the membership of the 1st petitioner of the 2nd petitioner or his qualification to contest the questioned election.

As regards the 3rd respondent (DW7) who D30 (a) and (b) were tendered through him; these exhibits were letters of inquiry written to the 1st respondent. The petitioners submitted that these letters lack probative value. Since the rule is that he who assert must prove.

The petitioners stated on issue 2 that in the whole gamut of the petition it was specifically alleged the incidents of over voting, cancellation, reduction and inflation of votes into the forms EC8B(i) in the polling units indicated therein. The petitioners contended that those polling units where the incidents occurred should be cancelled since the petitioners in proof of their case tendered exhibits P2-P11 and the petitioners also fielded 9 witnesses who all spoke in various tones to these act of over voting.

The petitioners submitted that it is clear from the exhibits tendered that the total number of PVCs affected in the indicated polling units is as specifically stated in paragraph 55 of the petition is 9, 725. The actual, margin of lead therefore is 5, 759.

In whole the petitioners relied on section 137 of the Electoral Act 2022. The petitioners relied on Dickson v Sylva and Oyetola & Anor vs. INEC & ors (2023).

In the later case supreme court state that it is indubitable that section 137 of the electoral act applies where the non compliance allege is manifest from the originals

or certified true copies of the documents relied on. they therefore invite the tribunal to scrutinized the relevant documents whose contents speak for themselves. The petitioners therefore submitted that the onus and evidential burden shifted to the respondent, particularly the electoral umpire (INEC) to lead evidence in rebuttal.

The 3rd respondent also filed a reply on point law in response to the petitioners' final address dated 11th September, 2023 and filed on 12 September, 2023.

We have set out above the issues distilled by parties as arising for determination. The issues formulated by parties appear the same in substance even if couched differently.

Nevertheless, upon a careful consideration of the entirety pleadings, the reliefs claimed and the grounds thereof, the totality of the evidence led on record by parties and the final addresses, it seems to us that the issues raised by respondents captured the essence and crux of this dispute and it is on the basis of these three issues which were slightly modified which also fully subsumed all the issues raised by parties that we shall proceed to resolved the disputed election.

In proceeding to determine the issues, we have carefully read and considered the detailed and impressive written and oral submissions of respective counsel on both sides of the aisle, and we shall endeavor to refer to their submissions as we consider needful in the course of the judgment.

The issues, as reformulated, are as follows:

Issue 1:

Whether the Honorable Tribunal has the Jurisdiction to entertain the extant petition?

Issue 2

Whether as regards the provisions of Section 106(d) of the 1999 Constitution as amended, the 1st Petitioner has the necessary *locus standi* to present the extant Petition?

Issue 3:

Whether from the circumstances of the extant petition Ground One of the petition is inconformity with section 134(1)(c) of the Electoral Act, 2022 (as amended)?

Issue 4:

Whether the petitioners established the two grounds upon which the petition is anchored to entitle them to the reliefs sought?

Now issue 1 will be considered in the light of the provisions of **Section 106(d)** of the **1999 constitution** that outlines the factors for qualification of candidates for election to the State House of Assembly, as follows:

Issue 1:

Whether the Honorable Tribunal has the Jurisdiction to entertain the extant petition?

The complaint of the Respondents before this tribunal concerned questioning the competency of the Petition; particularly of being in contravention of the Section 285 (5) of the 1999 Constitution concerning the time limit within which an election petition shall be instituted. This attack raised very serious issue of jurisdiction directly affecting the powers of this Hon. Tribunal to entertain the Petition. The issue of jurisdiction is the threshold of the whole action or in action of this Tribunal, this issue, therefore, must be resolved first before any other issue. Since issue of jurisdiction is the foundation upon which the whole adjudication is based. This is because jurisdiction is the life-wire and threshold of adjudication.

Thus the contention of the 3rd respondent is that the petitioners failed to state the date of the declaration of the result. He contended that this tribunal cannot speculate on the date the election result was declared. The 3rd respondent said that this allegation goes to the root of the petition and robbed the tribunal jurisdiction

and power to adjudicate. He relied on the case of **Akinwe Adesule vs Akinfola Mayowa** (2011) 13 NWLR pt. 1263, page 135 and 159.

The 3rd respondent submitted a petition to be validly presented must be instituted within 21 days allowed by the constitution. He cited **Oke v Mimik** (2014)1 NWLR pt. 257, where the court stated:

> **More importantly, section 285 (5) of the 1999 Constitution (as amended) provides that "an election petition shall be filed within 21 days after the date of the declaration of the result of the election'. The use of the word 'shall' in the section 285(5) supra connotes a command or mandatory obligation.**

The 3rd respondent finally submitted that taking into consideration the factual situation of this petition; that the election was declared on the 18th March, 2023 and filed on 8th April, shows conclusively that the petition was presented outside the confine of the constitutional provisions. Thus the tribunal lacks jurisdiction to entertain the petition.

The petitioners in reaction to the above contention argued in their final written address, that the respondents failed to demonstrate how this petition was presented out of time. The petitioners stated that the combined effects of section 285(5) of

the 1999 Constitution and section 132 of the Electoral Act, a petition must be filed within 21 days after the date of declaration of the election. It is in agreement that the said election was conducted on 18th March, 2023 and the election result declaration was made on 19th March, 2023. Here even if the petitioners did not state the date of declaration it is submitted that since the petition was filed on 8th April, 2023. The petition was filed within the postulated time frame, this is because in computing time to file a petition the date of the election is excluded.

We have considered the submission of counsel in both side of the aisle and we observe that the phrase within 21 days after the date of the declaration… is very clear and unambiguous which must be given its plain grammatical meaning. The simple mental calculus revealed that the Month of March having 31 days. The difference between 18th March and 8th April, 2023 are exactly 21 days. The petition was therefore filed on the last day the filing of the petition is to expire. Thus, the petitioners narrowly escaped the trap of the section 285(5) of the constitution.

See **Maku and Anor v Sule & Ors** (2019) LPELR-58513 (SC).

This issue is therefore resolved against the respondents and favour of the petitioners.

Issue 2:

Whether as regards the provisions of Section 106(d) of the 1999 Constitution as amended, the 1st Petitioner has the necessary *locus standi* to present the extant Petition?

This crucial issue then leads us to the legal position of the question of party membership and nomination of candidates in election petition.

It is a principle of general application that *locus standi* denotes the legal capacity based upon sufficient interest in a subject matter to institute proceedings in a court of law to pursue a cause. It is the legal capacity to institute an action in a court of law. If a party does not possess the required *locus standi*, that delimits the jurisdiction of the court or the tribunal to entertain his complaint. See **Emezi V Osuagwu (2003) 30 WRN 1 at 19 or (2005) 12 NWLR (pt. 939) 240 at 361.**

Citizens derive *locus standi* from the constitution, Section 6 (6) (b) of the 1999 constitution, the statutes, customary law or voluntary arrangement in an organization as the case may be. See **Odenye V Efunuga (1990) 7 NWLR (pt. 164) 618.**

With respect to the leading counsels' to the respondents, in this petition, failed to situate the issue of nomination of candidate under section 285 of the 1999 Constitution; which deals with the issue of pre election matters. The issue of pre election matters under the constitution is non justiciable in post election matters. It

is our considered view that these issues are strictly matters concerning the internal affairs of the petitioners' party (LP) over which the respondents have no *locus standi* to complain about.

Now from the import of section 106(d) concerning qualification for membership of House of Assembly, it is not in dispute that membership and sponsorship by a political party are no doubt qualifying factors.

It is important to note that the 1st respondent stated, in his introductory part of his final address, that the election in to the House of Assembly seat for Obingwa East State Constituency was conducted on the 18th of March, 2023 by the 1st respondent as the constitutional body saddled with the responsibility. She said in that election the 1st petitioner was sponsored by the 2nd Petitioner and the 3rd respondent was sponsored by the 2nd respondent and they contested the extant election. Upon successful conclusion of the election, the 3rd respondent was declared a winner of the election and duly returned.

This is a clear admission by the 1st respondent that the 1st petitioner was duly sponsored by the 2nd petitioner. The rule is that facts admitted need no further proof. Again a part from this admission there is no any evidence led by the respondents to show that the 1st petitioner was not really sponsored by the 2nd petitioner.

Now, for ease of understanding, it is imperative to stress that the respondents who clearly belong to a different political party, is **one seeking the disqualification of another party's candidate for contest of the House of Assembly seat** based on section 106(d) of the 1999 Constitution and section 77 (3) of the Electoral Act. With respect to the learned counsels' to the respondents, the jurisprudence is settled by our superior courts that the issue of nomination of candidates to represent a political party in an election is strictly an internal affair of the political party. Our superior courts have made the point abundantly clear that outsiders, other political parties and persons who did not participate in the primaries being complained of are precluded from instituting an action challenging same. By the clear provisions of section 285 (14) (a), (b) and c of the 1999 constitution, the respondent would lack the *locus standi* and/or legal right to present a challenge on the basis of sections 106(d) of the constitution and section 77 (3) of the Electoral Act. Without *locus standi*, this tribunal will not have jurisdiction to, *ab-initio,* even look into the complaint. See **APM V INEC (Supra) 419.** Indeed in this case, the Court of Appeal instructively held and we shall quote them in extensor; that the lead judgment of **Senchi JCA** at pages 496 – 497 E – E, His Lordship held thus:

> **"The right to complain under section 285(14) (c) is given to a political party who complains that the provisions of the laws applicable to elections "has not been complied with by the 1st**

respondent, INEC. It does not extend to the complaint of the appellant/cross respondent in this action that a rival political party and its candidate "breached and violated the provision of section 77(2) and (3) [of] the Electoral Act"

At the pre-election stage, the manner in which a political party nominates its candidate for election cannot occasion an actionable wrong which a rival political party can litigate on. In A.P.C. V P.D.P. (2021) LPELR (55858) 1 at 21, this court per Ekanem, JCA, dealing with whether section 285 of the 1999 Constitution, as amended, grants a political party the right to complain about the conduct of the primaries of another political party held thus:

"……. (they) do not set out to clothe a political party with the standing to dabble into or peep at the internal affairs of another political party. To advocate a contrary position is nothing but a postulation for political voyeurism".

In Appeal No. CA/PH/481/2022: P.D.P V INEC & Ors (unreported) delivered on 29th November 2022, this court per Kolawole JCA held as follows:

"Let me state further that the new provision in section 285 (14) (a) (b) and in particular (c) was not intended by the legislature to create a new cause of action in favour of the political parties to embark as it were on poaching into the outcome of other parties primaries so as to raise perceived issues of non compliance with the provisions of the Electoral Act (Supra) or the applicable provisions of the constitution, 1999 as amended and use it to drag INEC into the fray of partisan politics by seeking orders to compel INEC to disqualify the nominated candidates of an adverse party"

This court then proceeded to conclusively hold that:

"… the appellant (P.D.P)…. is in no way entitled to complain about the conduct of the primaries of 2nd respondent (APC), and to request the court to make orders against 1st respondent (INEC) to compel it to disqualify the 3rd to 13th respondents (APC candidates) , I so hold".

In his contribution, Ogakwu JCA at pages 521 B – H added as follows:

"….. the appellant does not have the standing to maintain this cause of action as it does not fall within the orbital orb in which a political party has been vested with *locus standi* to pursue a pre – election matter by section 285 (14) (c) of the 1999 constitution as amended. The said provision reads:

"285 (14) For the purpose of this section, pre – election matter means any suit by:

(a) 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, time table for an election, registration of voters and other activities of the Commission in respect of preparation for an election."

By the above stipulation, political party can present a pre-election matter in two instances, *videlicet* –where INEC the 1st Respondent herein, disqualifies its candidate from participating in the election; and secondly, where INEC has not complied with the relevant laws in respect of preparation for an election. As already stated, the appellant's complaint is that the 2nd and 3rd Respondents did not comply with sections 29 (1) and 77 (3) of Electoral Act, 2022; the non-compliance for which the Constitution has imbued the appellant with *locus standi* is where the complaint of non-compliance is against INEC, which is not the appellant's grouch in this matter".

This is because the Supreme Court cases in **Dangana V Usman (2013) 6 NWLR (Pt 1349) 50** and **Wambai V Donatus (2014) 14 NWLR (Pt 1427) 223** regularly cited as an authority in pre election matters, which project the point that the issue of qualification or non qualification to contest an election is both a pre and post election matter which can be instituted in the High Court (as a pre-election matter) or in the tribunal (as a post election suit). It is however beyond any argument that after the above decisions, the Supreme Court has in several of its decisions made the point abundantly clear that issues of qualification or disqualification in respect to internal affairs of parties which are pre-election matters are no longer justiciable and they are not matters for the post-election matters which tribunal such as ours

tribunal can entertain. See **Akinlade V INEC (20220) 17 NWLR (Pt 1754) 439 SC; Abubakar V INEC (2020) ALL FWLR (Pt 1052) 898 SC; APM V INEC (2023) 9 NWLR (Pt 1890) 419** among others .Let us perhaps refer to a recent pronouncement by the **Supreme Cour**t on the issue in **People's Democratic Party V Hon. Ladun Nelson Mgbor (2023) LPELR – 59930 (S.C)** where the law lords stated instructively as follows:

> **"For a Plaintiff to have locus standi to sue, such Plaintiff must have sufficient interest in the subject matter of the litigation, and one of the factors for determining sufficiency of interest is whether the party seeking redress would suffer injury or detriment from the litigation. See INAKOJU v. ADELEKE (2007) 4 NWLR (PT1025) 423, ADESANYA v. PRESIDENT (1981) 5 SC 112, ITEOGU v. ILPDC (2009) 17 NWLR (PI171) 614 and IJELU V LAGOS STATE DEVELOPMENT AND PROPERTY CORPORATION (1992) LPELR. The outcome of a political party's primary election can only be challenged in the context of the provisions of Section 84(14) (2) and (b) of the Electoral Act 2022 by an aggrieved "aspirant" who participated in the primary election and no other person. Therefore it is only the aggrieved**

"aspirant" as defined by statute who has the *locus standi* to institute pre-election actions and no other person.

By the golden rule of interpretation, the whole section of the law must be considered in the circumstances. Obviously the intention of the legislature as gleaned from Section 84(14) of the Electoral Act, 2022 is to circumscribe the litigants who can file pre-election suits and the Courts have consistently maintained that it must be an aspirant challenging his own party's violation of the Electoral Act or Party's Act, Constitution and guidelines.

My Lords, I agree with the Appellant that while it is settled that by Section 285(14) (a) and (b) as enunciated above, only an aspirant can challenge the outcome of a primary he participated in, Section 285(14) (c) is not so cut and dried. The point being made here by the Appellant is that the second portion enables a political party to challenge the actions of INEC which are illegal or ultra vires the Electoral Act of the 1999 Constitution.

The offshoot of that point is that the appellants are challenging the Courts not to close eyes to the second portion of Section 285(14) (c) which provides disjunctively for political party to

challenge INEC on the basis that " …any other applicable law has been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, time table for an election, registration of voters and other activities of the commission in respect preparation for an election"

No doubt, the primary responsibility of the Court in interpretation of a statute is to ascertain the intention of the legislature and give effect to it. My Lords, pre-election and election maters are sui generis in the sense that they are a special breed of specie of litigation bound by special statutory and Constitutional provisions as interpreted by decision law.

While Section 285(14) (c) talks about how the political party can challenge the decision of INEC, it relates to any decision of INEC directly against the interest of that political party. It cannot be stretched to include the inactions/actions of INEC in respect of nomination for an election by another political party.

So, pre-election and election matters are governed by laws made specially to regulate proceedings. See NWAOGU v. INEC (2008) LPELR 4644, SA'AD v. MAIFATA (2008) LPELR -4915.

In this case, the 2nd Appellant has absolutely no cause of action since the party purportedly in violation of the Electoral Act is not his party. In the case of the political party, no other interpretation can be given to the provision than that the political party has a right of action against INEC where it rejects the nomination of its candidates, where it proposes unsuitable timetable or its registration of voters or register of voters or other activities of INEC are against the interest of that political party.

Section 285(14) (c) cannot extend to challenge INEC's conduct in relation to another political party irrespective of whether such conduct by the other party is wrongful or unlawful. Section 285(14) (c) cannot cloth a party with the locus to dabble into INEC's treatment or conduct in respect of another political party. No matter how manifestly unlawful an action is, it is the person with the locus standi to sue who can challenge it in a Court of law. See Suit SC/CV/1 628/2022 APC & ANOR v. INEC & ORS delivered on 3/2/23.

My Lords, a Lot of fuss has been made about the fact that this Court in several cases had nullified primaries conducted in violation of the Electoral Act. However, these cases arose as a result of a challenge by an aspirant within the same political party who felt aggrieved about the illegal venue where the primaries were conducted or about the illegality and irregularity perpetrated by his party which adversely affected his interest.

Section 285(14)(c) cannot be a license for another political party to challenge not to talk of successfully challenging such a wrong doing by INEC. In the circumstances, this issue is resolved against the Appellant."

The above authority is very clear on this issue. The law and jurisprudence is clear that where there appears to be conflicting judgments of the Supreme Court; the later or latest will be applied and followed in the circumstances. See **Osakwe V Federal College of Education (2010) 5 scm 185.**

Our position on the basis of authorities of our superior courts is that once a candidate is sponsored by a political party as in this case and has satisfied the stipulations set out in section 106 and is not disqualified under section 107 thereof, he is qualified to stand election for a seat in the House of Assembly.

The qualifying and disqualifying factors for a person seeking to occupy a seat in the House of Representatives at the risk of sounding prolix, under section 106 and 107 of the constitution are clear. It is too late in the day to seek to expand the remit of these provisions

Therefore, where the complaint is on the **nomination** of such candidate, it is left for an **aspirant** who contested the party primaries to contend with a pre-election dispute at the federal high court and that he must do within the strict time frame under section 285 (9) of the constitution.

Thus a person who is not an aspirant in such a primary election, cannot validly bring the issue into contention in an election petition, as done here. Where it is done, they will be adjudged as meddlesome interlopers and being strangers to the other party's primary election. See **Shinkafi V Yari (2016) LPELR – 26050 (SC); APC V INEC & ORS (2019) LPELR – 48969 (CA.**

Correspondingly, in the extant case, we are obviously dealing with an election dispute which is ***sui generis.*** We must thus take our bearing from the Electoral Act 2022 which regulates matters of that particular nature.

Now section **133 (1) (a) and (b)** of the Act provides persons entitled to present election petitions as follows:

"An election petition may be presented by one or more of the following persons –

(a) A candidate in an election;

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

The above provisions are clear and unambiguous. **Candidates** who participated at the election and their political parties are thus the only persons vested with the requisite *locus standi* to present an election petition.

As stated earlier, the concept of ***locus standi*** is an aspect of jurisdiction; that being the case, the only petition which a tribunal can take are those presented by **either a candidate** at the election or **the political party** which participated at the election or both of them. Once a party or petitioner has expressly stated that he is a candidate, in the election petition, that is enough that he has established his right to present the petition. See **Kamil V INEC (2010) 1 NWLR (pt. 1174) 125 at 142; Okonkwo V Ngige (2006) 8 NWLR (pt 981) 119**.

The converse is equally the case that a person who is not a candidate at an election has no locus to institute a Petition.See **P. P. A. V INEC and ANR (2012) 13 NWLR (pt. 2327) 2154 at 235.**

In this case, on the pleadings filed by parties that have streamlined the issues in dispute; it is clear that the 1st Petitioner participated and or was a candidate in the

State House of Assembly elections conducted on 25th February 2023. Indeed his participation in the election is a **common ground.**

We therefore hold on this issue that the 1st Petitioner has the requisite *locus standi* to present this petition. Whether the petition will succeed ultimately or not is however a different matter altogether which goes to the substance and merit of the substantive case but which has nothing to do with his legal capacity to present the present petition.

On the whole, we note that the qualifying element of membership and sponsorship by a political party has been used here, under the guise of challenge to qualification to import into the election petition, matters which are clearly internal to the Labour Party. The correct approach, as we hope, we have demonstrated from the authorities, however ought to be that where a political party is resolute as to who the party sponsored as in this case, matters relating to that resolution being internal to the party ought not to be a basis for challenge by a member of another party in an election petition. As stated earlier, this position can be situated within the confines of section 285 (14) (c) which defines pre-election matter to include issues of challenging the nomination process.

Issue 2 is thus resolved against the respondents.

Issue 3:

Whether from the circumstances of the extant petition Ground One of the petition is inconformity with section 134(1)(c) of the Electoral Act, 2022 (as amended)?

In respect of this issue, the 2nd Respondent contended in his final address that the way and manner in which the Petitioners couched ground one of the petition. The 2nd Respondent specifically complaint that the petitioners butchered the provision of section 134 (1)(c) by inclusion or addition of the phrase **"did not score the"** to the provision. The petitioners formulated ground one as follows:

"The 3rd Respondent did not score the majority of lawful votes cast at the election"

According to the 2nd respondent that this being the case, that ground as formulated by the petitioner is incompetent and not cognizable under the provision of the Act, and thus liable to be struck out since the ground one being incompetent the tribunal has no jurisdiction to delve into the substance of that ground. This is because grounds of petition are jurisdictional issues. He submitted that this ground is liable to be struck out.

Counsel to the respondent cited copious authorities including: **Salis v INEC** (2022) 10 NWLR pt. 1839 page 467 and **Ojukuw v 'Yar'adua** (2009)12 NWLR pt. 1151 page 50 at 142 paras F-G.

It is trite law, the a petitioner is required to question an election on any of the grounds set out in section 134(1) of the Electoral Act, 2022, provides as follows:

"An election may be questioned on any of the grounds-

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

(b) The election was invalid by reason of corrupt practices or non compliance with the provisions of the Act; or

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

Then what is the meaning of the word "ground"? In the case of **Kalu v Chukwumerije** (2012) pt. 1315 page 425 at 485, the Court of Appeal per Owade, JCA puts it succinctly, thus:

> **the compact Edition of the Oxford English Dictionary (1971) US reprint (1988) defines the word "Ground" in numerous terms and with an array of examples at pages 1214 to 1225 as follows: "Ground": (a) the**

> **fundamental constituent or the essential part of anything, (b) a fundamental principle, also the elements or rudiments of any study or branch of knowledge, (c) a circumstance on which an opinion, inference, arguments, statement or claim is founded, or which has given rise to an action procedure or mental feeling, a motive often with additional implication. A valid reason justifying motive or what is alleged as such"**

Thus a "ground" in the context of an election petition, is the fundamental reason, basis or justification for questioning a concluded election.

Before a petitioner can question an election, his petition, must fall within the ground specified under section 134 (a)-(c) of the Electoral Act, 2022.

See the following cases: Oyegun v Igbenedion & Ors (1992) 2 NWLR pt. 226 page 947; Okonwo v INEC (2020)12 NWLR pt. 1737 and Modibo v Usman (2020) 3 NWLR pt. 1712 page 470.

The issue at stake here, is not that the petition is not incorporated with a ground at all, but the issue here bothers on the way and manner the ground was couched; can

it then this be said that the petitioner offended the provision of section 134(1)(c) of the Electoral Act leading to striking out of said ground?

The petitioners filed their petition on 8th April, 2023 before this Election Tribunal against the Respondents pursuant section 134 of the Act, as follows:

(1) That the 3rd Respondent did not score the majority of lawful votes cast at the election.

(2) That the election was invalid by reason of non-compliance with the provisions of the Electoral Act.

The issue is whether by the inclusion of the phrase **"…did not score the…"** into the provision of section 134 (1)(c) of the Electoral Act, 2022, renders ground 1 of the petition as invalid and liable to be struck out.

Without much ado, copious authorities as cited by the 2nd respondent are to effect that, the petitioners are enjoined to use words as stated in section 134 of the Electoral Act, 2022 word for word as decided in the in case **Mimi v. Suswam** (2019) LPELR -48780 (CA) (pp.19-28, paras. D-E. However, a petitioner who decided to use his own language is taking a big gamble, if not a big risk. See **Ojukuw v 'Yar'adua (*supra*).**

Nevertheless, if a petitioner in an election petition, elect to couch the grounds of his petition then he must to convey the exact intents and purposes, in this sub-section, but cannot add or subtract from the provision of the section.

It is the collective submissions of parties in their final addresses that a petitioner may use a language which did not effects the essence within the meaning of the said section of the Act.

In the case of **Adewunmi & Anor v Akinloye & Ors (**2019) LPELR-50417 CA, in interpreting the provisions of the then section 138(1) of the Electoral Act, 2010, which is now section 134 of the extant Act, per Omleye JCA, relying on the decision in **OJukwu v. 'Yaradua** (*supra*) reiterated thus:

> **"… in couching the grounds of a petition, the words used in S. 138(1) of the Act should be employed verbatim, in the earlier decisions of this court in Ojukuw v Yar'adua (2019) 12 NWLR pt. 1154 PG 55 and (2) Ojukwu & ANOR V INEC & ORS 2015LPELR 40652, petitioners are enjoined to use words as stated in section 138(1) of the act in framing their grounds of petition. However this court went further to state, and I agree that a petitioner has the**

freedom to use his own language to convey the exact meaning and purport of the sub-section. It is my humble view but very firm view that, the purport and meaning of section 138(1) of the Act, especially when read communally with the provision of section 138(2) and 153 of the Electoral Act and paragraph 4(1)(d) of the 1st schedule to the Electoral Act, have not in any way been offended so as to render invalid ground three (3) of the 1st and 2nd Respondent"

The crux of the matter, if juxtaposed with the decision and interpretation of the parameters of section 134(1)(c) of the Electoral Act, 2022, is whether the phrase "**… did not score the**.." included into the provision of the said section to render the provision ambiguous therefore invalid as canvassed by the 2nd respondent?

Suffice it to say, that section 4(1) of the 1st schedule to the Act states, as follows:

(1) An election petition under the Act shall:

(a) Specify the parties interested in election petition;

(b) Specify the right of the petitioner to present the election petition;

(c) Specify the holding of the election, scores of the candidates and the person returned as the winner of the election; and

(d) State clearly the facts of the election petition and the grounds or grounds on which the petition is based, and the reliefs sought by the petitioner.

There was no contention as to the fact that there was a State House of Assembly election in the **Obingwa East State Constituency of Abia** State held on 18th March, 2023. And that the 3rd respondent was returned as the winner of the election for scoring majority of votes as declared by the 1st respondent. So there is no gain saying, that there was an 'election' and that there was "**scores**" in the State membership election in the Abia State.

It is therefore our considered view, premised on the strength and consideration of the authorities cited above, that though the petitioner is enjoined to use the exact words in section 134 (1)(c) of the Act, that the addition of the phrase "**… did not score the**.." into the provisions of the section in the ground as stated by the petitioners in their petition, is not that ambiguous and does not materially or substantially alter that provision of that ground as formulated by the petitioners, as it is inclusive of the obvious and known fact, that there was an 'election' held in Abia State House of Assembly on 18th March, 2023. Election is a composite process which ends with a scores and return of a disputed successful candidate. We are unable to see how ground one of this petition which complaints on majority of votes cast at disputed election can be outside or contravened section 134(1)(c) of the Electoral Act, 2022.

The current judicial mood is that substantial justice should be done to the parties in election cases without being unduly fettered by technicalities through strict adherence to the provision of section 134 of the Electoral Act, 2022. This is liberal approach founded on a consideration of the attainment of substantial justice. We are inclined to do substantial justice to this issue for determination concerning the couching of ground one of the petition.

The apex court, per Nweze JSC, in **Omisore vs Aregesola** (2015) ALL FWLR pt. 813 page 1673 at 1712 paras B-C where his lordship held , as follows:

> **"Now, it is no longer in doubt that this Court and indeed all Courts have made a clean sweep of "the picture of the law and its technical rules triumphant", Aliyu Bello & Ors v Attorney General of Oyo State (1986) NWLR (pt. 45)826-828. Let me explain by its current mood, it is safe to assert that this court has firmly and irreversibly spurned to old practice where the temple of justice was converted into a forensic abattoir where legal practitioners, employing such tools of their trade like "whirling of technicalities', daily butchered substantial issues in Court. In their fencing game in which parties engage themselves in an**

exercise of outsmarting each other …" Afolabi vs Adekunle (1983) 2 SCNLR 14, 150. Those days are gone; gone for good".

Consequent upon the aforesaid reasons, we hold that ground one is competent and issue 3 is resolve in favour of the petitioners and against the respondents.

Issue 4:

Whether the petitioners established the two grounds upon which the petition is anchored to entitle them to the reliefs sought?

Submissions were made on the above issues which formed part of the Record of the tribunal which we have carefully considered. The summary and or substance of the case made out by Respondents on this issue is that on all the grounds which the petitioners have predicated the extant petition, they were not able to establish creditably any of the grounds of the petition. That the 1st Petitioner was constitutionally unqualified to contest the election and that ground of disqualification which is also constitutionally situated has not been established.

Further, that the petitioners have not established that the election was invalid by reason of over voting or that election was conducted in substantial non compliance

with the Electoral Act. It was finally submitted that the 3rd Respondent was duly elected with majority of lawful votes cast at the election.

The final address of the 1st Respondent submitted that it is trite that the burden of proof in an election rests squarely on the petitioners. The petition fails or succeeds on the strength of the case of the petitioners and not on the weakness of the respondents' case. Thus where a petitioners has failed to prove the petition; there is no burden or duty the respondents see **Maihaja vs Gaidam (**2018) 4 NWLR pt. 1610 454 at 502.

The respondents further submitted that the petitioners' grounds are that the **Obingwa East State Constituency** election was held on 18th March, 2023 was invalid by reason of over voting and non-compliance with Act as contained in paragraphs 26 at pages 13 of the petition.

The 2nd respondents submitted that the petitioners did not plead facts and give no evidence in respect of ground one of the petition the said ground fails automatically. He also submitted that the petitioners predicated their petition on allegation of non compliance with the provision of the Act.

They further submitted that a petitioner who alleges that there was non-compliance has legal duty to proof the ingredients of the non compliance by cogent and credible evidence.

The respondents submitted that the petition is devoid of merit as the petitioners led no credible evidence in proof of their claim.

Parties cited various statutory and judicial authorities in support of their respective arguments.

However, before we delve in to the substance of this issue we shall resolve the preliminary issue raised by the 1st respondent on the admissibility of the documents tendered by the petitioners in proof of the petition.

The 1st respondent in his final address at paragraph 4.23 – 4.26 submitted that exhibits P2 – P11 are inadmissible because they did not come from proper custody and that PW1 is incompetent to tender them not being the maker. He said P2 -P11 are all official documents from the 1st respondent the documents therefore are public documents. He also submitted that P2 to P11 tendered by the 1st petitioner lack any probative value and no weight should be attached to them. He finally urged the tribunal to expunge same.

The petitioners however argued that the documents in question are CTCs of various electoral forms dully paid for, and issued by the 1st respondent. The petitioners therefore submitted that the exhibits are not only relevant but duly pleaded. The further submission of the petitioners is that the 2nd and 3rd respondents equally relied on their own version of the same set of results. Finally

they submitted that the exhibits being pleaded, relevant and duly procured and in view of section 137 of the Act urge the tribunal to admit same.

The 1st respondent challenged the admissibility of exhibits P2-P11 which are CTCs of various electoral forms on ground that they are not from proper custody and the 1st petitioner was not the maker of same. The critical questions governing admissibility on the basis of the Evidence Act are as follows:

1) Is the document pleaded
2) Is it relevant
3) Is it admissible in law

Now I think the law is settled law that under sections 89 and 90 (1) (e) of the Evidence Act, the only secondary evidence admissible in respect of public document within the purview of section 102 of the Evidence Act is a certified true copy of the document and no other kind of secondary evidence. See **Ogboru V Uduaghan (2011) 2 NWLR (Pt 1232_ 608 at 578 A – B; Goodwill & Trust Investment Ltd V Umeh (2011) 8 NWLR.**

Public document within the meaning of section 102 of the Evidence Act are only admissible under section 89 (4) and 90 (1) (c) of the Evidence Act where the secondary evidence is a certified and no any other kind of secondary evidence.

In the instant case Exhibits P2 –P11 are certificate true copies in compliance with section 89 of the Evidence Act prepared by INEC; which were duly paid for by the Petitioners for the issuance of certified true copies of those electoral materials including the BVAS report.

We are not too sure that in the circumstances, the arguments concerning the proper custody under the Evidence Act on public documents will fly here. The statutory body charged with preparation of the Report (INEC) prepared and issued same on due payment is the 1st respondent the body citified and issued same on payment of same.

The principle is settled that where the interpretation of a statute will defeat the object of proceeding, the court is not to lend its weight to such interpretation. The language of a statute is not to be stretched beyond acceptable limits to defeat its aim. See **Ansaldo Nig Ltd V National Provident Fund Management Board (1991) 2 NWLR (Pt 174) 392 at 405 E – F.**

Section 89 must be given a purposely and beneficial interpretation that will be for public good especially on election matters to allow **INEC** own up to documents prepared by them which they have properly certified within the purview of sections 104 of the Evidence Act. The objection of the 1st respondent, for us is misconceived and is hereby discountenanced.

Now in determining the aforementioned issues it is expedient for us to predicate our consideration on certain basic principles of law. **The procedural law** necessarily **to prove** any existing facts is as provided sections 131 (1), 131 (2) and 132 of the Evidence Act 2011 which stipulate as follows:

> **"131 (1) 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.**
>
> **(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.**
>
> **132 The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side".**

Our superior courts have enunciated and restated the time honoured principle on the fixation of the burden of proof on the Petitioner who is duty bound to prove positively the affirmative of his allegations as it is he who would lose if no evidence is elicited to establish creditably the grounds upon which the election is predicated.

The supreme court in the most recent case of **Oyetola V INEC** (2003) 11 NWLR (Pt. 894) 125 at 168 A – D PerAgim J. S. C., restated most instructively this same position in the following terms.

"The appellants in their petition desired the tribunal to give judgment to them the reliefs they claimed on the basis that the facts they assert in their petition exist. Therefore, they had the primary legal burden to prove the existence of those facts by virtue of section 131 (1) of the Evidence Act 2011 which provides that "whoever desires any court to give judgment as to any legal right or liability dependent on the existence of those facts which he asserts must prove those facts exist". Because the evidential burden to disprove the petitioners case would shift and rest on the respondents only if the evidence produced by the petitioners establish the facts alleged in the petition by virtue of section 133 (1) and (2) of the Evidence Act, the tribunal was bound to first consider if the evidence produce by the petitioners establish the existence of the facts alleged in the petition, before considering the evidence produced by the respondents to find out if the evidence has disproved the case established by the petitioners on a balance of probabilities". See also **Buhari V INEC (2008) 19 NWLR (Pt. 1120) 246 at 350.**

Being properly guided by theses authorities, we shall now proceed to examine the **grounds** and the allegations made therein in the clear context of the **facts** streamlined in the pleadings.

As stated earlier, the burden was on the petitioners to provide credible evidence to support the grounds of the petition.

We have had carefully read the whole paragraphs of the petition from paragraphs 1- 65 where allegations were made on over voting and cancellation of result in 28 polling units across 5 ward as contained in paragraph 21 and 6 wards Registration area in Obingwa East State Constituency as contained in paragraph 22. Assertion were also made that the Gubernatorial and State House of Assembly elections were held simultaneously with the disputed election on 18 March, 2023 where accreditation and voting were held and the accreditation values are the same in the election.

The petitioners tendered in evidence CTC of polling units results issued by the 1st respondents and relied on same by virtue of section 137 of the Electoral Act, 2022 and alleged that the burden is on the respondent to disproof same; particularly the 1st respondent a body that conducted the disputed election.

We considered the submission of parties and indeed the authorities cited by both sides. It is our humble but firm view that a petitioner who based his case on

fraudulent cancellations, mutilations or alterations as the petitioners have elaborately done in this case must establish two ingredients i.e.:

1) **That there were cancellations, alterations or mutilations in the electoral documents and**
2) **That the cancellations, alterations or mutilations were dishonestly made with a view to falsifying the result of the election.**

These two defined ingredients must both be established together before the result of an election can be cancelled or those grounds. See **Tunji V Bamidele (2012) 12 NWLR (Pt 1315) 477; Doma V INEC (2012) 13 NWLR (Pt 1317) 297 at 327.**

The petitioners did not tender a single credible result sheet from any unit of the constituency and they did not call any eye witness from any of these units to give evidence or establish any of the corrupt practices which allegedly occurred in the units. It is difficult to accept that there were falsification, manipulation, inflation and deflation of results in the absence of evidence from those who falsified the result or those who were present when the falsification was carried out. See **Buhari VObasanjo (2005) 13 NWLR (Pt 941) 1 at 193 C – D.**

Again with respect to over voting which traverses the entire petition, the petitioners did not lead any iota of evidence to support this allegation. The **Supreme Court in Oyetola V INEC (2023) 11 NWLR (Pt 1894) 125 at 187-188 G – C; 192 A – D;**

197 C – H made the point abundantly clear that whenever it is alleged that there was over voting in an election, the documents needed to prove over voting are 1) the voters register to show the number of registered voters, 2) the BVAS machine to show the number of accredited voters and 3) the forms EC8A(i)s to show the number of votes cast at the polling units.

These three documents will show exactly what transpired at the polling units and failure to tender these documents would be fatal to any effort to prove over voting. The petitioners in this case clearly failed to provide and prove these essential requirements on the allegation of over voting. There was really absolutely no evidence demonstrated before us situating clear evidence of heavy mutilation, cancellation and alteration of figures in the election. The petitioners did no show what differentiate between the gubernatorial election and that of the State House Assembly which were held the same with same day facilities of accreditation.

In real terms, as we have demonstrated above, no scintilla of **evidence** was produced to support the various allegations of cancellation, inflation of votes and so on which was streamlined extensively in the petition and this is fatal. None of the evidence of petitioners' witnesses as we have demonstrated above absolutely bears any relevance to any complaints of over voting in any of the units mentioned in the petition. There was thus no credible evidence before us by the witnesses of petitioners to support the complaints of cancellations, alterations or mutilations in

the electoral documents and that they were dishonestly made with a view to falsifying the result of the election. See **Tunji V Bamidele (supra).**

The effect of this is that the evidence of the petitioner's witnesses goes to no issue.

It is obvious from the foregoing that ground one has no proof and must fail and it is hereby dismissed.

On the second ground alleging non – compliance with Act. **Ground 2** of the petition is that:

"…the election was invalid by the reason of non-compliance with the provisions of the Electoral Act 2022".

Now the petitioners based their petition mainly on non-compliance with the Electoral Act. The question is does the election in question was conducted in substantial non compliance with the Act? The law is that the petitioners must prove this fact; because the law does not require an absolute compliance with the provisions of the Act in order to sustain the return of the declared winner of the election. Consequently, the petitioner who alleges non-compliance with the Electoral Act must call credible witnesses to prove that there was substantial non-compliance with the Electoral Act. See **Emmanuel V Umana (No 1) (2016) 12 NWLR (Pt 1526) 179 at 256 – 257 paras G – C; Nyesom V Peterside (2016) 7 NWLR (Pt 1512) 425.**

Indeed the burden on petitioner to prove non-compliance is three fold. In **Waziri&Anor VGeidam&ors (1999)7 NWLR (Pt 630) 227 CA,** it was held that for the Petitioners to succeed in their allegations of non-compliance, they must **first** plead in their petition the heads of non-compliance alleged. They must then situate clear and precise pleading necessary to sustain the evidence in proof of such allegations. **Secondly**, they must render cogent and compelling evidence to prove that such non-compliance took place in the election and **thirdly** and finally, that the non-compliance substantially affected the result of the election to the detriment of the petitioners.

In this case, as found already, **only 28 polling** unit out of 137 polling units in the **Obingwa East state constituency** where the petitioners lay their complaint. The evidence of 1st Petitioner himself largely consisting of hearsay evidence was of not much help to Petitioners.

Even if we bend over backwards and accept that the petitioners even pleaded the heads of non compliance, from the unclear petition filed, they have **abysmally** failed to prove, show or render compelling and cogent evidence to prove that such non-compliance took place and that the non-compliance substantially affected the result of the election to the detriment of the petitioners. The evidence elicited by petitioners which are bereft of cogency and credit are clearly insufficient to negatively affect the election and return of 3rd respondent. See **Isiaka&Anor V**

Amosun&Ors (2016) 9 NWLR (Pt 1518) 417 at 441 – 442 F – A; Omisore V Aregbesola (2015) 15 NWLR (Pt 1482) 205 at 280 – 281 para G – A, 298 B – F.

As we conclude on this point, particularly on the question of substantial non-compliance, we must underscore the position of the law that while all provisions of the Electoral Act are to be complied with, however by the provision of section 135 (1) of the Electoral Act 2022, it is not every non-compliance that will lead to an invalidation of the election results. Thus, where it appears to the tribunal as in this case, that there was substantial compliance with the provisions of the Electoral Act such that the results are not affected substantially, the results will be upheld. See **Buhari&Anor V Obasanjo&Ors (2005) All FWLR (Pt 273) 1 at 145; Abubakar&Anor V INEC &Ors (2020) 12 NWLR (Pt 1737) 37 at 177 D – E; Yahaya V Dankwambo (2016) 7 NWLR (Pt 1511) 284 at 313 EG; 315 C-G.**

The Petitioners here woefully failed to establish substantial non-compliance and secondly that it did or could have affected the result of the election. It is only where they have established the foregoing, that the onus would have shifted to the respondents to establish that the result is not affected.

The 3rd respondent called 3 witnesses in his defence to the petition that is DW5-DW7. DW5 and DW6 were polling unit agents of the 2nd and 3rd respondents in the election in question who adopted their depositions and testified in the line with

same. Under cross examination they maintained that election was held successfully and peacefully in their various polling units and that the results were equally generated at the said polling units. The 3rd respondent testified for himself as DW7 in line with his reply to the petition and tendered documents admitted as exhibits D8 – D35. Under cross examination, the 3rd respondent maintained that the election was conducted peacefully in the polling units of the Constituency and the accreditation was done with BVAS machine and voters register.

The law is sacrosanct that averments in pleadings not supported by evidence are deemed abandoned. It is the law that mere averments in pleadings without proof of facts pleaded cannot constitute a proof of facts if not admitted. See **Adegbite V Ogunfolu** (1990) 4 NWLR (Pt 146) 518.

In the instant petition, the petitioners merely tendered from the Bar through PW1 polling units results vide exhibits P1 – P11 in the State Constituency without more; but fail to show how the tendering of these documents will translate to proof of over voting because of non compliance with the Act.

The respondents further submitted that the law is now settled that whoever desires any court to give judgment as to any legal right exist or liability dependent on the existence of facts he assets, must prove that those facts exist. He must lead credible evidence to prove same. In the instant, also the petitioners failed to prove over-voting their case must surely fail, see **Adesina vs Air France** (2023) All FWLR pt.

1184 p. 891. He also referred to sections 136 and 137 of the Evidence Act that the burden of proof lies on the party who will lose if no evidence is adduced at all.

The petitioners only fielded PW1 who is the 1st petitioner tendered exhibits P1-P11 from the bar but without calling oral evidence from the various complain polling units to testify. The petitioners tendered only the said exhibits and folded their hands for the respondent to disprove same.

The respondents contended the exhibits relied upon by the petitioners are all hearsay documentary evidence which must be discountenanced by the tribunal; as no oral evidence called to demonstrate same.

As alluded to earlier, and we must again underscore this point at the risk of sounding prolix, that the petitioners failed to state the exact number of wards in the constituency. Although in paragraph 20 of the petition, the petitioners state that in **Obingwa East State Constituency** there were 5 electoral wards and 137 polling units; but in **paragraph 22** of the petition, the petitioners aver that **Obingwa East State Constituency** has 6 wards and there was cancellation of results in 28 polling units. While in paragraph 41 they made allegations of the over voting in 11 polling units. Surprisingly, in paragraph 42, the petitioners state that there were instances of cancellation of results from several polling units across wards 08, 09 and 011, as indicated on the face of form EC8b(i). Likewise, in paragraph 44 the petitioners

further stated that there were 9 polling units were either results are cancelled or were not returned.

The petitioners in paragraph 49 of the petition stated the 1st respondent, announced the result of the election are as follows:

That the 3rd respondent has the total of **7, 732** votes, the 1st petitioner has the total of 1, 636 votes. The petitioners however alleged in paragraph 48 that the total number of votes lost by the petitioners due to disingenuous reduction of their lawful votes scored is 169 votes. But in paragraph 50 -51they stated that if 168 votes was subtracted and added to the petitioners' result the total valid votes of the 1st petitioner shall be **1, 805;** whilst in paragraph 52 the petitioners aver that if this subtraction is done in respect of the 3rd respondent; the valid votes shall be **5, 759** valid votes.

However, it is important to note that no evidence was presented to reconcile this inconsistencies in the petition and to situate the complaints made and how it affected substantially the elections.

In **Andrew V INEC (2018) 9 NWLR (Pt 1625) 587 at 558,** the Supreme Court inter-ala held that documents tendered must be subjected to the test of veracity and credibility. Where it involves mathematical conclusions, how the figures were arrived at must be demonstrated in open court. It is the duty of the party tendering

the documents to ensure that such documents and exhibits are linked to the relevant aspect of the case which they relate. This was not done in this case at all. The attempt to provide these critical pieces of evidence or explanation in the address of counsel will not fly.

It is true that section 137 of the Electoral Act 2022 may have stipulated that a party alleging non-compliance with the provisions of the Electoral Act during the conduct of an election does not need call oral evidence to prove the allegations if the originals or certified true copies of the documents manifestly disclose the non-compliance alleged. The caveat here is that the documents must manifestly disclose the non-compliance alleged. Where there is no such manifest of non-compliance, section 137 of the Electoral Act will not be availing.

In the petition, the petitioners highlighted in the same paragraph 12 incidents of over voting but there was absolutely no demonstration of these complaints. Tendering of the Exhibit P1 – P11from the Bar, simpliciter, cannot be a basis to hold that there was non–accreditation or over voting amounting to substantial non compliance of the Act. This is because the provisions of sections 47 and 60 of the Electoral Act provides for procedure for accreditation of voters, voting and counting of votes. The Supreme Court in **Oyetola V INEC (supra)** made the point abundantly clear that wherever it is alleged that there was over voting in an election, the documents needed to prove over voting are (1) the voters register to

show the number of registered voters, (2) the BVAS to show the number of accredited voters and (3) the forms EC8As to show the number of votes cast at the polling units.

These three documents will show exactly what transpired at the polling units and failure to tender these documents would be fatal to any effort to prove over voting. The petitioners in this case clearly failed to prove these essential requirements on the allegation of over voting. There was really absolutely no evidence demonstrated before us situating clear evidence of substantial non compliance that resulted to over voting.

The petitioners, in the extant petition, only dumped on the court **Exhibits P1 – P11** which on its own cannot provide the answers to the question of non-accreditation of voters or over voting. In **Andrew V INEC (Supra)**, the Supreme Court stated as follows:

1) **"On the issue of dumping documents on the Tribunal, both the Tribunal and the Court below are in concurrence that the appellants dumped their documents (Exhibits) on the tribunal. The Court below said this much on page 13018 of the record of appeal (vol. 14) as follows: "What the law requires is that first of all, the maker of the document must tender it and testify to its**

contents. Then, the documents must be subjected to the test of veracity and credibility and where it involves mathematical calculations, how the figures were 'arrived at must be demonstrated in the open Court and finally, the correctness of the final figure must also be shown in open court. What the appellants did here was to dump the documents on the court by tendering it from the Bar, got a few witnesses to identify or recognize some of the documents and left the Tribunal to figure out the rest in its chambers"..... it is not the duty of the Court to sort out the various exhibits, the figures and do calculations in chambers to arrive at a figure to be given in judgment particularly in an election petition which is challenging the number of valid votes scored by a candidate declared and returned as the winner of the election "...let me lend my voice to the trite position of the law which has been expounded in this Court severally that tendering documents in bulk in election petitions is to ensure speedy trial and hearing of election petitions within the time limited by statute. But that does not exclude or stop proper evidence to prop such dormant documents.....it is not the duty of a Court or tribunal to embark on cloistered justice by

making enquiry into the case outside the open Court, not even by examination of documents which were in evidence but not examined in the open Court. A judge is an adjudicator not an investigator. I need to state clearly that demonstration in open Court is not achieved where a witness simply touches a bundle of numerous documents with numerous pages. The Front – loading of evidence and tendering documents in bulk from the bar do not alter the requirement which is an element of proof... From the record of appeal, almost all the documents tendered by the appellants were tendered by their counsel from the Bar. Hence the decision of the Tribunal as upheld by the Court below in this regard cannot be faulted."

Again, the scenario graphically captured by the Supreme Court played out in this case. The final address of counsel, however well written is no substitute for the pleadings and evidence to prove the contested averments. A court of law qua Justice can only pronounce on the basis of evidence presented and established before it in court. A court cannot go outside the evidence presented and established in court in deciding any contested issue.

In the instant petition the petitioners only dump the exhibited documents on the tribunal. It is not the duty or responsibility of the tribunal to determine or decipher

in chambers what relevant exhibit relate to what fact that petition sought to established.

In an election petition were a petition as in this case complains of non-compliance with the Electoral Act based on non compliance with act and over voting, once the issue of proof is resolved against the petitioner, the petition on that point is effectively determined against the petitioner. See **Doma V INEC (2012) 13 NWLR (Pt 1317) 297 at 319 – 320.**

As we round up, we must underscore the point that it is correct that the law requires all the provisions of the Electoral Act should be complied with. However, it must be noted that by the provision of section 135 (1) of the Electoral Act, 2022, it is not every non-compliance that will lead to invalidation of the election results. Thus, where it appears to the election tribunal as in this case that there is clear substantial compliance with the provisions of the Electoral Act such that the results are not affected substantially, the results will be upheld. See **Buhari & Anor V Obasanjo & ors (2005) All FWLR (Pt 273) 1 at 145.**

On the whole, it is clear without any doubt that the petitioners have not established and not situated first substantial non-compliance and secondly, that it did or could have affected the result of the election. They did not cross this threshold and so the

onus did not shift to respondents to establish that the results are not affected negatively on the election under review.

On the margin of lead principle, which was also relied upon by the petitioners, provided for under Regulations 62 of the Regulations and Guidelines for the conduct of election 2022 states, as follows:

> **Where the margin of lead between the two leading candidates in election is not in excess of the total number of votes who collected their permanent voters card (PVC) in polling units where elections are postponed, voided or not held in line with sections 24(2 and 3), 47(3) and 51 (2) of the Electoral Act, the returning officer shall decline to make a return. This is the margin of lead principle and shall wherever necessary in making returns for all election in accordance with these regulation and guidelines.**

On this point the submission of the respondents was that, the petitioners did not satisfy the requirement proving that if the figure representing the alleged over voting is removed, will turn the pendulum of success in favour of the petitioners. It goes without saying that, the over voting areas if removed revealed that, still the 3rd respondent will be leading the 1st petitioner by a margin lead of **5, 759** votes.

We are unable to situate the argument of the petitioners on the margin of lead principle, because they admitted in their pleading that the 3rd respondent was still ahead of the 1st petitioner even if the result of the 28 disputed polling units is deducted from 137 polling units of the Constituency. It is easily discernible from the pleading, facts supporting the petition and the evidence that the 3rd respondent has won at least 109 polling units out of 137 polling units as indicated in paragraph 20 of the petition. That means the 3rd respondent has at least 90% of the votes cast in that Constituency.

It is a trite principle of law that what is admitted does not require further proof, in the instance case, the above facts. Margin of lead principle cannot therefore be invoked in the circumstances of this petition.

This is because as contended by the respondents and admitted by the petitioners, that the said disputed 5 or 6 wards consisting of 28 polling units, but which no evidence is led on them, are very insignificant in the circumstances of this case because the 3rd respondent leads in the said election.

We really wonder how, even if the petitioners proved the substantial non – compliance with the Act how that non compliance will impact on the result. Since even if the 28 polling units result is deducted from the 137 polling units, the 3rd

respondent would have still won the election by at least 90% of the polling units result of the Constituency under review.

Finally, the petitioners have clearly failed to prove by relevant, credible and admissible evidence, the elaborate but inconsistent allegations made in the petition. It is in not dispute that facts may have been pleaded but they were challenged by the adversaries on the other side of the aisle. Witnesses with credible evidence were not however made available to prove these contested assertions.

Accordingly, we hold that the petitioners have not been able to establish any of the **grounds** upon which the petition was brought. Cases are determined on the strength and quality of evidence adduced before the tribunal. Where the evidence led is palpably weak or tenuous, it means that the case has not been established.

We accordingly hold that **Reliefs sought** are really not availing.

The petition, accordingly fails and it is hereby dismissed.

This petition is wholly bereft and devoid of any merit or substance. It is hereby dismissed with ₦150, 000 costs payable to the Respondents, N50, 000 each.

HON. JUSTICE AHMAD MUHAMMAD GIDADO

MEMBER 1

Appearances:

1. **Bertram Faotu, Esq., with C.C. Nwachukwu for the Petitioners.**

2. **Omonuwa Ogiemudia, Esq. with Elder Stanley S. Amakwe, Esq., for the 1st Respondent.**

3. **O.I. Orakwe Esq., with E.C. Kalu for the 2nd Respondent.**

4. **O.I. Orakwe, Esq., with S.C. Ifeakor , Esq., and Israel Maduka, Esq.,for the 3rd Respondent.**