

IN THE AREA COUNCIL ELECTION APPEAL TRIBUNAL OF
THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA

HON. JUSTICE S.B. BELGORE - CHAIRMAN
HON. JUSTICE Y. HALILU - MEMBER I
HON. JUSTICE J.O. ONWUEGBUZIE - MEMBER II

APPEAL NO: FCT/ACEAT/AP/01/2022
PETITION NO: FCT/ACET/EP/03/2022

BETWEEN:

CHRISTOPHER ZAKKA APPELLANT

AND

1. MURTALA USMAN
2. ALL PROGRESSIVE CONGRESS (APC) RESPONDENTS
3. PEOPLE'S DEMOCRATIC PARTY (PDP)
4. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)

JUDGMENT

The Appeal Number **FCT/ACEAT/AP/01/22** is predicated upon the decision of the FCT Area Council Election Petition Tribunal headed by Chief Magistrate Folashade Oyekan in Petition No. **FCT/ACET/EP/03/2022**.

The Judgment complained of was delivered on the 5th August, 2022. It was in favour of the Petitioners.

The petition submitted by the 1st and 2nd Petitioners i.e Murtala Usman and All Progressive Congress (APC) before the Lower Tribunal is contained in pages 1 – 23 of Volume one (1) of the Records of Appeal.

The reliefs as contained in page 12 of the Records of Appeal are declaratory in nature.

The petition in page 434 of Volume 1 of the Records of Appeal complained about the collation of results in 12 Polling Units in Forms EC 8B being different from the results declared at 12 Polling Units in Form EC 8A Series.

The 12 Polling Units are:

1. Presidential Villa/Police Affairs Commission Polling Unit Code 021 of City Centre Ward.

2. Presidential Villa/Police Affairs Commission Polling Unit Code 022 of City Centre Ward.
3. Area 8/Opp./ Block Flat 1 Mohd. Buhari Way Polling Unit Code 015.
4. Tundun Wada Village Polling Unit Code 085, Kabusa Ward.
5. Karshi 1/Central Primary School Polling Unit Code 001, Karshi Ward.
6. Karshi/Kusaki Village Centre Polling Unit Code 008, Karshi Ward.
7. Karshi III/Dispensary Opp. Chief Palace Polling Unit Code 003, Karshi Ward.
8. Kado Village 1/Kado Opp. Life Camp Polling Unit Code 016, Gwarinpa Ward.
9. Mabushi/Mabushi Primary School, Code 010, Gwarinpa Ward.
10. Bawa/Ung. Bawa Primary School Polling Unit Code 015, Nyanya Ward.
11. Guguggu/Guguggu Primary School Polling Unit Code 003, Orozo Ward.
12. Madalla Resettlement Village Polling Unit Code 050, Orozo Ward.

The Petitioners complained that the actual scores of the parties in the said 12 Polling Units are:-

1. Presidential Villa/Police Affairs Commission Polling Unit Code 021 of City Centre Ward – APC – 979 not 79 recorded in EC 8B, PDP – 136 not 36 recorded in EC8B.
2. Presidential Villa/Police Affairs Commission Polling Unit Code 022 of City Centre Ward – APC – 641 not 41 recorded in EC 8B, PDP – 33 same as recorded in EC 8B.
3. Area 8/Opp./Block Flat 1 Mohd. Buhari Way Polling Unit Code 015, City Centre Ward – APC 417 not 17 recorded in Form EC 8B, PDP – 223 not 23 recorded in Form EC 8B.
4. Tundun Wada Village Polling Unit Code 085, Kabursa Ward – APC – 70 not 7 recorded in Form EC 8B, PDP – 30 as recorded in Form EC 8B.
5. Karshi 1/Central Primary School Polling Unit Code 001, Karshi Ward – APC – 1,260 not 0 recorded in Form EC 8B, PDP – 3 nor 0 recorded in Form EC 8B.
6. Karshi/Kusaki Village Centre Polling Unit Code 008, Karshi Ward – APC – 212 not 12 recorded in Form EC 8B, PDP – 12 as record in Form EC 8B.

7. Karshi III/Dispensary Opp. Chief Palace Polling Unit Code 003, Karshi Ward – APC – 1,109 not 203 recorded in Form EC 8B, PDP – 10 as recorded in Form EC 8B.
8. Kado Village 1/Kado Opp. Life Camp Polling Unit Code 016, Gwarinpa Ward, APC – 2060 not 60 recorded in Form EC 8B, PDP – 196 as recorded in Form EC 8B.
9. Mabushi/Mabushi Primary School, Code 010, Gwarimpa Ward, APC 1,194 not 194 recorded in Form EC 8B, PDP – 173 not 73 recorded in Form EC 8B.
10. Bawa/Ung. Bawa Primary School Polling Unit Code 015, Nyanya Ward, APC – 555 not 55 recorded in Form EC 8B, PDP – 43 as recorded in Form EC 8B.
11. Guguggu/Guguggu Primary School Polling Unit Code 003, Orozo Ward, APC – 225 not 25 recorded in Form EC 8B, PDP – 189 as recorded in Form EC 8B.
12. Madalla Resettlement Village Polling Unit Code 050, Orozo Ward, APC – 80 not 28 recorded in Form EC 8B, PDP – 10 as recorded in Form EC 8B.

The total scores collated in Form EC 8B for the Parties in the said 12 Polling Units is APC 721 and PDP 655 whereas the total actual votes scored by the Parties at the Polling Units is APC 8,802 and PDP 1,058.

The total number of votes removed from the actual scores of APC in the 12 Polling Units is 8,081 while that of PDP is 403.

The Petitioners' position is that if votes removed from the scores of parties in the said 12 Polling Units are added to the total votes announced by the 3rd Respondent in Form EC 8E, the Petitioners will win the election with a total of 21,321 votes against the 1st and 2nd Respondents with a total of 19,705 votes.

After a lengthy trial of the petition, the Lower Tribunal in a considered Judgment delivered on the 5th August, 2022 agreed with the Petitioners on the fact that the results of the Petitioners were wrongfully collated at the ward level in the respective Form EC 8B and that from the correct collation based on the evidence before the Trial Tribunal, the Petitioners and not the 1st and 2nd Respondent won the Abuja Municipal Area Council (AMAC) election with the highest lawful votes cast; hence the declaration of the 1st Petitioner as the validly election Chairman of Abuja Municipal Area Council (AMAC) by declaring him as the winner of the election, with an order directing Independent National Electoral Commission (INEC) to withdraw the certificate of return issued to the 1st and 2nd Respondents, now Appellant in this Instant Appeal, and issue same to the Petitioners having scored the majority of lawful votes cast at the Chairmanship Election of Abuja Municipal Area Council (AMAC) Election held on the 12th February, 2022, and that the FCT Minister of

Federal Capital Territory or any person acting on his behalf immediately swear in the Petitioner as the Chairman of Abuja Municipal Area Council (AMAC). See pages 663-819 of the Records of Appeal. Dissatisfied with the said Judgment of the Lower Tribunal, Appellant in exercise of his Constitutional Right of Appeal, approached the Appeal Tribunal by filing the Instant Appeal as it relates to Petition No. **FCT/ACET/03/2022** in issue.

Appellant filed his brief of argument dated 2nd September, 2022 on the 3rd September, 2022;

1st Respondent filed Respondents' brief on the 11th September, 2022;

2nd Respondent equally filed its brief of argument on the 11th September, 2022.

Appellant in turn filed a Joint reply brief on the 14th September, 2022.

On the 19th September, 2022 learned counsel for all the Parties adopted their respective briefs of argument.

It is instructive to mention that Peoples' Democratic Party (PDP) and Independent National Electoral Commission (INEC) who are 3rd and 4th Respondents, conceded to the Appeal of the Appellant, hence did not file any briefs.

Karina Tunyan, SAN for the Appellant, formulated the following issues for determination, to-wit;-

1. *Whether the Petition before the Lower Tribunal was competent and the said Tribunal has the requisite jurisdiction to entertain the Petition, when the 1st Respondent/Petitioner has no locus standi, having not participated in all the stages of the election; and the 2nd Respondent/Petitioner having not sponsored any candidate for the election into the Office of Chairman of Abuja Municipal Area Council held on the 12th February, 2022. As distilled from Grounds 1 and 2 of the Notice of Appeal.*
2. *Whether the FCT Area Council Election Tribunal lacks the requisite jurisdiction to declare the 1st Respondent winner of the election into the office of Chairman Abuja Municipal Area Council held on the 12th of February, 2022, a person who did not fully participated in all the stages of the aforesaid election. As distilled from Ground 3 of the Notice of Appeal.*
3. *Whether the Appellant, 3rd and 4th Respondents who cross-examined the 1st and 2nd Respondents' witnesses and tendered documents through the witnesses and were duly admitted, can be rightly held by the Lower Tribunal to have not called evidence and have abandoned their pleadings. As distilled from Ground 5 of the Notice of Appeal.*

4. *Whether the Petitioners who reliefs are declaratory in nature must prove their case on preponderance of evidence and not on the weakness of defence and/or on admission made by the defence. As distilled from Ground 4 of the Notice of Appeal.*
5. *Whether the Lower Tribunal was right when it treated the statement made while objecting to the admissibility of documents by the 4th Respondent's counsel ad "admission against interest"; and did not regard documents tendered by the Appellant and the 3rd Respondent which were not objected to by the 4th Respondent's counsel as "not admission against interest" of the 4th Respondent. As distilled from Ground 6 of the Notice of Appeal.*
6. *Whether the Lower Tribunal lacks power in law to compare signatures in disputed documents and/or reject inadmissible document inadvertently admitted at the stage of writing Judgment. As distilled from Ground 7 of the Notice of Appeal.*
7. *Whether the Lower Tribunal was right when it discountenanced the evidence of DW11 and Exhibits "D37 – D47" tendered by him on the ground that he was a witness subpoenaed to testify at the instance of the Appellant, therefore he is not an independent witness. As distilled from Ground 8 of the Notice of Appeal.*

8. *Whether the Lower Tribunal was wrong when it held that DW11 being a witness called at the instance of the Appellant cannot give evidence and tender documents to collaborate the evidence of other witnesses called earlier by the Appellant. As distilled from Ground 9 of the Notice of Appeal.*
9. *Whether the Lower Tribunal occasioned miscarriage of justice when it considered and evaluated all documents tendered by 1st and 2nd Respondents/Petitioners and failed to consider and evaluate the duplicate copies of Form EC8A series Exhibits “P23”, “P24”, “P25”, “P27”, “P28”, “D19”, “D22”, “D31”, “D33” and “D36” tendered by the Appellant and 3rd Respondent and the evidence of DW1, DW2, DW3, DW5, DW6, DW7, DW8, DW9 and DW10 who were Polling Units Agents and gave Eye-witness evidence. As distilled from Ground 10 of the Notice of Appeal.*
10. *Whether the Lower Tribunal was right when it held that Independent National Electoral Commission (INEC) refused to call any evidence to resolve the conflicting results tendered from the bar, when DW11 an Independent National Electoral Commission (INEC) Officer had testified on subpoena and tendered the original copies of the results Exhibits “D37” –*

“D47” to resolve the conflict. As distilled from Ground 11 of the Notice of Appeal.

- 11. Whether the Lower Tribunal was right to place high value on the certified true copies of Form EC8As tendered by 1st and 2nd Respondents/Petitioners based on early date of certification and suomotu discountenanced the certified true copies of Form EC8As tendered by the Appellant and 3rd Respondent on probability and/or speculation that same could have been tempered with. As distilled from Ground 12 of the Notice of Appeal.*
- 12. Whether the Lower Tribunal was right to have given credibility to the document (CTCs) and duplicates of results tendered by 1st and 2nd Respondents/Petitioners instead of on the original of Form EC8As Exhibits “D37” – “D47” and on the duplicates of the Form EC8As Exhibits “P23”, “P24”, “P25”, “P27”, “P28”, “D19”, “D20”, “D22”, “D31” and “D36” issued at the polling units on the date of the election. As distilled from Ground 13 of the Notice of Appeal.*
- 13. Whether the Lower Tribunal was wrong in admitting and relying on evidence of PW2, PW3, PW4, PW5, PW6 and PW8 who were all Supervisors’/Ward Collation Agents that gave inadmissible evidence, instead of believing and acting on evidence of DW1,*

DW2, DW3, DW4, DW5, DW7, DW8 and DW10 who were polling units Agents and gave eye-witness evidence. As distilled from Ground 14 of the Notice of Appeal.

- 14. Whether the Lower Tribunal was wrong when it admitted and refused to expunge Exhibits “P21”, “P22”, “P29”, “P30”, “P31” and “P33” and relied on same without giving any reason for discountenancing the objections to their admissibility. As distilled from Ground 15 of the Notice of Appeal.*
- 15. Whether the Trial Tribunal was right when it declared the 1st Respondent (Petitioner) winner of the election despite the 1st and 2nd Respondents’/Petitioners’ allegation that the election was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended). As distilled from Ground 16 of the Notice and Ground of Appeal.*
- 16. Whether the Judgment of the Lower Tribunal is against the weight of evidence adduced at the trial. As distilled from Ground 17 of the Notice of Appeal.*

It is instructive to mention at this point that the 3rd and 4th Respondents, i.e People’s Democratic Party (PDP) and Independent National Electoral Commission (INEC) both conceded to the Appeal.

The 1st Respondent filed brief of argument dated 10th September, 2022 but filed on the 11th September, 2022; 14 issues for determination were formulated, as follows:-

1. *Whether the 1st and 2nd Respondents have the locus standi to file the Petition before the Trial Tribunal (Grounds 1 and 2).*
2. *Whether the Trial Tribunal has jurisdiction to declare the 1st Respondent winner of Abuja Municipal Area Council Election conducted on the 12th February, 2022. (Ground 3).*
3. *Whether or not the 3rd and 4th Respondents did not abandoned their replies to the Petition having failed to call witness. (Ground 5).*
4. *Whether the Trial Tribunal was right when it relied on statement made by Counsel to the 4th Respondent favourable to the 1st and 2nd Respondents as admission against the interest of the 4th Respondent. (Ground 6).*
5. *Whether the Trial Tribunal was right when it refused the invitation of the Appellant to compare signature on Exhibits raised for the first time in the Appellant's written address. (Ground 7).*

6. *Whether the Trial Tribunal was right when it refuse to treat DW11 as an independent witness but a witness of the Appellant. (Grounds 8 and 9).*
7. *Whether the 4th Respondent call evidence to prove which of the conflicting results is the actual results from the Polling Units. (Ground 11).*
8. *Whether Trial Tribunal was right when it held that Exhibits “P21”, “P22”, “P29”, “P30”, “P31” and “P33” are admissible in evidence. (Ground 15).*
9. *Whether the Trial Tribunal was right when it placed more value on certified true copies of Form EC8As tendered by the 1st and 2nd Respondents which were certified 5 days after the election as against certified true copies of the same documents tendered by the Appellant certified 3 months and 11 days after election. (Ground 12).*
10. *Whether the Trial Tribunal was right when it ascribed probative value to Forms EC8As tendered by the 1st and 2nd Respondents which were same as Forms EC8As tendered by Nigerian Police, Nigerian Security and Civil Defence, All Progressive Grant Alliance and Peoples Redemption Party. (Ground 13).*

11. *Whether the Trial Tribunal was right when it believed and placed probative value on the testimonies of PW2, PW3, PW4, PW5, PW6 and PW8 whose testimonies were in accordance with certified true copies of Forms EC8As for the Polling Units in issue (Ground 14).*
12. *Whether the Trial Tribunal properly evaluated testimonies of witnesses called by the Appellant and Exhibits “P23”, “P24”, “P25”, “P27”, “P28”, “D19”, “D22”, “D31”, “D33” and “D36”. (Ground 10).*
13. *Whether the 1st and 2nd Respondents did not prove their joint petition on preponderance of evidence but relied on the weakness in the defence. (Ground 4).*
14. *Whether the Trial Tribunal was correct when it declared the 1st Respondent winner of the election (Grounds 16 and 17).*

2nd Respondent on their part, filed Respondent’s brief of argument dated the 11th September, 2022 and filed same date...14 issues were formulated by 2nd Respondent for determination in their brief of argument, as follows:-

1. *Whether the 1st and 2nd Respondents do not have the locus standi to have filed the Petition before the Trial Tribunal (Grounds 1 and 2).*

2. *Whether the Trial Tribunal lacked the jurisdiction to have declare the 1st Respondent winner of Abuja Municipal Area Council Election conducted on the 12th February, 2022. (Ground 3).*
3. *Whether the 3rd and 4th Respondents did not abandon their replies to the petition having failed to call witness. (Ground 5).*
4. *Whether the Trial Tribunal was not right when it relied on statement made by Counsel to the 4th Respondent favourable to the 1st and 2nd Respondents as admission against the interest of the 4th Respondent. (Ground 6).*
5. *Whether the Trial Tribunal was not right when it refused the invitation of the Appellant to compare signatures on Exhibits raised for the first time in the Appellant's Written Address.(Ground 7).*
6. *Whether the Trial Tribunal was not right when it refuse to treat DW11 as an Independent Witness but a Witness of the Appellant. (Grounds 8 and 9).*
7. *Whether the 4th Respondent can be said to have called evidence to prove which of the conflicting results is the actual results from the Polling Units. (Ground 11).*

8. *Whether Trial Tribunal was not right when it held that Exhibits “P21”, “P22”, “P29”, “P30”, “P31” and “P33 are admissible in evidence. (Ground 15).*
9. *Whether the Trial Tribunal was not right when it placed more value on certified true copies of Form EC8As tendered by the 1st and 2nd Respondents which were certified 5 days after the election as against certified true copies of the same documents tendered by the Appellant certified 3 months and 11 days after election. (Ground 12).*
10. *Whether the Trial Tribunal was not right when it ascribed probative value to Forms EC8As tendered by the 1st and 2nd Respondents which were same as Forms EC8As tendered by Nigerian Police, Nigerian Security and Civil Defence, All Progressives Grant Alliance and Peoples Redemption Party. (Ground 13).*
11. *Whether the Trial Tribunal was not right when it believed and placed probative value on the testimonies of PW2, PW3, PW4, PW5, PW6 and PW8 whose testimonies were in accordance with certified true copies of Forms EC8As for the Polling Units in issue (Ground 14).*
12. *Whether the Trial Tribunal did not properly evaluate testimonies of the witnesses called by the Appellant and Exhibits “P23”,*

“P24”, “P25”, “P27”, “P28”, D19”, “D22”, “D31”, “D33” and “D36” (Ground 10).

13. Whether the 1st and 2nd Respondents did not prove their joint petition on preponderance of evidence but relied on the weakness in the defence. (Ground 4).

14. Whether the Trial Tribunal was not correct when it declared the 1st Respondent winner of the election. (Grounds 16 and 17).

From the issues formulated afore, by both Appellant and Respondents, they all clearly are not farfetched from the corridor of proliferation which is most unnecessary.

We therefore have decided to deal with this Appeal under one issue which clearly would have taken care of all the issues.

The issue is as follows:-

1. Whether the Trial Tribunal was right when it found that the 1st and 2nd Respondents proved their petition and proceeded to grant the reliefs sought by them.

The arguments of all counsel, both written and viva-voce are firmly captured on the record. It would therefore be of no added value to

reproduce same word for word, as already done on the record. We will however refer to them where necessary in the course of this Judgment.

Before we proceed to consider the formulated issue; we would like to put to rest the argument of Chief Karina, SAN, as raised in the Appellant's issue No. 1 for determination i.e. ***“whether the Petition before the Lower Tribunal was competent and the said Tribunal has the requisite jurisdiction to entertain the Petition, when the 1st Respondent/Petitioner has no locus standi, having not participated in all the stages of the election; and the 2nd Respondent/Petitioner having not sponsored any candidate for the election into the office of Chairman of Abuja Municipal Area Council held on the 12th February, 2022. As distilled from Grounds 1 and 2 of the Notice of Appeal.”***

It is the argument of Chief Tunyan, SAN, that the Lower Tribunal hadn't jurisdiction to have entertained Petition No. **FCT/ACET/EP/03/2022** in view of the fact that the 1st Petitioner (Murtala Usman) never had the locus standi to initiate same, having not participated in all the stages of the Abuja Municipal Area Council (AMAC) Chairmanship Election held on the 12th February, 2022 more so that the All Progressive Congress (APC) did not sponsor any Candidate for the said Abuja Municipal Area Council (AMAC) Chairmanship Election into the Office of the

Chairman of Abuja Municipal Area Council (AMAC) held on the 12th February, 2022.

Tunyan, SAN, similarly contended that the Lower Tribunal lacked the jurisdiction to have declared the 1st Respondent/Petitioner winner of the said Election into the Office of Chairman Abuja Municipal Area Council (AMAC) held on the 12th February, 2022.

Learned senior counsel cited Sections 141 of the Electoral Act, 2010 (as amended) and Section 285(13) of the 1999 Constitution of the Federal Republic of Nigeria (FRN), as amended.

For the records, the said Sections are hereby reproduced; as follows:-

Section 141 Electoral Act (2010 as amended)

“An Election Tribunal or Court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said Election.”

Section 285(13) of the 1999 Constitution Federal Republic of Nigeria (FRN) as amended.

“An Election Tribunal or Court shall not declare any person a winner at an Election in which such a person has not fully participated in all stages of the Election.”

Learned senior counsel cited the case of *NYESON VS. PETERSIDE (2016)7 NWLR (Pt. 1512) 452 at 514 Paragraphs A – B* in aid of his argument that the name of the 1st Respondent was conspicuously missing in Form EC8E i.e Declaration of Result, hence the argument that he did not participate in all the stages of the Election and there bereaved of the capacity to have instituted the petition before the Lower Tribunal.

It is the argument of Tunyan, SAN, that the violation of Section 141 of the Electoral Act, 2010 (as amended) and Section 285(13) of the Constitution of the Federal Republic of Nigeria (FRN) 1999 (as amended) robs the Tribunal of the competence to have entertained the petition.

JAMES VS. INEC & ORS (2015) LPELR – 2449 (SC) Page 72, Paragraphs C – G was cited in aid.

It is further the argument of Tunyan, SAN, that the Lower Tribunal erred in law when it declared the 1st Respondent who did not fully participate in all the stages of Election as winner of the Election and validly elected as Chairman of Abuja Municipal Area Council (AMAC), and that the Lower Tribunal acted without jurisdiction when it directed the withdrawal of the Certificate of Return issued to the Appellant and Issuance of same to the 1st and 2nd Respondents/Petitioners.

The cases of *APU VS MAYAFA (2020)6 NWLR (Pt. 1721) 383 at 433;*

CPC VS. OMBUGADU & ANOR (2013) LPELR – 21007 (SC) were both cited in aid.

On his part, 1st Respondent's counsel contended that he has the requisite locus standi to have filed the said Petition before the Tribunal... it is the argument of learned counsel for the 1st Respondent that a Tribunal or Court faced with challenge to jurisdiction, shall consider the petition before the Tribunal and non-other... learned counsel contended that Appellants did not raise the issue of locus standi before the Lower Tribunal and cannot now raise it, moreso that Appellants admitted in their paragraph 2.3 of reply to petition before the Tribunal that the 1st Petitioner was Candidate of the 2nd Petitioner at the Chairmanship Election for Abuja Municipal Area Council (AMAC) held on the 12th February, 2022, as stated in Page 1 of Volume 1 of the record.

It's further the argument of learned counsel for the 1st Respondent that the fact that 1st Respondent was Candidate of the 2nd Respondent at Abuja Municipal Area Council (AMAC) Chairmanship Election held on the 12th February, 2022, has been admitted by the Appellants, hence require no prove... Section 21(1) of Evidence Act, 2011 was cited.

Learned counsel cited Section 27 of Evidence Act, 2011 to say that Appellant is estopped on grounds of admission from challenging the locus of the 1st and 2nd Respondent, and that such challenge ought to fail... Court was urged to so hold.

On its part, 2nd Respondent equally re-echoed the argument of learned counsel for the 1st Respondent in urging the Court to hold that 2nd Respondent had the locus to have filed the petition in issue.

It is the contention of Liman, SAN, that following the Primary Election for the Election of and or selection of the flag bearer of the 2nd Respondent herein, dispute arose as to who was the Candidate of the 2nd Respondent for the Abuja Municipal Area Council (AMAC) Chairmanship Election.

This question was finally laid to rest by the Supreme Court which made the 1st Respondent a validly nominated Candidate of the 2nd Respondent, thus, the declaration by the Court of competent jurisdiction.

It is further the argument of 2nd Respondent that the mere fact that the name of the 1st Respondent did not appear in Exhibit “P14” completed by the Respondents does not invalidate the fact that the 1st Respondent was sponsored by the 2nd Respondent. Court was urged to so hold.

In his joint reply, Tunyan, SAN, contended that Appellant has the right to raise the issue of jurisdiction before the Appellate Court and for the first time and even orally... learned senior counsel contended that the argument on the fact that only the petition ought to be considered in determining jurisdiction is no longer the law.

All other materials before the Court would be considered... the case of ***ABUBAKAR UMAR ABDULLAHI VS. HON. MOHAMMED ANGULU LOKO & 2 ORS (SC/CV/41/2022) (unreported)*** delivered on the 16th March, 2022 at ***Pages 37 – 38*** was cited.

Tunyan, SAN, then urged the Court to hold that the time Tribunal was not properly clothed with jurisdiction arising from lack of locus of both 1st and 2nd Respondents who were the Petitioners at the Tribunal.

TRIBUNAL

We have considered the arguments of the respective counsel on this issue of locus standi of 1st and 2nd Respondents on account of the fact that 1st Respondent did not fully participate in all stages of the Election... it is not in doubt that All Progressive Congress (APC) as a Party was faced with legal battle after the Party primaries to elect or nominate her Party flag bearer for the Election of Abuja Municipal Area Council (AMAC) Chairmanship Election held on the 12th February, 2022.

It is equally not in doubt that 1st Respondent in this Appeal was involved in the same legal altercation which eventually landed parties before the Apex Court of the Land which eventually declared the 1st Respondent as winner of the All Progressive Congress (APC) primaries for Abuja Municipal Area Council (AMAC) Chairmanship Elections which was held on the 12th February, 2022.

This Appeal Tribunal was faced with a similar if not more difficult objection in Appeal No. **FCT/ACEAT/AP/11/2022** Between;

- 1. Abubakar Umar Abdullahi**
- 2. All Progressive Congress (APC)**

AND

- 1. Hon. Yahaya Garba**
- 2. Peoples' Democratic Party (PDP)**
- 3. Independent National Electoral Commission (INEC)**

In the said Appeal, the legal battle was between two All Progressive Congress (APC) Candidates which landed them both before the Supreme Court which made pronouncement on the matter after the Election which saw All Progressive Congress (APC) victorious for Abaji, Chairmanship Election held on the 12th February, 2022 even though All Progressive Congress (APC) did not have a clear fielded Candidate on account of the legal tussle... The All Progressive Congress (APC) Candidate who's name was submitted to Independent National Electoral Commission (INEC) i.e Abubakar Umar Abdullahi was eventually returned as the Chairman of Abaji Area Council regardless of the fact that Supreme Court merely dismissed the Appeal for want of jurisdiction on account of statute barred.

Our reason and reasoning in overruling the Lower Tribunal in the said Appeal No. **AP/11/2022** is hereby adopted in overruling Chief Tunyan, SAN, in his argument on locus standi of the 1st and 2nd Respondents. We so hold.

We shall pause here and address two (2) Fundamental Issues Tunyan, SAN, raised even though we have dismissed his argument as locus standi.

May we emphasize that Chief Tunyan, SAN, argument that objection can be raised even if it for the first time before the Appellate Court and orally done is the true position of the law... Parties for sure cannot by agreement confer jurisdiction in a Court or Tribunal. Regardless of the fact that jurisdiction was not argued at the Lower Tribunal, it can always be raised at the Appellate Court.

But as it relates to the Instant argument, the 1st Respondent did indeed participate in the election held on the 12th February, 2022, the decision of Supreme Court having been handed down before the election. We so hold... 1st and 2nd Respondents were therefore most qualified and had the locus to have filed the said petition before the Trial Tribunal. We so hold.

The argument of Chief Tunyan, SAN, on this score is refused and dismissed.

We now gravitate to the issue for determination formulated by this Court for the determination of the Instant Appeal.

For the records, the reliefs sought – for by the Petitioner as revealed from the preceding part of this Judgment are declaratory in nature.

We shall for above reason briefly state the law with respect to the requirements expected to be fulfilled before such a claim is or are granted.

It is a requirement of the law that any person who seeks a declaration of a right must plead and prove such a claim for declaratory relief without relying on the weakness of evidence of Defendant, or absence of such and or concession by the Defendant... this is so because declaratory reliefs are not granted as a matter of course... it must be won on hand evidence.

See *MBODAN VS. DABAI (2019) LPELR – 46739 (CA)*;

OBI VS. I.N.E.C & ORS (2007) LPELR – 2434 (SC);

MODIBBO VS. YARO & ORS (2019) LPELR – 47790 (CA).

To establish their petition, Petitioner called a total number of 13 witnesses as revealed at page 691 of the Records of appeal.. PW1, PW7, PW9, PW10, PW11, PW12 and PW13 were subpoenaed witnesses, whereas PW2, PW3, PW4, PW5, PW6 and PW8 all had their witness

deposition frontloaded with the Petitioner. They were the ward supervisors the wards in issue.

It is instructive to mention that the subpoenaed witnesses were from the Police, Nigeria Security and Civil Defence Corps (NSCDC), All Progressives Grand Alliance (APGA) and Peoples Redemption Party (PRP) and FCT High Court.

Petitioners tendered documents i.e Exhibits “P1” – “P37” as contained in Pages 692 – 694 of the Records of Appeal.

The evidence of Petitioners’ witnesses is contained in Pages 695 – 703 of the Records of Appeal.

On the part of the 1st Respondent, he called a total number of 11 witnesses who testified as DW1 – DW11. Whereas DW1 – DW10 had their evidence front-loaded, DW11 who is Staff of Independent National Electoral Commission (INEC) came before the Tribunal on subpoena.

1st Respondent through his witnesses tendered certified true copy of Form EC 8A and EC 8B series, official receipt of Independent National Electoral Commission (INEC), letter of appointment as Independent National Electoral Commission (INEC) agents.

The evidence of all the witnesses and the tendered documents can be found at pages 704 – 714.

Permit us to state the law as it relates to Declaration of Rights by Independent National Electoral Commission (INEC).

It is the law that any such result declared by Independent National Electoral Commission (INEC) is presumed regular until same is rebutted under the principle of presumptuous of regularity... this is captured in the latin maxim **omnia presumentur rise esseacta** .

See *BUHARI VS. OBASANJO (2005) 13 NWLR (Pt. 941) 1*;

ESELEMO VS. FUNKEKEME & ORS (2007) LPELR – 8707 (CA);

A.P.C VS. ADELEKE & ORS (2019) LPELR 47736 (CA);

C.P.C VS. I.N.E.C & ORS (2011) LPELR – 12652 (CA).

Even though this presumption is a rebuttable one, evidence must be led to indeed properly rebutit.

See *OJO & ANOR VS. P.D.P & ORS (2015) LPELR – 4180 (CA)*;

OMOBOLIOWO VS. AJASIN (1984)1 SCNLR 1.

It is already settled law that whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those empirical facts exist.

See Section 131(1) Evidence Act, 2011 as amended.

See also the case of *SHARING CROSS EDUCATIONAL SERVICES LTD. VS. UMARU ADAMU ENTERPRISES LTD. & ORS (2020) LPELR – 49567 (SC)*.

We have seen and considered the evidence adduced by both Petitioners and Respondents before the Trial Tribunal. This can be found at pages 525 – 714 of the Records of Appeal.

Petitioners called Ward Supervisors and equally subpoenaed witnesses from Civil Defence, Police, All Progressives Grand Alliance (APGA) and Peoples Redemption Party (PRP).

For the subpoenaed witnesses, they gave evidence and tendered Forms EC8A series this can be found at pages 572 to 587 of the Records of Appeal.

On the part of the listed witnesses on record as revealed in the body of the petition as contained on the Records of Appeal, they gave evidence as the Ward Supervisors for the affected 12 Polling Units who were appointed by the 2nd Respondent All Progressive Congress (APC) for the 12th February, 2022 Area Council Election. They both gave evidence on the fact that All Progressive Congress (APC) scored more votes than Peoples’ Democratic Party (PDP) at the respective disputed Polling Units earlier captured in the body of this Judgment;

All the listed witnesses identified their respective Ward results in examination in-chief.

It is important to mention that all the listed witnesses who gave evidence as Supervisors for 1st and 2nd Respondents admitted that they were not Polling Unit Agents and were not part of what had transpired at the Polling Units in dispute.

Even though the ground of the petition before the Trial Tribunal was anchored on the wrongful collation of results scored by All Progressive Congress (APC) at the 12th February, 2022 Election, it has become most necessary for us to ask some pertinent questions at this point...

what does the process of collation of election results connote; and can collation be done without Polling Unit result?

It is indeed an election procedure that votes are cast at the respective Polling Units after accreditation, sorted-out and counted at the close of voting and results announced to the hearing of all Party Agents; who then shall sign the original copy of Form EC8A which is in many counterparts and who are thereafter given copies each for onward transmission to their respective Ward Collation Agents at the Ward Level.

It is therefore impossible for any declaration to be made at the Ward Level without the Polling Unit results.

If that is the case, who then is the proper person to be called as a witness in a situation where there is complaint anchored on wrongful collation or omission etcetera, of results as done by the Petitioners in the petition on Appeal Now?

Is it a Ward Supervisor or a Polling Unit Agent?

Our answer is a Polling Unit Agent.

See *FIJABI & ANOR VS. I.N.E.C & ORS (2019) LPELR – 48660 (CA)*

Where the Court dwelled on the fact that the significance of a Polling Unit Agent in an Election cannot be overemphasized...

It is therefore clear from the evidence on record that PW2, PW3, PW4, PW5, PW6 and PW8 who were not at the Polling Units where the said results were made and later transmitted by Polling Unit Agents to the Ward Level, could not have had the protection of law to give oral evidence on the said results.

Their evidence falls within the domain of hearsay evidence and precisely documentary hearsay.

Documentary hearsay arises when a person who is not privy to a document, who did not witness its preparation neither was he the author

or signatory to a document seek to prove its content by oral or other secondary evidence.

See **Section 37 of the Evidence Act, 2011.**

In *ANDREW VS. I.N.E.C (2018) 9 NWLR (Pt. 1625) Page 507 Pp. 558* the Court there has this to say;

“A Court or Tribunal has no business to entertain, consider or rely on the evidence of persons who did not have a first hand, direct, actual and positive interaction with the facts in issue, and in the unlikely event that testimony of such person is received in evidence, the Court is under a burden duty to expunge the testimony of such witness from its Judgment.”

On the basis of our findings therefore, the evidence of the afore-listed witnesses is hereby expunged from the Record of the Trial Tribunal.

In consequence whereof, all documents so made reference-to by the said witnesses are equally hereby deemed dumped on the Tribunal since no evidence would have been led in prove of their content.

See *A.P.C VS. ADELEKE & (2019) LEPELR – 47736 (CA).*

For above reason alone, we would have dismissed the said petition at this point and upheld the Appeal for the fact that only six (6) subpoenaed witnesses called by the Petitioners are left to give evidence.

We are however are determined to consider for the purposes of posterity to go further.

Now we are left with the evidence of subpoenaed witness called by the Petitioners on the one hand, and subpoenaed witness from Independent National Electoral Commission (INEC), called by the 1st and 2nd Respondents and their listed witnesses mentioned in their reply to the petition.

It is important to observe that 1st and 2nd Respondents called Polling Unit Agents for the disputed 12 Polling Units and equally subpoenaed Independent National Electoral Commission (INEC) to produce the originals of the Forms EC8A and EC8B series for the Polling Units in dispute for the Election held on the 12th February, 2022 for the Office of Abuja Municipal Area Council (AMAC) Chairmanship.

1st Respondent through his witnesses tendered the certified true copy of Forms EC8A, EC8B and Independent National Electoral Commission (INEC) /Peoples' Democratic Party (PDP) Polling Agent tags for the disputed Polling Units. This can be found at pages 705 – 706 of Volume two (2) of the Records of Appeal.

The witnesses called by Appellant did confirm all Exhibits “EC8A” and “EC8B” series and were cross-examined on the documents... they were similarly linked to all the disputed Polling Units as Agents appointed by

the 2nd Respondent Peoples' Democratic Party (PDP) for the Abuja Municipal Area Council (AMAC) Chairmanship Election.

Benson UnekwuEmwuchola who came before the Tribunal on subpoena, tendered originals of Form EC8A Series for codes 015, 021, 022, 085, 001, 003, 008, 010, 016, and 015, and proceeded to identify Exhibits "D1" – "D11" as the certified true copy in respect of the documents he tendered as Exhibits "D37" – "D47".

DW11 equally confirmed the stamps on the exhibits as Independent National Electoral Commission (INEC) stamps and that the exhibits were the only originals of Form EC8A of the true results from the Polling Units, and that the presiding Officer signed all the exhibits.

This is contained at pages 712 – 713 of the Records of Appeal.

The witnesses left to establish the petition of Petitioners are subpoenaed witnesses PW1, PW7, PW9, PW10, PW11 and PW12.

These said subpoenaed witnesses came from the Nigerian Police, Nigeria Security and Civil Defence Corps (NSCDC), All Progressives Grand Alliance (APGA) Agent, Peoples Redemption Party (PRP) Agent and High Court Staff.

The said subpoenaed witnesses who both were at the Tribunal tendered Form EC8A series meant for the Polling Units in disputes... their evidence is contained at pages 694 – 702 of the Records.

It is fascinating to observe that PW9 (Inspector Peter Gwashim) who was meant to have taken part in the Election hence a subpoenaed witness, stated under cross-examination that he did not take part in the Abuja Municipal Area Council (AMAC) Election held on the 12th February, 2022, and does not know the color of the duplicate result usually given to the Police and did not also know how the document he brought to Court was generated.

The same pattern of evidence was given by PW10 (Balogun Samuel) from Nigerian Security and Civil Defence Corps (NSCDC).

The same evidence was given in the case of All Progressives Grand Alliance (APGA) and Peoples Redemption Party (PRP) who were subpoenaed and who gave evidence as PW11 and PW12.

The Lower Tribunal was therefore faced with certified true copy of Forms EC8A and EC8B series from Independent National Electoral Commission (INEC) tendered through Petitioners' subpoenaed witness and witnesses called by 1st and 2nd Respondents to evaluate and reach a decision on the petition... it was then left for the Tribunal to place the said Form EC8A series side by side and compare it to the originals tendered by DW11 Independent National Electoral Commission (INEC) and admitted by the Tribunal... That is the property thing to do under such a circumstance.

The Court is obliged to compare signatures in disputed documents tendered before it.

See ***POLARIS BANK VS. VITAL VETS (NIG) LTD. 2020 LPELR – 49954 (CA).***

In this case, whereas the results (EC8A Series) tendered by the Police, Nigeria Security and Civil Defence Corps (NSCDC), All Progressives Grand Alliance (APGA) and Peoples Redemption Party (PRP) witnesses were ascribed probative values by the Tribunal, the Lower Tribunal had this to say with respect to DW11 who came on subpoena from Independent National Electoral Commission (INEC), the Electoral Umpire...

“Was DW11 a witness for Independent National Electoral Commission (INEC) or the Tribunal or the 1st Respondent? Well, DW11 stated under cross-examination that a subpoena was served and addressed to Resident Electoral Commissioner who was subpoenaed and he doesn’t have any written document to represent the Resident Electoral Commissioner of Independent National Electoral Commission (INEC) and finally, he was not the maker of D37 – D47. It is trite law, that a subpoenaed witness can only be a witness of Court when the issuance of the subpoena was not prompted by either of the party but when

prompted by a party, the witness becomes that of the party and no longer a witness of Court.

Who is a subpoenaed witness?

Any person, whether a party or not, in a cause may be summoned to produce a document without being summoned to give evidence, and if he causes such document to be produced in Court, the Court may dispense with his presence.

A person summoned therefore to produce a document and give evidence on a subpoena is a witness and shall be opened to cross-examination.

See ***IYANDA & ORS VS. LAMIBA & 11 ORS (2002) LPELR – 7084 (CA).***

The Tribunal similarly stated in its Judgment that DW11 is not an independent witness but a witness of the 1st Respondent who applied for the Issuance of the subpoena.

See Page 801 of the Records of Appeal.

Lower Tribunal also held in paragraph 2 of page 802 of the Records as follows:-

“Therefore, DW11 who tendered the original Form EC8A series results (admitted as Exhibits “D37” – “D47”) from 3rd Respondent cannot be said to have corroborated any part or form

of the result because he was a witness of the 1st Respondent who compared and certified all the certified true copy of Election results tendered before this Honourable Tribunal.”

The potent question we wish to ask is... what then is the status of the Petitioners subpoenaed witnesses? were they similarly not those of the Petitioners? if the answer is yes, why then did the Tribunal rely on their evidence, use their certified true copy of Form EC8A Series, upturned the declaration and return of the 1st Respondent/Appellant as the duly elected Chairman of Abuja Municipal Area Council (AMAC) at the 12th February, 2022 Chairmanship Election?

If DW11 is 1st Respondent's witness, it follows that PW1, PW7, PW9, PW10, PW11 and PW12 were then all the witnesses of the Petitioners... the same reason that saw the Tribunal refusing to rely on the evidence of DW11 should have been extended to the said Petitioners' subpoenaed witnesses. That was not to be... The Tribunal decided to do the hatched job by throwing the baby with the bathed water.

What is good for the goose, is also good for the gander, is the saying.

Lower Tribunal clearly had two rules up it sleeves.. one for the Petitioners and another for the Respondents.

We are indeed fascinated at the way and manner originals of Form EC8A series tendered by Independent National Electoral Commission

(INEC), the Electoral Umpire, will be jettisoned for whatever reason... it was an opportunity for the Tribunal to compare Form EC8A series tendered by the Petitioners, on the one hand and the ones tendered by the 1st Respondent to see which one was made from the same process... that was not to be. Petitioners who were under a duty to prove their claims same being declaratory in nature, did not just fail, but woefully failed to do so. Elections are won at the Polling Units and not Court. Our duty is to make judicial pronouncements.

The law cannot command an impossibility. The essence of justice is to do what is true and correct.

DW11 who is from Independent National Electoral Commission (INEC), the statutory body responsible for the conduct of all Elections in Nigeria has indeed corroborated the evidence of “DW1” – “DW10” when he certified the said Forms EC8A and EC8B series as those duly certified by them and which are in agreement with the originals he tendered in evidence.

If we may ask... where then did Petitioners get their Form EC8A series from? This is for another-day. How then did the Lower Tribunal arrive at its decision?

The Judgment of the Lower Tribunal is not just perverse, but evil and a travesty of justice and the voice of God...

Minority will always have their say, but majority must be allowed to have their way.

Morality cannot be legislated, but behavior can be regulated. The law may not change the heart, but it can restrain the heartless... so said, Martin Luther King, Jnr.

The attitude of the Lower Tribunal is tantamount to turning the established and settled principles of law upside down and painfully drag it on its head. This is not good for our democracy and collective wellbeing.

We have not seen any reason or reasoning that led to the decision in issue.

He who passively accepts evil is as much involved in it as he who helps to perpetrate it... God forbid.

Clearly, the petition of the Petitioners was left in limbo to wither away as a judicial gate-crasher that has by the provision of law been consigned to a forlorn heap of legal fossils... We say no more.

On the whole therefore, the Appeal **No.FCT/ACEAT/AP/01/2022**succeeds.

The Judgment of the Lower Tribunal delivered on the 5th day of August, 2022 is hereby set aside.

