

IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY
ELECTION PETITION TRIBUNAL
ABIA STATE
HOLDEN AT UMUAHIA

THIS WEDNESDAY, THE 21ST DAY OF JUNE, 2023

BEFORE THEIR LORDSHIPS

HON. JUSTICE ABUBAKAR IDRIS KUTIGI - CHAIRMAN
HON. KHADI AHMAD MUHAMMAD GIDADO - MEMBER I
HON. JUSTICE MOMSISURI ODO BEMARE - MEMBER II

EPT/AB/SHA/15/2023

BETWEEN:

1. BARR. CHUKWUMA UCHECHUKWU ONYEKWERE
 2. AFRICAN DEMOCRATIC CONGRESS (ADC)
- PETITIONERS

AND:

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
- RESPONDENTS
2. IHEONUNEKWU UGOCHUKWU COLLINS
3. PEOPLES DEMOCRATIC PARTY (PDP)

RULING

By a motion on notice dated 15/6/2023, the Petitioners/Applicants pray for the following reliefs:

- 1. AN Order** for the 1st Respondent to certify for the Petitioners/Applicants "STATEMENT OF RESULT OF POLL FROM

POLLING UNIT” FORM EC 8A (I) of the 185 Polling Units in Isiala Ngwa North State Constituency of Abia State used in the House of Assembly Election of 18th March, 2023, **downloaded from INEC Irev Server** by the Petitioners/Applicants.

- 2. AN ORDER** for the Petitioners/Applicants to be allowed to tender as exhibits in evidence at the hearing of the Petition “STATEMENT OF RESULT OF POLL FROM POLLING UNIT” FORM EC 8A (I) of the 185 Polling Units in Isiala Ngwa North State Constituency of Abia State used in the House of Assembly Election of 18th March, 2023, **downloaded from INEC Irev Server** by the Petitioners/Applicants in the absence of the 1st Respondent certifying same as ordered in relief 1 above.

The application is supported by seven(7) paragraphs affidavit and a written address which raised a single issue for determination as contained in the address to wit:

Whether it is not in the interest of fair hearing to grant the reliefs sought.

Submissions were made on the above issue in the address which forms part of the Record of the Tribunal. At the hearing, counsel to the Petitioners withdrew relief (2) on the motion paper and then adopted the submissions in the written address in urging the court to grant relief (1).

The 1st Respondent filed a counter affidavit of eleven (11) paragraphs in opposition and a written address in support. The 1st Respondent adopted

the issue formulated by Petitioners and Submissions were then made on the issue which forms part of the Record of court.

At the hearing, counsel to the 1st Respondent relied on the contents of the counter affidavit and adopted the submissions in the written address in praying that the application be dismissed.

The 2nd and 3rd Respondents equally filed an eleven (11) paragraphs counter affidavit and a written address in support in which one issue was raised as arising for determination:

“In the light of the provisions of Sections 104 and 105 of the Evidence Act 2011, whether this Tribunal can be persuaded to compel the 1st Respondent to certify purported documents privately generated by the Petitioners/Applicants from a source and/or server not in the custody of the 1st Respondent.”

Submissions were made on the above issue which equally forms part of the record of the Tribunal.

At the hearing, counsel to the 2nd and 3rd Respondents relied on the paragraphs of the counter affidavit and adopted the submissions in the written address in praying that the application be dismissed.

We have carefully considered the processes filed on both sides of the aisle and the submissions made. The narrow issue here has to do with the remit

of application of the exercise of powers of certification of public documents by a public officer.

Relief (2) having withdrawn is accordingly **struck out**. With respect to the remaining relief(1), we take our bearing from the facts streamlined in support by the Applicants and then we apply the relevant law.

Now in this case, the applicants pray that the 1st Respondent should be ordered to certify certain documents as indicated in relief (1) above. From a careful perusal of the affidavit in support; certain critical facts are immediately apparent:

- 1) The said documents requiring certification by Applicants was downloaded or generated by Petitioners/Applicants and,
- 2) They downloaded same from what they called an "INEC IREV Server".

We have gone through the entire affidavit and no such "Statement of Result" of any of the 185 polling units of the constituency in issue was attached to the affidavit. There is equally nothing to situate that any document (s) was downloaded from any "INEC IREV Server" as indicated.

The Tribunal has really not been put in any position by Applicants to see and determine the nature of the documents sought to be certified and most importantly, the source or origin.

These are clearly features which undermines the application, ab initio, because the court has no jurisdiction to speculate on the nature and contents of the documents requiring certification which the Petitioners admitted they produced themselves from an unidentified source.

The duty and responsibility was on applicants to provide clearfactual basis to situate the Reliefs they seek. In this case, they did not provide these critical basis.

Another **important fact** and what is interesting in this case is that the Applicants in paragraph 4 of their affidavit appear to have on their own showing fatally compromised the very basis of the relief (1) they seek.

In paragraph 4, the 1st Petitioner averred as follows:

"4 the "statement of result of poll from polling unit" form EC 8A (i) of the 185 Polling units in Isiala Ngwa North State Constituency of Abia-State used in the House of Assembly Election of 18/3/2023, certified and made available to the Petitioners/Applicants are not the correct "statement of result of poll from polling unit" form EC 8A (i) or the 185 Polling units in Isiala Ngwa North State Constituency of Abia-State used in the House of Assembly Election of 18/3/2023 and uploaded to IREV Server of the 1st Respondent and; thirteen (13) polling units are missing completely. These are: ward 2: polling units 1, 2, 9, 12, 13 and 20; the Petitioners have already applied. Ward 4: polling units 3 and 26, ward 7: polling units 2, 4, 17 and 20; Ward 9 polling unit 12".

The above **paragraph is clear**. The clear implication is that the Applicants concede that they were given **certified copies of the results** as they demanded and as required by law.

If it is not **'correct'** as argued by Applicants, that it is a matter for proof at the substantive hearing. The law does not put on a public officer any added burden or responsibility to certify what is not in his custody or to certify a document (s) privately generated and from an unknown source.

The relevant applicable provision is **Section 104 (1)** of the Evidence Act which provides thus:

"Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees prescribed in that respect, together with a certificate written at the foot of such a copy that it is the true copy of such document or part of it as the case may be."

The above provision is clear, self-explanatory and unambiguous. It commences with "Every public officer having custody of a public document...." We pause here. The section speaks to **custody** of a public document by a public officer. That provision cannot be expanded or its remit extended to suit a particular purpose. A privately generated document cannot come within the scope of this provision.

A party cannot therefore produce a document by himself and then expect a public officer to certify same. To the extent that there is an admission by the Petitioners that they produced the document themselves from a particular unproven source, then section 104 (1) of the Evidence Act immediately becomes inapplicable or unavailing as the documents sought to be certified as in this case is clearly not in the custody of the public officer.

The law is clear under the Evidence Act referred to above that every public officer who has custody of a public document has the duty to do the certification of it when required. He cannot however be forced or compelled to certify what is not in his custody. See **Goodwill and Trust Inv. Ltd V Umeh (2011) 8 N.W.L.R (Pt. 1250) 500 at 542 E-G.**

The rationale for certification must not be understated. It is to assure of the integrity and authenticity of the document (s) sought to be tendered vis-à-vis the original and by **Section 105** of the Evidence Act, it is only documents certified in accordance with **Section 104** that may be produced in proof of contents of the public documents or parts of the public documents of which they purport to be copies.

It is difficult to therefore see how the integrity or authenticity of any public documents(s), can be assured in the circumstances projected by the Petitioners here. It is indeed difficult to situate any basis in which a court or tribunal will compel an institution to certify documents not in their possession or custody.

The case of the Applicants is made even worse by the fact that they had already applied and **they were given certified true copies of these same documents.** We say no more.

On the whole, both factually and legally, Relief (1) and indeed the extant application is compromised. The application wholly lacks merit and it is hereby dismissed.

**HON. JUSTICE ABUBAKAR IDRIS KUTIGI
CHAIRMAN**

I concur.

**HON. KHADI AHMAD MUHAMMAD GIDADO
MEMBER I**

I concur.

**HON. JUSTICE MOMSISURI ODO BEMARE
MEMBER II**