

**IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY  
ELECTION PETITION TRIBUNAL, OVERRI, IMO STATE  
HOLDEN AT HIGH COURT 1 & 2 COMPLEX, MARARABA,  
NASARAWA STATE**

**On Thursday 26<sup>th</sup> day of October, 2023**

**BEFORE THEIR LORDSHIPS**

<b>HON. JUSTICE Y. HALILU</b>	<b>-</b>	<b>CHAIRMAN</b>
<b>HON. KADI M.G. ABUBAKAR</b>	<b>-</b>	<b>MEMBER I</b>
<b>HON. JUSTICE A.O. FAMILONI</b>	<b>-</b>	<b>MEMBER II</b>

**PETITION NO. EPT/IMO/SHA/59/2023**

**BETWEEN:**

<b>1. IHEONUKARA JOHNSON DURU</b>	}	<b>PETITIONERS</b>
<b>2. ALL PROGRESSIVES CONGRESS (APC)</b>		

**AND**

<b>1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)</b>	}	<b>RESPONDENTS</b>
<b>2. AZODO VITALIS NDUBUISI</b>		
<b>3. ACCORD PARTY</b>		

## **JUDGMENT**

The 1<sup>st</sup> Petitioner, Iheonukara Johnson Duru who was sponsored by his Political Party, the All Progressive Congress (APC) to contest Election into the Imo State House of Assembly for Ideato South Local Government Area, was declared the winner and returned as such on the 18<sup>th</sup> March, 2023.

The Independent National Electoral Commission (INEC), the 1<sup>st</sup> Respondent in this petition, declined to issue him with certificate of return but rather ordered for a Supplementary Election which was conducted on the 15<sup>th</sup> April, 2023 whereupon the 2<sup>nd</sup> Respondent was declared winner of the Election.

Dissatisfied with the declaration and return, the Petitioners then filed the instant **Petition No. EPT/IM/SHA/59/2023** before the National and State House of Assembly Election Petition Tribunal, at the Tribunal Registry, Owerri, on the 5<sup>th</sup> May, 2023.

The Petitioners contended in the said Petition that;

- a. 2<sup>nd</sup> Respondent was not duly elected by majority of lawful votes cast at the Election.

For above reasons, Petitioners sought for the following reliefs from the Tribunal, as follows:-

1. A declaration that the 2<sup>nd</sup> Respondent did not score the majority of lawful votes cast in the Election for the seat of the member,

representing Ideato South State Constituency, in the Imo State House of Assembly, held on 18<sup>th</sup> March, 2023.

2. A declaration that the 1<sup>st</sup> Petitioner scored the majority of lawful votes in the said election, held on the 18<sup>th</sup> day March, 2023, is and remains the winner of the election to elect the member representing Ideato South State Constituency into the Imo State House of Assembly.
3. A declaration of the Honourable Tribunal that the declaration by 1<sup>st</sup> Respondent that the 1<sup>st</sup> Petitioner won the election of 18<sup>th</sup> March 2023 for Ideato South State Constituency, is still subsisting, valid and binding on all the parties.
4. A declaration that, having declared the 1<sup>st</sup> Petitioner the winner of the election of 18<sup>th</sup> March 2023, the 1<sup>st</sup> Respondent lacks the vires to make any other declaration, other than by an order of a competent Election Petition Tribunal.
5. A declaration of the Honourable Tribunal that the declaration by the 1<sup>st</sup> Respondent on the 15<sup>th</sup> of April, 2023, that the 2<sup>nd</sup> Respondent won the election for Ideato South State Constituency is null and void.
6. An order of the Honorable Tribunal setting aside the Certificate of Return, issued to the 2<sup>nd</sup> Respondent for Ideato South State Constituency in the Imo State House of Assembly.
7. An order directing/compelling the 1<sup>st</sup> Respondent to issue a certificate of return to the 1<sup>st</sup> Petitioner, as the winner of that election,

conducted on the 18<sup>th</sup> day of March, 2023, for Ideato South State Constituency.

***In the alternative, if the Honourable Tribunal finds merit in the Supplementary Election held on the 15<sup>th</sup> day of April 2023:***

1. A declaration of the Honourable Tribunal that the 2<sup>nd</sup> Respondent did not score the majority of lawful votes cast during the Supplementary election of 15<sup>th</sup> of April, 2023.
2. A declaration of the Honourable Tribunal that the 1<sup>st</sup> Petitioner scored the majority of lawful votes cast at the Supplementary election, held on the 15<sup>th</sup> April, 2023.
3. A declaration of the Honourable Tribunal, that by a combination of the votes scored by the 1<sup>st</sup> Petitioner on the 18<sup>th</sup> day of March 2023 and 15<sup>th</sup> day of April, 2023, the 1<sup>st</sup> Petitioner scored the majority of lawful votes cast during the Election(s) to elect the member representing Ideato South State Constituency in the Imo State House of Assembly.
4. A declaration that the 1<sup>st</sup> Petitioner is the winner of the election(s) to elect the member representing Ideato South State Constituency into the Imo State House of Assembly.
5. An order directing the 1<sup>st</sup> Respondent to withdraw and cancel the Certificate of Return which it issued the 2<sup>nd</sup> Respondent in this Petition.

6. An order directing/compelling the 1<sup>st</sup> Respondent to issue a Certificate of Return to the 1<sup>st</sup> Petitioner as the winner of that election conducted on the 18<sup>th</sup> day of March, 2023 and 15<sup>th</sup> day of April, 2023.

The facts of the Petition as contended by the 1<sup>st</sup> Petitioner is on the ground that after the declaration and return of the 1<sup>st</sup> Petitioner herein as duly elected after the election of the 18<sup>th</sup> day of March, 2023, the 2<sup>nd</sup> Respondent herein as a petitioner, approached the National and State Houses of Assembly Election Tribunal on the 8<sup>th</sup> day of April 2023, in Petition No. **EPT/IM/SHA/36/2023**.

That inspite of the fact that no lawful impediment affected the election, which was held and concluded on the 18<sup>th</sup> day of March, 2023, in which a declaration and return was made and the pending petition filed by the 2<sup>nd</sup> Respondent herein, the 1<sup>st</sup> Respondent went ahead and purported to fix and conduct what it termed "Supplementary Elections" in Seven (7) Polling Units of Ugbelle Ward, whereof the 1<sup>st</sup> Petitioner still went ahead and scored the highest number of lawful votes cast at the said Polling Units of Ugbelle ward in Ideato South State Constituency in that so called "Supplementary election", and that 1<sup>st</sup> Petitioner had led the other contestants in the election, held on 18<sup>th</sup> March, 2023 on the basis of which he was duly declared and returned as the winner of the said Election after garnering the majority of lawful votes cast.

These results, which are hereby pleaded, were uploaded by the Ad-hoc staff of the 1<sup>st</sup> Respondent who acted as the Presiding Officer in charge of the stated polling units into the IREV platform of the 1<sup>st</sup> Respondent.

The Petitioners pleaded copies of the various polling Units of **Ugbelle** ward of Ideato South State Constituency which was downloaded by the 1<sup>st</sup> Petitioner from the 1<sup>st</sup> Respondent's Portal on the 15<sup>th</sup> day of April, 2023. The Petitioners plead further that the said polling unit results downloaded from the 1<sup>st</sup> Respondent's IRev Portal, was produced via the 1<sup>st</sup> Petitioner's HP Laptop Computer, enabled by a mobile Hotspot of the 1<sup>st</sup> Petitioner's Mobile phone, enabled via Firefox Application and printed via his HP Laser Jet P2035 Printer, during a period that the Computer and the printer were regularly used to store or process information for the purpose of any activities regularly carried on over that period and that over that period, there was regularly supplied to the Computer and the printer in the ordinary course of those activities, information of the kind contained in the printout from which the information so contained is derived, and that throughout the material part of those periods the Computer and the printer were operating properly, and that the information herein pleaded as contained in the Polling Units results printout is derived from the information supplied to the said Computer and printer in the ordinary course of those activities. A certificate of compliance by the 1<sup>st</sup> Petitioner is further pleaded. The 1<sup>st</sup> Petitioner hereby gives notice to the 1<sup>st</sup> Respondent to produce the uploaded versions of the results which it uploaded into its IRev. Platform for the Supplementary Election which it

conducted on the 15<sup>th</sup> April, 2023 for the Seven (7) Polling Units of Ugbelle Ward.

That the 1<sup>st</sup> Respondent contrary to the results, which emanated from the Polling Units in Forms EC8A(1)s, entered into the Form EC8B(1) results which are different from the ones which it duly uploaded into its IRev Platform.

That the 1<sup>st</sup> Respondent, flowing from the wrong results, proceeded to make another unlawful EC8E(1) for the election of 15<sup>th</sup> April 2023.

From the results of the election which was held on 18<sup>th</sup> of March, 2023 after collation, the total results polled by the 1<sup>st</sup> Petitioner amounted to 4,907 votes, while the 2<sup>nd</sup> Respondent polled 3,996 votes.

The Petitioners contended that they shall rely on all the letters of appointments and voters' cards of the Polling Units, Ward Collation, and State Constituency Collation Agents of the Petitioners, Voters register for Ideato South State Constituency, INEC Forms EC8A(1), EC8B(I), EC8C(1), EC8D(1) & EC8E(I) for the elections Receipts evidencing payment for certification of documents, 1<sup>st</sup> Respondent's Regulation and Guidelines for the conduct of the Elections 2022. The Petitioners shall also rely on the certified true copies of the IRev Print-out made by the 1<sup>st</sup> Respondent herein, dated the 18<sup>th</sup> day of April, 2023 together with the Certificate of compliance in line with Section 84 of the Evidence Act.

That the general elections to elect the member representing Ideato South Constituency into the Imo State House of Assembly was conducted on the

18<sup>th</sup> day of March, 2023 across all the Wards and Polling Units which makeup, Ideato South State Constituency, and that at the close of the polls, across the different Polling Units and Wards, results of the elections were duly collated and the 1<sup>st</sup> Petitioner was duly declared as the winner of the election by the 1<sup>st</sup> Respondent. The Petitioners pleaded certified true copies of INEC Forms EC8A(I), EC8B(1), EC8C(I), EC8E(I) used for the conduct of the elections which took place on the 18<sup>th</sup> day of March, 2023.

Sequel to the above declaration and return of the 1<sup>st</sup> Petitioner herein, the 30<sup>th</sup> of March, 2023 was slated by the 1<sup>st</sup> Respondent to the 1<sup>st</sup> Petitioner herein in addition to other successful candidates across the other state constituencies in Imo State, to come and collect their Certificates of Return having been declared the winners of the said election.

From that time on the 18<sup>th</sup> of March 2023, when the said declaration was made in favour of the 1<sup>st</sup> Petitioner herein, no further correspondence was made to him by the 1<sup>st</sup> Respondent herein or any of its agents to come for anything except to collect his Certificate of Return.

That on the 30<sup>th</sup> day of March 2023, the 1<sup>st</sup> Petitioner went to the office of the 1<sup>st</sup> Respondent which is at Port-Harcourt Road Owerri with other successful candidates in the said Election which held on the 18<sup>th</sup> March, 2023 to collect his Certificate of Return.

On getting to the said office of the 1<sup>st</sup> Respondent herein, the 1<sup>st</sup> Respondent without any justification whatsoever, withheld/refused to issue the Certificate of Return due to the 1<sup>st</sup> Petitioner herein.

In response to the said development, the Petitioners through their solicitor wrote the 1<sup>st</sup> Respondent by a letter dated the 30<sup>th</sup> day of March, 2023 demanding for the release of the said Certificate of Return which is due to the 1<sup>st</sup> Petitioner herein. The Petitioners hereby give the 1<sup>st</sup> Respondent Notice to Produce the Original copy of the said demand letter written by the Petitioners solicitor to it.

On the 8<sup>th</sup> day of April, 2023, the 2<sup>nd</sup> Respondent herein approached the National & State Houses of Assembly Election Petition for Imo State in Petition No. **EPT/IM/SHA/36/2023**. The certified True copy of the said Petition number **EPT/IM/SHA/36/2023** and its accompanying processes shall be relied upon by the Petitioner herein.

Despite the pendency of the said petition, before the election petition Tribunal and inspite of the declaration made by the 1<sup>st</sup> Respondent declaring the 1<sup>st</sup> Petitioner as the winner of the said election conducted on the 18<sup>th</sup> March 2023, the 1<sup>st</sup> Respondent went ahead and purported to fix and conduct what it termed "Supplementary Elections" in the seven (7) Polling Units of Ugbelle Ward of Ideato South State Constituency.

The 1<sup>st</sup> Respondent, at all times material, from the conduct, collation, declaration and return made in the elections in which the 1<sup>st</sup> Petitioner herein emerged the winner as duly declared by the 1<sup>st</sup> Respondent up to the 8<sup>th</sup> day of March, 2023, never communicated the Petitioners herein of any further action which it had taken against the said election conducted on the 18<sup>th</sup> March, 2023 in which the 1<sup>st</sup> Petitioner herein emerged the winner of the said election and was duly declared as elected and returned,

and that the declaration and return of the 1<sup>st</sup> Petitioner as the winner of that election conducted on the 18<sup>th</sup> March 2023 was done in substantial compliance with The Electoral Act, Regulations and Guidelines for the conduct of the General Elections, and same was voluntary, lawful and in substantial compliance with the Provisions of the extant laws guiding the conduct of the General Elections.

That it is only an Election Petition Tribunal that can question the declaration and return of the 1<sup>st</sup> Petitioner herein as the winner of that election conducted on the 18<sup>th</sup> March, 2023.

Upon receipt of service of the petition, 1<sup>st</sup> Respondent filed Reply to the Petition and traversed the claims of the Petitioner in one breath and admitted some of the part of the Petition.

1<sup>st</sup> Respondent denies paragraph 2 of the Petition to the extent that the Petitioners has no right to present the Petition having lost at the poll and failed to score the majority of the lawful votes cast after the final collation of valid votes cast

1<sup>st</sup> Respondent also denied paragraph 3 of the Petition and states that the 1<sup>st</sup> Petitioner has no right to be returned after the final collation and conclusion of the election having failed to score majority of the valid votes cast in accordance with the Electoral Act 2022, the 1<sup>st</sup> Respondent 2022 Regulations and Guidelines.

In further denial of Paragraph 3 of the Petition, the 1<sup>st</sup> Respondent states that the 2<sup>nd</sup> Respondent scored majority of the lawful and valid votes cast

after the final collation of the Election result including the supplementary election and thus was rightfully returned as the winner of the Election.

It is the submission of counsel that, the 1<sup>st</sup> Respondent denies paragraph 4 of the petition and states that although the 2<sup>nd</sup> Petitioner sponsored the 1<sup>st</sup> Petitioner, the Petitioners failed to score majority of the valid votes cast at the General Election held on 18<sup>th</sup> day of March 2023 and did not also score majority of the lawful votes cast after the final collation of the first election held on the 18<sup>th</sup> day of March 2023 and the supplementary held on the 15<sup>th</sup> of April 2023.

The 1<sup>st</sup> Respondent admits Paragraph 5 of the petition and further states that the 1<sup>st</sup> Respondent conducted the Imo State House of Assembly Election for Ideato South State Constituency held on the 18<sup>th</sup> day of March 2023 and the 15<sup>th</sup> day of April 2023 in substantial compliance with the Electoral Act and the 1<sup>st</sup> Respondent regulations and guidelines, Manuals and other extant laws.

Learned counsel submitted that in Response to Paragraph 6 of the Petition, the 1<sup>st</sup> Respondent states the 2<sup>nd</sup> Respondent was the candidate of the 3<sup>rd</sup> Respondent duly sponsored by the 3<sup>rd</sup> Respondent to cut the Imo State House of Assembly Election for Ideato South State Constituency and the 2<sup>nd</sup> Respondent did win the election.

In response to Paragraph 7 of the Petition the 1<sup>st</sup> Respondent states that the 3<sup>rd</sup> Respondent sponsored the 2<sup>nd</sup> Respondent who won the election squarely against the Petitioners.

Learned counsel also contended that, the 1<sup>st</sup> Respondent through the instrumentality of its official, the ad-hoc staff and other staff including assistant presiding officer, presiding officers, supervising presiding officers, collating officers, electoral officers and returning officers all complied with their statutory role and obligation in the conduct of the Imo State House of Assembly Election for Ideato South State Constituency including but not limited to accreditation of voters, sorting of votes, counting of the ballot cast, collation of the results of the polls and declaration of the result.

The 1<sup>st</sup> Respondent denies paragraph 9 of the Petition and states that the Petitioners does not have the right to present this Petition nor question the validity of the supplementary election having failed score majority of the valid votes cast.

In further denial of Paragraph 9 of the Petition the 1<sup>st</sup> Respondent states that the declaration and return of the 2<sup>nd</sup> Respondent as the winner of the election was lawful and valid having scored the majority of the Valid votes cast and satisfy the constitutional widespread required by the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Electoral Act 2022.

In response to Paragraph 10 of the Petition, the 1<sup>st</sup> Respondent states that the 1<sup>st</sup> Petitioner was erroneously declared by the 1<sup>st</sup> Respondent as the winner of the 18<sup>th</sup> March Election for Ideato South State Constituency contrary to the provisions of the law, regulations and guidelines and manual for the election.

In further response to Paragraph 10 of the Petition, upon application by the Respondent and other candidates in the election, the 1<sup>st</sup> Respondent pursuant to Section 65 of the Electoral Act reviewed the election and discovered that;

- i. The 1<sup>st</sup> Petitioner did not score majority of the lawful and valid vote cast in the votes or results recorded and transmitted directly from the Polling Units under section 60 (4) and 64 of the 2022 Electoral Act.
- ii. The 2<sup>nd</sup> Respondent was leading with the valid votes cast or results recorded and transmitted directly from the Polling Units.
- iii. Election was not conducted in Ugbelle Ward of Ideato State Constituency as a result of violence.
- iv. The 2<sup>nd</sup> Respondent Scored 3,990 while the 1<sup>st</sup> Petitioner scored 3,053 in the votes or results recorded and transmitted directly from the Polling Units on the 18<sup>th</sup> March 2023.
- v. The Margin of lead between the 2<sup>nd</sup> Respondent and 1<sup>st</sup> Petitioner in the votes or results recorded and transmitted directly from the Polling Units was less than the registered voters in Ugbelle Ward.

Counsel further stated that, the 1<sup>st</sup> Respondent in line with Section 24 (2&3), Section 51 (2) of the Electoral Act and Paragraph 85 of the 1<sup>st</sup> Respondent 2022 Regulations and Guidelines appointed the 15<sup>th</sup> day of April 2023 to conduct supplementary election in Ugbelle Ward as a result of the fact that the election was affected by the margin of lead principle.

Learned counsel contends that the 1<sup>st</sup> Respondent denies paragraph 12 of the Petition and states that the result relied on by the Petitioners in the said paragraph was made in error and contrary to the Electoral Act, 1<sup>st</sup> Respondent Regulations and guidelines, and her manual. The result (Form EC8E (1)) was not a product of the Results recorded and transmitted directly from the Polling Units.

In further denial of paragraph 12 of the Petition, the 1<sup>st</sup> Respondent states that from the results directly recorded and transmitted from Polling Units and uploaded on IREV, the 2<sup>nd</sup> Respondent Scored 3,990 while the 1<sup>st</sup> Petitioner Scored 3,053 votes.

It is the submission of counsel that 1<sup>st</sup> Respondent refutes and denies the unfounded ground relied upon by the Petitioners in Paragraph 15 of the Petition in questioning the election, declaration, and return of the 2<sup>nd</sup> Respondent as the winner to the office of the member Imo State House of Assembly Representing Ideato South State Constituency as contained in the Ground, that is, that the Respondents was not duly elected by majority of lawful votes cast at the election. The Petitioners shall be put to the strictest proof of the said baseless and incompetent grounds at the trial.

The 1<sup>st</sup> Respondent denies Paragraph 17 of the Petition and states that the 1<sup>st</sup> Respondent rightfully reviewed the election of 18<sup>th</sup> March 2023 and discovered that the collation, declaration and return made did not emanate from collation of Form EC8A(1)'s recorded and transmitted directly from polling units. ie uploaded on IREV, contrary to the requirement of the Electoral Act and guideline for the conduct of election and also that the

margin of lead was lesser than the number of registered voters in Ugbelle Ward where election didn't hold as a result of disruption of election.

The 1<sup>st</sup> Respondent in response to Paragraph 18 of the Petition states that the 1<sup>st</sup> Petitioner won the supplementary election, but did not win the majority of the lawful votes cast after the final collation of all the results directly recorded and transmitted from the polling Units in the 13 Wards of the Ideato State Constituency. The 2<sup>nd</sup> Respondent polled majority of the lawful and valid votes cast after final collation of the result and as such was rightfully declared as the winner.

The 1<sup>st</sup> Respondent denies Paragraph 19 of the Petition and states that the Petitioner was erroneously declared by the 1<sup>st</sup> Respondent as the winner of the 18<sup>th</sup> March Election for Ideato South State Constituency contrary to the provisions of the law, regulations and guidelines and manual for the election. The results relied on in the said declaration were not results recorded and transmitted directly from the Polling Units under section 60 (4) and 64 of the 2022 Electoral Act.

Learned counsel also submitted that 1<sup>st</sup> Respondent denies Paragraph 20 of the petition and states that the supplementary election was conducted in seven (7) Polling Units. Six of the polling units were affected by over voting, leading to cancellation of votes emanating from the polling units in line with section 51 (2) of the Electoral Act. The polling units which votes were vitiated by over-voting includes Polling Units 002 (Uhualla Village Hall I), 003 (Eluama Hall II), 004 Uhualla Village Hall II), 005 (Uhualla Village Hall III), 006 (Ama-obi Hall Eluama), and 007 (Comprehensive Sec. Sch.

Ugbelle) in Ughelle Ward of Ideato South State Constituency. It was discovered that the number of voters accredited by BVAS was less than the total votes cast at the various units as follows:

- a. In Polling Unit 002, the total number of Accreditation on BVAS is 43 while total votes cast is 385
- b. In Polling Unit 003, the total number of Accreditation on BVAS is 0 while total votes cast is 340
- c. In Polling Unit 004, the total number of Accreditation on BVAS is 476 while total votes cast is 505
- d. In Polling Unit 005, the Accreditation on BVAS is 22 while total votes cast is 410
- e. In Polling Unit 006, the total number of Accreditation on BVAS is 470 while total votes cast is 501
- f. In Polling Unit 007, the total number of Accreditation on BVAS is 16 while total votes cast is 38.

In further denial of Paragraph 20 of the petition, the 1<sup>st</sup> Respondent states that it was only Polling Unit 001 (Eluama Hall 1) that the total votes casted was lesser than the total accredited voters. Total Number of voters Accredited by the BVAS Machine is 433 while the Total Votes cast is 400. APC Scored 345 and Accord Scored 0.

Further to Paragraph 22 above, the 1<sup>st</sup> Respondent states that when the valid votes in the supplementary was collated with the votes polled by the

parties in the 18<sup>th</sup> March 2023 election, the 1<sup>st</sup> Petitioner Scored 3,398 votes while the 2<sup>nd</sup> Respondent polled 3,990 votes. Thus the 2<sup>nd</sup> Respondent scored the Majority of the lawful votes cast and was indeed declared the winner of the election pursuant in accordance with the Electoral Act 2022 and 1<sup>st</sup> Respondent 2022 regulations and guidelines for the conduct of election.

The 1<sup>st</sup> Respondent in response to Paragraph 21 of the Petition states that the results from the seven polling units of Ugbelle Ward uploaded on IREV when compared to number of accredited voters in the seven polling units, it was discovered that six of the polling units earlier mentioned were vitiated by over voting and non-compliance.

The 1<sup>st</sup> Respondent denies Paragraph 23 of the petition and hereby puts the petitioners in strict proof of their baseless assertions contained therein. All forms and results relied on in the declaration of the 2<sup>nd</sup> Respondent including Form EC8E(1) are valid. The return of the 2<sup>nd</sup> Respondent is lawful

The 1<sup>st</sup> Respondent denies Paragraph 24 of the Petition and states that after collation of the Results recorded and transmitted directly from the polling unit in the election held on 18<sup>th</sup> March 2023, the 1<sup>st</sup> Petitioner Scored 3,053 while the 2<sup>nd</sup> Respondent Polled 3,990

The 1<sup>st</sup> Respondent denies Paragraph 25 of the petition and states that after final collation of both the Election and the supplementary election, the 2<sup>nd</sup> Respondent won the Election with a total score of 3,990 while the 1<sup>st</sup> Petitioner polled 3,398. The 1<sup>st</sup> Respondent shall at the trial of this

petition rely on Form EC8A (1)'s recorded and transmitted from the polling units, Form EC8B(1)'s, Form EC8C(1) and Form EC8E(1) relied on in declaring the 2<sup>nd</sup> Respondent.

The 1<sup>st</sup> Respondent denies paragraph 27 of the Petition and states that election did not hold in Ugbelle Ward as a result of disruption of election in all the polling Units within the ward.

Counsel submit in response to paragraph 28 of the petition, the 1<sup>st</sup> Respondent states that the 2<sup>nd</sup> Respondent was leading in the election conducted on the 18<sup>th</sup> day of March 2023 after collation of the Form EC8A(1)'s recorded and transmitted from the polling unit.

In response to Paragraph 29, 30, 31, 32, 33, 34 and 36 of the petition, the 1<sup>st</sup> Respondent states that after the erroneous declaration of the 1<sup>st</sup> Petitioner, the 2<sup>nd</sup> Respondent and other candidates applied for review of the election, consequent upon which 1<sup>st</sup> Respondent reviewed the election and discovered that the declaration of the 1<sup>st</sup> Petitioner was not a product of collation of the votes or results recorded and transmitted directly from the polling unit (uploaded on IREV) and that the margin of lead between the candidates was less than the number of registered voters in Ugbelle Ward where election was disrupted, consequent upon which a supplementary election was scheduled to hold in Ugbelle ward.

Counsel contends that the 1<sup>st</sup> Respondent denies Paragraph 37 and 38 of the Petitions and states that the declaration of the 1<sup>st</sup> Petitioner after the election of 18<sup>th</sup> March 2023 was made contrary to the provisions of the Electoral Act, 1<sup>st</sup> Respondent Regulations and Guidelines and the manual

for the election. i.e the collation and declaration wasn't a product of the result directly recorded and transmitted from the polling units and the election was affected by the margin of lead principle.

The 1<sup>st</sup> Respondent denies Paragraph 39 of the Petition and states that the 1<sup>st</sup> Respondent reviewed the declaration and return of the 1<sup>st</sup> Petitioner pursuant to section 63 of the Electoral act having been made contrary to the provisions of the electoral Act 2022, 1<sup>st</sup> Respondent Regulations and Guidelines and the manual for the election.

Learned counsel further submits that in further denial of the Paragraph 39, the 1<sup>st</sup> Respondent states that, the 1<sup>st</sup> Respondent relied on Form EC8A(1)'s recorded and transmitted directly from the polling units in both the election held on 18<sup>th</sup> day of March 2023 and 15<sup>th</sup> April 2023.

The 1<sup>st</sup> Respondent pleaded all the Forms and documents used for the Election and also pleaded the guidelines and Electoral Act, 2022.

WHEREOF the 1<sup>st</sup> Respondent respectively urges this Honourable Tribunal to dismiss the petition in its entire ramification with deterrent cost as the petition is devoid of merit, gold digging, red herring, most vexatious and frivolous.

On the part of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, they contended in their joint reply that all facts contained in the Petition are false same for those admitted expressly.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondent denies Paragraphs 2 and 3 of the Petition and puts the Petitioners to the strictest proof thereof.

Paragraphs 5, 6 and 7 of the Petition have been admitted and 2<sup>nd</sup> Respondent further states that as the candidate of the 3<sup>rd</sup> Respondent, he was elected by the majority of lawful votes cast at the election and duly returned as the member-elect for Ideato South State Constituency in the Imo State House of Assembly.

2<sup>nd</sup> and 3<sup>rd</sup> Respondents denies Paragraph 8 of the Petition and puts the Petitioners to the strictest proof thereof; and in further answer thereto states that apart from its polling agents duly accredited by the 1<sup>st</sup> Respondent (INEC), all ***"other presiding officers, assistant presiding officers, supervising presiding officers ad-hoc staff of any description in all the polling units, voting points, as ward collation officers in the collation centers, as Local Government Collation officer, at the Local Government Collation center"*** were all known agents of and acted for the Petitioners in the elections.

The 2<sup>nd</sup> Respondent further aver that he is the candidate nominated and sponsored by Accord Party (3<sup>rd</sup> Respondent) in the election Ideato South State Constituency in the Imo State House of Assembly held on 18<sup>th</sup> March, 2023. The 2<sup>nd</sup> Respondent's Nomination Form and Voter's Card are hereby pleaded.

In answer to Paragraphs 10 to 14 of the Petition, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents states as follows:

- i. The election was duly conducted and held in all the Polling Units of Ideato South Local Government Area of Imo and in compliance with the Electoral Act, 2022, at the end of which he got the highest

number of lawful votes and is therefore entitled to be returned elected as the member-elect representing the Ideato South State Constituency in the Imo State House of Assembly.

- ii. By the results, records and details of the 1<sup>st</sup> Respondent, the election was duly held and conducted in all the polling units in Ideato South State Constituency of Imo State and the Petitioner received the highest number of lawful votes cast except few polling units, where due to supervening insecurity caused and instigated by the Petitioners, the election could not practicably hold,
- iii. The 1<sup>st</sup> Petitioner did not win any of the election for the Ideato South State Constituency in the Imo State House of Assembly, as he did not score the highest number of votes cast at the election of 18<sup>th</sup> March, 2023 or the subsequent re-run of 15<sup>th</sup> April, 2023.
- iv. According to the scores as declared by the 1<sup>st</sup> Respondent on 18<sup>th</sup> March, 2023 (which result sheets are hereby pleaded), the candidates at the Ideato South State Constituency election scored as follows:

- 1. Accord Party = 3,990
- 2. AA = 17
- 3. AAC = 19
- 4. ADC = 17
- 5. ADP = 16
- 6. **APC = 3,053**
- 7. APGA = 19
- 8. APM = 14
- 9. APP = 2
- 10. BP = 8

- 11. **LP** = **2,474**
- 12. NNPP = 13
- 13. NRM = 3
- 14. **PDP** = **1,180**
- 15. PRP = 4
- 16. SDP = 0
- 17. YPP = 8
- 18. ZLP = 23

The 2<sup>nd</sup> Respondent denies paragraph 15 of the Petition and puts the Petitioners to the strictest proof thereof,

In answer to paragraph 16 of the Petition, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent states that **EPT/IM/SHA/36/2023** was competently instituted following the earlier delay of the 1<sup>st</sup> Respondent (INEC) to declare and return the 2<sup>nd</sup> Respondent as the winner of the election; and in view of the fact that the he had a limited time from the date of the declaration of the results to challenge the outcome, he instituted the said petition as a pre-emptive measure to safeguard his mandate.

In further answer to the above, the earlier Petition in **EPT/IM/SHA/36/2023** has since been withdrawn following the due declaration of the results of the election and the return of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as the winner and the initial filing or withdrawal of the said Petition does not presuppose that the 1<sup>st</sup> Petition won the said election in any manner whatsoever. The Order of the Honourable Tribunal discontinuing **EPT/IM/SHA/36/2023** is hereby pleaded.

In answer to the averments at paragraphs 17 to 40 of the Petition, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents states as follows:

- a. At the election of 18<sup>th</sup> March, 2023, the 1<sup>st</sup> Petitioner scored only 3,053 votes which was not the majority of lawful votes cast at the election and was not entitled to be declared, announced and returned as having been elected for the Ideato South State Constituency in the Imo State House of Assembly in the 2023 General elections.
- b. The Ideato South State Constituency of Imo State, in which the election took place on 18<sup>th</sup> March, 2023, has a total of 152 polling units and 13 Wards. The 13 Wards are as follows:
  - i. Amanator/Umueshi
  - ii. Dikenafai
  - iii. Isiekenesi I
  - iv. Isiekenesi II
  - v. Ntueke
  - vi. Obioha
  - vii. Ogboko I
  - viii. Ogboko II
  - ix. Umuakam/Umuago
  - x. Umuchima
  - xi. Umuma Isiaku
  - xii. Umuobom
  - xiii. Ugbelle
- c. The accreditation and voting took place in all the Polling units of the 13 Ward except in the one ward of Ugbelle and the results were duly uploaded to the NEC Central Server, BVAS and the IRev portal; and the summary of the Results from the 13 Wards of Ideato South LGA at the 18<sup>th</sup> March, 2023 election are as follows:
- d. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents hereby pleads the Results Sheets, BVAS Report and BVAS for the Ideato South State Constituency of Imo

State as uploaded contained and contained in the INEC Central Server and the IRev portal.

- e. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents further states that by the results of the election held on 18<sup>th</sup> March, 2023, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents scored a total number of 3,990 votes, which is the majority of lawful votes cast as against the 3,053 votes scored by the 1<sup>st</sup> Petitioner; and therefore, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents ought to be declared, announced or returned as the winner of the election.
- f. It also averred that the above results or scores of the 2<sup>nd</sup> Respondent is in conformity with the results collated and declared in all the 152 polling units Potting Units and collated from the 13 Wards at the conclusion of the accreditation, voting and announcement of the results; as seen in the breakdown of the votes scored by the candidate in all the 152 Polling units of the 13 Wards in Ideato South above.
- g. At the trial of this Petition, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents shall found and rely upon all the Results sheets from the polling units in Ideato South LGA including INEC Form EC8A(1) and the data or contents of the back-end of the Bimodal Voters Accreditation System (BVAS), the BVAS machine used in the election.

In further answer to Paragraphs 17 to 40 of the Petition, the 2<sup>nd</sup> Respondent avers that at the conclusion of the election on 18<sup>th</sup> March, 2023 and upon the insistence of the Petitioners, the 1<sup>st</sup> Respondent ordered for a supplementary election in Ugbelle Ward; on grounds of

insecurity occasioned by the act and conduct of the Petitioners and their agents, thugs and supporters.

Learned counsel submit that, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents avers that Ugbelle Ward in Ideato South is the immediate Ward of the 2<sup>nd</sup> Respondent, where he has his considerable support base, family members, and friends amongst the potential voters and with high probability of win at any time.

2<sup>nd</sup> and 3<sup>rd</sup> Respondents avers that Ugbelle Ward in Ideato South has a total of 7 Polling Units to wit: PU 001 to PU 007 with a total number of 3,923 registered voters, and that the total number of Permanent Voters' Card collected is **3,888**.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents hereby pleads the Voters Register showing the total number of registered voters and the number of the PVC's collected in Ugbelle Ward.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents also avers that the supplementary election held on 15<sup>th</sup> April, 2023 was marred by considerable insecurity occasioned and instigated by the Petitioners, upon seeing that the 2<sup>nd</sup> Respondent was winning massively; thereby causing them to resort to massive rigging, forgery of results and mutilation of the results sheets and inflation of the results thereby leading to irreconcilable over-voting in 6 out of 7 polling voting units in Ugbelle Ward.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents avers that at the supplementary election held on 15<sup>th</sup> April, 2023; the 1<sup>st</sup> Respondent manipulated and re-wrote the

results and ascribed a total of 2,211 votes to himself and incredibly ascribed 0 (zero) vote to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in his own Ward; in manipulating the results, the Petitioners overlooked the glaring number of registered voters, number of PVC's collected and the accreditation of voters in the BVAS machine at the election.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents further avers that the 6 polling units of Ugbelle, where the Petitioners caused and instigated the massive and irreconcilable over-voting are: PU 002, PU 003, PU 004, PU 005, PU 006 and PU 007 respectively.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents avers that the number of votes ascribed to the 1<sup>st</sup> Petitioner in the supplementary election on 15<sup>th</sup> April, 2023 is far greater than the number of accredited voters on the BVAS for the supplementary election of 15<sup>th</sup> April, 2023; and the breakdown of the manifest over-voting are as follows:

State	Local Government	Registration Area	Polling Unit	Delim	Total Accreditation on BVAS	Accreditation on Result Sheet
Imo	Ideato South	Ugbelle	Eluama Hall 1	16-06-06-001	433	400
Imo	Ideato South	Ugbelle	Uhualla Village Hall 1	16-06-06-002	43	385
Imo	Ideato South	Ugbelle	Eluama Hall II	16-06-06-003		340
Imo	Ideato South	Ugbelle	Uhualla Village Hall II	16-06-06-004	476	505
Imo	Ideato South	Ugbelle	Uhualla Village Hall III	16-06-06-005	22	405
Imo	Ideato South	Ugbelle	Ama-Obi Hall Eluama	16-06-06-006	470	501
	Ideato South	Ugbelle	Comprehensive Sec. Sch. Ugbelle	16-06-06-007	16	38
					<b>1460</b>	<b>2574</b>

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents hereby pleads the INEC Report, BVAS report, BVAS Machine, IRev Report, Result Sheets for the entirety of Ugbelle Ward

in the Supplementary election of 15<sup>th</sup> April, 2023 to establish the over-voting.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents shall at the hearing of this Petition urge the Honourable Tribunal to cancel, nullify, discountenance and deduct the scores or votes of PU 002, PU 003, PU 004, PU 005, PU 006 and PU 007 in Ugbelle Ward from the results of the Supplementary election held on 15<sup>th</sup> April, 2023, for being illegal, null, void and in contravention of the Electoral Act.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents further avers that when the 345 votes purportedly scored by the 1<sup>st</sup> Petitioner in Polling Unit 001 (Eluama Hall 1) in Ugbelle Ward, which is the only polling unit in the Supplementary election on 15<sup>th</sup> April, 2023, where no over-voting is presently established, is added to the original votes of the 1<sup>st</sup> Petitioner **(3,053)** in the main election of 18<sup>th</sup> March, 2023, the number of votes scored by the 1<sup>st</sup> Petitioner will be: **3,398** only which is still lesser than **3,990** being the majority of lawful votes scored by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent. This is shown below:

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents avers that with 3,990 majority of lawful votes, the 2<sup>nd</sup> Respondent is still leading the Petitioners with a considerable margin of 592 majority and lawful votes thereby making his election, return and declaration valid as the candidate with the majority of lawful votes cast at the elections.

Regarding the PU 002, PU 003, PU 004, PU 005, PU 006 and PU 007 in Ugbelle Ward, the 2<sup>nd</sup> Respondent avers that the over-voting was caused

and instigated by the Petitioners, who used stationed Armoured Personnel Carrier, used armed thugs and members of the Ebubeagu militia and others to attack, threaten and disperse the few voters that turned out to vote and thereby worsened the already tense insecurity in the Ward; and when the potential voters had been dispersed, the Petitioners had a feed day in manipulating the scores, result sheets, inflated the results in order to make up their votes to exceed the lawful votes scored by the 2<sup>nd</sup> Respondent; thereby resulting in the manifest over-voting in the polling units, and that the Petitioners having caused and instigated the high level of insecurity in the area, that led to the first cancellation of the results of the 18<sup>th</sup> March, 2023 election and the present: supplementary election of 15<sup>th</sup> April, 2023, cannot benefit from the crime or wrong; and it would be prejudicial to allow their legal manipulation of results leading to the over-voting to stand or to order any fresh or further supplementary election in the area, since supplementary election cannot hold endlessly for the benefit of the Petitioners, who are the guilty parties.

It is also stated that the level of insecurity created and instigated by the Petitioners in the area prior, during and after the election has reached an insurmountable level, such that future elections in the area has become impracticable.

It is further the averment of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents that Voters came out to vote for the 2<sup>nd</sup> Respondent, but were attacked and threatened by the Petitioners through their armed agents, thugs Ebubeagu militia and others and presently no voter in the entirety of Ugbelle Ward is willing to

risk his life in any future election in the Ward, due to the actions of the Petitioners, and that on the eve of the supplementary election, the Petitioners stationed or caused to be stationed, an Armoured Personnel Carrier in Ward, very close to his house, invaded his house with unknown gunmen, with a view to abducting and neutralising him; and ultimately ensured that all the voters, majority of whom are his supporters, did not vote and those that voted, were threatened to vote for the Petitioners.

That the declaration, announcement and return of the 2<sup>nd</sup> Respondent is valid, lawful and in accordance with the Electoral Act, 2022.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents prays this Honourable Tribunal on the whole to dismiss this Petition for lacking in merit and affirm the election of the 2<sup>nd</sup> Respondent for being in compliance with the Electoral Act.

Upon receipt of the 1<sup>st</sup> Respondent's reply to the petition, Petitioners counsel filed Reply to the 1<sup>st</sup> Respondent's reply to the Petition and debunked Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, & 23 of the 1<sup>st</sup> Respondent's Reply to the petition and in answer stated specifically that;

On the 31<sup>st</sup> day of March, when 1<sup>st</sup> Respondent published and distributed the names of Constituency where supplementary election is to be held on 15<sup>th</sup> April, 2023 Ideato South State Constituency was not among the Constituency listed. The Petitioners shall rely on the publication during trial.

Even after the 1<sup>st</sup> Respondent denied 1<sup>st</sup> Petitioner Certificate of Return on the 30<sup>th</sup> March, 2023, after enlisting the 1<sup>st</sup> Petitioners name among the recipients without any reason, Ideato South State Constituency was still not listed on 31<sup>st</sup> March, 2023 as among the places where there will be Supplementary Election on the 15<sup>th</sup> April, 2023.

The 1<sup>st</sup> Respondent never reviewed the said Election of 18<sup>th</sup> March, 2023 for the Ideato South State Constituency.

The 2<sup>nd</sup> Respondent never led in election of 18<sup>th</sup> March, 2023 for the Ideato South State Constituency, hence the declaration.

The 1<sup>st</sup> Petitioner was lawfully declared the winner of the election of 18<sup>th</sup> March, 2023 for the Ideato South State Constituency, by the 1<sup>st</sup> Respondent, as contained in the Form EC8E(I), dated 18<sup>th</sup> March, 2023.

The 1<sup>st</sup> Petitioner won the Supplementary Election of 15<sup>th</sup> April, 2023 for the Ideato South State Constituency.

That there was no over voting in any of the Polling Units stated for the re-run election of 15<sup>th</sup> April, 2023, in that the issue of margin of lead is not applicable to the facts of the election of the Ideato South State Constituency, the 1<sup>st</sup> Petitioner won the election of 18<sup>th</sup> March, 2023 by a landslide victory and was so declared by the 1<sup>st</sup> Respondent.

The Petitioners are entitled to their claims as same is meritorious and not fictitious.

At the close of pleadings, pre-hearing was conducted on the 10<sup>th</sup> day of July, 2023, and report presented on the 13<sup>th</sup> July, 2023, wherein parties agreed on the number of witnesses to be called etcetera etcetera.

Petition was then adjourned to the 20<sup>th</sup> day of July, 2023 for commencement of hearing.

Parties further agreed for the said Petition to be adjourned to the 29<sup>th</sup> July, 2023, for hearing.

The total number of witnesses called by both Petitioners and Respondents were four (4).

On the said date, Petitioners called two (2) witnesses while the 1<sup>st</sup> Respondent called one witness and 2<sup>nd</sup> and 3<sup>rd</sup> Respondents called one (1) witness respectively.

PW1, Nwufu Olisa Emeka, who came before the Tribunal as a subpoenaed witness identified himself as the Returning Officer for the Election held on the 18<sup>th</sup> March, 2023 for Ideato South State Constituency Election, Imo State.

PW1 tendered his appointment letter and subpoena which were admitted as Exhibits "17" and "18" respectively.

PW1 gave evidence to the effect that he declared the Winner of the Election held on the 13<sup>th</sup> March, 2023, and also identified Exhibit "15" as the Form he used for the declaration.

Under cross-examination, PW1 said he was before the Tribunal because he was asked by Olachi, the 1<sup>st</sup> Respondent Legal Officer to come after being served the subpoena.

He also stated the fact that he only saw the fact that the result of Ideato was being received on the internet.

The **1<sup>st</sup> Petitioner, IHEONUKARA JOHNSON DURU**, gave evidence as PW2. He stated as follows:

That he is a registered voter and a registered member of the All Progressives Congress and a citizen of the Federal Republic of Nigeria who contested the general election scheduled by the 1<sup>st</sup> Respondent (INEC) to hold on Saturday, the 18<sup>th</sup> day of March, 2023, to the office of the Member representing Ideato South State Constituency in the Imo State House of Assembly and the supplementary election fixed by the 1<sup>st</sup> Respondent after the declaration and return of the 1<sup>st</sup> Petitioner as the winner of the election conducted on the 18<sup>th</sup> day of March, 2023. As a candidate of the All Progressives Congress (APC) he has the right to present this petition. He also voted and was voted for, at the said general election and was voted for at the Supplementary Election which held on the 15<sup>th</sup> day of April, 2023 fixed by the 1<sup>st</sup> Respondent after declaring and returning the 1<sup>st</sup> Petitioner as the winner of that election which held on the 18<sup>th</sup> day of March, 2023.

That he, IHEONUKARA JOHNSON DURU, as the candidate of the 2<sup>nd</sup> Petitioner, in the said elections states that he has the right to be returned as elected, upon the conclusion of that election.

That the 2<sup>nd</sup> Petitioner is a Political Party duly registered in Nigeria and was the Political Party that sponsored me as its candidate for the said election to the House of Assembly of Imo State, in the general election which held on the 18<sup>th</sup> day of March, 2023 wherein he duly emerged the winner and supplementary election conducted on the 15<sup>th</sup> day of April, 2023, which he also duly won.

That the 1<sup>st</sup> Respondent was the Independent National Electoral Commission (INEC) a body created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) whose address is at 436 Zambezi Crescent Maitama District FCT Abuja and vested with the statutory duties of conducting elections for the offices created by the Constitution of the Federal Republic of Nigeria, it conducted the general election held on the 18<sup>th</sup> March, 2023 and the supplementary election held on 15<sup>th</sup> April, 2023, for Ideato South State Constituency of the Imo State House of Assembly.

That the 2<sup>nd</sup> Respondent, whose address is at Umuoriaku Village, Ugbelle Town, Ideato South Local Government Area, Imo State, was the candidate of the 3<sup>rd</sup> Respondent at that election pleaded above.

That the 3<sup>rd</sup> Respondent, a political party duly registered in Nigeria with its address at Plot 488, 7<sup>th</sup> Yauri Street, Area 3 Garki, Abuja FCT, Abuja.

That all persons who acted as Presiding Officers, Assistant Presiding Officers, Supervising Presiding Officers ad-hoc staff of any description in all the Polling Units, voting points, as Ward Collation Officers in the Collation Centres, as Local Government Collation Officer at the Local Government Collation Centre, as Resident Electoral Commissioner or in any other

capacity howsoever described, on behalf of the 1<sup>st</sup> Respondent at the aforesaid elections, acted as agents of the 1<sup>st</sup> Respondent.

That he and the 2<sup>nd</sup> Petitioner claim to have the right, to present this petition and the right to question the validity of the result of the supplementary elections, with which the 1<sup>st</sup> Respondent unlawfully declared the 2<sup>nd</sup> Respondent as the winner of the said election.

That he and the 2<sup>nd</sup> Petitioner state that the 1<sup>st</sup> Respondent conducted the aforesaid general election on the 18<sup>th</sup> March, 2023, wherein it duly declared him as the winner of that election and returned him as elected and after the declaration and return fixed the supplementary election for the 15<sup>th</sup> day of April, 2023, where the following candidates and political parties who the 1<sup>st</sup> Respondent published in its final list of candidates for the said election participated.

That he and the 2<sup>nd</sup> Petitioner hereby give notice to the 1<sup>st</sup> Respondent to produce the original Form EC8E(I) for the election which held on the 18<sup>th</sup> day of March, 2023. That he and the 2<sup>nd</sup> Petitioner hereby tenders the colour photocopies made of the counterpart original issued to him on the 18<sup>th</sup> day of March as the original copy can no longer be found by him after diligent search of same had been made without success.

That the wards in the State Constituency for which the general election was scheduled to hold consists of 13 wards namely:

1. Amanator/Umueshi Ward.
2. Dikenafai Ward.
3. Iseiekenesi I Ward.

4. Isiekenesi II Ward.
5. Ntueke Ward.
6. Obiohia Ward.
7. Ogboko I Ward.
8. Ogboko II Ward.
9. Umuakam/Umuago Ward.
10. Umuchima Ward.
11. Umuma Isiaku Ward.
12. Umuobom Ward.
13. Ugbelle Ward with 152 Polling Units.

That after the declaration and his return as the duly elected after the election of the 18<sup>th</sup> day of March, 2023, the 2<sup>nd</sup> Respondent herein as a Petitioner, approached the National and State Houses of Assembly Election Tribunal on the 8<sup>th</sup> day of April, 2023, in ***Petition No. EPT/IM/SHA/36/2023***. The certified true copy of the said ***Petition No. EPT/IM/SHA/36/2023*** and its accompanying processes shall be tendered during the hearing of the petition. Himself, All Progressives Congress (APC) and the Independent National Electoral Commission (INEC) are the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents respectively.

That the 1<sup>st</sup> Respondent herein, in spite of the fact that no lawful impediment affected the election which was held and concluded on the 16<sup>th</sup> day of March, 2023 in which a declaration and return was made and the pending petition filed by the 2<sup>nd</sup> Respondent herein, went ahead and

purported to fix and conduct what it termed "*Supplementary Elections*" in 7 Polling Units of Ugbelle Ward.

That he still went ahead and scored the highest number of lawful votes cast at the said Polling units of Ugbelle Ward in Ideato South State Constituency in that so called "Supplementary election".

That he had led the other contestants in the election held on 18<sup>th</sup> March, 2023 on the basis of which he was duly declared and returned as the winner of the said election, after garnering the majority of lawful votes cast.

That for the supplementary elections which was conducted on the 15<sup>th</sup> April, 2023, he also scored a total of 2250 votes as against the 2<sup>nd</sup> Respondent who did not score any votes in the 7 Polling Units.

That these results which are hereby pleaded was uploaded by the Ad-hoc staff of the 1<sup>st</sup> Respondent who acted as the Presiding Officer in charge of the stated polling units into the IReV platform of the 1<sup>st</sup> Respondent, and that they would be relying on copies of results of the various Polling Units of Ugbelle Ward of Ideato South Constituency which was downloaded by him from the 1<sup>st</sup> Respondent's Portal on the 15<sup>th</sup> day of April, 2023 and that the said Polling Unit Results downloaded from the 1<sup>st</sup> Respondent's IReV Portal was produced via PW2's HP Laptop Computer enabled by a mobile Hotspot of my Samsung Fold 3 Mobil phone, enabled via Firefox Application and printed via his HP LaserJet P2035 Printer during a period that the Computer and the printer were regularly used to store or process information for the purpose of any activities regularly carried on over that

period and that over that period there was regularly supplied to the Computer and the printer in the ordinary course of those activities information of the kind contained in the printout from which the information so contained is derived and that throughout the material part of those periods the Computer and the printer were operating properly and that the information therein pleaded as contained in the Polling Units results printout is derived from the information supplied to the said Computer and printer in the ordinary course of those activities. A certificate of compliance by him is relied upon and tendered. He hereby gave notice to the 1<sup>st</sup> Respondent to produce the uploaded versions of the results which it uploaded into its IRev. Platform for the supplementary election which it conducted on the 15<sup>th</sup> April, 2023 for the 7 Polling Units of Ugbelle Ward.

That the 1<sup>st</sup> Respondent contrary to the results which emanated from the Polling Units in Forms EC8A(I)s, entered into the EC8B(I) results which are different from the ones which it duly uploaded into its IReV Platform.

That the 1<sup>st</sup> Respondent flowing from the wrong results as stated above proceeded to make another unlawful EC8E(I) for the election of 15<sup>th</sup> April, 2023.

That from the results of the election which was held on 18<sup>th</sup> of March, 2023 after collation, the total results, polled by the 1<sup>st</sup> Petitioner amounted to 4907 votes while the 2<sup>nd</sup> Respondent polled 3996 votes.

That if calculations are made by adding the results of the supplementary elections which the 1<sup>st</sup> Respondent conducted on the 15<sup>th</sup> April, 2023, my

total scores will come up to 7157 votes while that of the 2<sup>nd</sup> Respondent will remain at 3996 votes.

That we (the Petitioners) shall rely on all the letters of appointments and voters' cards of the polling units, ward collation, and State Constituency Collation Agents of the Petitioners. Voters register for Ideato South State Constituency, INEC Forms EC8A(I), EC8B(I), EC8C(I), EC8D(I) & EC8E(I) for the elections receipts evidencing payment for certification of documents, 1<sup>st</sup> Respondent's Regulation and Guidelines for the conduct of the Elections 2022. The Petitioners shall also rely on the certified true copies of the IRev print out made by the 1<sup>st</sup> Respondent herein, dated the 18<sup>th</sup> day of April, 2023 together with the Certificate of compliance in line with Section 84 of the Evidence Act.

That the general elections to elect the member representing Ideato South Constituency into the Imo State House of Assembly was conducted on the 18<sup>th</sup> day of March, 2023 across all the wards and Polling Units which make up Ideato South State Constituency.

That at the close of the polls, across the different polling units and wards, results of the elections were duly collate and he was duly declared the winner of the election by the 1<sup>st</sup> Respondent. We (the Petitioners) shall rely on all the certified true copies of INEC Forms EC8A(I), EC8B(I), EC8C(I), EC8E(I) used for the conduct of the elections which took place on the 18<sup>th</sup> day of March, 2023.

That sequel to the above declaration and return of him as the winner, the 30<sup>th</sup> day of March, 2023 was slated by the 1<sup>st</sup> Respondent to him in

addition to other successful candidates across the other state constituencies in Imo State to come and collect our Certificates of Return having been declared the winners of the said election.

That from that time on the 18<sup>th</sup> day of March, 2023, when the said declaration was made in his favour, no further correspondence was made to him by the 1<sup>st</sup> Respondent herein or any of its agents to come for anything except to collect his Certificate of Return.

That on the 30<sup>th</sup> day of March, 2023, he went to the office of the 1<sup>st</sup> Respondent which is at Port Harcourt Road, Owerri with other successful candidates in the said election which held on the 18<sup>th</sup> March, 2023 to collect his certificate of return.

That on getting to the said office of the 1<sup>st</sup> Respondent herein, the 1<sup>st</sup> Respondent without any justification whatsoever, withheld/refused to issue the Certificate of Return due to him.

That in response to the said development, we (the Petitioners) through our solicitor wrote the 1<sup>st</sup> Respondent by a letter dated the 30<sup>th</sup> day of March, 2023 demanding for the release of the said Certificate of Return which is due to him. We (the Petitioners) hereby give the 1<sup>st</sup> Respondent notice to produce the original copy of the said demand letter written by the Petitioners solicitor to it.

That on the 8<sup>th</sup> day of April, 2023, the 2<sup>nd</sup> Respondent herein approached the National & State Houses of Assembly Election Petition for Imo State in ***Petition No. EPT/IM/SHA/36/2023***. The certified true copy of the

said ***Petition No. EPT/IM/SHA/36/2023*** and its accompanying processes shall be relied upon by the Petitioner herein.

That despite the pendency of the said petition, before the election petition Tribunal and in spite of the declaration made by the 1<sup>st</sup> Respondent went ahead and purported to fix and conduct what it terms “supplementary elections” in the 7 Polling Units of Ugbele Ward of Ideato South State Constituency.

That the 1<sup>st</sup> Respondent at all times material, from the conduct, collation, declaration and return made in the elections in which he emerged the winner as duly declared by the 1<sup>st</sup> Respondent up to the 8<sup>th</sup> day of March, 2023, never communicated him or the 2<sup>nd</sup> Petitioner of any further action which it had taken against the said election conducted on the 18<sup>th</sup> day of March, 2023 in which he emerged the winner of the said election and was duly declared as elected and returned.

That his declaration and return as the winner of that election conducted on the 18<sup>th</sup> March, 2023 was done in substantial compliance with the Electoral Act, Regulations and Guidelines for the conduct of the General Elections.

That the declaration and return of the Petitioners as the winners of that election which was held on the 18<sup>th</sup> March, 2023, by the 1<sup>st</sup> Respondent was voluntary, lawful and in substantial compliance with the Provisions of the extant laws guiding the conduct of the general elections.

That it is only an Election Petition Tribunal, that can question his declaration and return as the winner of that election conducted on the 18<sup>th</sup> March, 2023.

**Under cross – examination**, PW2 denied the fact that there was any result falsification which resulted into the review of the Election.

The Petitioners closed their case to pave way for Respondents to enter their Defence. 1<sup>st</sup> Respondent, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents called one witness each.

**DW1 (PROF. I. I. EKPE)** in his evidence, stated that he was the Collation/Returning Officer for Ideato South Local Government Area of Imo State.

That he monitored the 18<sup>th</sup> March, 2023 Imo State House of Assembly Election for Ideato South State Constituency as a Collation/Returning Office for Ideato South Local Government Area of Imo State, by virtue of which he is conversant with the depositions he made herein.

That he has the consent and authority of the 1<sup>st</sup> Respondent to depose to this statement on oath.

He denied paragraphs 2, 3 4, 9, 12, 15, 17, 19, 20, 23, 24, 25, 27, 37, 38, 39 and 40 of the petition as false and baseless.

That he knows as a fact that the Petitioners has no right to present the petition having lost at the poll and failed to score the majority of the lawful votes cast after the final collation of valid votes cast.

That he knows as a fact that the 1<sup>st</sup> Petitioner has no right to be returned after the final collation and conclusion of the election having failed to score majority of the valid votes cast in accordance with the Electoral Act, 2022, the 1<sup>st</sup> Respondent 2022 Regulations and Guidelines.

That he knows as a fact that the 2<sup>nd</sup> Respondent scored majority of the lawful and valid votes cast after the final collation of the election result including the supplementary election and thus was rightfully returned as the winner of the election.

That he knows as a fact that although the 2<sup>nd</sup> Petitioner sponsored the 1<sup>st</sup> Petitioner, the Petitioners failed to score majority of the valid votes cast at the General Election held on 18<sup>th</sup> day of March, 2023 and did not also score majority of the lawful votes cast after the final collation of the first election held on the 18<sup>th</sup> day of March, 2023 and the supplementary held on the 15<sup>th</sup> April, 2023.

That he knows as a fact that the 1<sup>st</sup> Respondent conducted the Imo State House of Assembly Election for Ideato South State Constituency held on the 18<sup>th</sup> day of March, 2023 and the 15<sup>th</sup> day of April, 2023 in substantial compliance with the Electoral Act and the 1<sup>st</sup> Respondent Regulations and Guidelines, Manuals and other extant laws.

That he knows as a fact that the 2<sup>nd</sup> Respondent was the candidate of the 3<sup>rd</sup> Respondent duly sponsored by the 3<sup>rd</sup> Respondent to contest the Imo State House of Assembly Election for Ideato South State Constituency and the 2<sup>nd</sup> Respondent did win the election.

That he knows as a fact that the 3<sup>rd</sup> Respondent sponsored the 2<sup>nd</sup> Respondent whom won the election squarely against the Petitioners.

That he knows as a fact that the 1<sup>st</sup> Respondent through the instrumentality of its official, the ad-hoc staff and other staff including Assistant Presiding Officer, Presiding Officers, Supervising Presiding Officers, Collating Officers, Electoral Officers and Returning Officers all complied with their statutory role and obligation in the conduct of the Imo State House of Assembly election for Ideato South State Constituency including but not limited to accreditation of voters, sorting of votes, counting of the ballot cast, collation of the results of the polls and declaration of the result.

That he knows as a fact that the Petitioners does not have the right to present this petition nor question the validity of the supplementary election having failed score majority of the valid votes cast.

That he knows as a fact that the declaration and return of the 2<sup>nd</sup> Respondent as the winner of the election was lawful and valid having scored the majority of the valid votes cast and satisfy the constitutional widespread required by the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Electoral Act, 2022.

That he knows as a fact that the 1<sup>st</sup> Petitioner was erroneously declared by the 1<sup>st</sup> Respondent as the winner of the 18<sup>th</sup> March, 2023 Election for Ideato South State Constituency contrary to the provisions of the law, Regulations and Guidelines and Manual for the election.

That he knows as a fact that upon application by the 2<sup>nd</sup> Respondent and other candidates in the election, the 1<sup>st</sup> Respondent pursuant to Section 65 of the Electoral Act reviewed the election and discovered that:

- a. The 1<sup>st</sup> Petitioner did not score majority of the lawful and valid votes cast in the votes or results recorded and transmitted directly from the Polling Units under Section 60(4) and 64 of the 2022 Electoral.
- b. The 2<sup>nd</sup> Respondent was leading with the valid votes cast or results recorded and transmitted directly from the Polling Units.
- c. Election was not conducted in Ugbelle Ward of Ideato State Constituency as a result of violence.
- d. The 2<sup>nd</sup> Respondent scored 3,990 while the 1<sup>st</sup> Petitioner scored 3,053 in the votes or results recorded and transmitted directly from the Polling Units on the 18<sup>th</sup> March, 2023.
- e. The Margin of lead between the 2<sup>nd</sup> Respondent and 1<sup>st</sup> Petitioner in the votes or results recorded and transmitted directly from the Polling Units was less than the registered voters in Ugbelle Ward.

That he knows as a fact that the 1<sup>st</sup> Respondent in line with Section 24(2 & 3), Section 51(2) of the Electoral Act and Paragraph 85 of the 1<sup>st</sup> Respondent 2023 Regulations and Guidelines appointed the 15<sup>th</sup> day of April, 2023 to conduct supplementary election in Ugbelle Ward as a result of the fact that the election was affected by the margin of lead principle.

That he knows as a fact that the result relied on by the Petitioners in the said paragraph was made in error and contrary to the Electoral Act, 1<sup>st</sup> Respondent Regulations and Guidelines and her Manual. The result (Form EC8E(I)) was not a product of the Results recorded and transmitted directly from the Polling Units.

That he knows as a fact that from the results directly recorded and transmitted from polling units and uploaded on IRev, the 2<sup>nd</sup> Respondent scored 3,990 while the 1<sup>st</sup> Petitioner scored 3,053.

That he knows as a fact that the ground relied upon by the Petitioners in paragraph 15 of the petition in questioning the election, declaration and return of the 2<sup>nd</sup> Respondent as the winner to the office of the Member, Imo State House of Assembly representing Ideato South State Constituency that is, that the 2<sup>nd</sup> Respondent was not duly elected by majority of lawful votes cast at the election is false, baseless and unfounded.

That he knows as a fact that the 1<sup>st</sup> Respondent rightfully reviewed the election of 18<sup>th</sup> March, 2023 and discovered that the collation, declaration and return made did not emanate from collation of Form EC8A(I)'s recorded and transmitted directly from Polling Units, i.e. uploaded on IReV, contrary to the requirement of the Electoral Act and Guideline for the conduct of election and also that the margin of lead was lesser than the number of registered voters in Ugbelle Ward where election did not hold as a result of disruption of election.

That he knows as a fact that the 1<sup>st</sup> Petitioner won the supplementary election, but did not win the majority of the lawful votes cast after the final

collation of all the results directly recorded and transmitted from the Polling Units in the 13 Wards of the Ideato State Constituency. The 2<sup>nd</sup> Respondent polled majority of the lawful and valid votes cast after final collation of the result and as such was rightfully declared as the winner. That he knows as a fact that the 1<sup>st</sup> Petitioner was erroneously declared by the 1<sup>st</sup> Respondent as the winner of the 18<sup>th</sup> March, 2023 election for Ideato South State Constituency contrary to the provisions of the Law, Regulations and Guidelines and Manual for the election. The results relied on in the said declaration were not results recorded and transmitted directly from the Polling Units under Section 60(4) and 64 of the 2023 Electoral.

That he knows as a fact that the supplementary election was conducted in seven (7) Polling Units. Six of the Polling Units were affected by over voting, leading to cancellation of votes emanating from the Polling Units in line with Section 51(2) of the Electoral Act. The Polling Units which votes were vitiated by over voting includes Polling Units 002 (Uhualla Village Hall I), 003 (Eluama Hall II), 004 (Uhualla Village Hall II), 005 (Uhualla Village Hall III), 006 (Ama-Obi Hall Eluama) and 007 (Comprehensive Sec. Sch. Ugbelle) in Ugbelle Ward of Ideato South State Constituency. It was discovered that the number of voters accredited by BVAS was less than the total votes cast at the various units as follows:

- a. In Polling Unit 002, the total number of Accreditation on BVAS is 43 while total votes cast is 385.

- b. In Polling Unit 003, the total number of Accreditation on BVAS is 0 while total votes cast is 340.
- c. In Polling Unit 004, the total number of Accreditation on BVAS is 476 while total votes case is 505.
- d. In Polling Unit 005, the Accreditation on BVAS is 22 while total votes case is 410.
- e. In Polling Unit 006, the total number of Accreditation on BVAS is 470 while total votes cast is 501.
- f. In Polling Unit 007, the total number of Accreditation on BVAS is 16 while total votes cast is 38.

That he knows as a fact that it was only Polling Unit 001 (Eluama Hall I) that the total votes casted was lesser than the total accredited voters. Total number of voters accredited by the BVAS machine is 433 while the total votes cast is 400. APC scored 345 and Accord scored 0.

That he knows as a fact that when the valid votes in the supplementary was collated with the votes polled by the parties in the 18<sup>th</sup> March 2023 election, the 1<sup>st</sup> Petitioner scored 3,398 votes while the 2<sup>nd</sup> Respondent poled 3,990 votes. Thus, the 2<sup>nd</sup> Respondent scored the majority of the lawful votes cast and was indeed declared the winner of the election pursuant in accordance with the Electoral Act, 2022 and 1<sup>st</sup> Respondent 2022 Regulations and Guidelines for the conduct of election.

That he knows as a fact that the results from the seven (7) Polling Units of Ugbelle Ward uploaded on IReV when compared to number of accredited voters in the seven (7) Polling Units, it was discovered that six (6) of the Polling Units earlier mentioned were vitiated by over voting and non-compliance.

That he knows as a fact that Paragraph 23 of the petition is false. All forms and results relied on in the declaration of the 2<sup>nd</sup> Respondent including Form EC8E(I) are valid. The return of the 2<sup>nd</sup> Respondent is lawful.

That he knows as a fact that after final collation of both the election and the supplementary election, the 2<sup>nd</sup> Respondent won the election with a total score of 3,990 while the 1<sup>st</sup> Petitioner polled 3,398.

That he knows as a fact that after final collation of both the election and the supplementary election, the 2<sup>nd</sup> Respondent won the election with a total score of 3,990 while the 1<sup>st</sup> Petitioner polled 3,398.

That he knows as a fact that the 1<sup>st</sup> Respondent shall at the trial of this petition rely on Form EC8A(I)'s recorded and transmitted from the Polling Units, Form EC8B(I)'s, Form EC8C(I) and Form EC8E(I) relied on in declaring the 2<sup>nd</sup> Respondent.

That he knows as a fact that election did not hold in Ugbelle Ward as a result of disruption of election in all the Polling Units within the Ward.

That he knows as a fact that the 2<sup>nd</sup> Respondent was leading in the election conducted on the 18<sup>th</sup> day of March 2023 after collation of the Form EC8A(I)'s recorded and transmitted from the Polling Unit.

That he knows as a fact that after the erroneous declaration of the 1<sup>st</sup> Petitioner, the 2<sup>nd</sup> Respondent and other candidates applied for review of the election, consequent upon which the 1<sup>st</sup> Respondent reviewed the election and discovered that the declaration of the 1<sup>st</sup> Petitioner was not a product of collation of the votes or results recorded and transmitted directly from the Polling Unit (uploaded on IReV) and that the margin of lead between the candidates was less than the number of registered voters in Ugbelle Ward where election was disrupted, consequent upon which a supplementary election was scheduled to hold in Ugbelle Ward.

That he knows as a fact that the declaration of the 1<sup>st</sup> Petitioner after the election of 18<sup>th</sup> March, 2023 was made contrary to the provisions of the Electoral Act, 1<sup>st</sup> Respondent Regulations and Guidelines and the Manual for the election, i.e. the collation and declaration was not a product of the results directly recorded and transmitted from the Polling Units and the election was affected by the margin of lead principle.

That he knows as a fact that the 1<sup>st</sup> Respondent reviewed the declaration and return of the 1<sup>st</sup> Petitioner pursuant to Section 65 of the Electoral Act having been made contrary to the provisions of the Electoral Act, 2022, 1<sup>st</sup> Respondent Regulations and Guidelines and the Manual for the election.

That he knows as a fact that, the 1<sup>st</sup> Respondent relied on Form EC8A(I)'s recorded and transmitted directly from the Polling Units in both the election held on 18<sup>th</sup> day of March, 2023 and 15<sup>th</sup> April, 2023.

That he knows as a fact that the Petitioners are not entitled to any of the reliefs as set out in paragraph 40(I to VII) of the petition.

That he knows as a fact that it will meet the end of justice for this Honourable Tribunal to dismiss the petition in all ramification with deterrent cost as the petition is devoid of merit, gold digging red herring, most vexatious and frivolous.

**Under cross-examination**, DW1 admitted that election only holds at the Polling Units and not the Ward Level, and that Independent National Electoral Commission (INEC) can review election within a specific period.

DW1 confirmed in evidence that he was not the Returning Officer that made the first declaration upon which the 2<sup>nd</sup> Respondent filed the petition before this Tribunal, and that he was appointed a Returning Officer for the supplementary election of 15<sup>th</sup> day of April, 2023.

**DW2 (AZODO VITALIS NDUBUISI)** the 2<sup>nd</sup> Respondent, in his evidence, stated that he is a Member of Accord Party and a registered voter at the Ideato South State Constituency election held on 18<sup>th</sup> March, 2023 and the supplementary election held on 15<sup>th</sup> April, 2023 by reason of which he is conversant with the facts and circumstances of this case.

That this petition is incompetent as it did not state the holding the election on 18<sup>th</sup> March, 2023, by which the 2<sup>nd</sup> Respondent won the highest number of votes cast before the subsequent re-run election.

That the reliefs sought by the Petitioners are incompetent, inconsistent and not grantable.

That the petition is predicated on non-existent fact of the 1<sup>st</sup> Petitioner having the highest score at the election.

That the averments of the Paragraphs 10 to 39 of the petition are vague, nebulous, imprecise, contradictory and without sufficient particulars of the facts alleged.

That this Honourable Tribunal will be urged to strike out the offending Paragraphs of this petition and for the reasons that the residue of the Paragraphs will not sustain the petition, to dismiss the petition in its entirety.

That without prejudice to the above, the 2<sup>nd</sup> Respondent denies each and every material allegation of facts contained in the petition, as if same were specially set out and denied seriatim.

That Paragraphs 2 and 3 of the petition are denied and the Petitioners are put to the strictest proof thereof.

That Paragraphs 5, 6 and 7 of the petition are admitted and as the candidate of the 3<sup>rd</sup> Respondent, the 2<sup>nd</sup> Respondent was elected by the majority of lawful votes cast at the election and duly returned as the

member-elect for Ideato South State Constituency in the Imo State House of Assembly.

That Paragraph 8 of the petition is denied and the Petitioners are put to the strictest proof thereof and in further answer thereto, apart from its polling agents duly accredited by the 1<sup>st</sup> Respondent (INEC), all “other Presiding Officers, Assistant Presiding Officers, Supervising Presiding Officers ad-hoc staff of any description in all the Polling Units, voting points, as Ward Collation Officers in the collation Centres, as Local Government Collation Officer at the Local Government Collation Centre” were all known agents of and acted for the Petitioners in the elections.

That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is the candidate duly nominated and sponsored by Accord Party (3<sup>rd</sup> Respondent) in the election Ideato South State Constituency in the Imo State House of Assembly held on 18<sup>th</sup> March, 2023 and has his Nomination Form and Voter’s Card.

That in answer to Paragraphs 10 to 14 of the petition, it is stated as follows:

- i. The election was duly conducted and held in all the Polling Units of Ideato South Local Government Area of Imo and in compliance with the Electoral Act, 2022, at the end of which he got the highest number of lawful votes and is therefore entitled to be returned elected as the member-elect representing the Ideato South State Constituency in the Imo State House of Assembly.

- ii. By the results, records and details of the 1<sup>st</sup> Respondent, the election was duly held and conducted in all the Polling Units in Ideato South State Constituency of Imo State and the 2<sup>nd</sup> Respondent received the highest number of lawful votes cast except few Polling Units, where due to supervening insecurity caused and instigated by the Petitioners, the election could not practicably hold.
- iii. That the 1<sup>st</sup> Petitioner did not win any of the election for the Ideato South State Constituency in the Imo State House of Assembly, as he did not score the highest number of votes cast at the election of 18<sup>th</sup> March, 2023 or the subsequent re-run of 15<sup>th</sup> April, 2023.

DW2 denied paragraph 15 of the Petition.

That the Petition in ***EPT/IM/SHA/36/2023*** was competently instituted following the earlier delay of the 1<sup>st</sup> Respondent (INEC) to declare and return the 2<sup>nd</sup> Respondent as the winner of the election; and in view of the fact that he had a limited time from the date of the declaration of the results to challenge the outcome, he instituted the said petition as a pre-emptive measure to safeguard his mandate.

That the earlier Petition in ***EPT/IM/SHA/36/2023*** has since been withdrawn following the due declaration of the results of the election and the rerun of the 2<sup>nd</sup> Respondent as the winner and the initial filing or withdrawal of the said petition does not presuppose that the 1<sup>st</sup> Petitioner won the said election in any manner whatsoever.

In answer to the averments at paragraphs 17 to 40 of the petition, DW2 stated as follows that;

At the election of 18<sup>th</sup> March, 2023, the 1<sup>st</sup> Petitioner scored only 3,053 votes which was not the majority of lawful votes cast at the election and was not entitled to be declared, announced and returned as having been elected for the Ideato South State Constituency in the Imo State House of Assembly in the 2023 general elections.

The Ideato South State Constituency of Imo State in which the election took place on 18<sup>th</sup> March, 2023 has a total of 152 Polling Units and 13 Wards as follows:

- i. Amanator/Umueshi
- ii. ikenafai
- iii. Isiekenesi I
- iv. Isiekenesi II
- v. Ntueke
- vi. Obioha
- vii. Ogboko I
- viii. Ogboko II
- ix. Umuakam/Umuago
- x. Umuchima
- xi. Umuma Isiaku
- xii. Umuobom
- xiii. Ugbelle

That the accreditation and voting took place in all the Polling Units of the 13 Wards except in the one Ward of Ugbelle and the results were duly uploaded into the INEC Central Server, BVAS and the IReV Portal and the

summary of the Results from the 13 Wards of Ideato South Local Government Area at the 18<sup>th</sup> March, 2023.

The 2<sup>nd</sup> & 3<sup>rd</sup> Respondents hereby pleads the Results Sheets, BVAS Report and BVAS for the Ideato South State Constituency of Imo State as uploaded contained and contained in the INEC Central Server and the IReV Portal.

That by the results of the election held on 18<sup>th</sup> March, 2023, the 2<sup>nd</sup> Respondent scored a total number of 3,990 votes, which is the majority of lawful votes cast as against the 3,053 votes scored by the 1<sup>st</sup> Petitioner and therefore, the 2<sup>nd</sup> Respondent ought to be declared, announced or returned as the winner of the election.

It is also averred that the above results or scores of the 2<sup>nd</sup> Respondent is in conformity with the results collated and declared in all the 152 polling units Polling Units and collated from the 13 Wards at the conclusion of the accreditation, voting and announcement of the result as seen in the breakdown of the votes scored by the candidate in all the 152 Polling Units of the 13 Wards in Ideato South above.

At the trial of this petition, the 2<sup>nd</sup> respondent shall found and rely upon all the Results Sheets from the Polling Units in Ideato South Local Government Area including INEC Form EC8A(I) and the data or contents of the backend of the Bimodal Voters Accreditation System (BVAS), the BVAS machine used in the election.

That contrary to Paragraphs 17 to 40 of the petition, at the conclusion of the election on 18<sup>th</sup> March, 2023 and upon the insistence of the Petitioners, the 1<sup>st</sup> Respondent ordered for a supplementary election in Ugbelle Ward, on grounds of insecurity occasioned by the act and conduct of the Petitioners and their agents, thugs and supporters.

That Ugbelle Ward in Ideato South is the immediate Ward of the 2<sup>nd</sup> Respondent, where he has his considerable support base, family members and friends amongst the potential voters and with high probability of win at any time.

That Ugbelle Ward in Ideato south has a total of 7 Polling Units to wit: PU 001 to PU 007 with a total number of **3,923** registered voters as tabulated below:

PU 001	–	795
PU 002	–	691
PU 003	–	601
PU 004	–	621
PU 005	–	601
PU 006	–	572
PU 007	–	42
<b>TOTAL</b>	<b>-</b>	<b><u>3,923</u></b>

That in Ugbelle Ward in Ideato South the total number of Permanent Voter's Card collected is **3,888** as tabulated below:

PU 001	–	788
PU 002	–	685
PU 003	–	596
PU 004	–	614
PU 005	–	596

PU 006	–	569
PU 007	–	40
<b>TOTAL</b>	-	<b>3,888</b>

That he shall rely on the Voters Register showing the total number of registered voters and the number of the PVC’s collected in Ugbelle Ward.

That the supplementary election held on 15<sup>th</sup> April, 2023 was marred by considerable insecurity occasioned and instigated by the Petitioners, upon seeing that the 2<sup>nd</sup> Respondent was winning massively; thereby causing them to resort to massive rigging, forgery of results and mutilation of the results sheets and inflation of the results thereby leading to irreconcilable over voting in 6 out of 7 polling voting units in Ugbelle Ward.

That at the supplementary election held on 15<sup>th</sup> April, 2023, the 1<sup>st</sup> Respondent manipulated and re-wrote the results and ascribed a total of 2,211 votes to himself and incredibly ascribed 0 (zero) vote to the 2<sup>nd</sup> Respondent in his own Ward in manipulating the results, the Petitioners overlooked the glaring number of registered voters, number of PVC’s collected and the accreditation of voters in the BVAS machine at the election.

That the 6 Polling Units of Ugbelle, where the Petitioners caused and instigated the massive and irreconcilable over voting are: PU 002, PU 003, PU 004, PU 005, PU 006 and PU 007 respectively.

That the number of votes ascribed to the 1<sup>st</sup> Petitioner in the supplementary election on 15<sup>th</sup> April, 2023 is far greater than the number

of accredited voters on the BVAS for the supplementary election of 15<sup>th</sup> April, 2023.

That he hereby relies on the INEC Report, BVAS Report, BVAS machine, IReV Report, Result Sheets for the entirety of Ugbelle Ward in the Supplementary election of 15<sup>th</sup> April, 2023 to establish the over voting.

That the Honourable Tribunal ought to cancel nullify, discountenance and deduct the scores or votes of PU 002, PU 003, PU 004, PU 005, PU 006 and PU 007 in Ugbelle Ward from the results of the supplementary election held on 15<sup>th</sup> April, 2023 for being illegal, null, void and in contravention of the Electoral Act.

That when the 345 votes purportedly scored by the 1<sup>st</sup> Petitioner in Polling Unit 001 (Eluama Hall I) in Ugbelle Ward, which is the only polling unit in the supplementary election on 15<sup>th</sup> April, 2023, where no over voting is presently established, is added to the original votes of the 1<sup>st</sup> Petitioner (**3,053**) in the main election of 18<sup>th</sup> March, 2023, the number of votes scored by the 1<sup>st</sup> Petitioner will be **3,398** only which is still lesser than **3,990**, being the majority of lawful votes scored by the 2<sup>nd</sup> Respondent.

That with **3,990** majority of lawful votes, the 2<sup>nd</sup> Respondent is still leading the Petitioners with a considerable margin of **592 majority and lawful votes** thereby making his election, return and declaration valid as the candidate with the majority of lawful votes cast at the elections.

That regarding the **PU 002, PU 003, PU 004, PU 005, PU 006 and PU 007 in Ugbelle Ward**, the 2<sup>nd</sup> Respondent avers that the over voting was

caused and instigated by the Petitioners, who used stationed Armoured Personnel Carrier, used armed thugs and members of the Ebubeagu militia and others to attack, threaten and disperse the few voters that turned out to vote and thereby worsened the already tense insecurity in the ward and when the potential voters had been dispersed, the Petitioners had a feed day in manipulating the scores, result sheets, inflated the results in order to make up their votes to exceed the lawful votes scored by the 2<sup>nd</sup> Respondent; thereby resulting in the manifest over voting in the Polling Units.

That having caused and instigated the high-level of insecurity in the area, that led to the first cancellation of the results of the 18<sup>th</sup> March, 2023 election and the present over voting in the supplementary election of 15<sup>th</sup> April, 2023, cannot benefit from their crime or wrong and it would be prejudicial to allow their illegal manipulation of results leading to the over voting to stand or to order any fresh or further supplementary election in the area, since supplementary election cannot hold endlessly for the benefit of the Petitioners, who are the guilty parties.

That the level insecurity created and instigated by the Petitioners in the area prior, during and after the election has reached an insurmountable level, such that future elections in the area has become impracticable.

That on the dates of the elections, voters came out to vote for the 2<sup>nd</sup> Respondent, but were attacked and threatened by the Petitioners' through their armed agents, thugs, Ebubeagu militia and others and presently no

voter in the entirety of Ugbelle Ward is willing to risk his life in any future election in the Ward, due to the actions of the Petitioners.

That on the eve of the supplementary election, the Petitioners stationed or caused to be stationed, an armoured Personnel Carrier in Ward, very close to his house, invaded his house with unknown gunmen, with a view to abducting and neutralizing him and ultimately ensured that he all the voters, majority of whom are his supporters, did not vote and those that voted, were threatened to vote for the Petitioners.

That the declaration, announcement and return of the 2<sup>nd</sup> Respondent is valid, lawful and in accordance with the Electoral Act, 2022.

That he prays this Honourable Tribunal to dismiss this petition for lacking in merit and affirm the election of the 2<sup>nd</sup> Respondent for being in compliance with the Electoral Act.

**Under cross-examination,** DW2 stated that Independent National Electoral Commission (INEC) has the powers to review election. DW2 confirmed the fact that the Supplementary Election was conducted upon INEC review, but that he lost the Supplementary Election by a small margin but that he eventually emerged the winner of the election after the Supplementary election for Ideato South.

DW2 also stated under cross-examination, that following the declaration of the 1<sup>st</sup> Petitioner as the winner of the election, he challenged same by filing Exhibit 16 i.e. a petition - before the Election Tribunal and that during the pendency of your petition, INEC received the result of election of the 18<sup>th</sup>

day of March, 2023 and conducted a Supplementary Election of the 15<sup>th</sup> day of April, 2023.

At the conclusion of hearing, parties filed their respective final written addresses wherein issues were formulated for determination.

On the part of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, the lone issue formulated are the same, hook, line and sinker, whereas the Petitioners on their part formulated three issues.

The Respondents' issue for determination is:-

**"Whether the Petitioners have proved their case and are entitled to the reliefs sought."**

The resolution of the issue formulated by the 1<sup>st</sup> Respondent invariably disposes that of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

On the part of the Petitioners, they formulated three issues to wit:-

1. **Whether the 2<sup>nd</sup> Respondent, whose election is questioned was, at the time of the election, qualified to contest the election.**
2. **Whether the 2<sup>nd</sup> Respondent was duly elected by majority of lawful votes cast at the election.**
3. **Whether the Petitioners are entitled to the reliefs sought.**

Arguing on the respective issues, learned counsel for the Petitioners A.I Nwachukwu, Esq., who abandoned issue No. 1, argued issues 2 and 3 disjunctively.

Learned counsel argued, that at the close of Polls, on the 18<sup>th</sup> March, 2023, the 1<sup>st</sup> Petitioner, as the candidate of the 2<sup>nd</sup> Petitioner, polled 4907 votes to emerge the winner and was duly declared as returned. Counsel reiterates that election results as declared is presumed correct. The case of ***NGIGE VS. INEC (2015)1 NWLR (Pt. 1440) 281 at 317-318 H-A*** where the Supreme Court held that ***"there is a rebuttable presumption that any election result declared by a returning officer is authentic and correct and the burden of rebutting that presumption is on the person who denies its correctness"*** See also ***AKPOTI VS. INEC (2022) 9 NWLR (Pt. 1836) 403 at 424 E-G.***

As at the close of election on the 18<sup>th</sup> March 2023, the 1<sup>st</sup> Petitioner had 4907 votes to his credit. There is no subsisting election petition anywhere challenging that result as declared by the 1<sup>st</sup> Respondent. Learned counsel humbly submits and urge the Tribunal to hold that the said result subsists and has never been disturbed.

Learned counsel further submits, that having regards to Section 285(1)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), and Section 130 of the Electoral Act, 2022, the 1<sup>st</sup> Respondent cannot competently entertain any question, complaint or protest by any person(s) against the election which produced the 1<sup>st</sup> Petitioner as winner, after due

declaration of the Petitioners by the 1<sup>st</sup> Respondent as the winners of that election conducted and concluded on the 18<sup>th</sup> March, 2023.

For the purposes of ease of Reference, Section 285 (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus:

- (1) "There shall be established for each State of the Federation and the Federal capital Territory, one or more Election Tribunals to be known as the National and State Houses of Assembly election Tribunals which shall, to the exclusion of any Court or Tribunal, have the original jurisdiction to hear and determine petitions as whether-**
- (b) any person has been validly elected as a Member of the House of Assembly of a State"**

Section 130(1) of the Electoral Act 2022 further provides as follows:

**"No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition" presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and which the person elected or returned is joined as a party"**

Learned counsel contends, that the competence to look into any complaint against any undue election or undue return has been constitutionally

vested in the election petition tribunal and thus no officer of the 1<sup>st</sup> Respondent, including the chairman thereof, has the competence to usurp or pretend to usurp the authority of a judicial body such as an election petition tribunal. When the constitution provides the mode or procedure that will be followed in a particular issue, that mode and no other will be allowed in law. The case ***ABUBAKAR VS. NASAMU (2012) 17 NWLR (Pt. 1330) 523 at 577 E and ABUBAKAR VS. INEC (2020) 12 NWLR (Pt. 1737) 37 at 102 B-D*** were cited.

Learned counsel submits, that once a declaration has been made (as in this case) in an election, signaling the conclusion of that election, every other complaint against that declaration no matter how couched, can only be done by an election petition. Counsel submits also that the Constitution has ousted both the powers and discretion of the 1<sup>st</sup> Respondent to tamper with the election or to act with respect to the Certificate of Return in any other contrary manner, save to issue same to the 1<sup>st</sup> Petitioner, having been declared winner of the election, in the face of Exhibit "15", and counsel urge the Tribunal to so hold. That result still inures to the benefit of the Petitioners. The only recourse which a person who is aggrieved by any declaration of election result can have is to approach an Election Petition Tribunal duly constituted in line with the Constitution to vent his grievance.

It is the submission of learned counsel, that no portion of the Electoral Act 2022, including Section 65, thereof can fly in the face of Section 285(1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

and Section 130 of the Electoral Act, 2023. In the case of ***NIGERIAN ARMY VS. YAKUBU (2013) 8 NWLR (Pt. 1355) 1 at 26 D-F*** The Supreme Court held thus ***"The constitution of the Federal Republic of Nigeria is the Supreme law of the country and it overrides all other laws in the country. Where any conflict exists between the Constitution and any other statute, the Court or Tribunal has a duty to interpret or apply such statute in such a way as to bring the statute in line with the letters and intendment of the Constitution"***

The case of ***BAYO VS. NJIDDA [2004] 8 NWLR (Pt. 876) 544 at 628 G-H*** was cited.

Without sounding repetitive, and for the avoidance of any doubt counsel reproduce the relevant Section of the Constitution and the stigmatized Section of the Electoral Act side by side.

Section 285 (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus:

***(1) "There shall be established for each state of the Federation and the Federal capital Territory, one or more Election Tribunals to be known as the National and State Houses of Assembly election Tribunals which shall, to the exclusion of any Court or Tribunal, have the original jurisdiction to hear and determine petitions as to whether-***

***(b) any person has been validly elected as a Member of the House of Assembly of a State"***

While Section 65 (1) of the Electoral Act 2022 provides thus:

***The decision of the returning officer shall be final on any question arising from or relating to;***

***a. Unmarked ballot paper***

***b. Rejected ballot paper, and***

***c. Declaration of scores of candidates and return of a candidate. Provided that the Commission shall have the power within seven days to review that declaration and return where the commission determines that the said declaration and return was not made voluntarily or was made contrary to the provisions of the law, regulations and guidelines and manual for the election.***

Paragraph 99(a) of the Regulations and guidelines for the Conduct of Elections 2022 which provides thus ***"where the Commission receives a report and it is satisfied that a declaration/return may have been made involuntarily or contrary to law, regulations and guidelines, the Commission shall withhold the publication of the result(s) and issuance of certificate of Return to the candidate declared the winner of the election"*** [underlining supplied]

For the avoidance of any doubt Sections 36(1), (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus:

Section 36(1) ***"In the determination of his civil rights and obligations by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality"***

Section 36(2) ***"without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law-***

- a. Provides an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and***
- b. Contains no provision making the determination of the administering authority final and conclusive."***

Learned counsel humbly submit that the provisions of Section 651 of the Electoral Act and Paragraph 99(a) of the of the Regulations and Guidelines for the Conduct of Elections 2022 are not only inconsistent with **Sections**

**36 & 285 (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**, they also have the effect of usurping judicial powers which the Constitution or Statute did not donate to the 1st Respondent or any of its powers. ***OKWUOSA VS OBIORA (2009) 9 NWLR (Pt. 1147) 593 at 593*** where the Court of Appeal held ***"The powers to act on the result of an election after declaration by the Independent National Electoral Commission resides in the Court or Tribunal"***

Learned counsel further submits, that in arriving at the decision by the 1<sup>st</sup> Respondent to withhold or refuse to issue the 1<sup>st</sup> Petitioner with a Certificate of Return and/or arbitrarily order for a supplementary election, the 1<sup>st</sup> Respondent either relied on facts or allegations which on the face of it may be against the Petitioners, which requires the Petitioners to make a response to any of the facts or allegations, so made against them. In the case of ***ARDO VS INEC [2017] 13 NWLR (Pt 1583) 450 at 495-496 F-A***

***"Fair hearing means a trial conducted according to all legal rules formulated to ensure that justice is done to the parties. Fair hearing in relation to a case means a trial of a case or the conduct of the proceedings therein in accordance with the relevant laws or rules. It is a judicial or administrative hearing conducted in accordance with due process"***

Learned counsel also submits, that assuming without conceding, that the 1<sup>st</sup> Respondent had the powers to review the declaration and return of the

1<sup>st</sup> Petitioner as duly elected, not giving him an opportunity to defend his already legally acquired interest over that seat vide the declaration and return already made in his favour, the decision to withhold the Certificate of Return and purportedly conduct a supplementary election without giving the Petitioners opportunity to be heard vitiates the entire process and reverts the Status quo to the declaration evidenced by Exhibit "15". The case ***OLANIYAN VS ADENIYI [2007] 3 NWLR (1020) 1 at 20-21 H-C*** where the appellate court held thus:

***"To satisfy the requirement of fair hearing before an administrative decision is taken, there must be investigation by an identifiable person or body of persons empowered and capable of going into the issues in disputation. The person who is affected by such an administrative decision, act or proceeding must be given adequate notice of what is proposed and any allegation against him. He must be afforded the opportunity to know the case against him, make representations by himself or through someone else on his behalf; be represented at the hearing or enquiry if he likes, effectively prepare his defence and answer to the case against him, In the instant case the steps taken by the government was null and void because of its breach of fair hearing in not giving the 1st respondent fair hearing"***

It is the submission of learned counsel, that a community reading of the Sections of the Constitution elucidated above, goes to show that the 1<sup>st</sup>

Respondent and its officers lack the constitutional competence to take steps inimical to the interest of the Petitioners, without affording them the right to be heard. The action of the 1<sup>st</sup> Respondent in the above regard is not only ultra vires but void. Counsel urged the Honourable Tribunal to so hold. The 2<sup>nd</sup> Respondent, in conceding to his defeat and being aggrieved by same, went ahead and filed a Petition at the National and State Houses of Assembly Election Petition Tribunal, challenging that declaration and Return made by the 1<sup>st</sup> Respondent (INEC), in Petition No. ***EPT/IM/SHA/36/2023 HON. VITALIS AZODO VS IHEONUKARA JOHNSON DURU & 2 ORS.*** That Petition, filed by the 2<sup>nd</sup> Respondent, is an admission on his own part and challenge of the declaration made to the effect that the Petitioners herein won the instant election, conducted on 18<sup>th</sup> March, 2023 with a seal of finality placed on it by that declaration and return vide Exhibit "15". Counsel humbly submits, that it is unnatural dishonorable and does not accord with good reason and common sense for a party to approbate and reprobate at the same time. In the case of ***FOLKSYTHENSIS LTD VS GAPUMA (UK) LTD (2017) 8 NWLR (Pt. 1566) 150 at 165 C-D*** the Court said thus;

***"A party cannot approbate and reprobate or blow hot and cold at the same time. The law frowns at a person natural or artificial, changing like shifting shadows or like shadow of a weather vane as the appellant did in the instant case"***

Learned counsel argued, that the 2<sup>nd</sup> Respondent cannot, in one breath, approach an Election Tribunal with a petition, claiming reliefs thereat and,

in another breath, connive with willing elements in the 1<sup>st</sup> Respondent to come up with a purported declaration, allocating the seat of member representing Ideato South State Constituency to him, when he is still contesting for the same seat at the Election Petition Tribunal. For the 1<sup>st</sup> Respondent, the Petitioners submit that they cannot be heard declaring the Petitioners as winners of an election in one breath, and in another breath, purport to conduct a Supplementary election over the same seat, which they had earlier declared the 1<sup>st</sup> Petitioner as the winner.

On the position of the law that a party cannot approbate and reprobate at the same time, the cases of ***FRIDAY VS GOV, ONDO STATE (2022) 16 NWLR (Pt. 1857) 585 @ 666 A-B, and***

***DINGYADI VS WAMMAKO (2008) 17 NWLR (Pt. 1116) 395 @ 444 D-F*** were cited.

The Constitution is the supreme law of Nigeria, and every law is subject to the overriding powers of the Constitution. It is a cardinal principle of justice that a person cannot be a judge in his own case which is commonly espoused by the Latin Maxim "Nemo Judex in Causa Sua" The 1<sup>st</sup> Respondent cannot declare the Petitioners as winners of the election in one breath, turn around in the next to determine, without any lawful reason to conduct a purported Supplementary election which lacks constitutional validation and support. On the prohibition of a person from being a judge in his own case, the case of ***NWABUEZE VS THE PEOPLE OF LAGOS STATE (2018) 11 NWLR (Pt. 1630) 201 at 215 A-C*** was cited.

Learned counsel contends, that assuming (without conceding) that the 1<sup>st</sup> Respondent could review the declaration and return of the 1<sup>st</sup> Petitioner, made on 18<sup>th</sup> March, 2023, the fact that it was made by way of supplementary election on 15<sup>th</sup> April, 2023, outside the statutory period of 7 days, provided in the provision to Section 65 (1)(c) of the Electoral Act, 2022, further makes the review a nullity. In any event, conducting a supplementary election after a declaration of results is a contradiction in terms. A supplementary election is conducted when an election is inconclusive, not after a declaration has been made. In the instant case, after the declaration of the 1<sup>st</sup> Petitioner, as the winner of the election on 18<sup>th</sup> March, 2023, counsel submits that the 1<sup>st</sup> Respondent no longer had the powers to conduct a supplementary election.

Learned counsel further submits, that the decision of the Returning Officer on any question arising from or relating to declaration of scores of candidate and the return of a candidate is final, subject to review by a Tribunal or Court in an election petition proceeding. We rely on the Court of Appeal decision in ***ABANA VS. OBI (2004) 10 NWLR (Pt. 881) 319.*** In that case, the 1<sup>st</sup> Respondent, in the Senatorial Election held on 12<sup>th</sup> April, 2003 into the Anambra Central Senatorial District, contested under the Peoples Democratic Party (PDP) and was returned and declared the winner having scored 97,774 votes. The result of the election was announced by the returning officer who issued Form EC8E with Serial No. 0000195 to the 1<sup>st</sup> Respondent on 16<sup>th</sup> April, 2003 as evidence of his victory. On 18<sup>th</sup> April, 2003, the Resident Electoral Commissioner for Anambra state withdrew the Form EC8E issued to the 1<sup>st</sup> Respondent,

cancelled it, and thereafter declared the appellant as the winner of the election on the basis of a High Court judgment obtained by the Appellant on 11<sup>th</sup> April, 2003, which declared him the validly nominated candidate of the PDP for the same senatorial district. The Court of Appeal held that where an error was discovered after a return had been made by the returning officer, following the declaration of an election result, the returning officer could not make a second return as any such subsequent return would be invalid. The court further held that the proper way to question the first return was by way of petition to the appropriate election tribunal which had jurisdiction to determine all question about the election.

Similarly, in ***OKUNOLA VS. OGUNDIRAN (1962) 1 SCNLR 150; (1962) 1 ALL NLR (Pt. 1) 83***, there were two inconsistent return in respect of two candidates. The returning officer had made an arithmetical error in the counting of votes and had returned a wrong candidate. When he discovered the error, the returning officer declared the other candidate returned. The Supreme court affirmed the decision of the high court of Western Nigeria to the effect that, if an arithmetical error was discovered after the return had been made, the returning officer could not validly make a second return. Any such second return would be invalid. The Supreme court, Per Ademola, CJF, held:

***On the face of this regulation, I am of the view that the returning officer was wrong in making a second return after the first one. The proper way to question the first return, in my view, was by a petition to the high court which has***

***jurisdiction to determine all questions about elections. This has however, now been done and this appeal is the outcome of the decision of the High Court.***

In ***ABANA VS. OBI (Supra)***, the court of appeal held neither the INEC nor even the returning officer himself was competent to reverse or make a second return.

The Petitioners still went ahead and scored the majority of lawful votes cast during the unconstitutional supplementary elections despite all the assaults on the results from the Polling Units by the 1<sup>st</sup> Respondent working in concert with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to subvert the will of the Electorate in that area. See Exhibit "12" particularly for Polling unit 001 Eluama hall. DW1, under cross-examination, admitted that the Petitioners won him according to him by a "small margin". Firstly, the Petitioners have established and the Respondents also have admitted that there was a declaration made in favour of the Petitioners flowing from the election of the 18<sup>th</sup> March, 2023. The question which they are yet to answer is the effect of that declaration in the eyes of the law on one hand, and whether that declaration has been validly disturbed by any competent Tribunal or authority in line with the law. Learned counsel submits, that the said declaration subsists. Again, in establishing that the Petitioners scored the majority of lawful votes cast during the unconstitutional Supplementary elections, the Petitioners pleaded two sets of results as required by law. The case of ***WADA VS. INEC (2022) 11 NWLR (Pt. 1841) 293 at 326-327 Paragraphs D-C*** thus:-

***"When a Petitioner alleges that a respondent has not won by majority of lawful votes in an election as in this case, to succeed in his claim, the law enjoins the Petitioner firstly to specifically plead the existence of two sets of results emanating from the election"***

Learned counsel further argued, that aside this point, the surviving result which the Respondents admitted as in Exhibit "12" still puts the Petitioners ahead in the stigmatized and clearly unconstitutional Supplementary election.

Counsel reiterates, that there is no election Petition challenging the declaration and return of the Petitioners over and in respect of the Election of the 18<sup>th</sup> March, 2023, which subsists in favour of the Petitioners till date. That having so submitted, we go further to state that the actual burden to impugn the results, culminating in that declaration, which is evidenced by the declaration of result Form EC8E(I) Exhibit "15", is fixed on the Respondents and they can only do that in line with the Supreme Court decision in ***OYETOLA VS. INEC (2023) 11 NWLR (Pt. 1894) 125*** where the Supreme Court held that:-

***"It is glaring from the above reproduced provisions of the Electoral Act and the INEC Regulations and Guidelines that the evidence required to prove that voting was allowed without accreditation or that there was improper accreditation are the Register of Voters, BVAS and the Polling Unit Result in FORM EC8A and that the evidence***

***required to prove there is over voting are record of accredited voters in the BVAS and the Polling Unit Result in FORM EC8A"***

Also in the case of ***SOKOTO VS. INEC [2022] 3 NWLR (Pt. 1818) Page 577 at 596 paragraphs C-D***, the Apex Court held that;

***"A Party tendering documents has the duty to ensure that such documents are linked to the relevant aspect of his case which they relate"***

The Respondents in their defence did not comply with the law in line with the decision of the Supreme Court in ***OYETOLA VS. INEC (Supra)***. Again, all the documents tendered by the Respondents on the basis of which they put up their tepid response to their impudent violations of the Constitution, Electoral Act 2022 and rule of law, were actually dumped on the honourable Tribunal, without any appropriate witness speaking to the said documents.

In the case of ***BELGORE VS. AHMED (2013) 18 NWLR (Pt. 1355) Page 60 at Page 100 paragraphs E - F***, the Supreme Court held that:-

***"The proper person to tender a document is its maker who alone can be cross-examined on it and where a person who did not make it tenders it, the Court ought not to attach probative value to it, since the witness cannot be cross-examined on it".***

On when a witness/evidence does not comply with the mandatory requirements of the evidence act as it relates to computer generated evidence, the case of ***DICKSON VS. SYLVA (2017) 8 NWLR (Pt. 1567) 167 at 200-221 H-E, 213-214 H-A*** as it relates to computer generated evidence of the witnesses of Respondents, the court cannot place probative evidence on same.

On when a document is tendered by a person other than the maker see the case of ***GBENGA VS APC [2020] 14 NWLR (Pt 1744) 248 at 273 E-G*** The claimed certificate of compliance was tendered by a person who is not competent to tender same being not the maker thereof.

Moreso, when the Supreme Court held in the case of ***SA'EED VS. YAKOWA [2013] 7 NWLR (Pt. 1352) Page 124*** that documents are to be tested in open Courts before the Court can evaluate them. An Exhibit tendered from the BAR without calling the maker thereof attracts no probative value, because there is no opportunity given to the other Party to Cross-examine for the purpose of testing its veracity.

See also ***OMISORE VS. AREGBESOLA [2015] 15 NWLR (Pt. 1482) Page 205 at 322 paragraphs F-H.***

Learned counsel submits, that there is no valid challenge to the declaration made in favour of the Petitioners, as it relates to the election of 18<sup>th</sup> March, 2023; that having being established and the fact that the said Exhibits already mentioned above are not properly before this Honourable Tribunal, counsel urge the Honourable Tribunal to hold that the 2<sup>nd</sup> Respondent did not score the majority of lawful votes cast for the election to elect the

House of Assembly Member to represent Ideato South State Constituency in the Imo State House of Assembly rather same was scored by the 1<sup>st</sup> Petitioner as the candidate of the 2<sup>nd</sup> Petitioner.

On issue 3, **Whether the Petitioners are entitled to the reliefs sought.**

Learned counsel seek the Honourable Tribunal's leave to adopt and rely on all the arguments already proffered in respect of issue 2, in respect of issue 3 in asking that on the balance of probabilities, that Tribunal find in favour of the Petitioners that the Petition has been proved.

Learned counsel concludes by urging the Honourable Court to grant this petition having proved the ground and facts in support of same for being meritorious.

On the part of the 1<sup>st</sup> Respondent's counsel, he argued that the burden of proof in electoral matters is governed by the provisions of Sections 134 and 139 of the Evidence Act, 2011. It is a cardinal principal of law that he who asserts must prove. Where the allegations made by the petitioner are civil in nature, the burden of proof shall be discharged on balance of probabilities.

Manifestly missing from the case of the Petitioners is, how the 2<sup>nd</sup> Respondent failed to have scored the majority of lawful votes to have won the election. In ***WADA VS. INEC (supra)*** the court stated:

***"When a petitioner alleges that a respondent has not won by majority of lawful votes in an election as in this case, to***

***succeed in his claim, the law enjoins the petitioner firstly to plead the existence of two sets of results emanating from the election. Thereafter the Petitioners must adduce credible evidence that the respondent did not score the majority of lawful votes cast at the election. Secondly, the Petitioners must plead and prove votes cast at the various polling units, the votes illegally credited to the declared winner, the votes which ought to have been deducted from the supposed winner in order to find out if it will affect the result of the election. In all, the best form of evidence to be led in prove of such allegation is those polling Unit Agents who witnessed the infractions at the various polling units.”***

What the Petitioners did more, was to present table with figures, alleging over voting and irregularities with numbers and documents. The Petitioners' case did not comply with the instructions and principles elucidated in WADA's case.

It is the submission of learned counsel that the above application is missing copiously from the case of the Petitioners. The petitioners failed to state what they scored and what they should have or were meant to have scored were some votes added to their scores by the reason of the alleged infractions, what the 2<sup>nd</sup> Respondent scored and what the 2<sup>nd</sup> Respondent ought not to have scored. All these facts must be spelt out and proven for the said case against the election to stand. Failure of the petitioners to comply to that is fatal to the petition.

Furthermore, in ***AKPOTI VS. INEC (2022)***, the court stated:

***"There is a rebuttable presumption that the result of any election declared by a Returning Officer is correct and authentic, and the burden is on the person who denies the correctness and authenticity of the return to rebut that presumption. This, where a party alleges, as the appellants did in this case, that there was non-compliance in the conduct of the election the onus is on him to establish":***

- a. That there was substantial noncompliance; and***
- b. That the noncompliance did or could have affected the result of the election. It is after the Petitioner has established the foregoing that the onus would shift to the respondent to establish that the result was not thereby affected.***

It is the contention of learned counsel that the Petitioners did not discharge the laid down burden of proof and assuming they did, the 1<sup>st</sup> Respondent has rebutted same as it concerns the conduct and outcome of the election.

It is also manifest that the said witnesses were not able to fully prove all the alleged infractions. On that light, we submit that the Petitioners have not adduced credible evidence to void the entire process of electing, announcing and returning the 2<sup>nd</sup> Respondent as winner of the election. Counsel urge the Tribunal to hold so.

Learned counsel submits, that the Petitioners are averse to the fact that 1<sup>st</sup> Respondent reviewed the declaration and return made with respect to the main election held on 18<sup>th</sup> March, 2023 and further ordered for a supplementary election which took place on 15<sup>th</sup> April, 2023.

Counsel further submits, that the powers conferred on the 1<sup>st</sup> Respondent to review a declaration and return in an election is a novel provision to the Electoral Act, 2022 as enshrined in Section 65(1) thereof. The provisions of Section 65 (1) of the Extant Electoral Act provides as follows:

Section 65 (1) ***"The decision of the returning officer shall be final on any question arising from or relating to;***

- a. Unmarked ballot paper***
- b. Rejected ballot paper, and***
- c. Declaration of scores of candidates and the return of a candidate:***

***Provided that the commission shall have the power within seven days to review the declaration and return where the commission determines that the said declaration and return was not made voluntarily or was made contrary to the provisions of the law, regulations and guidelines, and manual for the election. (emphasis mine).***

By virtue of the second limb of Section 65(1) of the Electoral Act, 2022, it is crystal clear that 1<sup>st</sup> Respondent has the requisite power to review the result of an election even when a declaration and return has been made.

In the instant case, DW1 led credible evidence to show that the declaration and return of the 1<sup>st</sup> Petitioner made by 1<sup>st</sup> Respondent in the main election held on 18<sup>th</sup> March was rightly reviewed by 1<sup>st</sup> Respondent because of the margin of lead principle.

The margin of lead between the two leading candidates in the House of Assembly election held on 18<sup>th</sup> March, 2023 in Ideato South LGA was less than the total number of PVC's collected in Ugbelle Ward where elections did not hold at all. This necessitated for a supplementary election in Ugbelle ward which was conducted on 15<sup>th</sup> April, 2023 wherein all parties to the election duly participated.

Learned counsel argued, that it is pertinent to state that DW1 led cogent and verifiable evidence to show that he collated and returned the 2<sup>nd</sup> Respondent after the 15<sup>th</sup> April, 2023 Supplementary Election which are evident in Exhibit "D14" – "D16" certified true copies of the result sheets obtained from 1<sup>st</sup> Respondent.

Particular interest is the polling units result sheet and ward collation result sheets for the election held on 18<sup>th</sup> March, 2023 (Exhibits "1" – "11" and Exhibit "13" relied upon by the Petitioners) these exhibits were altered and mutilated. DW2 discredited the mutilated contents of Exhibits "1 – "11" (certified true copy of Polling Unit result sheets for election held on 18/3/2023 and Exhibit "13", certified true copy of Ward collation result

sheet for election held on 18/3/2023), by tendering and relying on the polling unit result sheet uploaded on the election day to the IRev Portal as shown in Exhibits "D34" – " D45".

In the instant case, the 1<sup>st</sup> Respondent armed with Exhibits "D34" - "D45" the Certified True Copies of IRev results duly reviewed the declaration and return made in the election held on the 18<sup>th</sup> day of March, 2023 and ordered a supplementary election on 15<sup>th</sup> April, 2023 owing to the margin of lead principle. Also, all the parties to the election voluntarily took part in the supplementary election held 15<sup>th</sup> April, 2023 in Ugbelle Ward.

Learned counsel further contend, that the reliefs sought for by the Petitioners are incongruous, incompetent, inconsistent and not grantable. This petition is apparently challenging the final declaration and return made by 1<sup>st</sup> Respondent after the supplementary election held on 15<sup>th</sup> April, 2023 and not the election of 18<sup>th</sup> March, 2023.

We submit that the petition lacks evidential proof, is vague, nebulous, imprecise, contradictory and without sufficient particulars of facts alleged.

Learned counsel respectfully urge the Honourable Tribunal to resolve this issue for determination in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

Learned counsel concludes by submitting that it is crystal clear that the petitioners have failed to prove the averments contained in their petition for the following reasons:

- a. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents discredited the contents of the certified true copy of result sheets obtained from, by tendering the polling unit

result sheet form EC8A duly uploaded to the IRev portal (Exhibit "D34" – "D45"). The Polling Unit results uploaded to the IRev portal for the election of 18<sup>th</sup> March, 2023 countered the mutilated and altered version of results as shown in the certified true copy of result sheets obtained from INEC;

- b. 1<sup>st</sup> Respondent duly reviewed the declaration and return of the House of Assembly election for Ideato South State Constituency held on 18<sup>th</sup> March, 2023 and ordered a supplementary election in Ugbelle ward on 15<sup>th</sup> April, 2023 based on the margin of lead principle.
- c. The 2<sup>nd</sup> Respondent garnered the majority of lawful votes cast at the election on 18<sup>th</sup> March, 2023. The 2<sup>nd</sup> Respondent also garnered the majority of lawful votes cast at the election by computing the votes scored by candidates both at the main election held on 18<sup>th</sup> March, 2023 and the supplementary election held on 15<sup>th</sup> April, 2023.
- d. The reliefs sought for by the petition are incompetent, inconsistent and vexatious.

Learned counsel finally urge the Honourable Tribunal to dismiss this petition for being frivolous and lacking in merits.

### **TRIBUNAL:-**

As stated from the preceding part of this judgment, the issue formulated by Respondents is the same. It is therefore needless to further reproduce the joint argument of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents which is not different

from that of the 1<sup>st</sup> Respondent. It has been covered under the principle of covering the field and deemed considered in this judgment.

Above represents the gamut of the Petitioners case on the one hand and the Defence of the Respondents on the other hand.

The gamut of Petitioners' case is clearly premised on the fact that he won the Election of 18<sup>th</sup> March, 2023 and was declared and returned Eected by the Ideato South Returning Officer (Nwufu Olisaemeka) i.e PW1 and that for unexplained reasons, he was denied Certificate of Return by Independent National Electoral Commission (INEC) (1<sup>st</sup> Respondent).

It is further his case that Independent National Electoral Commission (INEC) then proceeded to conduct Supplementary Election at Ugbelle Ward of the same Ideato South LGA which he still won, but that a new Returning Officer (Prof. I.I. Ekpe) declared 2<sup>nd</sup> Respondent of the Accord Party as the winner of the Election.

It is true that any result declared by Independent National Electoral Commission (INEC) enjoys a presumption of regularity which is rebuttable once there is evidence that same was not done in line with law and justice.

I have considered the evidence and legal arguments contained in the final addresses as presented by both the Petitioners and Respondents in support of their respective cases.

The issue, whether the Petitioners have proved their case and are entitled to the reliefs sought, which is the issue formulated by both Respondents, seem very apt and all-encompassing as far as the formulated issues by

parties are concerned. Same is hereby adopted as Tribunal issue for determination.

The issue is; **whether the Petitioners have proved their case and are entitled to the reliefs sought.**

The principal reliefs sought by the Petitioners as contained in the Petition are Declaratory in nature.

It is instructive to note timely that the law on declaratory relief has been well settled in the annals of our jurisprudence through a long line of decided cases.

Any Claimant who seeks declaration of any right, must lead evidence so credible enough to show that he is indeed entitled to such relief. This is in view of the fact that declaratory relief is not granted as a matter of course.

The burden of proof on the plaintiffs in establishing their declaratory relief to the satisfaction of the Court is quite heavy in the sense that such a declaratory relief is not granted even on admission by the defendant where the plaintiffs fail to establish their entitlement to the declaration sought by their own evidence.

The cases of ***NWOKIDU VS. OKARU (2010) 3 NWLR (PT. 1181) 362; MATANMI & ORS V. DADA & ANOR (2013) LPELR-19929(SC) (PP. 8 PARAS. C) and INEC VS. ATUMA & ORS (2013) LPELR – 20589 (SC)*** and Sections 132 and 134 of the Evidence Act, 2011 are instructive on this issue.

In their effort to establish their case, Petitioners tendered Exhibits "1 – 19" which comprises of Polling Unit Results for Ideato South Ward and Statement of Results, Summary of Results in Forms EC8B(I), EC8C(I), Declaration of Results, Receipt issued by INEC, certified true copy of Petition, Subpoena, appointment letter as the RA/Ward Collation Officer and an Order of Tribunal striking-out Petition.

The kernel of the Petitioners' case is anchored on the fact that he won the Election that held on the 18<sup>th</sup> March, 2023 and was declared and returned as the winner but the 1<sup>st</sup> Respondent (Electoral Umpire) refused to issue him with his Certificate of Return but rather proceeded without any prompting to conduct supplementary Election in Ugbelle Ward where he still won but Independent National Electoral Commission (INEC) declared the 2<sup>nd</sup> Respondent as the winner of the Election after the Supplementary Election.

May I observe at this juncture, that Election is a process... what then does an Electoral process and Election entail!!

Electoral Process and "Election" have been judicially defined and pronounced upon by this Court and the Apex Court in numerous cases but suffice to refer to the following:-

***CHIEF C. O. OJUKWU VS. CHIEF O. OBASANJO (2004) 1 EPR 626 at 653 Per SALAMI, JCA later PCA (RTD)*** who said:-

***"The issue of Election goes beyond merely voting, as it is a process inclusive of delimitation of Constituency,***

***nomination, accreditation, voting itself, counting, collation and return, or declaration of result.”***

In ***SENATOR ABUBAKAR & ADDIO YAR’ADUA & ORS VS. SENATOR ABDU UMAR YANDOMA & ORS (2015) 4 NWLR (Part 1448) 123 at 177 A – B, M.D MUHAMMAD JSC*** had this to say;

***“Certainly, as asserted by the Appellants, an Election is a long drawn process with distinct stages ending in the Declaration of a winner by the returning Officer. It entails one’s membership of a Political Party, his indication or desire to be the Party’s Candidate at the Election, primaries for the nomination of the Party’s Candidate, presentation of the Party’s Candidate to Independent National Electoral Commission (INEC), the event of the Election, return of the successful candidate at the Election after declaration of scores, and ends with the issuance of Certificate of Return to the successful Candidate.”***

It is settled peradventure in the annals of our Electoral Jurisprudence that the moment a Returning Officer duly appointed by Independent National Electoral Commission (INEC) is satisfied that a particular Party and her Candidate having satisfied the position of the law scored the majority of the lawful votes cast at the Election, he shall declare and return such a person as winner of the Election, and Independent National Electoral Commission (INEC) shall be estopped from denying the authenticity of such a result.

Above was stated in the case of ***INEC VS. RAY (2004) 14 NWLR (Pt. 892) 92 at 131.***

The fact that any such declaration made by Independent National Electoral Commission (INEC) enjoys presumption of regularity in line with the provision of Section 168 of the Evidence Act, 2011, which has been interpreted in so very many cases, makes it difficult to taint such Declaration.

The cases of ***CPC VS. INEC & ORS (2011) LPELR – 8257 (SC); ABUBAKAR VS. YAR’ADUA (2008) 19 NWLR (Pt. 1120) Page 1*** are all instructive on point.

I am however not unmindful of the power of Independent National Electoral Commission (INEC) under Section 65(1)(c) of the Electoral Act, 2022 to review such an Election within 7 days.

I am however minded to observe the fact that the Respondents have maintained in their defence that arising from the conduct of the Petitioners on the 18<sup>th</sup> March, 2023 and coupled with results mutilation, over-voting and security threats which were all orchestrated by the Petitioners, it was then very necessary for the 1<sup>st</sup> Respondent to review the conduct of the Election of the 18<sup>th</sup> March, 2023 which culminated into the Supplementary Election for Ugbelle Ward which comprised 7 Polling Units.

I however wish to state that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents never led any evidence to establish the allegation of result mutilation, threats, over-voting etcetera throughout the hearing.

I am minded to observe that if 2<sup>nd</sup> and 3<sup>rd</sup> Respondents meant for any such review of the Election to be made by the 1<sup>st</sup> Respondent (INEC), why file petition challenging the declaration made in favour of the 1<sup>st</sup> Petitioner on the 18<sup>th</sup> March, 2023 before the National and State House of Assembly Election Petition vide **Petition No. EPT/IM/SHA/36/2023?**

For the purposes of clarity, I shall bend backward to have a look at paragraph 99(a) of the Regulation and Guidelines for the conduct of Election 2022 and Section 65(1)(c) of the Electoral Act, 2022 which empowers Independent National Electoral Commission (INEC) to so withhold announcement of result and declaration and or conduct Supplementary Election.

I hereby reproduce the said paragraph, as follows;

Paragraph 99(a)

***"Where the Commission receives a report and it is satisfied that a declaration/return may have been made involuntarily or contrary to law, regulations and guidelines, the Commission shall withhold the publication of the result(s) and issuance of certificate of Return to the candidate declared the winner of the election"***

Section 65 1(c) of the Electoral Act, 2022

***"Provided that the commission shall have the power within seven days to review the declaration and return where the commission determines that the said declaration and return***

***was not made voluntarily or was made contrary to the provisions of the law, regulations and guidelines, and manual for the election.”***

One Ogbeyalu Okoye authored a report to the Resident Electoral Commissioner Independent Electoral Commission Owerri, as the Electoral Officer for Ideato South LGA which was marked Exhibit “D49”.

I have seen Exhibit “D49” i.e Report on the State House of Assembly election held on the 18<sup>th</sup> March, 2023 which was duly signed her.

In the said report, the said Electoral Officer stated the fact that election held in all the other 12 wards in Ideato South Local Government Area except Ugbelle Ward where the car conveying INEC Ad-hoc staff with electoral materials was hijacked by hoodlums thereby making it impossible to hold election in Ugbelle where there are 7 polling units with 3,928 Registered Voters and 3,888 PVC collected.

Relying on the said report from the Electoral Officer for Ugbelle Ward, Independent National Electoral Commission (INEC) then claimed it took the decision to conduct Supplementary Election in the said Ugbelle Ward.

From the report of the Electoral Officer for Ideato South Local Government Area which was tendered by the Respondents’ counsel from the Bar, it is then very clear that the only snack with the election of 18<sup>th</sup> March, 2023 was the fact that election did not hold in Ugbelle ward on the 18<sup>th</sup> March, 2023 and no more.

I have seen yet another bundle of the various ward results for Ideato South LGA again tendered by Respondents from the Bar with that of Ugbelle Ward amongst them which formed the basis of the declaration of 2<sup>nd</sup> Respondent as winner of the Election.

Why are Respondents tendering the results of the other wards when the LGA returning officer had already declare one Duru Iheonukara Johnson of the APC as the winner of the election and returned him as elected as shown in Exhibit "15"!

Is the 1<sup>st</sup> Respondent (INEC) saying it carried out an electoral overhaul of the other results from the other 12 wards of Ideato South Local Government Area without the knowledge of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners!

If the answer is in the affirmative, could the 1<sup>st</sup> Respondent carry out such an exercise in absence of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners without violating their fundamental right to fair hearing!

Independent National Electoral Commission (INEC) must answer above questions.

I have seen Exhibit "D14" i.e another set of result declared by one Prof. I.I Ekpe who said he was appointed the LGA returning officer for the supplementary election held on the 15<sup>th</sup> April, 2023.

In the said result, one Azodo Vitalis Ndubusi (2<sup>nd</sup> Respondent) of the Accord party polled a total votes of 4091 (Four Thousand and Ninety One) while the 1<sup>st</sup> Petitioner Duru Maduabuchi Johnson of the APC polled 3188 (Three Thousand, One Hundred and Eighty-Eight votes).

I now turn to the summary of the results for the Supplementary Election conducted in Ugbelle Ward on the 15<sup>th</sup> April, 2023

From the summary of the results from the 7 polling units that make up Ugbelle ward in Ideato South LGA where the said supplementary election held on the 15<sup>th</sup> April, 2023, 1<sup>st</sup> Petitioner of the APC and the 2<sup>nd</sup> Respondent of the Accord Party scored the following votes;-

1. Uluama Hall 1  
Accord Party – 31  
APC – 23
2. Uhualla Village Hall I  
Accord Party – 13  
APC - 28
3. Eluama Hall II  
Accord Party – 30  
APC – 31
4. Uhualla Village Hall II  
Accord Party – 23  
APC – 44
5. Uhualla Village Hall III  
Accord Party – 0  
APC – 0
6. Ama Obi Hall Eluama  
Accord Party – 22  
APC – 38
7. Comprehensive Secondary School Ugbelle

Accord Party – 0  
APC – 0

From the scores and the subtotal as reflected in Exhibit "D16", i.e the summary of results from the 7 polling units in Ugbelle Ward, Accord Party scored a total votes of 119 while APC scored 164.

I wish to note that the fact that APC won the Supplementary Election was admitted under cross – examination by the 2<sup>nd</sup> Respondent.

Now, if the 1<sup>st</sup> Petitioner won the said election in the other 12 Wards in Ideato South LGA as stated in Exhibit "15" and was declared as the winner on the 18<sup>th</sup> March, 2023, and now that Independent National Electoral Commission (INEC) in exercise of her powers under the Electoral Act specifically Section 65 of the Electoral Act, 2022, found the need to conduct a supplementary election after the review of the Election in view of the issue of margin lead pursuant to the provision of Paragraph 62 of the Regulation and Guidelines for the conduct of Election, 2022, were the votes from the other 12 Wards and Ugbelle Ward ordinarily not expected to be re-entered in the appropriate Form EC8E(I) without any tampering with the initial scores of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners?

What did Independent National Electoral Commission (INEC) (the 1<sup>st</sup> Respondent) do that saw them declare the 2<sup>nd</sup> Respondent when clearly he did not win both the Elections of 18<sup>th</sup> March, 2023 and 15<sup>th</sup> April, 2023!

There is equally no such report to show what sort of review was made and the Tribunal therefore cannot speculate on the existence of any report

arising from the alleged review of the Election conducted on the 18<sup>th</sup> March, 2023.

The case of ***TANKO VS. NONGHA (2005) LPELR – 11405 (CA)*** is apt on the fact that a Court is not to speculate.

It is therefore clear that having not carried-out any review on the results of the 12 Wards where Election held on the 18<sup>th</sup> March, 2023, and coupled with the fact that no adverse report was made in writing or any credible evidence led to cast aspersion on the said Election by any of the Political Parties or Candidates, and in view of the fact that the Electoral Officer for Ideato South Local Government Area gave the Election of 18<sup>th</sup> March, 2023 good remark in her report, the said results for the 12 Wards which was used by the Returning Officer for Ideato South Local Government Area to declare and return the 1<sup>st</sup> Petitioner as the winner of the Election held on the 18<sup>th</sup> March, 2023 remains intact. What was then left was for the Returning Officer for the Supplementary Election of the 15<sup>th</sup> April, 2023 to collate the Polling Unit results from the 7 Polling Units and enter them in the appropriate form and further add same to the results of 18<sup>th</sup> March, 2023 to find a winner.

An addition of the 119 votes scored by the 2<sup>nd</sup> Respondent of Accord Party to the initial 3,996 votes would have seen him with 4,115 votes while 164 votes added to that of 1<sup>st</sup> Petitioner of All Progressive Congress (APC) would have seen him with a total of 5,071 votes.

What happened along the line that the 2<sup>nd</sup> Respondent and his political party i.e Accord Party were declared winner even where the key actor i.e

2<sup>nd</sup> Respondent himself admitted the fact that he lost the supplementary election.

I ask Independent National Electoral Commission (INEC) for answer.

The fact that Independent National Electoral Commission (INEC) enjoy a wide range of powers as it pertain the conduct of election does not mean the commission can whimsically change the position of the moon and the sun. The Independent National Electoral Commission (INEC) cannot alter the result of any ward already entered in favour of the Petitioners without giving them the opportunity to be heard... where such is done, it clearly violates their right to fair hearing which is a constitutionally provided right that derived its origin from God, the creator of man.

See Sections 36(1) and (2) of the Constitution of FRN 1999

Section 36(1)

***"In the determination of his civil rights and obligations by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality"***

Section 36(2)

***"without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine***

***questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -***

- a. Provides an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and***
- b. Contains no provision making the determination of the administering authority final and conclusive."***

To the extent that the results already declared by Independent National Electoral Commission (INEC) appointed returning officer for Ideato South LGA on the 18<sup>th</sup> March, 2023 was clearly tampered with without the knowledge and input of the Petitioners, which is in breach of the Fundamental Human Right to fair hearing, such exercise cannot stand in the eyes of the law in view of the golden position of human rights generally speaking.

Fundamental Rights have been said to be premodial... some say it is natural or God given Rights.. Text books writers like the renowned Professor Ben Nwabueze (SAN) have opined that these rights are already possessed and enjoyed by individuals and that the "Bills of Rights" as we know them today "created no right de-novo but declared and preserved already existing rights, which they extended against the legislature".

It is instructive to note that magna carta 1215 otherwise called "Great charter" came to being as a result of the conflict between the king and the barons, and petition of rights 1628 which is said to embody sir Edward Coke's concept of "due process of law" was also a product of similar conflicts and dissensions between the king and parliament.. nor was the Bill of Rights 1689 handed down on a "platter of Gold".. that bill drawn by a young barrister John Somers in the form of declaration of right, and assented to by king Williams secured interalia for the English People, freedom of religion, and for judges, their independence.

England has no written constitution with or without entrenched human Rights provisions however, the three bills of rights alluded to earlier, formed the bedrock of the freedom and democratic values with which that country has to this day been associated.

It is worthy of note that even before the amendment of its constitution, the Americans had to fight a war of Independence in 1776 and had proclaimed thus:-

***"We hold these truths as self-evident, that all men are created equal, that they endowed by there are creator with certain inalienable rights that among these are life, liberty and pursuit of happiness."***

It can therefore be gleaned from history that the pursuit of freedom, equality, justice and happiness is not peculiar to any race or group... it is indeed a universal phenomenon, hence man has striven hard to attain this goal.

The universal declaration of human rights which was adopted by the United Nation General Assembly on the 10<sup>th</sup> December, 1948, three (3) years after the end of the 2<sup>nd</sup> World War, was mainly geared towards ensuring a free world for all, regardless of status, tribe or religion.

Above underscores the significance of Human Rights.

Nigeria did not have to fight war to gain independence from the British.. it was proclaimed that our independence was given to us on a "platter of gold."

We have had our Fundamental Human Rights carefully captured and entrenched under Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as amended.

Any curtailment of human right not done in accordance with the Fundamental Principles of the Rule of Law which is a principle founded on the supremacy the laws of this Country and the Constitution, shall be frowned at.

1<sup>st</sup> Respondent (INEC) being an unbiased umpire, is an Institution created by law and must act in consonance with the law and not to use its position as a draconian monster with attendant self-appropriated right to deny any Citizen of this country its protected and guaranteed rights.

The conduct and action of Independent National Electoral Commission (INEC) and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents against the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners where results and scores of the Petitioners were reduced for whatever reason without giving them the opportunity to be heard constitutes a

serious breach and violation of the fundamental right to fair hearing of the Petitioners and the 1999 Constitution of the Federal Republic of Nigeria. This cannot stand in the eyes of the law, as same amounts to injustice.

The Independent National Electoral Commission (INEC) (1<sup>st</sup> Respondent) who is under an obligation to defend its action only called a sole witness who gave evidence as the Returning Officer for the Supplementary Election held on the 15<sup>th</sup> April, 2023 and nothing more. Voting is always done at the Polling Units and not Collation Centres.

There is no evidence led by the Respondents to show anywhere there was over-voting or disenfranchisement. No such evidence. Forms EC8A and EC8B tendered from the Bar by the Respondents were merely dumped on the Tribunal as no Party Agent of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and or Voters from the respective Polling Units were called to give any evidence.

The argument by the Respondents' counsel that Independent National Electoral Commission (INEC) upon review from the backend server of the uploaded result to IRev of the 1<sup>st</sup> Respondent cannot hold water in view of the fact that the primary evidence to show the number of accredited Voters is the BIVAS machine which the Respondents collectively failed to produce in Court and or demonstrate same before the Court.

This has been put to rest in the case of ***OYETOLA VS. INEC (2023) 11 NWLR (Pt. 1894) 125*** where the Supreme Court had this to say;

***"It is glaring from the above reproduced provisions of the Electoral Act and the INEC Regulations and Guidelines that***

***the evidence required to prove that there was over voting are the record of accredited voters in the BVAS and the Polling Unit result in Form EC8A.”***

All Exhibit “D” series which were mostly Polling Unit results, summary of results from the 13 Wards that makeup Ideato South Local Government Area were merely dumped on the Tribunal as their makers were not called to speak to them.

Documents cannot be dumped on the Court or Tribunal as the Petitioners did in the instant case, as it is not the duty of the Court or Tribunal to process through documents tendered by the parties, which were not demonstrated in open Court.

No probative value can be ascribed to the document tendered as such Exhibits amounts to documentary hearsay.

See ***PDP & ANOR VS. INEC & ORS (2019) LPELR-48101 (CA)*** and Section 37 of the Evidence Act is instructive on this point.

What more,... the arguments of the Respondents’ counsel who seek hide behind Section 137 of the Electoral Act, 2022 as the reason for not calling witnesses to speak to document is misplaced as the said Section did not preclude oral evidence of witnesses who are makers of documents in every ramification.

Respondents have clearly shirked from their obligation.

It is true that some people will always find a way to play around the law even when it is very clear.

Injustice anywhere is a threat to justice everywhere.

Morality cannot be legislated but behaviour can be regulated.

The law may not change the heart, but it can restrain the heartless.

He who passively accepts evil is as much involved in it as he who helps to perpetrate it. I say no more.

In consequence therefore, any such exercise carried out in the absence of Petitioners is null, void and unconstitutional... same is hereby set – aside.

Petitioners who are under an obligation to establish their entitlement to the reliefs sought by adducing credible evidence, have indeed been able to show that they won the elections of both the 18<sup>th</sup> March, 2023 and 15<sup>th</sup> April, 2023, hence entitled to the reliefs sought.

Clearly, the case of the Petitioners have been meritoriously proven by preponderance of evidence. Petitioners' case therefore succeeds.

Accordingly, the following Declarations and Orders are hereby made, as follows:-

1. A declaration is **hereby made** that the 2<sup>nd</sup> Respondent did not score the majority of lawful votes cast in the election for the seat of the member representing Ideato South State Constituency in the Imo State House of Assembly held on 18<sup>th</sup> March, 2023.

2. A declaration is **hereby made** that the 1<sup>st</sup> Petitioner scored the majority of lawful votes in the said election held on the 18<sup>th</sup> day of March, 2023, is and remains the winner of the election to elect the member representing Ideato South Constituency into the Imo State House of Assembly.
3. A declaration of the Honourable Tribunal is **hereby made** that the declaration by the 1<sup>st</sup> Respondent on the 15<sup>th</sup> of April, 2023 that the 2<sup>nd</sup> Respondent won the election for Ideato South State Constituency is null and void.
4. An Order of the Honourable Tribunal setting aside the certificate issued to the 2<sup>nd</sup> Respondent for Ideato South State Constituency in the Imo State House of Assembly is **hereby granted**.
5. A declaration of the Honourable Tribunal that the 2<sup>nd</sup> Respondent did not score the majority of lawful votes cast during the supplementary election of 15<sup>th</sup> of April, 2023, is **hereby granted**.
6. A declaration of the Honourable Tribunal, that the 1<sup>st</sup> Petitioner scored the majority of lawful votes cast at the supplementary election which held on the 15<sup>th</sup> April, 2023, is **hereby granted**.
7. A declaration of the Honourable Tribunal is **hereby made** that by a combination of the votes scored by the 1<sup>st</sup> Petitioner on the 18<sup>th</sup> day of March, 2023 and 15<sup>th</sup> day of April, 2023, the 1<sup>st</sup> Petitioner scored the majority of lawful votes cast during the election(s) to elect the

member representing Ideato South State constituency in the Imo State House of Assembly.

8. A declaration that the 1<sup>st</sup> Petitioner is the winner of the election(s) to elect the member representing Ideato South State Constituency into the Imo State House of Assembly is **hereby granted**.
9. The 1<sup>st</sup> Respondent, (INEC) is **hereby ordered** to withdraw and cancel the Certificate of Return which it issued the 2<sup>nd</sup> Respondent in this petition.
10. 1<sup>st</sup> Respondent is **hereby ordered** to issue a certificate of return to the 1<sup>st</sup> Petitioner as the winner of that election conducted on the 18<sup>th</sup> day of March, 2023 and 15<sup>th</sup> day of April, 2023.

May God bless the Federal Republic of Nigeria.

.....  
**HON. JUSTICE Y. HALILU**  
**(CHAIRMAN)**

.....  
**HON. KADI M.G. ABUBAKAR**  
**(MEMBER I)**

.....  
**HON. JUSTICE A.O. FAMILONI**  
**(MEMBER II)**