

**IN THE FCT AREA COUNCIL APPEAL TRIBUNAL
HOLDEN AT ABUJA
BEFORE THEIR LORDSHIPS**

HON. JUSTICE SULEIMAN BELGORE	- CHAIRMAN
HON. JUSTICE YUSUF HALILU	- MEMBER I
HON. JUSTICE JUDE O. ONWUEGBUZIE	- MEMBER II

**PETITION NO: FCT/ACET/EP/04/2022
APPEAL NO: FCT/ACEAT/AP/03/2022**

BETWEEN:

- 1. BASHIR UMAR ABDULLAHI**
- 2. ALL PROGRESSIVE CONGRESS (APC)..... PETITIONERS**

AND

- 1. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)**
- 2. OJONOMI TONY ONOJA**
- 3. PEOPLES DEMOCRATIC PARTY (PDP).....RESPONDENTS**

JUDGMENT

The two Appellants who were the Petitioners at the Lower Tribunal (FCT Area Council Election Petition Tribunal) filed this appeal following their loss in the Judgment delivered on 27th July, 2022.

Their petition is number **FCT/ACET/EP/04/2022** and the unanimous judgment of the lower Tribunal was roundly against them. See pages **131 - 172** of the **Record of Appeal**.

In their Notice of Appeal at pages **173 - 179** of the **Record of Appeal**, they specified **6 grounds** of Appeal and prayed for 4 numbers of reliefs as shown below:

GROUND OF APPEAL

GROUND ONE

The Area Council Election Petition Tribunal erred in law when it held its based and judgment on a wrong and restricted understanding of over-voting to only means when the total number of votes cast exceeds the total number of registered voters in the polling unit thereby plunging itself into the abyss of error and causing substantial miscarriage of justice.

PARTICULARS OF ERRORS:

- a. **Section 53 (2) of the Electoral Act, 2010** (as amended) which is the extant and relevant Act is not to be read in isolation of Subsections 3 and 4.
- b. Over voting takes different forms including when the votes cast exceed the total number of accredited voters.

- c. The total number of votes cast in the election in dispute for the **Polling Unit 006 for City Center Councillorship** election exceeds the number of accredited voters.
- d. The election of the **Polling Unit 006** for City Center Councillorship election ought to have been nullified by the Tribunal.
- e. The holding of the trial Tribunal goes contrary to the case of **DANDAM & ANOR VS. INEC & ORS. (2019) LPELR – 49517 (CA)** and other similar lines of decisions.

GROUND TWO

The trial Tribunal erred in law when it held that “...as **between number of voters on the register (2569) and the total number of votes cast at the election accredited voters (85 or 82) the latter is far less than the former and hence there is no case of over voting apparent in Exhibit P1 as contemplated in Section 53 (2) of the Electoral Act, 2010 (as amended).**”

PARTICULARS OF ERROR

- a. A cursory look at Exhibit P1 Form EC8A for Polling Unit 006 the result of the disputing Polling Unit shows number of accredited voters as 82
- b. Column (7) of Exhibit P1 Form EC8A for Polling Unit 006 the result of the disputing Polling Unit shows Total Number of Votes cast for all parties as 85.

- c. There was manifest case of over voting on the face of Exhibit P1, i.e. Form EC8A for Polling Unit 006 the result of the disputing Polling Unit.

GROUND THREE

The Area Council Election Petition Tribunal erred in law when it placed reliance on the decided case of **SHINKAFI & ANOR VS. YARI & ORS. (SUPRA)** to hold that the Appellants have failed to establish the case of over voting without due regards to the peculiarities and circumstances of the case of the Appellants before the trial Tribunal.

PARTICULARS OF ERROR

- a. The situations and Grounds considered in the case of **SHINKAFI & ANOR VS. YARI & ORS. (2016) LPELR – 26050 (SC) PP 32 – 33** Paragraph D – A, and other similar lines of cases relied upon by the trial Tribunal are clearly distinct from our instant case.
- b. In the case of Shinkafi & Anor Vs. Yari & Ors. (Supra) and other similar lines of cases relied upon by the trial Tribunal, there were no manifest case of over voting on the face of the Result sheet which is the Primary and raw evidence of the records of the event of the Polling Unit.
- c. In our instant case Exhibit P1 Form EC8A for Polling Unit 006 i.e. the result of the disputing Polling Unit on the face of it clearly shows over voting.

- d. The situations in **Shinkafi & Anor Vs. Yari & Ors.** (Supra) and other similar lines of cases relied upon by the trial Tribunal are clearly distinguishable without instant situation.
- e. The case of **Agya Vs. Zhekeba (Unreported)** and other similar lines of authorities are apt to the determination of our own case.

GROUND FOUR

The trial Tribunal misdirected itself in law when it held that **“The figure purporting to be over-voting is not in evidence in the testimonies of PW1 & PW2** thereby plunging itself into the abyss of error and causing substantial miscarriage of justice.

PARTICULARS OF ERROR

- a. The Appellants’ witnesses gave testimonies about the case of over-voting.
- b. Particularly PW1 (Ahmed Sandaji) made statement about the number of votes cast at the disputing Polling Unit 006 for City Center Councillorship election and the total number of accredited Voters.
- c. PW1 said the Total number of votes cast is 85 while the total number of accredited voters is 82.
- d. PW2 (Hauwa Enejoh) being a subpoenaed Witness from the 1st Respondent (INEC) stated that Exhibit P1

has 82 accredited voters while 85 total votes were cast for the disputing Polling Unit.

GROUND FIVE

The trial Tribunal misdirected itself in law when it held that **“A cursory look at Exhibit P1 shows that indeed there were some cancellation/alteration apparent on the fact of it. However, all the alterations were counter signed with same signature as that of the Presiding officer.”**

PARTICULARS OF ERROR

- a. The alterations on the face of Exhibit P1 are manifestly ill intended.
- b. Not all the alterations on Exhibit P1 were signed or counter signed.
- c. Alteration(s) when done, not in compliance with the requirement of the law render the alteration void.

GROUND SIX

The decision of the trial Tribunal is against the weight of evidence.

RELIEFS SOUGHT ARE AS FOLLOWS:

1. **AN ORDER** allowing the appeal.

2. **AN ORDER** setting aside the Judgment of the Trial Court delivered on the 27th July, 2022.
3. **AN ORDER** nullifying the election of Polling Unit 006 for City Center Councillorship conducted on the 12th February, 2022 on the ground of over-voting.
4. **AN ORDER** declaring and/or returning the 1st Appellant as the Duly elected Councilor for City Center Abuja MUNICIPAL Council held on the 12th February, 2022 as having scored the majority of lawful votes cast at the election. Or **ALTERNATIVELY** AN Order directing the 1st Respondent to conduct a rerun election in the Polling Unit 006, for City Center Councillorship Abuja MUNICIPAL Council.

We believe it is apposite to illustrate some background facts leading to the petition at the Lower Tribunal should be appropriate at this juncture.

The appellants and the 2nd and 3rd Respondents as political parties and candidates contested the Councillorship seat from CITY CENTRE in the election of 12th February, 2022 as conducted by the 1st Respondent.

At the end of that exercise, the 1st Respondent (INEC) declared and pronounced the 2nd Respondent elected since, according to them (INEC), 3rd Respondent (PDP) scored the majority of lawful votes cast at the election.

Aggrieved by the declaration of the result and the return of the PDP Candidate as duly elected, the petitioners as stated earlier approached the Lower Tribunal for redress.

The gravamen of their complaints is that there was OVER-VOTING at the polling booth situated at Area 2, section 2 National Library, Mokwa Street, Abuja. The code for the polling unit is 006; as a result there was non-compliance with the provisions of the **Electoral Act 2010 (as amended)**.

The Respondents, of course, challenged and fought the petition vide a REPLY to the PETITION that can be seen at pages 14 - 49 of the Record of Appeal.

At the risk of repetition, the judgment of the Lower Tribunal was in favour of the Respondents, hence the petitioners, now appellants approached this appeal Tribunal.

Following filing of the extant appeal, the appellants filed their Joint brief of arguments while the three Respondents also did so. Furthermore, the 2nd and 3rd Respondents on 1st September, 2022 filed a separate Preliminary Objection to this appeal being heard. The Preliminary Objection is dated 29th August, 2022. The stated grounds of the objection are:

GROUND FOR THE OBJECTION

1) There are six grounds of appeal vide the Appellants Notice of Appeal.

2) The Appellants formulated only one issue for the determination of the Appeal and for all six grounds of Appeal.

3) It is trite law that issue formulated in the Appellant's brief of argument must arise or relate to the ground of appeal. See **JOSIAH CORNELIUS LTD VS. EZENWA (1996) 4 NWLR (PT. 443) 391** at 40 para. E (SC).

4) The lone issue for the determination of tis petition evident in the Appellants brief of argument is " whether the tria tribunal was right when it held that over-voting is only when the number of votes cast in an election exceeds the total number of voters Registered Voters in a Polling Unit, and on that ground dismissed the Appellants Petition"

5) No issue was formulated in the Appellants brief of argument supporting the six grounds of the Appeal.

See pages 3, 4, 5, of the Preliminary Objection where written arguments were proffered.

Cases of **DINGYADI VS. INEC (NO. 2) (2010) 18 NWLR (PT. 1224) 544**; **IYOH0 VS. EFFIONG (2007) 11 NWLR (PT. 1044) 31**; **UKIRI VS. GECO PRAKLA NIG. LTD (2010) 16 NWLR (PT. 1220) 544**; **AHMED VS. REGD. TRUSTEES A.K.R.C.C. (2007) ALL FWLR (PT. 347) 623**; **OPENE VS. NJC & ORS (2011) LPELR - 4795(CA)**.

The Appellants did not respond to the Preliminary Objection in their brief of argument.

Apparently playing safe, learned Counsel to the 2nd and 3rd Respondents in their Brief of argument at page 6 then submitted a lone issue for determination in case the Preliminary Objection is overruled. The issue submitted for determination is:

"Whether the Trial Tribunal was right when it held that the over-voting is only where the number of votes cast in an election exceeds the total number of Registered voters in a polling unit, and on that ground dismissed the Appellants Petition".

Written arguments were proffered at the pages 6 - 14 of their Brief of argument. Several cases were cited which *inter alia* includes **REGISTERED TRUSTEES OF CHERUBIM & SERAPHIM CHURCH MOVEMENT & ORS. VS. IJAODOLA & ORS.** (2007) LPELR - 26050 (SC); **CHUKWUMAH VS. SHELL PETROLEUM** (1993) 4 NWLR (PT. 289) 512; **YAHAYA & ANOR VS. DANKWABO & ORS** (2016) LPELR - 48364 (SC); **BUHARI VS. OBASANJO** (2005) 2 NWLR (PT. 910) 241 etc.

Likewise the Appellants in their Brief of Arguments vide pages 5 - 11 proffered written arguments and cited *inter alia* the cases of **SHINKAFI & ANOR VS. YARI & ORS** (*Supra*); **DANDAM & ANOR VS. INEC & ORS** (2019) LPELR - 49517; **LADOJA VS. AJIMOB**I (2016) LPELR-40658 (SC) where it was held that a Preliminary Objection is raised as to the

competence of an appeal, such Preliminary Objection must be determined first. See **UBA PLC VS. A.C.B. (NIG) LTD (2005) 12 NWLR (PT. 939) 233; ABIOLA VS. OLAWOYE (2006) 13 NWLR (PT. 996) 1; NGIGE VS. OBI (2006) 14 NWLR (PT. 999) 1.**

On the 12th December, 2022, parties adopted their respective briefs as their arguments in this Appeal. Judgment was then reserved.

Let us quickly do that now.

It is settled law that where no issue is formulated from a particular ground of appeal, that ground of appeal is deemed abandoned by the appellant, and would be struck out. See **ANPP VS. INEC (2004) 7 NWLR (PT. 891) 330.**

What this means is that issues for determination in a Brief of argument must be based on grounds of appeal filed by the parties. But the issues need not be serially or strictly as many as the number of grounds in the appeal. The point is that if the issues are NOT related to ANY of the grounds of appeal then, that is where the problem would descend. And the issues so framed becomes irrelevant and go to no issue. See **IBATOR VS. BARAKURO (2007) 9 NWLR (PT. 1040) 475.** But if the issue(s) submitted cover any of the ground or some of the grounds, then such issues must be addressed. This is the law.

What do we find in this appeal? *Albeit*, there are 6 grounds of appeal and only one issue framed. But the issue is

related or cover grounds 1, 2, 3, 4 and 6, all relating to over-voting.

We found nothing wrong with this. The argument of learned Counsel to the 2nd and 3rd Respondents that there should have been six (6) issues framed by the appellant is not strictly the law. See pages 3, 4 and 5 of the 2nd and 3rd Respondents Brief of argument. The lone issue submitted for determination covered more than one grounds of appeal and that suffices for the appeal to be considered. And we so ruled.

Proceeding from the conclusion above, we now consider the merit or demerit of the appeal.

1st Respondent (INEC) on this issue of main appeal formulated a sole issue for determination, to wit:

“Whether from the totality of evidence before the Election Petition Tribunal, the election of 2nd and 3rd Respondents held on the 12th of February was conducted in substantial compliance with the provision of the Electoral Act 2010 (as amended)”

See paragraph 3.0, of the un-paginated Brief of argument of 1st Respondent.

As for 2nd and 3rd Respondent the issue for determination in this appeal is as stated in the earlier part of this Judgment. We see nothing wrong in repeating it here. It is:

“Whether the trial Tribunal was right when it held that over-voting is only where the number of votes cast in an election exceeds the total number of Registered Voters in a Polling Unit, and on that ground dismissed the Appellants Petition.”

See paragraph 30, page 6 of their Brief of argument.

On the part of the appellants they want this Appeal Tribunal to determine the same issue as couched by the 2nd and 3rd Respondents. See page 5 of the appellants’ Joint Brief of argument.

It is our considered view that the issues as submitted by the 1st Respondent on one hand and the 2nd and 3rd Respondents on the other hand are apt for determination. However, we can treat them together in one full swoop.

For all the Respondents, no over-voting was proved before the lower Tribunal; and the election was conducted in substantial compliance with the provisions of the Electoral Law 2010 (as amended). See paragraphs 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 44; pages 6 – 11 of the 2nd and 3rd Respondent Brief of Argument and paragraphs 4.0 of the un-paginated Brief of argument of 1st Respondent.

The arguments of the appellants are situated at pages 5, 6, 7, 8, 9, 10 and paragraphs 3.1 – 4.22 of their Brief of arguments dated 25/8/2022 and filed on 26/8/2022.

According to appellants, over-voting includes when number of voters exceeds number of accredited voters.

Is there any over-voting at the election of 12th February, 2022? To answer this question we reach for the provision of the **Electoral Law 2010 (as amended)** under which the election was conducted for the definition of over-voting. **Section 53(2) of Electoral Act 2010 (as amended)** defines Over-voting as where the votes cast at an election in any polling unit exceed the number of registered voters in the polling unit. It is as simple and straightforward as that. And to draw that conclusion or manifest or make bare the incidence of over-voting, we must look at the Register of Voters and the Forms EC8 series especially Form EC8A used at the election and polling unit(s) concerned. This would then lead the discerning minds to a simple arithmetical exercise. See **SHINKAFI & ANOR VS. YARI (SUPRA)**, **YAHAYA VS. DANKWABO (SUPRA)**, **APC VS. PDP (2020) (SUPRA)**.

In this matter under reference, the Appellant/Petitioner did not tender any voters' Register at the Lower Tribunal. They relied solely and heavily on **Exhibit P1** which is the **Form EC8A** for the **Polling Unit 006**. So, how can this help them in the absence of the Register of Voters in that polling unit? They further alleged cancellation and/alterations on the

Exhibit P1. But the alterations complained of were not as massive as painted. And the few that were apparent were signed as to make them obvious as being human errors that cannot be avoided in an exercise of this nature and magnitude. In fact, many of what looks like alterations are **EMBOLDENMENTS**. We looked closely at **Exhibit P1** and our findings is that it cannot be used to ground any incidence of non-compliance with the provisions of the Electoral Law.

We are not unmindful that over-voting as a concept may sometimes and sensibly so accommodates instances of where number of voters exceeds numbers of accredited voters as argued by the appellant's Counsel, the Chief indices and cynosure of over-voting is as provided for by **Section 53 of the Electoral Act**.

Here vide **Exhibit P1**, the number of **Registered voters** is **2569**. Number of **Accredited voters** is **82**. And total number of ballot papers used is **82**. Number of rejected Ballot is put at **zero (0)**.

We must point it out very loudly that allegations of over-voting considering our law is not as weighty as some official or candidate(s) would like Tribunals or Court to believe. It is not a magic wand or word that once flung, it must lead to disastrous consequences.

The law is clear that even if over-voting is proven to be occasioned, there must be further proof that it enures in favour of the candidate declared as the winner. Otherwise, it would be treated as one of those aberrations or human

errors that can happen. In **BUHARI VS. OBASANJO (Supra)** it was held that:

“It is not enough for the petitioner to allege and prove over-voting. In addition to the above, the petitioner must show that the said over-voting inured to the winner of the election in particular as the over-voting can be for any of the candidates in the election.....”

In finalising on this, it is not strenuous for us to conclude, as stated by learned Counsel to the 1st, 2nd and 3rd Respondents that no over-voting was proved, either by testimonies of **PW1 & PW2** or by examination of **Exhibit P1**; no mutilation or grave alterations on **Exhibit P1** (See paragraphs 4.0 & 4.2 Franca Osagie's written submission in their Brief; and paragraph 44 of Mr. C. I. Okoye's written submission in their Brief) and the election of 2nd and 3rd Respondents was in no way vitiated by any non-compliance with the provisions of the Electoral Law.

In short, this appeal is lacking in all merits in whatever way the search light is beamed. This Appeal is consequently dismissed. The Judgment of the lower Tribunal in favour of the Respondents much especially 2nd and 3rd Respondents is hereby affirmed.

**HON. JUSTICE SULEIMAN BELGORE
CHAIRMAN**

**HON. JUSTICE YUSUF HALILU
MEMBER**

**HON. JUSTICE JUDE O. ONWUEGBUZIE
MEMBER**