IN THE COURT OF APPEAL
IN THE PRESIDENTIAL ELECTION PETITION COURT
HOLDEN AT ABUJA

ON WEDNESAY THE 11TH DAY OF SEPTEMBER, 2019

BEFORE THEIR LORDSHIPS

MOHAMMED LAWAL GARBA	**JUSTICE, COURT OF APPEAL**
ABDU ABOKI	**JUSTICE, COURT OF APPEAL**
JOSEPH SHAGBAOR IKYEGH	**JUSTICE, COURT OF APPEAL**
SAMUEL CHUKWUDUMEBI OSEJI	**JUSTICE, COURT OF APPEAL**
PETER OLABISI IGE	**JUSTICE, COURT OF APPEAL**

PETITION NO: CA/PEPC/002/2019

BETWEEN:

1. ATIKU ABUBAKAR
2. PEOPLES DEMOCRATIC PARTY (PDP) ..... PETITIONERS/ RESPONDENTS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. MUHAMMADU BUHARI
3. ALL PROGRESSIVE CONGRESS (APC)

} RESPONDENT/ APPLICANT RESPONDENTS/ RESPONDENTS

JUDGMENT
(DELIVERED BY MOHAMMED LAWAL GARBA, JCA)

The result of the Presidential Election conducted by INEC (1st Respondent) on the 23rd day February, 2019 was declared on the 27th February, 2019 and the 2nd Respondent sponsored by the 3rd Respondent, was declared and returned as the winner thereof.

The Petitioners who participated in the election were aggrieved by the outcome and have approached the Court vide their Petition dated and filed the 18th day of March praying the Court by paragraph 409 of the said Petition as follows:-

"409 WHEREFORE the Petitioners pray jointly and severally against the Respondents as follows:-

a. That it may be determined that the 2nd Respondent was not duly elected by a majority of lawful votes cast in the said election and therefore the declaration and return of the 2nd Respondent by the 1st Respondent as the President of Nigeria is unlawful, undue, null, void and of no effect.

b. That it may be determined that the 1st Petitioner was duly and validly elected and ought to be returned as President of Nigeria, having polled the highest number of lawful votes cast at the election to the office of the President of Nigeria held on 23rd February 2019 and having satisfied the constitutional requirements for the said election.

c. An order directing the 1st Respondent to issue Certificate of Return to the 1st Petitioner as the duly elected President of Nigeria.

d. That it may be determined that the 2nd Respondent was at the time of the election not qualified to

contest the said election.

e. That it may be determined that the 2nd Respondent submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the said election.

IN THE ALTERNATIVE

f. That the election to the office of the President of Nigeria held on 23rd February 2019 be nullified and a fresh election ordered."

The grounds of the said Petition set out in paragraph 15 are as follows:-

(i) The 2nd Respondent was not duly elected by majority of lawful votes cast at the election.

(ii) The election of 2nd Respondent is invalid by reason of corrupt practices.

(iii) The election of the 2nd Respondent is invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended)

(iv) The 2nd Respondent was at the time of the election not qualified to contest the said election.

(v) The 2nd Respondent submitted to the 1st Respondent an Affidavit containing false information of a

fundamental nature in aid of his qualification for the said election.

The Respondents were duly served with the aforesaid Petition.

It is here relevant to state that each of the Respondents incorporated and raised Preliminary Objections bordering on the competence of Petition and the jurisdiction of this Court in their respective Reply to the Petition. This was soon followed by series of applications by the parties. Many of the Applications have been dealt with during pre-hearing session and Rulings delivered. The motions challenging the jurisdiction of the Court/competence of the Petition were also duly heard but Ruling on them were suspended to be delivered at this stage of final judgment in this matter.

The said Rulings have been delivered.

The hearing of the Petition commenced on 4th day of July, 2019 when the Petitioners opened their case. They called a total of 62 witnesses and closed their case of 19th day of July, 2019. The 1st Respondent through its Learned Senior Counsel YUNUS USTAZ USMAN, SAN informed the Court he would rely on the evidence of the Petitioners Witnesses as according to him the evidence proferred supports its defence to the Petition.

The Learned Senior Counsel to the 2nd Respondent CHIEF WOLE OLANIPEKUN, SAN opened the defence of the 2nd Respondent on 30th July, 2019 and called seven (7) witnesses in support of the defence of 2nd Respondent to the Petition. The 2nd Respondent's case was closed on 1st August 2019. The Learned Senior Counsel to the 3rd Respondent PRINCE R. O. FAGBEMI, SAN

on the same date informed the Court that the 3rd Respondent would like 1st Respondent, rely on the evidence led by the Petitioners for 3rd Respondent's defence as according to Learned Silk, enough evidence has been elicited under cross examination of the Petitioners witnesses. In addition 3rd Respondent also stated it would rely on the testimonies of the witnesses called by the 2nd Respondent.

The Court ordered the Parties to file final written addresses all of which were duly filed and exchanged between the Learned Senior Counsel to the Parties. The adoption of Written Addresses aforesaid was fixed for 21st August 2019.

On 21st August, 2019 the Learned Senior Counsel to the parties adopted their said final written addresses and made adumbration.

The Learned Senior Counsel to the 1st Respondent YUNUS USTAZ USMAN, SAN nominated four issues for determination of the Petition namely:-

"(a) **WHETHER HAVING REGARD TO THE EVIDENCE BEFORE THIS HONOURABLE COURT, THE PETITIONERS HAVE BEEN ABLE TO ESTABLISH THAT THE 2ND RESPONDENT WÀS NOT DULY ELECTED BY MAJORITY OF LAWFUL VOTES CAST AT THE ELECTION.**

(b) **WHETHER THE PETITIONERS BY THEIR PLEADING AND EVIDENCE HAVE BEEN ABLE TO ESTABLISH THAT THE ELECTION WAS INVALIDATED BY REASON OF CORRUPT**

PRACTICES.

(c) WHETHER THERE EXISTS SUFFICIENT EVIDENCE FOR THE COURT TO HOLD THAT THE ELECTION OF THE. 2ND RESPONDENT IS INVALID BY REASON OF NON-COMPLIANCE WITH THE PROVISIONS OF THE ELECTORAL ACT.

(d) WHETHER THE PETITIONERS HAVE ESTABLISHED THE ALLEGED NON- QUALIFICATION OF THE 2ND RESPONDENT, AND GIVING OF FALSE INFORMATION.

The Learned Silk to the 2nd Respondent CHIEF WOLE OLANIPEKUN, SAN formulated three issues for determination in this Petition as follows:-

"I. HAVING REGARD TO THE CLEAR PROVISION OF SECTION 131 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED), STIPULATING THE QUALIFICATIONS FOR ELECTION TO THE OFFICE OF PRESIDENT, AS WELL AS THE KNOWN ANTECEDENTS AND PEDIGREE OF THE 2ND RESPONDENT, WHETHER THE PETITIONERS HAVE BEEN ABLE TO MAKE ANY CASE THAT THE 2ND RESPONDENT WAS NOT QUALIFIED TO CONTEST THE PRESIDENTIAL ELECTION HELD ON 23RD FEBRUARY 2019 AND/OR THAT HE SUBMITTED FALSE INFORMATION TO THE 1ST RESPONDENT IN HIS FORM CF001.

II. CONSIDERING THE PLEADINGS OF THE PETITIONERS AND THE ARID EVIDENCE PROFFERED BY THEM WHETHER THE PETITIONERS HAVE NOT WOEFULLY FAILED TO PROVE ANY OF THE ALLEGATIONS OF NON COMPLIANCE WITH THE PROVISIONS OF THE

ELECTORAL ACT, 2010 (AS AMENDED), CORRUPT PRACTICES AND THAT THE 2ND RESPONDENT WAS NOT DULY ELECTED BY MAJORITY OF LAWFUL VOTE! CAST AT THE PRESIDENTIAL ELECTION OF 23RD FEBRUARY, 2019.

III. CONSIDERING THE FEEBLE CASE PRESENTED BY THE PETITIONERS BEFORE THIS HONOURABLE COURT WHETHER THE COURT CAN DECREE THAT THE 1ST PETITIONER WAS DULY AND VALIDLY ELECTED A! PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA AT THE PRESIDENTIAL ELECTION HELD ON 23RD FEBRUARY, 2019 ."

On his part the Learned Senior Counsel to the 3rd Respondent PRINCE L. O. FAGBEMI, SAN identified six (6) issues for the just determination of this Petition thus:-

"1) WHETHER IN THE CIRCUMSTANCES OF THIS PETITION, THE PETITION IS COMPETENT AND WHETHER THE PARAGRAPHS WHICH THE 3RD RESPONDENT IS OBJECTING TO ARE REGULAR AND VALID?

2) WHETHER THE 2ND RESPONDENT WAS AT THE TIME OF THE ELECTION NOT QUALIFIED TO CONTEST THE SAID ELECTION?

3) WHETHER THE 2ND RESPONDENT SUBMITTED TO THE I" RESPONDENT AN AFFIDAVIT CONTAINING FALSE INFORMATION OF A FUNDAMENTAL NATURE IN AID OF HIS QUALIFICATION FOR THE ELECTION?

4) WHETHER THE PETITIONERS HAVE PROVED THE ALLEGATION OF CORRUPT PRACTICE IN THE

CONDUCT OF THE ELECTION INTO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA BEYOND REASONABLE DOUBT?

5) **WHETHER OR NOT THE PRESIDENTIAL ELECTION HELD ON THE 23RD DAY OF FEBRUARY, 2019 WAS CONDUCTED BY THE 1ST RESPONDENT IN SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF ELECTORAL ACT, 2010 (AS AMENDED), THE GUIDELINES AND MANUAL FOR ELECTION OFFICIALS, 2019?**

6) **WHETHER THE 2ND RESPONDENT WAS DULY RETURNED WITH A MAJORITY OF LAWFUL VOTES CAST AT THE ELECTION INTO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA HELD ON THE 23RD FEBRUARY, 2019."**

DR. LIVY UZOUKWU, SAN for the Petitioners raises five (5) issues for determination and they are as follows:-

1. **WHETHER THE 2ND RESPONDENT WAS AT THE TIME OF THE ELECTION NOT QUALIFIED TO CONTEST THE ELECTION.**

2. **WHETHER THE 2ND RESPONDENT SUBMITTED TO THE 1ST RESPONDENT AFFIDAVIT CONTAINING FALSE INFORMATION OF A FUNDAMENTAL NATURE IN AID OF HIS QUALIFICATION FOR THE SAID ELECTION.**

3. **WHETHER FROM THE PLEADINGS AND EVIDENCE LED IT WAS ESTABLISHED THAT THE 2ND RESPONDENT WAS DULY ELECTED BY MAJORITY OF LAWFUL VOTES CAST AT THE ELECTION.**

4. **WHETHER THE. PRESIDENTIAL ELECTION CONDUCTED BY THE 1ST RESPONDENT ON 23RD FEBRUARY, 2019 WAS INVALID BY REASON OF CORRUPT PRACTICES.**

5. **WHETHER THE PRESIDENTIAL ELECTION CONDUCTED BY THE 1ST RESPONDENT ON 23RD FEBRUARY, 2019 WAS INVALID BY REASON OF NON-COMPLIANCE WITH THE ELECTORAL ACT, 2010 (AS AMENDED) AND THE ELECTORAL GUIDELINES 2019 AND MANUALS ISSUED FOR THE CONDUCT OF ELECTIONS.**

The same five issues were raised in Petitioners' Final Written Address in Reply to the Final Written Address of each of the Respondent's to the Petition.

I am of the view that the issues formulated by the DR. LIVY UZOUKWU, SAN for the Petitioners can be utilized for the determination of the Petition herein and the said issues will be considered in the sequence they were treated or argued by the Learned Senior Counsel to the Petitioners.

ISSUES 1 AND 2

1. **WHETEHR THE 2ND RESPONDENT WAS AT THE TIME OF THE ELECTION NOT QUALIFIED TO CONTEST THE ELECTION.**

2. **WHETEHR THE 2ND RESPONDENT SUBMITTED TO THE 1ST RESPONDENT AFFIDAVIT CONTAINING FALSE INFORMATION OF A FUNDAMENTAL NATURE.**

The submissions of Learned Senior Counsel to the 1st Respondent on the above united issues can be found on pages 27 – 34 of the 1st Respondent's Final Written Addresses.

It is the submission of YUNUS USTAZ USMAN, SAN that the two grounds of the Petition to which the issues relate constitute pre-election matters which are actionable within 14 days of the occurrence of the event as stipulated in Section 285(9) of the Constitution of the Federal Republic of Nigeria as amended and that the Petitioners did not commence the action within the time provided by the said Constitution and as such this Court lacks jurisdiction to adjudicate upon the said grounds.

That the grouse of the Petitioners is that FORM CF001 which was filed along with Affidavit sworn to by the 2nd Respondent pursuant to Section 31(2) of the Electoral Act 2010 as amended contains stale facts which do not reflect the true state of events regarding the qualification of 2nd Respondent. That the said grounds 4 and 5 of the Petition constitute complaints against 1st Respondent with respect to the appropriateness of participation of the 2nd Respondent in the election. He relied on Section 285(14)(b) and (c) of the Constitution of the Federal Republic of Nigeria 1999 as amended and Section 31 of the Electoral Act to contend that the right of action of the Petitioners is only maintainable at the Federal/State/FCT High Courts within the 14 days stipulated in the Constitution and as such this Court cannot entertain the said grounds 4 and 5 of the Petition. He relied on the cases of:-

1. JAMES ABAWU WATHARDA V MAINA ULARAMU & ORS (2015) 3 NWLR (PT. 1446) 369 CA.
2. MAKERA & ANOR V GALADANCHI & ORS (2013) LRECN 66 in urging the Court to decline jurisdiction to entertain

grounds 4 and 5 of the Petition they being pre-election matter.

The Learned Silk to the 1st Respondent however makes submissions on the merit of the issues in case this Court disagrees with him on jurisdiction points.

The Learned Silk submitted that the 2nd Respondent duly complied with the provisions of Section 131(d) of the 1999 Constitution and Section 31 of the Electoral Act 2010 as amended in that the evidence elicited from the Petitioners witnesses under cross examination and documents tendered by the 2nd Respondent during trial are proof that 2nd Respondent was qualified to contest the Presidential Election of 23/2/2019.

That the Petitioners claimed that 2nd Respondent did not attend the schools he claimed in his FORM CF001 and that those schools were not in existence at the mentioned dates.

He drew attention to the fact that 1st Respondent had objected to Exhibit P1 – CF001 and purported INEC receipt dated 18/3/19. Exhibit P2 and the alleged letter from Director Legal Services INEC Exhibits P2A to the effect that the said Exhibits were not certified in accordance with Section 104 of the Evidence Act and are not from proper custody. He relied on the case TABIK INVESTMENT LTD VS GUARANTEE TRUST BANK PLC (2011) LPELR – 3131 SC.

He drew attention of the Court to the fact that the Petitioners also tendered 1VCD in Exhibits P36 – P83 series without doing anything else to prove the allegation and that no single witness testified as to the propriety or otherwise of the weighty allegation.

That RW1 however under cross examination said they were not asked to hand over their Certificate to the Nigerian Army when he was listed to be general.

The Learned Silk then proceeded to examine the provisions of Sections 131 and 318 of the Constitution of the Federal Republic of Nigeria 1999 as amended on qualification a Presidential Candidate must possess to enable him contest Presidential Election. He referred and relied on Exhibits R19, R20, R21, R22, R23, R24, R25, R26 tendered by the 2nd Respondent as evidence of his academic qualifications. The Learned Silk submitted that the authenticity of Exhibits R19 – R27 are not in doubt as RW3 (ABBA KYARI) confirmed under cross examination by the Petitioners' Learned Silk that he was the one who personally received Exhibit R20 on behalf of the Respondent on 18th July, 2019.

He stated that the potency of the documentary evidence has been judicially noted to the effect that a document is the best evidence of its content and that its content cannot be controverted by oral testimony of witnesses. He relied on the case of SKY BANK & ANOR V AKINPELU (2010) LPELR – 3073 and the evidence of RW1 who testified that he was enlisted at the Nigerian Army with 2nd Respondent and that English Language was the meaning of communication and instruction.

He relied on evidence of RW4 under cross examination by 3rd Respondent's Learned Silk wherein he testified that Exh. R21 is a University of Cambridge moderated examination at which 18

Candidates sat for the examination in 1961 with result in Exhibit R21 and that 2nd Respondent was listed as No. 2.

He stated that Section 318(1) of the 1999 Constitution as amended was given judicial interpretation in the case of BAYO V NJIDDA (2004) 8 NWLR (PT. 876) 544 AT 629 H – 630 D per OGBUAGU, JCA later JSC.

That from the said judgment alternative qualifications would suffice. That 2nd Respondent has Primary Six School Leaving Certificate and 1st Respondent was satisfied with the rest of 2nd Respondent's qualification and that this cannot be questioned in this Court. That the 1st Respondent was also satisfied that 2nd Respondent attended Secondary Scholl and attended classes up to final stages of Secondary School and that in that regard he needed not sit for an exam, pass same or obtain a certificate.

Attention was also drawn to paragraph 98(i) and (ii) of 1st Respondent's Reply to the Petition wherein it was stated that 1st Respondent was satisfied with qualification of 2nd Respondent based on the information contained in Exh. P1 submitted by 2nd Respondent to 1st Respondent.

That it is not in contention that 2nd Respondent possesses Primary School Certificate and that Petitioners' witnesses admitted under cross examination that 2nd Respondent speaks English.

He also submitted that it is not in dispute that the 2nd Respondent had over the years undergone several trainings as a Military Personnel to the point of becoming Head of State of Nigeria. That the evidence of RW1 that he did not submit his certificate to

the Military does not in any way affect the fact of the qualification of the 2nd Respondent. That what the law requires is that INEC should be satisfied which claim he said has not been faulted.

Yunus Ustaz Usman, SAN emphasizes that the evidence before the Court show that the 2nd Respondent fulfilled the requirements of Sections 131(d) read together with Section 318(1) of the Constitution of Federal Republic of Nigeria 1999 as explained in BAYO V NJIDDA supra.

He argued that Petitioners complaints find no abode in the facts tested before the Court and that this Court should discountenance the claims of the Petitioners.

On the second issue which borders in accusation against the 2nd Respondent that he submitted false information to the 1st Respondent in breach of Section 38(1)(e) of the Electoral Act 2010 as amended. He referred the Court to paragraphs 397 – 405 of the Petition.

He stated that apart from tendering Exh. P1 and 1VCD in Exhibit P36 – P83 series no single witness testified as to propriety of the weighty allegation. That the Petitioners did not prove the criminal allegation.

He stated that the import of Section 31 of the Electoral Act was considered in the case of MAIHAJA VS GAIDAM (2017) LPELR – 42474 (SC) to submit that the Petitioners have not been able to show with any level of certainty that the 2nd Respondent gave false information of a fundamental nature or at all.

He argued without conceding it that even if there was such information as alleged, it does not affect the qualification of the 2nd Respondent to contest the election in that whether the Military Board denies that the certificates of 2nd Respondent are with the Military would not affect the uncontroverted fact that the 2nd Respondent possesses a Primary School Certificate and cognate experience to satisfy the 1st Respondent that he is qualified to contest the election, That there was no proof of any false information and that the 2nd Respondent has fulfilled the requirements of Section 131 of the Constitution.

He submitted that Section 138(1)(e) of the Electoral Act should be read along with Section 31(5) of the Electoral Act which says the Court to approach for redress are as set out in Section 31(5) of the Electoral Act 2010 as amended.

He concluded by stating that the Petitioners allegations that the 2nd Respondent is not qualified to contest the election is fatally faulted and cannot stand. He urged the Court to resolve the issues in Respondent's favour as according to him he Petitioners' complaint is baseless.

In arguing his own issue one which encapsulates the issues one and two formulated by the Petitioners on allegation of lack of qualification to contest the Presidential Election which held on 23/2/19, the Learned Senior Counsel to the 2nd Respondent CHIEF WOLE OLANIPEKUN, SAN first dealt with allegation contained in ground (e) relief (e) in the Petition which accused the 2nd

Respondent of submitting Affidavit containing false information of a fundamental nature in aid of his qualification for the said election.

The Learned Senior Counsel is of the view that the ground and the said relief (e) is meaningless as no Court will grant any relief that is not precise, certain, definitive and capable of being enforced. That the law is settled that a Court of law does not act in vain, He relied on the cases of AYOADE V SPRING BANK PLC (2014) 4 NWLR (PART 396) 93 AT 125 and OKE V MIMIKO (NO. 1.) (2014) 1 NWLR (PART 388) 225 AT 254 among other cases cited. He stated that the Petitioners have not given any inkling as to what they want, and it is not the business of the Court to grant a relief not sought moreso that election petition is sui generis.

The Learned Senior Counsel stated that the Petitioners called only one witness on the issue vide PW1 BUBA GALADIMA whose evidence both in his examination in chief and cross examination amounts to evidence against interest according to the Learned Senior Counsel. He referred to PW1's evidence wherein he said he was Deputy Director General Director of Operations and National Campaign Secretary of the 2nd Respondent respectively in 2003, 2007 and 2011. That PW1's only alibi was that he never saw the 2nd Respondent's Certificate but under cross examination PW1 said he believed that the 2nd Respondent was qualified to vie and contest for the office of President four times and PW1 supported 2nd Respondent in 2003, 2007, 2011 and 2015, That PW1 confirmed that 2nd Respondent was Military Head of State between 1983 and 1985 and he used to address the Nation in English Language.

Learned Silk wondered what else does one needs to establish the fact that 2nd Respondent was/is eminently qualified to contest the election, That PW1 who was a former close aide of the 2nd Respondent confessed falling out with him.

That his confession constitutes admission against interest. He relied on the case of ODUTOLA V PAPERSACK NIGERIA LTD (2006) 18 NLWR (PT. 1012) 470 AT 494 and ADEBOYE VS BAJA (2016) ALL FWLR (PT. 845) 79.

He further stated that both Petitioners and PW1 are estopped from denying or resiling from the fact that the 2nd Respondent was qualified to contest the office of President having supported him four times relying on Section 149 of Evidence Act and JOE IGA VS AMAKIRI (1976) 2 SC 1 AT 12 – 13.

That 1st Petitioner eulogized the 2nd Respondent in 2015 expressing every confidence in is qualification and ability as shown in Exhibit R6.

That unlike the Petitioners who trivially dumped all documents on the Court, RW3 read out clearly and loudly Exhibit R6 to the Court.

On constitutional requirements to qualify a person for election to the office of the President, the Learned Silk for the 2nd Respondent relied on Sections 133(d) and 318 of the Constitution of the Federal Republic of Nigeria to submit that from the clear constitutional provision, the question of tendering a certificate does not arise. According to the Learned Silk all that the Constitution requires and demands is education up to School Certificate level or

its equivalent. He submitted that the Constitution goes further under Section 318 thereof to define what "school certificate or its equivalent" means.

He drew attention to Section 318(a)(b)(c) where the word "or" is applied rather than "and" meaning according to Learned Silk that (a),(b),(c) are not conjunctive but disjunctive; each standing on its own. He relied on the cases of ABUBAKAR V YAR'ADUA (2008) 19 NWLR (PART 1120) 1 AT 83 – 84. He argued that sub paragraph (d) is independent of any other sub paragraph giving INEC the discretion to accept any other qualification, be it primary school or Vocational Certificate from any institution. That in this particular case, INEC cleared the 2nd Respondent to contest election in 2003, 2007, 2011, 2015 and 2019 elections, meaning that the qualification he submitted has always been acceptable to INEC.

He submitted that Petitioner has no locus to challenge the qualification as it is only INEC that can complain. He cited and relied on the cases of MUSTAPHA V MUNGONO LOCAL GOVERNMENT (1987) 3 NWLR (PT. 62) 663 AT 665 and MOBIL PRODUCING NIGERIA UNLIMITED V ASEPA (2002) 18 NWLR (PT. 798)

It is the submission of Learned Silk that when the constitution has made a provision for a particular subject no other statute can add to, review or modify or amend constitutional provision.

That any law that seeks to do that will be null and void and of no effect relying on Section 1(3) of the Constitution of Federal Republic of Nigeria 1999 and the case of ABIA STATE V A.G.

FEDERATION (2002) 6 NWLR (PT. 763) 264 AT 391 per UWAIS, CJN. He also relied on the cases of AD V. AYOSE (2005) 10 MNWLR (PART 932) 151 AT 223 where this Court per ONNOGHEN, JCA (as he then was) interpreted Section 177(d) of the Constitution to mean that it does not require that the person must obtain a School certificate but that he should be educated up to school certificate level or its equivalent. He also relied on the cases of:-

1. ACTION CONGRESS OF NIGERIA V JIMOH AFIZ ADELOWO & ORS (2012) LPELR 19718 CA;
2. BAYO V NJIDDA (2004) 8 NWLR (PT. 876) 544;
3. AREBI V GBABIJO (2008) 49 WRN 29;
4. IMAM V SHERIFF (2005) 4 NWLR (PART 914) 43.

The Learned Silk also submitted that the 2nd Respondent tendered Exhibit R19, the verified statement signed by the Vice Chancellor University of Cambridge attesting to the fact that 2nd Respondent sat for School Certificate Examination in 1961 at Provincial Secondary School, Katsina where he passed five subjects – English Language, English Literature, History, Geography, Hausa and Health Science. He also relied on Exhibits R21, R22, and R25 as attesting to the qualification of the 2nd Respondent. He relied on the evidence of RW2 and RW4 who identified and gave evidence on the educational qualification of the 2nd Respondent as proving that apart from the fact that 2nd Respondent retired as a Major-General in the Nigerian Army with numerous other qualifications which makes him constitutionally qualified to contest the election and assume office as President of Nigeria under sub section (c)(i)(ii) and

(iii) of Section 318(1) of Constitution of Federal Republic of Nigeria 1999 titled School Certificate or its equivalent. Reliance was also placed on the recent decision of this Court in Appeal No CA/A/2004/2019 SEN. ADEMOLA ADELEKE V WAHAB ADEKUNLE RAHEEM & ORS DELIVERED ON 30/5/19 PER AGIM, JCA pages 89 – 90.

Attention was drawn again to the fact that the 2nd Respondent retired in 1985 as Major-General after 22 years in service. Thus, according to Chief Wole Olanipekun, SAN, whether as a person who has been educated up to School Certificate level; a person who has primary school certificate, a person who has public service experience, or a person whose educational qualification is satisfactory to INEC, the 2nd Respondent is eminently qualified to contest the election and occupy the office of President.

He also submitted that this Court can pursuant to Section 122(2)(d) of the Evidence Act 2011 take judicial notice of all the antecedents of the 2nd Respondent up to 2015 when he again assumed office of President created by Section 130 of the Constitution of Federal Republic of Nigeria between 2015 and 2019 signing Bills passed by National Assembly into law .by virtue of Section 58(e) of the Constitution and performing functions of office as prescribed under Section 5 of the Constitution.

On the allegation that the 2nd Respondent submitted false information to INEC, the Learned Senior Counsel submitted that the allegation is without any stride of merit. That accusation of submission of false information is undoubtedly a criminal one,

meaning that by virtue of Section 135(1) of the Evidence Act 2011 it has to be proved beyond reasonable doubt. He relied on the cases of:-

1. OKECHUKWU V INEC (2016) 17 NWLR (PT. 1436) 255 AT 262;
2. AYOGU V NNAMANI (2006) 8 NWLR (PT. 981) 160 and
3. OMOBORIOWO V AJASIN (1984) SCNLR 108.

He stated that on this aspect of Petitioners' case PW 62 was presented as star witness challenging the qualification of the Respondent when he knew that nothing about the Schools the 2nd Respondent attended. That he even agreed that 2nd Respondent had been communicating and broadcasting to Nigerians and others in English Language, meaning according to Learned Silk, that PW 62 confirmed that by virtue of Section 318 of the Constitution 2nd Respondent possesses qualification requirement to contest for the office of President relying on Section 131 of the Evidence Act and the case of OKAFOR V EZENWA (2002) 13 NWLR (PT. 784) 319 AT 334. That the alleged Form CF001 purportedly submitted to 1st Respondent has not been identified as containing any false information by any of the Petitioners witnesses. That Section 138(1)(e) of Electoral Act is not a blanket provision which can be activated without any proof as any Petitioner relying on it has to prove the allegation beyond reasonable doubt, Reliance is placed on OGAH V IKPEAZU (2017) 17 NWLR (PT 1594) 299 AT 348 – 349 and OSHIOMHOLE V AIRHAIVBERE (2013) 7 NWLR (PT. 1353) 376 AT 396 per RHODES-VIVOUR, JSC. He stated that being a criminal

allegation the Petitioners must prove and establish the *mens rea* and *actus reus* of the accusation.

That bearing in mind the evidence of PW1 – RW5 as well as Exhibits R19 – 25 the allegation against the 2nd Respondent is unfounded.

That 2nd Respondent already had more than enough qualifications than what the Constitution requires and as such the allegation of making false entry in FORM CF001 is unfounded, Relying on the case of JOE AGI V PDP (2017) NWLR (PT 1595) 386 AT 454 – 455 per OGUNBIYI, JSC.

The Learned Silk urged the Court to resolve the issue(s) in favour of the 2nd Respondent.

The Learned Senior Counsel to the 3rd Respondent PRINCE LATEEF FAGBEMI, SAN dealt with the issues under consideration in 3rd Respondent's issues two and three on pages 12 – 21 of 3rd Respondent's Final Written Address. The Learned Silk commenced his argument by informing the Court that the issues border on whether the Petitioners have been able to prove as required by law the allegations made against the 2nd Respondent which are criminal in nature beyond reasonable doubt. That the onus rest squarely on the Petitioners who are seeking declaratory reliefs to prove that the 2nd Respondent has not satisfied constitutional requirements regarding qualification of a person or candidate contesting for the office of President and in this case the Presidential Election of 23/2/2019. He submitted that the Petitioners failed to prove that the 2nd Respondent was not qualified.

He stated that issue of qualification to contest an election is a matter of the Constitution of Federal Republic of Nigeria, 1999 as amended. That issue of qualification must relate to qualifying or disqualifying facts contained in the said Constitution. He relied on the case of AGI V PDP (2017) 14 NWLR (PT. 1595) 386 AT 455 A – C. He also drew attention to Section 131 of the Constitution aforesaid to submit that the 2nd Respondent eminently qualified to contest the Presidential election and occupy the office of the President of the Federal Republic of Nigeria.

That from the facts and circumstances of this Petition, the nature of the qualification in question is educational qualification and as such the relevant provision of the Constitution is Section 131(d) of Constitution of Federal Republic of Nigeria 1999 as amended.

He submitted that the Supreme Court of Nigeria has laid down what a Petitioner should establish to prove allegation of falsification of educational qualification and false declaration in the case of MAIJAJA V GAIDAN (2016) LPELR per SIDI BAGE, JSC. He submitted that from the pleadings and evidence before the Court, the Petitioners have not proved that the 2nd Respondent was not qualified to contest the said election and that 2nd Respondent submitted to the 1st Respondent an affidavit containing false information of a fundamental nature in aid of his qualification for the said election to warrant this Court to disqualify 2nd Respondent to contest the said election.

That the two allegations of attending/presenting certificates from non-existent school/institution between 1956 – 1961 and submission of false information in aid of his qualification to INEC has criminal implication within the context of the Penal Code, thus a criminal offence that must be proved beyond reasonable doubt. He relied on the cases of IMAM VS SHERIFF (2005) 4 NWLR (PT. 914) 80 AT 169 G – H and CAN V LAMIDO (2012) 8 NWLR (PT. 1303) 560 AT 582.

He opined that item (d) of Section 131 of the Constitution is most relevant for the purpose of rebutting the Petitioners. He referred to Section 318 of the said Constitution which defined "School Certificate or its equivalent" and further stated the Court considered the definition in the case of UKWUEZE V EROCHUKWU & ORS (2011) LPELR -22213 per ABDULKADIR, JCA and the case of KAKIH V PDP (2014) 15 NWLR (PART 1430) 374 AT 424H – 425A –F.

That evidence of having this level of education can be by means other than a certificate. That the 2nd Respondent tendered various exhibits confirming that he has attained the level of education required to qualify for the position he currently holds that is Exhibits R1 – R16 which are newspapers publications containing statements by 2nd Respondent's classmates showing that the 2nd Respondent had Secondary education .

That the irrefutable evidence is that 2nd Respondent obtained his educational qualifications in 1961. That Exhibit R22 was tendered from the Bar and testified to by RW1 and RW5 which also

shows a group photograph of Katsina Provincial Secondary School Form 6 Students of which 2nd Respondent was very much part of. That 2nd Respondent who was sponsored by 3rd Respondent also tendered Exhibits R18, R19, R20, R21 and E22 showing that 2nd Respondent possesses requisite qualification to vie for the office of President of Federal Republic of Nigeria. He recalled the pieces of evidence given by the Schoolmate of 2nd Respondent Major General Paul Tarfa and evidence of Deputy Registrar WAEC in person of OSEDEINDE HENRY ADEWUMI who testified to the authenticity of the 2nd Respondent's Certificate. He relied on evidence of RW1 – RW7. That the 2nd Respondent was also a former Head of State and he rose to the position of a General all proving beyond doubt that 2nd Respondent was qualified to contest the Presidential election and hold the office of President of Nigeria. That the instant Petition lacks merit. He stated that no evidence was led by Petitioners to prove the allegations. He contended that Petitioners must first prove their allegation of non-qualification of 2nd Respondent before 2nd Respondent would be called to prove that he is qualified. That there is no proof of the allegation on record. He also called in aid the provisions of Section 137(1)(e) of the Constitution of Federal Republic of Nigeria 1999 and Section 138(1) of the Electoral Act which he said is in pari materia with Section 145(6) of Electoral Act which was considered in the case of BUHARI V INEC (2008) LPELR 814BSC.

That allegation of submission of false documents against 2nd Respondent as pleaded in paragraphs 391 – 405 of the Petition is

grave and must be proved beyond reasonable doubt. He relied on the case of MAIHAJA V GAIDAM (2017) LPELR 42474 SC AT 35B-36 A – D.

That Exhibits R18, R19, R20, R21 and R22 tendered by 2nd Respondent could be used as hanger to test the oral evidence on record. He relied on the case of AIRIHEVERE V OSHIOMHOLE (2012) LPELR – 982439B – G.

L. O. FAGBMI, SAN also submitted that Petitioners have not proved their case to the effect that the 2nd Respondent had submitted to the 1st Respondent an Affidavit containing false information. He stated that the evidence of RW1 – RW6 and Exhibits "R" series have proved that the 2nd Respondent submitted the 1st Respondent Affidavit containing false information even in the face of failure to call relevant witnesses by Petitioners such as the Secretary to the Military Board to bring relevant documentary evidence from the said institutions/disclaiming the 2nd Respondent or his Certificate. He said that, though provision of Section 138(1)(a) and (e) of the Electoral Act confers the right on any person who alleged that a Candidate for election was not qualified at the time of election or that he has given false information of a fundamental nature in aid of his qualification in Form CF001 submitted to INEC for purpose of election to approach a Tribunal for redress. He however submitted that the Petitioners have onerous task/onus to satisfy the Tribunal that not only was the Certificate falsified or forged, the Petitioners must equally tender from the authority that issued the certificate, evidence stating that the document or

certificate was forged relying on MAIHAJA V GAIDAM supra page 54 per KEKERE-EKUN, JSC.

He also submitted that to prove that 2nd Respondent submitted to 1st Respondent Affidavit containing false information of fundamental nature in aid of his qualification which is criminal in nature, the Petitioners ought to establish the following viz:-

(i) That the 2nd Respondent submitted to the 1st Respondent an affidavit,

(ii) That the Affidavit contained false information of a fundamental nature,

(iii) That it was submitted with intent to aid his qualification for the election.

That the onus is not on 2nd Respondent but on the Petitioners in view of the far reaching implication of Section 137(1) of Constitution of Federal Republic of Nigeria, 1999 as amended. He concluded that the Petitioners have not succeeded in proving that the information contained in Form CF001 and Affidavit submitted to INEC by 2nd Respondent were false/forged by either oral or documentary evidence and that in such circumstance grounds 4 and 5 and the entire Petition ought to fail and be dismissed.

NON-QUALIFICATIION OF 1ST PETITIONER

The Learned Silk to the 3rd Respondent next dealt with the locus standi and or qualification of the 1st Petitioner. It is the contention of the 3rd Respondent that the 1st Petitioner has no locus standi to present this petition because ab initio he was not qualified

to contest the Presidential Election held on 23-02-2019 on the ground that he is not a citizen of Nigeria by birth. He relied on paragraph 3(b) and (c) Vol I of Respondent's reply page 409 thereof.

According to the Learned Senior Counsel, the 3rd Respondent adduced crucial and relevant evidence from cross examination of Petitioners' witnesses and Respondent's witnesses in support of the non-qualification of 1st Petitioner whom he said "was admittedly born on 25th November, 1946 in Jada, Adamawa in Northern Cameroun and is therefore a citizen of Cameroun by birth". He said there is in evidence that a plebiscite was held in British Cameroun in 1961 to determine whether the people preferred to stay in Cameroun or align with Nigeria. That Northern Cameroun chose to stay in Nigeria and the transition took place on 1st June 1961. It is the position of the 3rd Respondent that it was as a result of that plebiscite that Northern Cameroun which included Adamawa became part of Nigeria and by derivation the 1st Petitioner became a citizen of Nigeria but not by birth.

He urged this Court to take judicial notice of the fact narrated under Sections 122(2) (g) (h) and (3) and 124 (1) (a) and (b) of the Evidence Act 2011.

He relied on Section 131 (a) of the CFRN 1999 as amended to submit that 1st Petitioner has no right to contest the Presidential Election; not being a Nigerian by birth. He stated that the evidence of PW40 and RW3 support the contention of the 3rd Respondent. He therefore submitted that 1st Petitioner not being a Nigerian by birth was not eligible to contest for the Office of the President in Nigeria.

He urged the Court to dismiss the Petition, for want of requisite locus standi.

In response to the submission of 1st Respondent's final Address the Learned Counsel to the Petitioners Dr. Levy Uzoukwu Stated that the summary of Petitioners case on the pleadings in respect of how qualification of 2nd Respondent can be found in paragraphs 388 – 405 of the Petitioner that the case is that 2nd Respondent did not possess the certificates relating to the qualifications which the claimed in his CF001 to possess that is

(a) First School Leaving Certificate

(b) West African School Certificate (WASC) and

(c) Officer Cadet, all of which Learned Counsel seated were not attached to Exhibit P1.

He therefore submits that the 2nd Respondent failed to satisfy the mandatory requirements of Section 131(d) of the Constitution of the Federal Republic of Nigeria. He said in order to make the section clearer, section 318 (1) of the Constitution defines School Certificate or its equivalent which he laid out in his Address. He said here are by section 318 (1) of the CFRN 1999 four paths to education namely section 318 (1) (a) OR 318 (1) (b) OR Section 318 (c) and Section 318 (d) and that every candidate must choose which qualification he is relying on.

According to Learned Silk in Exhibit P1, the 2nd Respondent chose only (a) and (c) listing the schools he attended and qualifications he obtained as "Primary School Certificate, WASC

OFFICER CADET and that" His CV was attached to show his working experience only."

He therefore submitted that to be qualified the 2nd Respondent must produce his Primary School Certificate or Secondary School Certificate (WASC) or Officer Cadet since those were the qualifications he claimed in his Form CF001 Exhibit P1. That this must be done at the time of swearing to and submitting his Form CF001. That 2nd Respondent duly exercised that choice and must swim or sink with it.

That by section 31(2) of the Electoral Act the 2nd Respondent was required to depose an AFFIDAVIT CFIRM CF001 indicating that he has fulfilled all the Constitutional requirements for election into contested office. He relied on the cases of IKPEAZU V. OGAH (2017) 6 NWLR (PART 1562) 439 and OGAH V. IKPEAZU (2017) NWLR (PART 1594) 299.

He submitted that the 2nd Respondent has not proved in this Court that he was qualified rather the Petitioner have proved he was not qualified and that failure to satisfy the qualification stipulated in the Constitution constitute valid ground for under section 138 (1) (a) of the Electoral Act 2010 as amended relying on the cases of DINGYADI & ANOR V. INEC & ORS (2010) 7 – 12 SC 105, ALHASSAN & ANOR V. ISAKU & ORS (2016) LPELR – 40083 SC and PDP V. INEC ORS (2014) 12 NWLR (PART 1437) 525 at 558 – 559 H – B per Okoro JSC.

He submitted that paragraphs 361 – 382 of the 2nd Respondent's response to the Petition stating that the 2nd

Respondent's Certificates were with the Army were not proved. That the Petitioners proved that the Nigeria Army had denied being in possession of 2nd Respondent's Certificates and that none of the Respondent challenged the evidence. He said the strong evidence on the issue was given by the 2nd Respondent's witness RW1 who he said told the court firmly and unequivocally that the Army did not collect certificates of Military Officers and added "there was no such thing" meaning according to Learned Silk to the Petitioners that 2nd Respondent's witness confirmed that Affidavit submitted to the 1st Respondent by 2nd Respondent contained false information of a fundamental nature in aid of his qualification for the election.

That this is a strong evidence of the giving or false information elicited under cross examination by the 1st Respondent who conducted the election.

The learned silk made reference to the issues joined on the pleadings by the parties particularly the position of the Respondent possesses other credential or certificate that qualification(s) become extraneous to Exhibit P1 Form CF001. That equally futile is 2nd Respondent's attempt show he could speak and write in English. That he failed to produce any of the certificates claimed.

He opined that Exhibit P1 Form CF001 which required a candidate to attach evidence of his qualification has statutory backing in sections 31(4) and 76 of the Electoral Act 2010. That since Electoral Act has prescribed mode of providing information no other mode be used or accepted. He relied on the case of AMAECH v. INEC (No. 3) & ORS (2007) 18 NWLR (Part 1065) 105. He urged

the court to discountenance all pleadings and evidence Respondents with respect to the alleged qualification of the 2nd Respondent to contest the election that was not contained in Exhibit P1 – CF001.

The Learned Senior Counsel stated that the certificates in question were supposed to be in possession of 2nd Respondent and are that presumed by law to be in his custody. He submitted the onus is on him to prove on the preponderance of evidence that he possesses the claimed qualifications by producing the certificates. He relied on the cases of OGUNNIYI V. ANOR (2014) LPELR 23/64 CA and NSEFIK & ORS V. MUNA & ORS (2007) 10 NWLR (PART 1043) 502.

He stated that since 2nd Respondent is the Commander-in-Chief of Armed Forces of Nigeria he ought to have subpoenaed the Secretary to the Army Board who is under him to produce what the Learned Silk to the Petitioners referred to as "the elusive certificates in Court" He said RW2 and RW1 supported the case of Petitioners. That RW1 said "we did not submit our certificate to the Nigerian Army as there was no such thing."

That RW2, Suleiman Isa Maiadua under cross examination by Petitioners' Counsel stated that he did not know that 2nd Respondent had two certificates while RW3 Abba Kyari - Chief of Staff to 2nd Respondent had no knowledge of the whereabouts of the 2nd Respondent's alleged certificates and that the only document in which the certificate were listed was the 2nd Respondent's CV,

Exhibit 26. He submitted that the documents from Cambridge were obtained in violation of section 83 (3) of the Evidence Act.

He also quoted from Evidence of RW4 Oshindende H. S. Adewumi and RW5 under cross examination on how Exhibit R21 was issued in conjunction with Cambridge University and the fact that RW5 said that his statement on Oath is from the available records and 2nd Respondent's CV.

He stated that the admissions of RW4 and RW5 under cross examination were damaging to the Respondents pleadings but amply supported Petitioners pleadings on the non-qualification of 2nd Respondent and his giving of false information in aid of his qualification under section 138(1) of the Electoral Act.

Learned Silk for Petitioners Expressed surprise that 1st Respondent which did not call evidence was holding fort for the 2nd Respondent over his qualification thereby weeping more than the bereaved instead of playing the role of an umpire. He relied on the case of HARUNA V. MODIBO (2004) 16 NWLR (PART 900) 487 AT 568 – 569 H – C and INEC V. AC (2009) 2 NWLR (PART 1126) 524 at 611. He urged the Court to expunge or disregard what he described as "overzealous arguments of 1st Respondent at paragraphs 111 – 143 pages 28 – 35 of 1st Respondent's Final Address ...."

He also drew attention to Exhibit R23 allegedly written by Justice Abdullahi and Ibrahim Comassie and submitted that the document is hearsay evidence as the authors were not called to testify.

He also drew attention of the Court to the Certified True Copy of Confidential Result Sheet issued by WAEC on 18/7/2019 during the pendency of this action as in admissible relying on NICHOLAS OGIDI V. CHIEF DANIEL EGBA (1999) 10 NWLR (PART 621) 42 at 69 and UTC Nig. PLC vs. LANAL (2013) LPELR – 23003 P27.

That there were a lot of discrepancies between Cambridge Assessment International Education certifying Statement from WAEC and CTC of confidential Result Sheet of the University of Cambridge West Africa School Certificate 1961 for Provincial Secondary School, Katsina. That one listed eight (8) subjects while the other listed 6 subjects. He urged the Court not to accord any value to them for being unreliable as both cannot be correct.

That on 24/11/14 the 2nd Respondent Affidavit said his certificates are with the Army but was contradicted by RW3 – RW5. That attestation by a candidate in WAEC FORM CF001 is itself a certificate and as such viewed with seriousness. He relied on the case of A. A. MODIBBO vs. MUSTAPHA USMAN & ORS unreported SC 790/2016 delivered on 30th day of July, 2019 per EJEMIBI EKO, JSC pages 27 – 28

In addition, according to Learned Silk to the Petitioners, the Petitioners pleaded and tendered Public Statements made by the Secretary to the Army Board both in the electronic and print media as exhibits P80 and P24 where he said the Army emphatically denied the claim of 2nd Respondent that his certificates were with the Secretary to the Army Board. That this sufficiently shifts the evidential burden to 2nd Respondent. That Exhibits R19 – 26

tendered by 2nd Respondent did not help matter in that they contained a strange name of "Mohamed Buhari" not 2nd Respondent's name.

On what meaning should be ascribed to section 318(d) of the Constitution which says:

> ***"(d) another qualification acceptable by the independent National Electoral Commission."***

The Learned Silk is of the view that for 2nd Respondent to take refuge under it, he must specifically disclose and state the qualification under part C of the 2nd Respondent's FORM CF001 Exhibit P1 and evidence of such certificates must be attached. That no evidence of other qualification was attached and no educational certificate was pleaded and none was tendered. That 2nd Respondent cannot found his qualification to contest under "A".

On the alleged refusal or failure of INEC to call witnesses or produce any evidence attention was drawn to the fact that INEC pleaded in paragraph 98 (ii) page 64 of the Reply to the Petition that it found 2nd Respondent's educational qualifications acceptable but nobody testified to it and it thus means the pleadings are deemed abandoned. He relied on the case of AKINBADE V. BABATUNDE (2018) 7 NWLR (PART 1618) 366 at 392 F – G. That Final Address of 1st Respondent is not the place to prove that 1st Respondent was "satisfied" with 2nd Respondent's qualification citing the case of CHIME V. EZEA (2009) 2 NWLR (PART 1125) 263 at 380C.

On the averments contained in paragraph 364 of the 2nd Respondent's Reply to Petition to the effect that Petitioners have

since acquiesced to the fact that 2nd Respondent was qualified and has the educational qualifications to contest the election, and waived their rights to challenge 2nd Respondent, the Learned Senior Counsel Petitioners first submitted that there is no proof of the alleged waiver and secondly that the right of Petitioners to question the qualification of the 2nd Respondent is clearly statutory relying on section 137(1) and 38 (9) of the Electoral Act and the cases of OYAMA & ANOR v. AIGBE & ORS (2015) LPELR – 40600 CA and A.G. BENDEL STATE v. AG Fed & ORS (1981) 10SC 1 at 28 -29

On whether Petitioners complaints on qualification of 2nd Respondent is a Pre-election matter the Learned Senior Counsel submitted that non qualification of a candidate is both a pre election matters as well as valid ground for bringing Election Petition. He relied on PDP v. AYEDAUWA & ORS (2015) LPELR – 41800 PDP v. NEC supra and other cases.

On paragraph 120 of the 1st Respondent's address on presentation of certificates, the Learned Silk stated that it cannot be true because 1st Respondent is bound by the evidence of RW1 who said they did not submit certificates to the Army. That principle of estoppel by conduct will not allow that. He relied on the cases of UDO v. NWARA (1993) 2 at 622 (sic) and JOE AGI & ORS v. EZEKIEL AMAKIRI & ORS (1976) 11 SC 1 at 9 -10

That no matter how brilliant Counsel's address will not take the place of Evidence. He relied on ADEGBITE v. AMOSUN (2006) 15 NWLR (PART 1536) 404 at 423.

On the objection of the 1st Respondent to Exhibit P1 – CF001 and official Receipt issue by INEC dated 18/3/19, Learned silk believes it is absurd in that the documents came from INEC's custody and that proper custody has nothing to do with admission TORTI v. UKPABI (1984) 1 ANLR 185 at 195 and TABIK INVESTMENT v. GUARANTY TRUST BANK PLC (2011) LPELR – 3131 SC. That Exhibits R19 – 27 relied upon by 1st Respondent are documentary hearsay. That all the evidence led by 2nd Respondent did not show that he has a primary or secondary school certificate and does not prove that the certificate are with the Army as he claims.

On the reliance placed by 1st Respondent on BAYO v. NJIDDA (2004) 8 NWLR (PART 876) 544 at 629 A – 630 D and MAIHAJA v. GAIDA (2017) PER – 4274 SC on the issue of qualification under 318 (1) of the Constitution and Section 131 of Electoral Act 2010, Dr. UZOUKWU SAN submitted that the two cases do not inure in favour of the 1st or 2nd Respondent for the reason that by section 131 (1) of the Electoral Act, it is legitimate to challenge the qualification of 2nd Respondent before the court. That INEC cannot presumptuously claim that it was satisfied with 2nd Respondent's qualification without leading evidence.

He urged the court to firmly apply the law and hold that 2nd Respondent gave false information to the 2nd Respondent in aid of his qualification and stood disqualified for the election.

In essence, according to the Learned Silk to the Petitioners, all votes cast for the 2nd Respondent are deemed to be wasted votes

since he was not qualified to contest for the election in the first place relying on SALEH V ABAH (2017) 12 NWLR (Part 1578) 100 AT 136 A – B.

That 1st Petitioner ought to be declared and returned as the duly elected president of Nigeria. He again relied on the case of A. A. MODIBBO v. MUSTAPHA USMAN & ORS (Unreported) SC No. 790/2016 delivered on 30th July 2019 page 50 per EJEMBI EKO, JSC. He urged the court to resolve the two issues in favour of Petitioners

PETITIONERS' REPLY TO 2ND RESPONDENT'S FINAL WRITTEN ADDRESS

I must say at the onset here that the submissions of the Learned Counsel to the Petitioners in Reply to 2nd Respondent's Final Written Address are substantially and virtually the same in scope and substance as the submissions made on the two issues of qualification or otherwise of the 2nd Respondent to contest the election. The court will nonetheless deal with the meat and substance of the address as are germane to the issue without unnecessary repetition of comprehensive review already made under Reply to 1st Respondent's Address.

The Learned Senior Counsel stated that the 2nd Respondent called 7 witnesses and claimed to have extracted every bit of evidence needed to deflate the Petitioners case and to establish the defence pleaded in Reply to the Petition. That the record does not bear that out as what the petitioner witnesses were repeatedly

asked was to confirm if and Respondent could speak and write in English Language.

That by Section 31(2) of the Electoral Act 2nd Respondent must depose to an Affidavit FORM CF001 indicating that he fulfilled all the Constitutional requirements for election to the office he seeks to vie for. He relied on the case of IKPEAZU V. OGAH (2017) 6 NWLR (PART 1562) 439 and OGAH VS. IKPEAZU (2017) 17 NWLR (PART 1594). On the interpretation of sections 177 and 182 of the Constitution which are tandem with the wording in section 131 and 137 of the constitution and that the interpretation of both sets of provisions has to be the same.

That the 2nd Respondent is required by the constitution to disclose all educational qualifications that qualifies him to contest for the office of president under sections 131 and 137 of the Constitution by attaching the certificates. That 2nd Respondent failed to do so. He also referred to paragraphs 361 – 382 of 2nd Respondent Reply to the Petition wherein he was said to have pleaded that his certificates are with the Army and that he claimed that Affidavit of compliance Exhibit P1 "was correct in every material particular." He stated that no evidence was led to prove the claim but that evidence of Petitioners was not contested or challenged. That Petitioners have proved that the Nigerian Army had denied being in possession of 2nd Respondents certificates and that one of the strongest evidence on the issue was from RW1 who under cross examination by 1st Respondent told the court that Army did not collect their certificates.

That in effect RW1's evidence was that 2nd Respondent has submitted Affidavit contained false information of fundamental nature in aid of his qualification for the election. That the evidence is an admission against interest. He relied on ALFA v. MEMUDUKURE & ANOR (2004) LPELR – 10467 CA.

The Learned Silk to the Petitioners stated that on 24th November, 2014 2nd Respondent had in a stale Affidavit deposed and sworn by him at the FCT Exhibit P1 declared that did his certificates as filed in his Presidential Form are with the Secretary of Military Board as at the time of his deposing to the Affidavit. That it was on 8th of October, 2018 the 2nd Respondent deposed in his affidavit Form CF001, claiming that his certificates were with Army Board. That the statement has been shown to be false. That the corroborated testimonies of RW1 – RW5 contradicted the Oath on which 2nd Respondent deposed in his FORM CF001.

In addition, according to the Learned Senior Counsel the Petitioners have pleaded and tendered public statement made by the secretary to the Army Board both in the electronic and print media which were tendered in evidence as Exhibits 24 and P80 where Learned Silk said the claim were emphatically denied. That has sufficiently shifted the evidential burden to the 2nd Respondent. That none of 2nd Respondent's witnesses has ever seen the alleged certificates of the 2nd Respondent.

He also made submissions on Exhibit R19 – R26 as being of no probative value and that the 2nd Respondent failed to meet the requirements contained in section 318 including section 318 (d).

He submitted that no certificate was pleaded in the Petition and that none was tendered. That the only window for the disclosure of such qualification as is in candidate's Form CF001 which according to him is Exhibit P1.

The Petitioners also stated that another claim by the 2nd Respondent that is contained in the Affidavit attached to Exhibit P1 is that he attended "Elementary School Daura and Mai ADUWA 1948 – 52. According to Learned Senior Counsel Elementary School Daura is totally different from Elementary School MAI ADUWA. That their locations are totally different. That 2nd Respondent also claimed that he entered middle school Katsina in 1953. The Petitioner's also stated that by 1953 the middle school system had been abolished in Northern Region relying on paragraph 384 of the Petition and deposition by PW62 and Exhibit P30.

INEC'S REFUSAL TO CALL WITNESSES OR PRODUCE ANY EVIDENCE

I must say here that all issues or matters pertaining to the above have been dealt with under paragraphs 3.51 – 3.58 in their Reply to 1st Respondent's Final Written Address almost word for word now in Reply of the Petitioners to 2nd Respondent's Final Address paragraphs 3.47 – 3. 52 thereof.

The Learned Senior Counsel to the Petitioner stated that the Exhibits discussed in paragraph 4.8 are mostly hearsay. That Exhibits R19 and R21 were produced by a party interested at the time when proceedings were pending contrary to Section 83 (3) of

the Evidence Act and that Exhibit R25 sent from United State Army to Chief of Defence Staff was hearsay in that neither the worker nor recipient was called as witness.

That this also proved that the 2nd Respondent certificates are not with the Army.

On the cases of ADELEKE V. RAHEEM APPEAL NO. CA/A/2004/2019 and AGI v. PDP (2017) NWLR (Part 1595) 1386 relied upon by the 2nd Respondent, the Petitioners are of the view that ADELEKE's case is easily distinguishable from this case in that the case is a pre-election matter and that was accused of forgoing which was not to prove to the 1st Respondent that 2nd Respondent gave false information of a fundamental nature in aid of his qualification.

On AGI v. PDP supra the Learned Senior Counsel said the case rather supports Petitioners case in that the case actually decides that where the false information relates to a qualifying factor as in this case, according to Learned Silk, it can be for a Petition.

That the candidate involved in AGI v. PDP supra was not disqualified because the Appellant did not allege any infraction of section 177 of the Constitution. The Petitioners have expressly alleged that the 2nd Respondent was not qualified to contest the election.

The Petitioners further submitted that 2nd Respondent stood disqualified. They also contended that it is not about ability to

speak read or write in English Language that qualifies a candidate to contest for the position of President.

On the invitation of the 2nd Respondent to this Court to take into consideration his status and antecedents in determining his qualification Dr. Livy Uzoukwu SAN submitted that is not the law.

On the consequence of false information in FORM CF001 it is the submission of the Learned Senior Counsel to the Petitioners that the effect of the evidence led by the Petitioners on the qualification of 2nd Respondent and support, according to Learned Silk, by 2nd Respondent's witnesses is that Exhibit P1 contains information of a fundamental nature in aid of the qualification of 2nd Respondent.

On the hearing of the WORD "false", the case of A. A. MODIBBO vs. M. USMAN & ORS SC. 7901/2019 delivered on 30th/7/2019 per OKORO, JSC was heavily relied upon

That in this case the claim of 2nd Respondent's certificate that his certificates were with the Military Secretary was verified on Oath by him. He is presuming to have intended what he put down in writing according to the Petitioners and that the representation was verified on Oath.

On consequences of finding that a candidate gave false information in FORM CF001 and the nature of the order to be made, reliance was also placed on the case of MODIBBO v. USMAN supra.

In conclusion on reply to 2nd Respondent's submissions in his Final Written Address, the Learned Senior Counsel to the

Petitioners stated that with its eyes wide open, the 3rd Respondent fielded 2nd Respondent as its candidate for the Presidential election not withstanding his non qualification to contest the said election and as such 3rd Respondent is bound to accept the consequences. To the Learned Silk, the 2nd Respondent stands disqualified, the 1st Petitioner who, according to him won the majority of the lawful votes at the said election has to be declared and returned as the elected Presidential Candidate. He urged the Court to resolve issue 1 and 2 in favour of the petitioners.

PETITIONERS' FINAL WRITTEN ADDRESS IN REPLY TO THE 3RD RESPONDENT'S FINAL ADDRESS.

I again wish to say that the Petitioners' Reply to the address of 3rd Respondent is in content and substance the same with their submissions in respect of 1st and 2nd Respondents.

The Petitioners gave a background view of the paragraphs of the Petition relevant to issues 1 and 2 which were argued to gather and that the 2nd Respondent's claim that he satisfied the conditions stipulated in sections 131(d) and 318(1) of the Constitution are not true. They also stated the need for a contestant to choose any of the four paths to educational qualification under section 318(1) to be qualified to contest the Presidential election and the need to comply with section 31(2) of the Electoral Act which requires that 2nd Respondent should depose to all Affidavit (Form CF001) indicating that he has fulfilled all the constitutional requirements for election into the contested office. IKPEAZU V. OGAH (2017) 6

NWLR (PART 1562) 439 and OGAH V. IKPEAZU (2017) 17 NWLR (PART 1594) 299 were relied upon.

The Learned Counsel to the Petitioners submitted that 2nd Respondent is by the Constitution required to disclose "ALL" educational qualify him to contest under sections 131 and 137 of the Constitution by attaching the certificates. This the Petitioners stated the 2nd Respondent did not do. That non-qualification of a candidate to contest an election can be a ground for questioning the election. The cases of DINGYADI & ANOR VS INEC & ORS supra were relied upon. Reference was again made to paragraphs 361 – 382 of the 2nd Respondent's response to the Petition wherein according to the Petitioners the 2nd Respondent's alleged that his certificates were with the Military and that these were not proved by the 2nd Respondent.

That Petitioners proved that the allegation has been refuted by the Nigerian Army corroborated by evidence of RW1 who said there was no such thing according to the Petitioner.

The Learned Senior Counsel Stated that RW1's evidence was the strongest evidence that 2nd Respondent submitted Affidavit to 1st Respondent containing false information of fundamental nature in aid of his qualification for the election, when he stated that his academic qualification documents as filed in his 2015 Presidential Form as currently with Secretary Military Board as at the time of the Affidavit.

That the 2nd Respondent is also required by INEC Guidelines for Election to attach all Certificates upon which the 2nd Respondent relied as qualifying him for the election.

He submitted that any qualification not listed in Exhibit P1 is extraneous to the questioned election and cannot be countenanced in determining 2nd Respondent's qualification or otherwise to contest the election.

The Petitioners on that score submitted that all the evidence led to show that he attended a secondary school or a primary school or that he attended some courses as all irrelevant because he did not rely on any of those qualification in Exhibit P1.

The further submission on necessity to attach certificate to Form CF001 also led the Petitioner to rely on section 26 of the Electoral Act. That no other method could be used. He relied on AMACHI V. INEC (NO.3) & ORS (2007) 18 NWLR (PART 1065) 105.

Relying on Form CF001 Exhibit P1, the totality of evidence the Petitioners stated that 2nd Respondent did not meet the requirement of section 3 (d) and 318 of the Constitution of Nigeria. That 2nd Respondent is by section 167 of the Evidence Act, presumed to have custody of his certificates. The cases of OGUNIYI V. HON. MINISTER OF FCT & ANOR 2014 supra and NSEFIK & ORS V. MUNA & ORS supra and Section 136 of the Evidence Act were relied upon. It is also submitted that the 2nd Respondent did not also subpoena the Secretary to the Army Board to produce what he described as "the elusive certificate. Reliance was also placed on evidence of RW1, RW2 and RW3 to the effect that they do not know

the whereabouts of 2nd Respondent's certificates listed in Exhibit R26 (C.V.).

That the documents from Cambridge were obtained in violation of section 83 (3) of Evidence Act. They quoted from the evidence given by RW4 and RW5 as admitting that the 2nd Respondent is not qualified and that he gave false information in aid of his qualification under section 138 (1) of the Electoral Act. That Exhibit 23 is hearsay because the makers were not called.

It is also the submission of the Petitioners that since the certified true copy of the Confidential Result Sheet issued by WAEC was on 18/7/2019 during the pendency of this case, the document is in admissible relying on the cases of NICHOLAS OGIDI & ORS vs. CHIEF DANIEL EGBA supra and UTC Nig Limited v. LAWAL supra. It was also submitted that there are discrepancies in the subjects 2nd Respondent sat for or passed on Cambridge Assessment International Educational Certifying Statement of WAEC certificate and Confidential Result Sheet of University of Cambridge West African School Certificate 1961 for the Provisional Secondary School, Katsina in that one schools subjects and the other contains six subjects.

That documents tendered by 2nd Respondent should not attract any weight. That there is also discrepancy in the name on the results as between Mohammed and "Muhammadu."

On whether 2nd Respondent could be said to be qualified under section 318 (d), the Learned silk stated that since the 2nd Respondent did not disclose any such qualification under part C of

Exhibit P1, 2nd Respondent cannot benefit under section 318 (d). The submissions on "INEC'S REFUSAL OR FAILURE TO CALL WITNESSES OR PRODUCE also sufficed in Petitioners Reply to 3rd Respondent final Address. The submissions can be found in paragraphs 3.38 – 3.43.

The Learned Senior Counsel to the Petitioners stated that 3rd Respondent failed to appreciate the case of the Petitioner as pleaded in paragraphs 369 – 384 of the Petition in that what was pleaded therein is that 2nd Respondent does not have the educational qualification to contest election and that he gave false information in form CF001 namely by stating that he possessed the qualifications or certificates contained in the said Affidavit and that they are in existence.

That all these were corroborated by RW1 – RW6. He relied on the case SC 790/2019 A. A. MODIBBO V. MUSTAPHA USMAN & ORS delivered on 30/7/2019 on the definition of false information. That it is noteworthy that the 2nd Respondent did not tender a single certificate. That the Army had denied the claim of 2nd Respondent via Exhibits P24 and P25 and that this means the certificates he attested to in the Form CF001 do not exist.

That INEC could not have been satisfied with the 2nd Respondent's qualifications since they did not lead evidence on how INEC became satisfied on unattached certificates.

The Learned Silk to the Petitioner submitted that the word "certificate" in section 37(1)(i) of the Constitution has broader meaning than the restricted meaning given to the words "school

certificate" has broader meaning given to the words "school certificate or its equivalent" by section 318(1) of the Constitution and 2nd Respondent's attestation of the false contents or particulars of the said Form CF001 (Exhibit P1) amounts to making false statement with intent or knowledge that it may be used as genuine document. Reliance was placed on the case of A. A. MODIBBO V. MUSTAPHA USMAN Supra.

The Petitioners also relied on Exhibit R25 as evidence that certificates are not with the Army.

As submitted in Reply to the final Address of 2nd Respondent the Petitioners also stated that the case of AGI v. PDP supra supports Petitioners case.

On the reliance placed on the case of UKWEZE EKOCHUKWU supra cited by 3rd Respondent in paragraph 5. 13 of its address, the Petitioners Learned Senior Counsel said the case is not relevant because the issue here is not whether the 2nd Respondent attended secondary school BUT whether he had a primary school certificate, WAEC or another certificate which he called OFFICER CADET, none of which certificates Petitioners said 2nd Respondent did not produce claiming that they were with Military Board. That similar thing happened in MODIBBO v. USMAN supra.

He urged the court to apply the law firmly and hold that 2nd Respondent gave false information to the 3nd Respondent (sic) in aid of his qualification and stood disqualified for the election.

Petitioners therefore pray that this Court should hold that 3rd Respondent had no candidate in the said election, and order the 1st

Respondent to declare and return as elected the 1st Petitioner who polled the majority of lawful vote cast in the said election.

Before the determination of the issues, I would like to say that as agreed to by parties during the pre-hearing sessions, the Learned Senior Counsel for the parties had filed separate Addresses on their respective reasons for objections to the admissibility of most of the documents tendered from the Bar during the trial.

I will now consider the objections raised to admissibility of documents in the course of trial by Learned Senor Counsel and their admissibility.

The Learned Senior Counsel to the 1st Respondent filed twenty two pages 1st Respondent's Final Address on objections to the admissibility of documents tendered from the Bar by the petitioners during trial on 7/8/19. The Petitioners Learned Senior Counsel to the Petitioners filed Petitioners reply to the 1st Respondents Address on objections to the admissibility of documents tendered by the Petitioners during the trial on 4 – 8 – 2019. It is a 23 page Address. The Learned Senior Counsel to the 1st Respondent found it necessarily to file 1st Respondent Reply on points of law to Petitioners Reply. It consists of twelve pages.

The objections are principally that the documents were not tendered from proper custody; not properly certified not relevant and that some of them are caught by the various sections of the Evidence Act 2011 which rendered them inadmissible. Numerous cases were also cited. The petitioners learned silk argued the

contrary and submitted all the documents were duly certified and are admissible. He urged the court to admit them in evidence.

The Learned Silk to the 2nd Respondent on 7th August 2019 filed 2nd Respondent's written Address on objections to the admissibility of documents tendered from the Bar by the Petitioners. It consists of twelve pages. The Learned Counsel to the Petitioners filed petitioners Reply to the 2nd Respondent's written Address on objections to the admissibility of documents tendered from the Bar by the Petitioners. It was filed on 14 – 8 – 2019. It is a 13 page written Address. There was a reply on point of law by the 2nd respondent on 16/8/19. It is eight pages address.

Still on 2nd Respondent, the Petitioners Learned Counsel filed Petitioners objections to the evidence of RW4 and the 2nd Respondents documents tendered from the bar during trial. It has 6 pages and was filed on 14–8–2019. In response the 2nd respondent's Learned Senior Counsel filed 2nd Respondent's reply Address to the petitioners' objection to the evidence RW4 and documents tendered by 2nd respondent. It has five pages. On 20-8-2019 the Petitioners filed reply on points of law to 2nd Respondents Address to Petitioners objection to evidence by RW4 and documents tendered.

The arguments on the objections of the 2nd Respondent's to the admissibility of documents tendered from the Bar by the Petitioners centered on whether exhibit 173 conforms with section 84 of the Evidence Act and the case of KUBOR V. BICKSON (2012) LPELR – 9817 SC. The objections also border on whether Forms

EC8 series were certified in accordance with section 104 of the evidence Act and whether evidence of PW 40, PW 59 and 60 could be said to be admissible.

The Learned Silk to the Petitioners submitted that all the documents tendered complied with conditions for their admissibility under the Evidence Act, sections 84 and 104 in particular hence he could not see any factor militating against their admissibility. That evidence of PW59 and 60 was given upon subpoena duly issued on them by the Court and thus their evidence cannot be rendered inadmissible.

The Petitioners objection to the evidence of RW 4 and documents tendered is grounded on the fact that the witness's (RW4) Witness Statement on Oath breached paragraph 12(3) of 1st schedule to the Electoral Act 2010 as amended in that it did not accompany the 2nd respondent's reply to the petition. On exhibits RW1 – R 26 the Petitioners contended that they were not pleaded hence they are not admissible. They also contended that Exhibit P85 & 86 tendered through PW 40 are not admissible in that certificate of its authentication was not filed before the Court.

In reply the 2nd respondent Learned Silk submitted that the Witness, RW 4 gave evidence pursuant to a duly issued subpoena by the court. He the relied on paragraph 41 of 1st schedule to the Electoral Act and pleadings of the 2nd respondent to submit that the evidence of RW4 and documents tendered by 2nd respondents are admissible.

The 3rd Respondent's Learned Senior counsel filed twenty six page address in aid of his objection to the admissibility of Petitioners documents tendered from the Bar. It was filed on 7/8/2019. The Petitioners Address in reply to the 3rd Respondent's objection to the admissibility of their documents was filed on 14-8-2019 consisting of 14 pages.

The 3rd respondent filed reply on point of law running into twelve pages on 16/8/19. The pith or and substance of the Learned Senior Counsel in respect the 3rd respondent's objections to the petitioners documents (lists of which he set out in various table (s) on pages 1 – 6 of the Address is that they are documentary hearsay evidence and that since they have been objected to in paragraph 10 & 11 of 3rd respondent's answer in Form TF008. That by virtue of paragraph 41 (3) of the 1st schedule to the Electoral Act all disputed documents are to be tendered by the makers. Like the 1st and 2nd Respondents' learned Silk, he argued that the documents are inadmissible and that evidence of PW40, PW 59 and 60 should be held inadmissible.

The Learned Senior Counsel to the petitioners submitted that the documents are public documents and they were prepared and tendered in accordance with the provisions of Evidence Act 2011. As regards the evidence of PW 40, PW 59 and 60 Petitioners. Learned silk submitted they were competent to testify and that their evidence is admissible.

RESOLUTION OF ISSUE RELATING TO ADMISSIBILITY OF DOCUMENTS OBJECTED TO BY THE PARTIES

The criteria governing admissibility of documents in evidence are well settled. In the case of OKONJI & ORS V. GEORGE NJOKANMA & ORS (1999) LPELR – 2477 (SC) P 13, OKAY ACHIKE JSC had this to say:

> ***"The position of the law in relation to the question of admissibility of a document in evidence is that admissibility is one thing while probative value that may be placed thereon is another."***
>
> ***"Generally, three main criteria govern the admissibility of a document namely:***
>
> 1. ***Is the document pleaded?***
> 2. ***Is it relevant to the inquiry being tried by the courts and***
> 3. ***Is it admissible in law?"***

Where there are enough relevant facts in the pleadings of the parties to an action, the fact that a document is not specifically pleaded will not militate against its admission in evidence. Once it can be accommodated on facts already contained in the pleadings of the parties. See MONIER CONSTRUCTION COMPANY LTD VS. TOBIAS I AZUBUIKE (1990) LPELR – 1910 (SC) PER AGBAJE JSC.

I have examined the documents(s) tendered from the bar by the Petitioners and 2nd Respondent and the objections to them. I

have also examined the circumstances of evidence of PW 40, PW 59 and PW 60 and RW4 respectively.

I have also read thoroughly the submissions of Learned Senior Counsel to the parties in their various voluminous submission on the admissibility of the documents objected to and the cases cited and the decisions of the apex court herein before cited by me.

I am of the firm view that in the overall interest of justice the documents are admissible in evidence. The weight to be attached to the said documents will be decided upon in the course of the judgment herein. The weight or otherwise to be attached to the evidence of PW 40, 59 and 60 and RW 4's evidence will also be determined in the course of this judgment.

I hold therefore that the documents objected to by the parties in these proceedings which have already been marked as exhibits are hereby deemed to have been properly admitted in evidence.

RESOLUTION OF ISSUES 1 & 2

The Petitioners have pleaded in paragraphs 388 –. 405 of their Petition that the 2nd Respondent does not possess the requisite educational qualification s to contest the Presidential Election held on 23-2-2019 and that he had submitted to the 1st Respondent an Affidavit containing false information of a fundamental nature in aid of his qualification for the said election.

In view of the enormous time and energy devoted to the allegations by the parties to this Petition the profound arguments of Learned Senor Counsel and the broad spectrum of the relevant provisions of the Constitution and the Electoral Act 2014 as amended it is in the interest of justice to reel out the entire pleadings of the Petitioners relevant to issues 1 and 2 under consideration.

The aforesaid paragraphs 388 the 405 of the Petition are as follows:-

"**GROUNDS 4 AND 5: NON-QUALIFICATION AND GIVING FALSE INFORMATION:**

388. **The Petitioners state that the 2nd Respondent does not possess the educational qualification to contest the election to the office of the President of Federal Republic of Nigeria.**

389. **The Petitioners state that by Section 31 (1) of the Electoral Act, 2010 (as amended), every political party shall not later than 60 days before the date appointed for a general election submit to the Commission in the prescribed form the list of the candidates the party proposes to sponsor at the elections.**

390. **Further, by Section 31(2) of the Electoral Act, 2010 (as amended), the list or information submitted by each candidate shall be accompanied by an affidavit sworn to by the candidate at the**

Federal High Court, High Court of a State or Federal Capital Territory indicating that he has fulfilled all the constitutional requirements for election into that office.

391. The 2nd Respondent filled and submitted Form CF001 to the 1st Respondent, which was declared before the Commissioner for Oaths at the Registry of the High Court of the Federal Capital Territory, Abuja on the 8th day of October, 2018. The said Form CF001 is accompanied by an ACKNOWLEDGEMENT indicating that the 1st Respondent' received same.

392. The Petitioners aver that the said Form CF001 filed by the 2nd Respondent and submitted to the 1st Respondent for the Office of President was also accompanied by the Curriculum Vitae of the 2nd Respondent as well as GENERAL FORM OF AFFIDAVIT duly sworn to by the 2nd Respondent at the High Court of the Federal Capital Territory, Abuja, along with copies of his Membership Card of the 3rd Respondent and Voters Card.

393. The GENERAL FORM OF AFFIDAVIT which accompanied the Form CF001 submitted by the 2nd Respondent for the office of President on or about 18th October, 2018 to the 1st Respondent for the 2019 General Elections was surprisingly sworn to on

24th November, 2014 before High Court of Justice of the Federal Capital Territory, Abuja almost four (4) years preceding the 2019 General Elections. In this regard, the Petitioners plead and shall found on the following:

(a). Form CF001 filled and submitted by the 2nd Respondent to the 1st Respondent numbering six (6) pages including the Declaration/Oath page and
ACKNOWLEDGMENT page.

(b). Curriculum Vitae of the 2nd Respondent attached to the said Form CF001 submitted to the 1st Respondent on 18th October, 2018.

(c). GENERAL FORM OF AFFIDAVIT sworn to on 24th day of October, 2014 which accompanied the said Form CF001.

(d). Copy of Membership Card of the 2nd Respondent, which also accompanied the said Form CF001.

(e). Copy of Voters card of the 2nd Respondent, which accompanied the said Form CF001.

394. The 1st Respondent is hereby given NOTICE to PRODUCE the original of the said Form CF001 together with all the accompanied documents as

listed above

395. The Petitioners aver that the 2nd Respondent accompanied Form CF001 with a stale GENERAL FORM OF AFFI*DAVIT* earlier on deposed to on 24th day of November, 2014 instead of an Affidavit specifically sworn to in respect of the 2019 General Elections indicating that he had fulfilled all constitutional requirements for election into the Office of President of the Federal Republic of Nigeria.

396. In the stale GENERAL FORM OF AFFIDAVIT deposed to on 24th November 2014 which accompanied Form CF001 filled by the 2nd Respondent in respect of the 2019 General Elections, the 2nd Respondent claimed that all his academic qualification documents as filled in his Presidential Form, President APC/001/2015 are currently with the Secretary Military Board. The Nigerian Military has since denied that it held or was in possession of the 2nd Respondent's educational certificates. The Petitioners will rely on the video clips/newspaper reports of the press statement issued by the Military through the then Director of Army Public Relations, Brigadier General Olajide Lalaye in January 2015.

397. Besides the foregoing averments, the Middle School Katsina and Katsina Provincial Secondary School which the 2nd Respondent claimed to have attended

in his Curriculum *Vitae* between 1953 -1956 and 1956 - 1961 respectively were at the material time, non-existent. In this regard, the Petitioners plead and shall found on the archival documents of school system in Katsina, including Middle School, Katsina and Katsina Provincial Secondary School.

398. The 2nd Respondent in Form CF001 filled and submitted by him to the 1st Respondent at Paragraph C, Column 2, Page 3, under SECONDARY, wrote "WASC", thereby falsely claiming that qualification whereas there was no qualification known as WASC as at 1961.

399. The Petitioners contend that the 2nd Respondent was, at the material time, not qualified to contest election for the exalted office of President of the Federal Republic of Nigeria.

400. The Petitioners further aver that all votes purportedly cast for the 2nd and 3rd Respondents on 23rd February, 2019 during the Presidential Elections and as subsequently declared by the 1st Respondent on 27th February, 2019 are wasted votes in that the 2nd Respondent was not qualified to contest the said election in the first place or at all.

401. The 2nd Petitioner had stated on oath by affidavit deposed to on 24th November 2014 and filed along with his Form CF '001 in respect of this election as follows:- ALL MY ACADEMIC QUALIFICATIONS DOCUMENTS AS FILLED IN MY PRESIDENTIAL FORM, PRESIDENT APC/001/2015 ARE CURRENTLY WITH THE SECRETARY MILITARY BOARD AS AT THE TIME OF THIS AFFIDAVIT."

402. The information submitted to the 1st Respondent by the 2nd Respondent is false and of a fundamental nature in aid of his education qualification, notwithstanding that he had declared in the said sworn affidavit as follows:- "I hereby declare that all the answers, facts and particulars I have given in this Form, are true and correct and I have to the best of my knowledge, fulfilled all the requirements for qualifications for the office I am seeking to be elected."

403. The Petitioners contend that the 2nd Respondent did not possess the qualification he claimed to have in his Form CF001 (affidavit in support of personal particulars of persons seeking elections into the office of the President) sworn to on the 8th of October 2018) at the time of the election. The said form is hereby pleaded and shall be relied upon. The 1st Respondent is hereby given notice to produce the Form CF001 and documents submitted by the 2nd Respondent to it in respect of his nomination for this election.

404. The educational institutions the 2nd Respondent claimed to have attended and the certificates presented by him namely, Elementary School Daura and Mai Aduaa between 1948 to 1952, Middle School Katsina between 1953 to 1956 and Katsina Provincial College (now Government College, Katsina) between 1956 to 1961 and mentioned by the 2nd Respondent in his curriculum vitae attached to Form CF001, were not in existence as at those mentioned dates.

405. **The Petitioners shall rely on the certified true copies of the relevant documents from the National Archives at that material time."**

I have at the onset in this judgment set out the grounds of

the Petition, the prayers or reliefs the Petitioners are seeking from this Court. They are all declaratory reliefs. The pleadings reproduced above are laced and laden with serious criminal allegations or criminal wrongdoing against the 2nd Respondent.

The settled position of the law is that the party making such allegations must lead or proffer credible evidence in order to sustain the allegations as a prelude to the grant of the relief sought thereupon.

The Petitioners have the task and obligation to prove the allegations beyond reasonable doubt. They must rely on the strength of their own case and not on the weakness or failure to call evidence by the Respondents. See:-

1. Section 135(1) of the Evidence Act 2011 which provides:-

   "135(1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt."

2. EDWARD NKULEGU OKEREKE VS NWEZE DAVID OMAHI & ORS (2016) 11 NWLR (PART 1524) 438 AT 489 B - G per KEKERE-EKUN, JSC who said.-

   "It: has been settled by a long list of authorities of this court that:

   (1) Where a party seeks declaratory reliefs, the burden is on him to establish his claim. He must succeed on the strength of his own case and not on the weakness of the "defence (if any), Such reliefs will not be granted even on

the admission of the defendant. ***See: Emenike v P.D.P. (2012) LPELR - SC 443/2011 p. 27, O-G, (2012) 12 WLR (Pt. 1315) 556: Dume: Ltd. v. Nwakhoba (2008) 18 NWLR (Pt. 119) 361 at 373- 374: Omisore v Aregbesola (2015) 15 NWLR (Pt. 1482) 205, 297 - 298 F - A, Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330."***

3. DR SAMPSON UCHECHUKWU OGAH VS DR OKEZIE IKPEAZU (2017) 17 NWLR (PART 1594) 299 AT 336 G – H – 337 A per M. D. MUHAMMED, JSC who held:-

"I agree with learned senior counsel to both respondents that the appellant having asserted that 1st respondent's tax declaration in Form CF001 is false has the burden of proving what he asserts. Addedly, the reliefs the appellant seeks being declaratory, he succeeds on the strength of his case alone and not on the weakness of the case of the respondents. The appellant has the burden of proof to establish the declaratory reliefs to the satisfaction of the Court. Being declaratory, the reliefs are not granted even on the admission of the respondents. See Dume: (Nig.) Ltd. v. Nwakhoba (2008) 18 NWLR (Pt. 1119) 361 and Senator Iyiola Omisore & Anor v. Ogbeni Rauf Adesoji Aregbesola & Ors (2015) LPELR; (2015) 15 NWLR (Pt. 1482) 205.

To succeed in his claim, therefore, the appellant must, in the final analysis establish that the 1st respondent never paid the tax he declared in Form CF001, exhibit

D, to have paid as evidenced by exhibits A, B and C the tax receipts and tax clearance certificate respectively."

In the same case KEKERE-EKUN, JSC had this to say on pages 348h to 349A:-

"By the assertion that the documents submitted are false, there is an inherent allegation of dishonesty. It is implied that the documents submitted were concocted or that the originals were altered for the purpose of allowing the 1st respondent to contest the election under false pretences i.e. that he had complied fully with the requirements of the law and the PDP Guidelines. In other words, a crime is being imputed to the 1st respondent. In such circumstances, the appellant has the additional burden of proving his allegations beyond reasonable doubt. See section 135(1) of the Evidence Act, 2011."

In the same report on page 350F-H thereof EKO, JSC said:-

"I wish to merely add that either under section 31(5) & (6) of the Electoral Act, 2010, (as amended), or section 182 (1)(j) of the 1999 Constitution, as àltered, the burden of proof imposed by sections 131 - 139 of the Evidence Act, 2011 is not displaced. Whoever asserts under section 31(5) of the Electoral Act that "any information given by a candidate in the affidavit or any document submitted by that candidate is false" has the burden of proving his assertion in order to be

entitled to judgment under section 31(6) of the Electoral Act, 2010.

Similarly, whoever asserts that the candidate in an election had "presented forged certificate to the Independent National Electoral Commission" has the onus of proving beyond reasonable doubt that the candidate had in fact presented a forged certificate. In any proceeding H where commission of crime by a party is directly in issue the proof beyond reasonable doubt is the standard of proof. See Nwobodo v. Onoh (1984) 1 SCNLR 1; Tort v. Ukpabi (1984) 1 NSCC 141 at 145, (1984) 1 SCNLR 214."

4. ABUBAKAR SADIQ MOHAMMED V HON. A. M. WAMMAKO & ORS (2018) 7 NWLR (PART 1619) 573 AT 585H TO 586 A – C where NWEZE, JSC held:-

"My Lords, it is evident that the lower courts, rightly, concluded that the appellant failed to prove his case. In the main, his contention was that the respondents were deemed to have admitted his averments having not debunked them in a counter-affidavit.

With respect, I, entirely, endorse the submission of the learned senior counsel for the first and second respondents that, since the appellant sought for declaratory reliefs, he had an obligation to advance evidence in proof thereof.

The reason is not far-fetched. Courts have the

discretion either to grant or refuse declaratory reliefs. Indeed, their success, largely, depends on the strength of the plaintiff's case. It does not depend on the defendant's defence, Maja v. Samouris (2002) 7 NWLR (Pt. 765) 78; CPC v. INEC (2012) 1 NWLR (Pt. 1280) 106, 131. This must be so for the burden on the plaintiff in establishing declaratory reliefs is, often, quite heavy, Bello v. Eweka (1981) 1 SC 101; Okedare v. Adebara (1994) 6 NWLR (Pt. 349) 157; Dumez Nig Ltd v. Nwakhoba (2008) 18 NWLR (Pt. 1119) 361, 374.

What is, even worse in the instant case is the fact that the plaintiff made a host of criminal allegations against the first respondent. He, thus, had a duty to prove these allegations beyond reasonable doubt, Ndoma-Egba v. ACB Plc (2005) 7 SC (Pt. 111) 27, (2005) 14 WLR (Pt. 944) 79; A PC v. P DP (2015) 15 NWLR (Pt. 1481) 1,66-67."

In order to prove the allegations, the Petitioners through their Learned Senior Counsel DR LIVY UZOUKWU, SAN tendered from the Bar copies of the following documents viz:-

1. FORM CF001 with its attachments as EXHIBIT P1.
2. INEC OFFICIAL REPORT dated 18/3/2019 as EXHIBIT P2;
3. INEC Letter titled ; Issuance of Certified True Copies of DOCUMENTS as Exhibit P2A,
4. BUNDLE OF ARCHIVAL DOCUMENTS (CTC) tendered as Exhibit P. 30.

5. National Archives of Nigeria Receipts dated 15/3/2019 as Exhibit P31.
6. CTC of Pages 1 and 5 of Vanguard Newspaper dated Wednesday January 21, 2015 as Exhibit P24.
7. Certified True Copy of Pages 1 and 39 of Thisday Newspaper of November 1, 2018 as Exhibit P25.

PW62 was also called as star the witnesses.

In rebuttal the 2nd Respondent called RW1 – 5 who gave oral evidence and EXHIBITS. The Exhibits were tendered from the Bar. R19 – 26 were tendered as:-

1. Exhibit R19 is a Cambridge Assessment International Education Certifying Statement West African School Certificate in the name of MOHAMMED BUHARI.
2. Exh. R. 20 is the collection receipt for Exh. R19.
3. Exh. R. 21 is Confidential Result Sheet from WAEC certified by OSINDEINDE HENRY SUNDAY ADEWUNMI ON JULY 18, 2019 containing names of Statements of Provincial Secondary School, Katsina who sat for University of Cambridge West African School Certificate in 1961.
4. Exh. R22 photograph of FORM VI – 1961 Group Photograph of Katsina Provincial Secondary Form VI taken in 1961.
5. Printout of the Elites Nigerian on live News of 22/1/15 – Exh. 23.
6. Certificate of Compliance for the Group Photograph of Katsina Provincial Secondary School Form VI taken in 1961 – Exh. 24.

7. Commandant of United States Army War College Letter to Lt. Gen. Akumade Commanding Col. Buhari Exh. 25.
8. A copy of CV of 2nd Respondent - Exh. 26.

Apart from the adoption of this Witness Statement on Oath, PW62 did not give any evidence on the subject matter of issues 1 and 2 save identification of Exhibit P1. No evidence was also given on Exhibits P24, P25, P30 and P31.

No other witness was called by the Petitioners on subject matter of issues 1 and 2.

RW1 – Major General Paul Garfa Rtd. testified for 2nd Respondent and adopted his witness statement on oath.

Under cross examination by 1st Respondent's Senior Counsel he stated that he was enlisted in the Nigerian Army along with 2nd Respondent on 16/4/1961 and mentioned other Generals (Rtd.) who were Course Mates with them. He stated that they passed their examination in flying colours. That medium of communication was English Language.

The said Learned Silk for the 1st Respondent then asked:-

"Counsel

1st Respondent:

"I am grateful sir, I am sorry sir, Sir I will be correct to say that when you were listed with the General in the Nigerian Army you were ordered to hand over your certificate to the Nigerian Army and you did. I will be correct to say that you and General Muhammadu Buhari as well as your course mates

handed over your certificate to the Army, that is correct, sir?

Witness 1: There was no such thing my Lord.

The Petitioners' Learned Senior Counsel has latched on the answer to the cross examination as an admission by the 2nd Respondent that he gave false information in the Affidavit submitted to INEC that he had no certificates listed in Form CF001 and an admission that he submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the election in the Affidavit which the Petitioners described as stale and sworn to at FCT High Court on 24-11-2014 wherein he stated in paragraph 2 of the said affidavit:-

"2. THAT ALL MY ACADEMIC QUALIFICATIONS DOCUMENTS AS FILLIED IN MY PRESIDENTIAL FORM, PRESIDENT APC/001/2015 ARE CURRENTLY WITH THE SECRETARY MILITARY BOARD AS AT THE TIME OF THIS AFFIDAVIT."

The Petitioners had submitted in paragraph 3.13 – 3.18 of their Petitioners Final Address in Reply to 1st Respondent's Final Written Address as follows:-

"3.13 The strongest evidence on the issue was given by the 2nd Respondent's own witness, RW1, who told the court firmly and unequivocally that the Army did not collect the certificates of Military Officers and added, "there was no such thing". In other words, RW1'S evidence was that the 2nd Respondent had submitted an affidavit to the 1st Respondent

containing false information of a fundamental nature in aid of his qualification for the election, when he stated in his affidavit that "ALL MY ACADEMIC QUALIFICATIONS DOCUMENTS AS FILLED IN MY PRESIDENTIAL FORM, PRESIDENT APC/001/2015 ARE CURRENTLY WITH THE SECRETARY MILITARY BOARD AS AT THE TIME OF THIS AFFIDAVIT." At the risk of repetition, RW1 said of the above claim, "there was no such thing."

3.14 We submit that there can be no better or stronger evidence of the giving of false evidence than the evidence of the 2nd Respondent's own witnesses, elicited under cross examination by the 1st Respondent, who conducted the election.

3.15 The Respondents in their respective replies had joined issues with the Petitioners on the question of the 2nd Respondent's qualification to contest the questioned election. It was averred that the 2nd Respondent possesses other credentials which obviously were not contained in the information submitted to the 1st Respondent so as to qualify him to contest the election. It is respectfully submitted that by Section 31(2) of the Electoral Act, all the information that qualifies a candidate to contest an election must be complete in the materials submitted to the 1st Respondent under the Section. The 2nd Respondent, in the instant case was

required by the 1st Respondent's Guidelines for election, to also attach all the certificates upon which the 2nd Respondent relied as qualifying him for the election. In effect, any alleged qualification that was not contained in Exhibit P1 is extraneous to the questioned election and cannot be countenanced in determining the 2nd Respondent's qualification or otherwise, to contest the election.

3.16 We therefore submit that all the evidence led by the 2nd Respondent to prove that he attended a secondary school, or a primary school, or that he attended some courses, is irrelevant because he did not rely on any of those qualification in Exhibit P1. He relied on PRIMARY SCHOOL CERTIFICATE, WASC and OFFICER CADET". Equally futile is his attempt to prove that he can speak and write in the English Language. That is all irrelevant to his inability to produce his Primary School Certificate, Secondary School Certificate or WASC and his "Officer Cadet" qualification, whatever that means. "Officer Cadet" is not a qualification or certificate under the Constitution and Electoral Act; nor is it known to any law. At any rate, no evidence was given at the trial as to its meaning.

3.17 We must make the point here that Form CF001 (Exhibit P1) which requires a candidate to attach evidence of qualification to the said form has

statutory backing in so far as the said Form CF001 was issued by the 1st Respondent pursuant to Section 76 of the Electoral Act. Furthermore, by Section 31(4) of the Electoral Act, the 1st Respondent is required to avail whoever applies, a copy of such information submitted by a candidate for the purpose of challenging the qualification of the candidate under both Sections 31 and 138(1)(a) of the Act. In other words, the Electoral Act, having prescribed the mode by which a candidate must provide information regarding his qualification for election, no other mode can be used or accepted. We refer to AMAECHI V. INEC & (No.3) ORS. (2007) 18 NWLR (Pt. 1065) 105, on this principle. These provisions of the Electoral Act are not inconsistent with the Constitution. They are complementary. In other words, the Constitution did not make any provision as to HOW a candidate's qualifications are to be proved. It left that to the Electoral Act. We therefore urge Your lordships to completely expunge or discountenance the entire pleadings and evidence of the Respondents with respect to the alleged qualification of the 2nd Respondent to contest the election that was not contained in the information and materials comprised in Exhibit P1.

3.18 We further submit that based on Exhibit P1 and the totality of the evidence adduced with respect thereto,

the 2nd Respondent completely failed to satisfy any of the academic qualification requirements prescribed by Sections 131 (d) and 318 of the Constitution of the Federal Republic of Nigeria. As had earlier been stated in this address, the 2nd Respondent in his Form CF001 tendered as Exhibit P1, relied on three qualifications, namely, "Primary School Certificate, WASC and Officer Cadet" (whatever officer cadet means) and failed to produce any."

Attention will now be paid to the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999, as amended and the Electoral Act 2010 as amended on non qualification or disqualification of the 2nd Respondent to contest the February, 23, 2019 Presidential Election. The reason being that it is the said Constitution and the Electoral Act that govern the matters or issues relating to qualification and grounds for presentation on Election on the ground that a candidate has no requisite qualifications to contest a particular election.

The Court will also be guided by the principle of interpretation relating to provisions of the said Constitution and the Electoral Act. See: ACTION CONGRESS (AC) VS INEC (2007) 12 NWLR (PART 1048) 222 AT 259 B – D per KATSINA-ALU, JSC later CJN (Rtd.) of blessed memory who said:-

"It is necessary to bear in mind that the Electoral Act, 2006 is a subsidiary legislation which operates side by side with the 1999 Constitution. Both the

Constitution and the Electoral Act shall be read together in order to give effect and meaning to the rights and obligation of individuals.

It is a settled principle of interpretation that a provision of the Constitution or a statute should not be interpreted in isolation but rather in the context of the Constitution or statute as a whole. Therefore, in construing the provisions of a section of a statute, the whole of the statute must be read in order to determine the meaning and effect of the words being interpreted: See Buhari & Anor: v. Obasanjo & Ors. (2005) 13 NWLR (Pt. 941) 1 (219). But where the words of a statute are plain and unambiguous, no interpretation is required, the words must be given their natural and ordinary meaning."

The apex Court has also settled the law that when it comes to question of qualification to contest election recourse must be had to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 as amended. See:-

1. SENATOR JULIUS UCHA VS DR. EMMANUEL ONWE & ORS (2011) 4 NWLR (PART 1237) 386 AT 426 – 427 per TABAI, JSC who said:-

"It was..... (In addition to the petitioner 1st respondent also relied on Enetnuo v. Duru (2004) 9 NWLR (Pt. 877) 75 and Abana v. Obi (2005) 6 NWLR (Pt. 920) 183. In Enemuo v. Duru

the case of the 1st respondent was that he was duly nominated by his party (the PDP) screened and cleared and indeed contested the election of the 16th April, 2003 and won and was duly issued with form EC8E(1) by the returning officer. Thereafter, the 2nd – 4th respondents purported to cancel withdrew, and invalidate the said Form EC8E(1) and declared the appellant winner of the said election. The 1st respondent therefore filed a petition at the election tribunal which gave him judgment and granted the reliefs as claimed.

The appeal to the Court of Appeal was dismissed. In the concluding paragraph of the lead judgment at page 106 of the report, Fabiyi, JCA (as he then was) concluded:

> *"In conclusion, the appeal is devoid of merit. The appellant who did not contest the election ought not to have been returned. He has no seat in the House of representatives."*

It is clear from the report that the petitioner actually contested the election, and won. He was issued with a certificate of return. And the substitution on which the petition was predicated was made after the election. The matter therefore was clearly a post-election matter over which the election tribunal had jurisdiction. In the circumstances, I hold that the authority does

not support principle postulated by learned counsel for the 1st respondent. I have also read the case of Abana v. Obi cited by learned counsel and I can say without any equivocation that the case has no bearing whatsoever upon the issue of proper venue for pre-election and post-election disputes.

Learned counsel for the 1st respondent further made reference to the -provisions of section 246(1)(b)(i) of the Constitution on appeals to the Court of Appeal as of right from decisions of the National Assembly Election Tribunals on any question as to whether any person has been validly elected as a member of the National Assembly and submitted that the validity of the person's election includes his qualification; that the appellant. not being the person that was nominated for Ebonyi Central Senatorial District in the nomination exercise of the 4th respondent. was not qualified to contest the election. It was submitted therefore that by reason of the appellants non-qualification arising from the nomination exercise of the 4th respondent the validity of his election was rightly questioned in the election petition.

That argument is with respect untenable. Section 66(1) of the

Constitution makes specific provisions for a person's disqualification or non-qualification for election to the senate or the House of Representatives. These include the persons voluntary acquisition of the citizenship of a country other than Nigeria, his having been adjudged a lunatic or an undischarged bankrupt his having been sentenced to death or to imprisonment for an offence involving dishonesty, that he is a member of a secret society, his having been indicated for embezzlement or fraud, his presentation of a forged certificate to the Independent National Electoral Commission. Any of these disabilities spelt out in section 66(1) of the Constitution can properly constitute a ground upon which a person's election can be questioned in an election petition. A person's disqualification or non-qualification based on or arising from the domestic nomination exercise of his political party is clearly a pre-election matter over which the election tribunal has no jurisdiction.

In view of the foregoing considerations and particularly having regard to the specific pronouncements of this court on the issue of proper venue for pre-election and post-election matters in the cases which I have reviewed above and which I am bound to follow, I hold that the election tribunal had no jurisdiction to hear and determine the petition. The matter of the petitioner/respondent's nomination and/or substitution is a pre-election domestic matter of the PDP for which determination jurisdiction. is vested in the Federal High Court or the High

Court of a State ..

The result of the above analysis is that the appeal has merit and should be and is hereby allowed. The nomination and/or substitution exercise of the 4th respondent upon which the petition was predicated was clearly a pre-election matter over which only the Federal High Court or the High Court of a State has jurisdiction."

2. PDP V INEC (2014) 17 NWLR (PART 1437) 525 AT 559 – 560 per OKORO, JSC who said:-

"As I mentioned earlier, a person who wishes to challenge the election on the basis that the winner was not qualified to contest the election has umbrage in section 138(1)(a) of the Electoral Act. That is to say, where a person faded to take advantage of section 31(5) and (6) (supra) in the High Court, he can still approach the Election Tribunal under section 138(1)(a) thereof. Section 177 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) sets out conditions a person must meet to be qualified to be governor of a State. It states:

> ***"177. A person shall be qualified for election to the office of Governor of a State if:***
>
> ***(a) He is a citizen of Nigeria by birth;***
>
> ***(b)He has attained the age of thirty-five years;***
>
> ***(c) He is a member c of a political party***

and is sponsored by that political party; and

(d) He has been educated up to at least school certificate level or its equivalent."

Again, section 182 of the said Constitution provides for disqualification of candidates seeking the office of Governor. It is my view that where it is alleged that a person is or was not qualified to contest election to the office of Governor as envisaged by section 138(a) (1) of the Electoral Act, it is sections 177 and 182 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) that are being contemplated."

Sections 131 and 137 of the Constitution of Federal Republic of Nigeria 1999 as amended are as follows:-

"131. A person shall be qualified for election to the office of President if-

(a) he is a citizen of Nigeria by birth:

(b) he has attained the age of forty years ;

(c) he is a member of a political party and is sponsored by that political party; and

(d) he has been educated up to at least the School Certificate level or its equivalent."

137.(1) A person shall not be qualified for election to the office of President if--

(a) subject to the provisions of section 28 of this

Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country; or

(b) he has been elected to such office at any two previous elections; or

(c) under the law in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or

(d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal; or

(e) within a period of less than ten years before the date of the election to the office of President he has been convicted and sentenced for an offence, involving dishonesty or he has been found guilty of the contravention of the Code of Conduct; or

(f) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria or any other country; or

(g) being a person employed in the civil or public service

of the Federation or of any Stale, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election; or

(h) he is a member of any secret society; or

(i) (Deleted) ;

(j) he has presented a forged certificate to the Independent National Electoral Commission,

(2) Where in respect of any person who has been-

(a) adjudged to be a lunatic;

(b) declared to be of unsound mind;

(c) sentenced to death or imprisonment; or

(d) adjudged or declared bankrupt,

any appeal against the decision is pending in any court of law in accordance with any law in force in Nigeria, subsection (1) of this section shall not apply during a period beginning from the date when such appeal is lodged and ending, on the date when the appeal is finally determined or, as the case may be, the appeal lapses or is abandoned, whichever is earlier.

(3) A person who was sworn-in as President to complete the term for which another person was elected as President shall not be elected to such office for more than a single term."

Section 318(1) of the said Constitution defines "School Certificate or its equivalent" to mean:-

"School Certificate or its equivalent" means-

(a) a Secondary School Certificate or its equivalent, or

Grade II Teacher's Certificate, the City and Guilds Certificate; or

(b) education up to Secondary School Certificate level; or

(c)primary Six School Leaving Certificate or its equivalent and-

(i) service in the public or private sector in the Federation in any capacity acceptable to the Independent National Electoral Commission for a minimum of ten years, and

(ii) attendance at courses and training in such institutions as may be acceptable to the Independent National Electoral Commission for periods totalling up to a minimum of one year, and

(iii) the ability to read, write, understand and communicate in the English language to the satisfaction of the Independent National Electoral Commission; and

(d) any other qualification acceptable by the Independent National Electoral Commission."

The Petitioners argued strenuously that the failure of the 2nd Respondent to attach the certificates listed in the FORM CF001 to the said FORM means that 2nd Respondent does not possess the certificates he claimed in part C of FORM CF001about schools attended/Educational Qualifications with dates and that evidence of all educational qualifications should be attached.

The 2nd Respondent stated in the said column that he attended Primary School and has Primary School Certificate in 1952. That he has Secondary education and WASC in 1961 and for

his Higher School he stated "OFFICER CADET" 1963.

There is no evidence before the Court to disclaim or prove that the 2nd Respondent lied that he went to Primary School, Secondary School and that he joined the Army in 1962 with RW1 and many other persons in the 2nd Respondent's C.V. attached to Exh. P1 tendered by the Petitioners. Page 1 thereof shows conclusively that he attended Primary School and that he attended Katsina Provincial Secondary School (now Government College) Katsina in 1956 – 1961 and went to Nigerian Military Training from 1961 – 1963. The evidence of RW1 and RW2 bear testimony to the aforesaid facts.

The said RW1 and RW2 establish beyond doubt that 2nd Respondent had educational qualifications he filled in FORM CF001 on 8/10/2018.

The Petitioners Learned Counsel had argued that the evidence led to prove that 2nd Respondent attended secondary school or a primary school or that he attended some courses, is irrelevant because he did not rely on any of those qualification in Exhibit P1. With profound respect to the Learned Senior Counsel his position is faulty because the said FORM CF001 specifically asked 2nd Respondent the schools he attended with qualifications attained or obtained in order to determine whether the 2nd Respondent has been educated up to at least the School Certificate level or its equivalent which is part of the qualifications stipulated in Section 131 of the Constitution of Federal Republic of Nigeria 1999 as amended.

The Petitioners have relied on Section 76 and 31(4) of the

Electoral Act 2010 as amended that it is compulsory for 2nd Respondent to attach evidence of qualification to FORM CF001.

Section 31(4) of the Electoral Act provides:-

"31(4) Any person may apply to the Commission for a copy of nomination form, affidavit and any other document submitted by a candidate at an election and the Commission shall, upon payment of a prescribed fee, issue such person with a certified copy of document within 14 days".

The above section of the Electoral Act 2010 does not say any such thing. In any event Section 31(4) of the Electoral Act must be read together with Section 31(2) of the Electoral Act which provides:-

"31(2) The list or information submitted by each candidate shall be accompanied by an Affidavit sworn to by the candidate at the Federal High Court of a State or Federal Capital Territory indicating that he has fulfilled all the constitutional requirements for election to that office."

The reasonable inference or plausible meaning attachable to the above provision of Electoral Act 2010 as amended is that a Candidate can list information concerning evidence of his qualifications or other relevant information(s) about himself. The demand or information required in FORM CF001 cannot be more or higher than the statutory requirements.

Section 76 of the Electoral Act 2010 as amended provides:-

"76. The forms to be uses for the conduct of elections under this Act shall be determined by the Commission."

Where the provisions of a statute is straight forward and unambiguous the Court cannot read into the statute what is does not contain, A statute must be solemnly interpreted in a manner that will project and bring out succinctly the real intention of the law makers. No extraneous matter should be allowed to stray into the principles of interpretation of an Act or Constitution. See:-

1. COCACOLA NIGERIA LTD & ORS VS MRS TITILAYO AKINSANYA (2017) 17 NWLR (PART 1593) 74 AT 121 E – G per EJEMBI EKO, JSC who said:-

   "The courts for a long while now have come to settle on the principle that, if the words of the statute are clear and unambiguous they must be followed even if they lead to manifest absurdity. See Queen v. Judge Of The City Of London (1892) 1 QB 273 AT 290. It was stated further in this decision, in the manner of positivism, that the court has nothing to do with question whether the legislature has committed absurdity. It is only when the words of the statute are capable of two interpretations; one leads to absurdity, and the other does not, that the court will conclude that the legislature does not intend the absurdity and will adopt the other interpretation that does not lead to any absurdity. The judex neither makes laws nor does it possess any power

to amend any statute."

2. OCHOLI ONOJO JAMES, SAN V INEC & ORS (2015) 12 NWLR (PART 1474) 538 AT 588 D – G also per KEKERE-EKUN, JSC who had this to say:-

"In interpreting the provisions of the Constitution and indeed any statute, one of the important considerations is the intention of the lawmaker. In addition to giving the words used, their natural and ordinary meaning (unless such construction would lead to absurdity), it is also settled that it is not the duty of the court to construe any of the provisions of the Constitution in such a way as to defeat the obvious ends it was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serveto enforce and protect such ends. See: Mohammed v. Olawunmi (1990) 2 NWLR (Pt.133) 458; Rabiu v. The State (1981) 2 NCLR 293; Adetayo v. Ademola (2010) 15 NWLR (supra) @ 190-191 G-A; 205 D-F."

It is also in tandem with the principle of interpretation that provisions of a statute must be read as a whole to determine the object of the law. See OZONMA (BARR) CHIDI NOBLIS ELENDU VS INEC & ORS (2015) 6 SCM 117 AT 137 per M. D. MUHAMMED, JSC who said:-

"The interpretative task of the foregoing desired a communal consideration from the lower court. Whenever a court is faced with the interpretation of

statutory provisions, the statute must be read as a whole in determining the object of a particular provision. Thus, all provisions of the statute must be read and construed together unless there is a very clear reason why a particular provision of the statute should be read independently. To achieve a harmonious result, a section must be read against the-background of another to which it relates. This principle is indispensable, in giving effect to the true intentions of the makers of the statute. See Rabiu v. Kano State (1980) 8 -11 SC 130 and Attorney-General Lagos State v. Attorney-General Federation (2014) All FWLR (Pt. 740) 1296 at 1331."

My firm view is that Section 76 of the Electoral Act is clearly inapplicable to the issues under consideration. The form referred to are the form to be used in the conduct of the election as FORM CF001 had been taken care of in Section 31 of the Electoral Act and the said FORM CF001 is tied to the steps laid down in the said Section 31 of the Electoral Act.

More importantly the law is firmly settled that a candidate is not required by the Constitution or the Electoral Act to attach his certificates to FORM CF001 before the candidate can be considered or adjudged to have the requisite educational qualifications to contest election. See the cases of:-

1. TERVER KAKIH VS PDP * ORS (2014) 15 NWLR (PART 1430) 374 AT 424 B – H TO 425 A – E per GALADIMA, JSC who

said:-

"The contention of the appellant is that 4th respondent was not qualified to contest because of non-presentation of his certificate. However, the courts below recognized the fact that the issue; of r. non-qualification of 4th respondent by virtue of non-presentation of certificate was never the case of appellant from the beginning earlier observed. The appellant has contended that having regards to section 182(7)(j) of the 1999 Constitution the 4th respondent is necessarily required to present his certificate to the 1st and 2nd respondents in order to prove his qualification to contest the election otherwise he is disqualified under S. 177 (d) of the Constitution and that by S. 167(d) of the Evidence Act 2011, the failure is fatal, because if produced it would have been unfavourable to him.

This contention is misconceived. Submission or presentation of certificate is not the requirement of S. 177(d) of the Constitution as regards the Gubernational screening process. The process of screening which the appellant and 4th respondent undertook with the 1st respondent requires the candidate to fill in his qualification in the form and to swear to a verifying affidavit that the information contained in Form CF001 was true. This takes away the necessity of presentation of the actual certificate to the 1st and 2nd respondents.

When the appellant was confronted under cross-examination, with exhibit C and D (the nomination Form) which is similar in form with INEC FORM CF001, and which the 1st respondent used in screening the appellant and 4th respondent he stated that he did not attach his certificate to his party nomination Form and that did attach his certificate to his party nomination Form and that the same procedure of not attaching certificates to the nomination form applied to all candidates. He admitted that, presentation or submission of certificate was not a requirement for the purpose of screening. See page 711 Vol. 1 of the record.

In any case, it is not a requirement of S. 177 (d) of the Constitution for the candidate to necessarily present the certificate to qualify for election to the office of Governor, of a State.

By the provision of S. 177 (d) of the Constitution a person shall be qualified for election to the office of Governor of a State if:

(a) .....

(b) .....

(c) .....

(d) He has been educated up to at least school certificate level or its equivalent.

By section 318 (1) "School certificate or its equivalent means."

(a) .....

(b) Educated up to secondary school certificate level.

In Bayo v. Njidda (2004) 8 NWLR (Pt. 876) 544 at 630; (2004) FWLR (Pt.192) 10 at 78, the Court of Appeal then the apex and final court on Election Petition Assembly/Governorship and Legislative Houses Election Tribunal had this to say on the point:

> *"In other words, as regards a secondary school certificate examination'; it is enough, in my view that one attended School certificate level i.e. without passing and obtaining the certificate."*

By the combined reading of Ss. 177(d), and 318 (b) of the Constitution is not the only requirement or basis of qualification, but whether the candidate has been educated up to Secondary School certificate Level.

I am on one and in agreement with the learned counsel for the respondents that it is not only by presentation of certificate to the respondent that is the only proof that 4th respondent is qualified as the appellant here in who has taken this position did not by his own showing under cross-examination) present or submit one.

As rightly; held by the court below, by Ss. 131-134 of the Evidence Act, it is only by cold facts presented to the law Court that civil rights and obligations of the

parties are determined.

By dint of these foregoing sections of the Evidence Act learned counsel would do well for the litigants who will be happier for it if they shun sentiments as these command no place in judicial deliberations: See Ogbiti v. N.A.O.C. Ltd. (2010) 14 NWLR (Pt.1213) p.208. A litigant must be able to establish his case on the evidence he presented before the court or on known or settled principles of law.

In sum the appellant having failed to show that the concurrent finding of facts by the lower Court is perverse thereby occasioning miscarriage of justice. I cannot disturb same and the conclusion that the appellant claim is frivolous, brought malafide, vexatious..."

3. OLATUNJI V WAHEED & ORS (2010) LPELR 4754 CA P. 18 – 20.

The provisions of the Electoral Act 2010 cannot subvert the clear provisions of Section 131, 137 and 318(1)(d) of the Constitution of Federal Republic of Nigeria 1999 as amended. Any allegation of giving false information in the Affidavit submitted to INEC must be a false information of a fundamental nature that breaches any of the provisions of Sections 131, 137 and 138(1)(d) of the Constitution of Federal Republic of Nigeria 1999 as amended. No such infraction has been proved in this case. See:-

1. SAIDU V ABUBAKAR (2008) 12 NWLR (PT. 1100) 201;

2. ANPP & ORS VS USMAN & ORS (2008) 12 NWLR (PT. 1100) 1.

The Petitioners insinuated that Officer Cadet is not a qualification or certificate under the Constitution and Electoral Act. The Oxford Advanced Learners Dictionary International Student's Edition (7th Ed.) describes "CADET" as ***"a young person who is training to become an officer in the police or armed forces."***

There is evidence on Record by RW1 and RW2, RW3, RW4, RW5 that 2nd Respondent had Secondary Education at KATSINA PROVINCIAL SECONDARY SCHOOL (now GOVERNMENT COLLEGE, KATSINA) from where he proceeded to Nigerian Military Training School, Kaduna from FORM VI in 1962 along with RW1. In effect 2nd Respondent went through further Education in Military Training after his Secondary School Education. The Military Training is thus higher than Secondary School Certificate Education.

The Petitioners in paragraph 3.43 of their Address in response to INEC Final Written Address submitted that the 2nd Respondent gave false information when he claimed in his Affidavit deposed to on 24th day of November, 2014 and submitted to the 1st Respondent vide FORM CF001 18/10/2018 when he said all his academic qualifications documents as filled in his Presidential Form APC/E01/2015 were with the Secretary Military Board as at the time he made the Affidavit.

The Petitioners claimed that they have proved the false Affidavit and in addition they pleaded and tendered public

statements made by the Secretary to the Army Board both in the electronic and print Media and relied on Exhibit P80 and P24 to show that the Army emphatically denied the claim and as such onus shifts on the 2nd Respondent to disprove it.

The fact remains that the Petitioners failed to call the then Director of Army Public Relations, Brigadier General Olajide Laleye who they pleaded in paragraph 396 of the Petition as having debunked the assertion of 2nd Respondent contained in Affidavit sworn to on 24/11/2014. The said paragraph 396 constitutes the fountain and pivot of the Petitioners' allegation of and they have a bounden duty to show that the Affidavit contained false information of a fundamental nature in aid of his qualification for election.

What the Petitioners did through their Learned Counsel was tendering the documents from the Bar with no one to confirm the authenticity of the report contained in Exhibits P80 and P24 and with no witness to cross examine on it thereby rendering exhibits P80 and P24 of no probative value as the Court cannot rely on then to found on Petitioners favour.

The consistent holding of the apex Court is that such documents (Exh. P80 and P24) must be tendered through their makers or where tendered from the bar the maker or a witness with the knowledge of Exhibits P80 and P24 must be called to give evidence on them. Moreso the Petitioners made allegations of crime the cornerstone of issues 1 and 2. See:-

1. IKPEAZU V. OTTI (2016) 8 NWLR (PT. 1513) 38 AT 93 B per GALADIMA, JSC who said:-

"It is settled law that a party who did not make a document is not competent to give any evidence on it. This is the situation here PW19 did not make Exhibit PWC2 she cannot competently tender it. The maker must be called to testify to credibility and veracity."

2. EZENWO NYESOM VS HON. (DR) DAKUKU ADOL PETERSIDE & ORS (2016) 7 NWLR (PART 1512) 452 AT 522 where KEKERE-EKUN, JSC, said:-

"In Belgore v. Ahmed (supra) this court emphasised the fact that where the maker of a document is not called to testify, the document would not be accorded probative value, notwithstanding its status as a certified public document. Furthermore, in Buhari v. INEC (supra) at 391, it was held that in estimating the value to be attached to a statement rendered admissible by the Evidence Act, regard must be had, inter alia, to all the circumstances from which any inference can reasonably be drawn to the accuracy or otherwise of the statement."

3. UDOM GABRIEL EMMANUEL VS UMANA OKON UMANA & ORS (2016) 12 NWLR (PART 1526) 270 AT 286 G - H TO A - B per NWEZE, JSC who said:-

"However, I wish to further emphasize on the rather reckless behavior of the court below in refusing to be guided by the decision of this court but relied on its

own decision to decide that it was unnecessary to call the makers of documents exhibits 317 and 322 to testify in this case. The law is well settled that documents produced by parties in evidence in course of hearing are to be tested in open court before the court can evaluate them to determine their relevance in the determination of the case upon which the documents are relied upon. For this reason, any document tendered from the bar without calling the maker thereof attracts no probative value in the absence of opportunity given to the other party to cross-examine for the purpose of testing its veracity. See Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205 at 322-323 which the court below refused to apply in place of its own decision in Aregbesola v. Oyinlola (2011) 9 NWLR (Pt. ..."

And recently the Supreme Court warned that newspaper report may not represent the truth of what it contained see AYO ADEGBITE V THE STATE (2018) 5 NWLR (PART 1612) 183 AT 205A per GALINJE, JSC who said:-

"The lower Court was also right when it refused to accord probative value to the newspaper report and radio interview as newspaper report is not always the truth of its contents, and the prosecution had no burden to tender the newspaper report in evidence."

That is not the end of the matter. I take it a little further that even if the newspaper Report containing the Army denial

Exh. P24 can be accorded probative value or weight, the newspaper Exhibit P24 and in particular the statement or refutation made by Brigadier General Olajide Laleye on 21st January, 2015 does not at all support the position of the Petitioners that the 2nd Respondent has no certificates or that he was not educated up to Secondary School Certificate. Exhibit P24 point blank confirms that the 2nd Respondent obtained a WASC Certificate otherwise known as West African School Certificate and that he attended the Schools listed in his FORM CF001 Exh. P1. I will reproduce in full the statement the Army made under the title of "ARMY SPEAKS ON BUHARI CERTIFICATES by Kinsley OMONOBI."

It reads:-

> ***"ABUJA—As controversy continues to trail the academic qualifications of the Presidential candidate of the All Progressives Congress, APC, Major General Mohammadu Buhari, the Army, yesterday, said it was not in possession of Buhari's credentials***
>
> ***The APC presidential candidate, Major General Buhari had averred in an affidavit he deposed before an Abuja High Court that all his certificates were with the Secretary, Military Board, while submitting his Form 199A to the Independent National Electoral Commission, INEC. But the Army, yesterday, denied being in possession of the APC candidate's original certificates or the certified true copies. The outgoing Director of Army Public Relations, Brigadier-General Olajide Laleye, who addressed newsmen in Abuja, said: "The Nigerian Army does not have the original copy of***

his (Buhari) West African Examinations Council, WAEC result or a certified true copy."But the APC in a swift reaction has warned that those who are bent on destroying Buhari on the basis of his certificates may end up destroying the country's military. The army spokesman told newsmen that what the army had and which he displayed were the information contained in the forms Buhari filled at the point of his entry into the military and some letters of recommendation by Principal of Provincial Secondary School, Katsina.

For the record

Olajide said: "Records available indicate that Major General Muhammadu Buhari applied to join the military as a Form Six student of the Provincial Secondary School, Katsina on October 18, 1961. His application was duly endorsed by the Principal of the school, who also wrote a report on him and recommended him suitable for military commission."

The report which was shown to newsmen, read:

"I recommend Muhammadu Buhari fit for military commission." On Buhari's result, the Principal also wrote, "I consider that he will pass Maths, English and three other subjects." Laleye said the briefing was necessitated by deluge of requests from civil society groups and the media among others, over General Buhari's eligibility for any political office.

He said: "It is a practice in the Nigerian Army that before candidates are short-listed for commissioning into the officers' cadre of the service, the selection board verifies the original copies of credentials that are presented.

"However, there is no available record to show that this process was followed in the 60s. Nevertheless, the entry made on the Nigerian Army Form 199A at the point of documentation after commission as an officer indicated that the former head of state obtained the West African School Certificate, WASC, in 1961 with credits in relevant subjects: English Language, Geography, History, Health Science, Hausa and a pass in English Literature.

"Neither the original copy, Certified True Copy, CTC, nor statement of result of Major General Muhammadu Buhari's WASC result is in his personal file. What I have said here is what is contained in his service records' personal file. We have not added or subtracted anything." Earlier; Brigadier-General Laleye said:

"Let me state clearly that the Nigerian Army holds the retired senior officer in very high esteem and respect and would not be a party to any controversy surrounding his eligibility for any political office. Suffice it to state that Major General Buhari rose steadily to the enviable rank of Major General before becoming head of state of our dear country in December 1983."

The above statement confirms that the 2nd Respondent actually obtained West African School Certificate and passed at credit level in five subjects (in 1961) in English Language, Geography, History, Health Science, Hausa and a pass in English Literature. The statement confirms the truism and authenticity of Exhibits R19, R20, R21, R22 and R23 tendered by the 2nd Respondent through RW3, RW4 and RW5.

What Brigadier Olajide Olaleye said is that the original copy or CTC or copy is NOT in his personal file. It does not exclude the inference that the Army may have the certificates having regard to the fact stated by Brigadier Olajide Laleye who said:-

> ***"Never the less, the entry made on the Nigerian Army FORM 199A at the point of documentation after commission as an officer indicated that the former Head of State obtained the West African School Certificate, WASC, in 1961 with credits in relevant subjects: English Language, Geography, History, Health Science, Hausa and a pass in English Literature."***

The question may be asked, If 2nd Respondent did not present his Certificate how did the Army indicate the subjects in their FORM 199A. The plausible inference was/is that he that he presented the Certificate to the Army for documentation. See Section 167 of the Evidence Act 2011 which says:-

> ***"167 The court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case."***

It will be incredible and repugnant to common sense and justice to hold in the face of all the pieces of evidence highlighted above that 2nd Respondent does not possess qualifications to contest the exalted office of the President of the Federal Republic of

Nigeria as prescribed by Section 131 and 318 of the Constitution of the Federal Republic of Nigeria or that he submitted an affidavit to the 1st Respondent containing false information of fundamental nature in aid of his qualification to contest the election.

The Petitioners also tendered the C.V. of the 2nd Respondent showing his educational background, Military Service and Public Service becoming Head of State and Commander-in-Chief of the Armed Forces of Nigeria from December 1983 to 1985. All of these were confirmed by Brigadier-General Olajide Olaleye who said 2nd Respondent rose steadily to become Head of State. To my mind the CV contains impressive credentials to enable him contest and hold the Office of the President of Nigeria even if it could be said that he has only Primary School Certificate and that is not the case here. The 2nd Respondent has more than Secondary School Certificate having attended courses in famous Military College(s) in the USA, UK and India.

There is no doubt that he is eminently qualified to contest the February 23, 2019 Presidential Election.

The Petitioners cannot run away from all the facts that are favourable to 2nd Respondent's Exhibits P1 & P24 tendered by them. The fact that he did not attach his Certificates to the CV or Form CF001 cannot lead to conclusion that he did not obtain them or that he is not educated up to School Certificate level or its equivalent.

Since the documents Exh 124 and 130 were tendered to advance the petitioners case, the Court is entitled to utilize and

validate them and in advantage position and qualified to draw such inferences as found fit and proper to do.

A close scrutiny and or perusal of the petitioners averments in paragraphs 388-405 discloses that the case of the petitioners is that 2nd Respondent was not qualified to contest election because he does not possess the educational qualification to contest for the office of the President of the Federal Republic of Nigeria. See paragraphs 388 and 399.

Paragraphs 398 specifically accuses 2nd Respondent of submitting form CF001 wherein he filed in paragraph C, Column 2 page 3 under secondary wrote "WASC" thereby falsely c claiming the qualification which he submitted to INEC whereas there was no qualification known as WASC as at 1961.

The second aspect of it is that he swore to Affidavit containing false information of fundamental nature that is stating that his certificates are with the Army.

Paragraphs 397 and 404 pleaded that the schools 2nd Respondent claimed that he attended were at the material time nonexistent. There was/is no pleadings in the petition to the effect that 2nd Respondents failure to attach his certificates to form CF001 amounts to lack of educational qualification to contest the election. In other words the issue of failure to attach certificates which has been flogged throughout the length and breadth of the petitioners Address (es) in Reply to 1st, 2nd and 3rd Respondents final written address is not the case of the petitioner in the pleadings. No issue was joined on non production of certificates or failure to attach

them as an infraction of section 131, 137 and 138 of the Constitution of Federal Republic of Nigeria, 1999 as amended.

Parties are bound by their pleadings and any evidence of witness(es) or address of Learned Counsel to a party contrary to the pleaded case of the party goes to no issue and the Court seized of the matter will in the circumstance discountenance such evidence. A party will not be allowed under any guise to deviate from his pleadings. See:-

1. HON. CHIEF OGBUEFI OZOMGBACHI V MR DENNIS AMADI & ORS LPELR - 45152 (SC) 1 AT 53 per PETER-ODILI, JSC who said:-

"It needs be reiterated that parties are bound by their pleadings and no party is allowed to make case different from what it set out from inception and so for the Appellant to seek to depart from their pleadings and embark on a fresh or brand new case different from the very beginning is an act in futility. The obvious reason is that a case retains its original nature from the commencement and the colour would not change because it is on appeal since an appeal or appeals are merely a continuum of that matter that entered from the very first time at the Court of first instance. It follows that the brilliant address of Counsel would not scratch the surface in the apparent quest or a change of nature of the case. See Effiom v C.R.S.I.E.C (2010) 14 NWLR (PT. 1213) 106; Alhasan v. Ishaku supra at 286 per Ogunbiyi, JSC;

Ogunsanya v The State (2011) LPELR - 2349 SC 44 - 54 per RHODE5-VIVOUR, J5C."

2. AFRICAN CONNTINENTAL SEAWAYS LTD VS NDRHW LTD (1977) 5SC 235 at 249-250 per IRIKEFE JSC later CJN.

All submission about failure to produce certificates or attach same to CF001 is hereby discountenanced.

Even if it can be said that the submissions made are in tandem with the Petitioners Pleadings on issues 1 and 2 the fact remains that none of the facts pleaded were proved or established as required by law.

It must be stated that the evidence of RW1 so much relied upon with elation has no relevance or weight at all in that the 2nd Respondent never deposed to any Affidavit stating that he submitted his certificates to the Army when he was enlisted to the Nigerian military training school Kaduna in 1962. What 2nd Respondent deposed to was that in 24th November, 2014 stating that his educational qualifications are with the army not at the point of enlistment with the Army. If Exhibit P24 is anything to go by, it clearly punctured the case of the Petitioner because the Nigerian Army through Brigadier General Olafide Lalaye stated that records shows that 2nd Respondent was a form six student at Provincial Secondary School, Katsina as at 18/10/1961 when he applied to join the Army and it was on the recommendation of his principal who assured that 2nd Respondent would pass his examination in math, English and three other subjects that he was enlisted into the Army and he eventually passed thereafter. In effect

there could be no certificate deposited in the Army Board when he entered Military School or was enlisted in the Army.

On the claim that the schools attended were nonexistent, the Petitioners have been proved wrong even by Exhibit P1 and P24 tendered from the Bar. There is no scintilla of evidence to establish or prove that the schools entered into Form CF001 were non-existent. The overwhelming evidence of RW1, RW2 and RW4 positively shows that those schools actually existed and 2nd Respondent attended them.

Exhibit P30 tendered from the Bar as Archival Document was only dumped on the Court without any evidence to breathe life into it. PW62 confessed under cross examination that facts contained in his witness statement on oath was gathered from information passed to him. In any event, he gave no evidence concerning the Exhibits because facts therein contained are not from his personal knowledge. In effect, Exhibit P30 are also of no probative value. The allegations that the schools were not in existence and there was no certificate known as WASC have not been proved and the petitioners thereby failed to discharge the onus placed on them. See MAKU V AL-MAKURA (2016) 5 NWLR (PART 1505) 201 at 222 G-H to 223 A per M.D MUHAMMAD, JSC who said:

> ***"Lastly, the essence of front-loading statements of witnesses is to facilitate speedy disposal of election petition and does not justify "dumping" of exhibits and urging the tribunal and the court to proceed in a manner that opens them to unnecessary and avoidable suspicion***

of bias. All facts that entitle the party to the H courts indulgence must be demonstrated in open court to ensure that in arriving at its decision on the matter the court is as detached and neutral as anyone could easily see. The examination of exhibits outside the court and behind the litigants certainly stands in the way of these necessary and laudable traits. See Obasi Brothers Ltd. v. MB.A. Securities Ltd. (supra) and Onihylo v. Akibu (1982) 7 SC 60 at 62 and Ucha v. Elechi (supra).”

(2). SENATOR RASHIDI ADEWOLU LADOJA VS SENATOR ABIOLA AJIMOBI & ors (2016) 10 NWLR (PART 1519) 87 at 146F-H to 147 A-B per OGUNBIYI, JSC.

Exhibit P30 remains documentary hearsay.

On failure of 1st Respondent to call witnesses or produce evidence, the petitioners had contended that facts pleaded by the 1st Respondents in paragraphs 98(1) of 1st Respondents reply to the Petition to the effect that it was satisfied with educational qualification presented by 2nd Respondent was not proved or established by the Respondent for their failure to call evidence. They submitted that in as much as no one was called to tell the Court on the alleged acceptability on 2nd Respondent's qualifications. The Learned senior Counsel to the petitioner therefore submitted that paragraphs 98(ii) of 1st Respondents Pleadings is deemed abandoned.

In his reply on point of law, the Learned Counsel to the 3rd Respondent submitted that where a petitioner has not made out or

proved the case in his petition during examination in chief the Respondent would not be called upon to offer evidence in defence and that where a party has extracted evidence favourable to his case and the Petitioner fails to discharge the burden on him, the Respondent is not bound to call evidence. He relied on the following.

1. AKANBI V. ALAO (1989) 5SCNJ 1 at 20
2. AKOMOLAFE GUARDIAN PRESS LTD (2010) 3 NWLR (PART 1181) 338 AT 351-354 F-B
3. ANDREW V. INEC (2018) 9 NWLR (PART 1625) 507 at 584 D-F.

He also submitted that since the Petitioners claim is declaratory in nature there is heavy burden of proof raised on they relied on JAMES V INEC & ORS (2013) LPELR 20322 CA.

That submission of the 1st Respondent Learned Counsel represent the Law in that it is the Petitioner who alleged that the 2nd Respondent does not possess the educational qualification to contest the election to the office of the President of the Federal Republic of Nigeria and they pray for declaratory reliefs. This much they conceded in paragraphs 1.01 of their final written address in response to 1st Respondents final written address.

That being the case the onus rest squarely on the petitioner to prove the assertion that the 2nd Respondent is not educationally qualified to contest the election or that he submitted to the 1st Respondent, Affidavit containing false information of a fundamental

nature in aid of his qualification for the said election. These petitioners have been unable to do. They cannot rely on the refusal or failure of the 1st Respondent to call evidence of how it was satisfied with 2nd Respondents educational qualifications. See:-

1. AYODELE ILORI & ORS VS ALHAJA RISIKAT ISHOLA (Nee Raji) (2018) 15 NWLR (PART 1641) 77 at 94 C-D per KEKERE EKUN JSC who said:

   "The guiding principle is that where a party seeks declaratory reliefs, he must succeed on the strength of his case and not on the weakness of the defence, if any. See: Dume: Nig. Ltd. v. Nwakhoba (2008) 18 NWLR (Pt. 1119) 361; Bello v. Eweka (1981) 1 SC (Reprint) 63; Emenike v. PD.P (2012) 12 NWLR (Pt. 1315) 556. A declaratory relief must be proved to the satisfaction of the court) notwithstanding default of defence or any admission in the defendant's pleading pleadings".

2. WIKE EZENWO NTYESOM V HON. DR. D. A. PETERSIDE & ORS (2016) 7 NWLR (PART 1512) 453 at 535 G-H where the Supreme Court per KEKERE-EKUN JSC said:

   "It will be recalled that the 1st and 2nd Respondent sought declaratory relief before the tribunal. The law is that where a party seeks declaratory reliefs the burden is on him to succeed on the strength of his own case and not on the weakness of the defence (if any). Such reliefs will not be granted even on admission."

What is more, the Petitioner pleaded that the 2nd Respondent was sponsored by the 3rd Respondent and he contested the election. The petitioner also pleaded that he submitted form CF001 along with some documents which they are not challenging. It is because the 2nd Respondent went through the procedure laid out in section 31 of the electoral Act and cleared to contest the election that enables the Petitioner to challenge his qualification as pleaded by them in paragraphs 388-405 of their petition. The presumption is that 1st Respondent duly cleared him to contest the election. See section 168 (1) of the Evidence Act and the cases of:

1. CHARLES UMEZINNE V A.G. OF THE FEDERATION (2019) 11 NWLR (PART 1683) 358 at 372 G-H Per EJEMBI EKO, JSC who said:

"The appellant relishing in tardiness, took no steps to regularise the records which, of course, enjoyed the presumption of regularity under section 150(1) of the Evidence Act, 2004 (now section 168(1) Evidence Act, 2011). By that provision, any judicial or official act shown to have been done in a manner substantially regular is presumed to have been done in compliance with the formal requisites for its validity. Accordingly, the substantive and H the supplementary records remain valid until set aside by the Court of Appeal."

2. ENGR. GEORGE J.A. NDUUL V. BARR. BENJAMIN WAYO (2018) 16 NWLR (PART 1646) P 548 at 597 D-H per KEKERE-EKUN JSC who said:

"Contrary to the contention of learned counsel for the appellant that this provision applies to primary elections, it is evident from sub-paragraph (I) or Section 31 that the provisions are activated after primaries have been concluded and at the stage when political parties submit the names of candidates who scaled through the primaries and whose names are being submitted as candidates for the general elections. INEC Form CF001 is issued to candidates who won their party's primaries. By section 31(2), the documents submitted and affidavit deposed to are to show that the candidate has fulfilled all the Constitutional requirements for election into that office.

Thus, section 31 (2) is not at large. The information required is in respect of the constitutional requirement for the office the candidate is vying for. The publication of the personal particulars of a candidate in the constituency where he intends to contest the election pursuant to sub-section (3) and the right of any person to apply for copies of the nomination forms, affidavit and any other document submitted pursuant to subsection (4), is to provide an avenue for challenging the person's candidature where he does not meet the Constitutional

requirements for the office he is seeking. This is where subsection (5) comes in. The information that may be complained about must be with reference to sub-section (2). This court in Agi v. PDP (supra) at 455, B - C and G, held per Ogunbiyi, JSC:

> ***'The Constitution takes precedence over all other laws. Therefore, where there is a matter of alleged falsification of a document or rendering of a false statement as alleged in this case, it must relate to the qualifying or disqualifying factor by virtue of the Constitution of the Federal Republic of Nigeria. Section 31 of the Electoral Act did not by any stretch of imagination create Jew grounds of disqualification or non qualification."***

The Petitioners tendered all documents compiled and submitted in Form CF001 as Exhibit P1. The submission that INEC is deemed to have abandoned it pleadings cannot hold sway.
See AISHA JUMMAI ALHASSAN & ANOR VS MR DARIUS DICKSON ISHAKU & ORS (2016) 10 NWLR (PART 1520) 230 AT 261 D and 263, 275-276.

On whether Exhibits R19 and R21 are caught by Sections 83(3) of the Evidence Act; the Petitioners have submitted that Exhibit R19 and R21 are inadmissible because they were made by a person interested when proceedings were anticipated and in this case after the petition has been filed and hearing commenced.

In response to the submission the learned senior Counsel to the 2nd Respondent dealt with the issue in paragaraphs423 and 425 of 2nd Respondents reply to petitioner's final written address.

The Learned senior Counsel to the 2nd Respondent argues that the petitioner misconstrued section 83(3) of the Evidence Act in that Exhibit r19 and R21 were actually made or produced by the WEST AFRICAN EXAMINATION COUNCIL *(WAEC)" and University of Cambridge respectively.

That the documents were only obtained and not made by the 2nd Respondent who is the person interested. That the petitioner have not accused the University of Cambridge and WAEC of being persons interested and on the meaning and scope of sections 83(3) of Evidence Act, he relied on cases of ANYAEBOSI V RT. BRISCOE (NIG) LTD (1987) NWLR (PART 59) 84 at 98-99 and KELECHI V T. WALI & SONS LTD (1958) 2 A.B 344.

I am of the view that the 2nd Respondent is not the maker of Exhibit R19 and R21 through a person interested. It has not been shown or proved that the West African Examination Council and University of Cambridge are interested persons in these proceedings.

On whether there is variation in the names of 2nd Respondent on Exhibit R19 and R21 as to whether it is "Mohammed" or "Muhammed". The petitioners stated that the documents cannot be said to belong to 2nd Respondent because no facts were pleaded to reconcile the names.

The Learned Counsel to the 2nd Respondent submitted that the supposed variation will not detract from the fact that the name is and could be borne by one person. He relied on the case of AD V. FAYOSE (2005) 10-NWLR (PART 932) 151 at 193.

He also relied on the evidence of RW5 who gave explanation on the names and stated they are the same. He drew analogy from the name of lead Counsel to the petitioner whose names are Dr. LIVINUS IFEANYICHUKWU UZOUKWU, SAN signing off processes as DR LIVY UZOCHUKWU, SAN.

The variation in the name of the 2nd Respondent on the Exhibits R19 and R21 is non-sequitor since both of them refer to and were issued in respect of the same person who bears the names as set out therein. Whether "Mohammed" or "Muhammed" or "Muhammadu" the name(s) refer to one and the same person in respect of who the Exhibits were issued particularly since the second name "Buhari" on the Exhibits indisputably refers and belongs to the 2nd Respondent and no other person. After all, a name is defined at page 1048 of the 8th Edition of Black's Law Dictionary to mean:

> ***"a word or phrase identifying or designating a person or thing and distinguishing that person or others."***

From the totality of the evidence before the Court, the names "Muhammed Buhari", "Mohammed Buhari" contained in Exhibits R19 and R21 all refer to, identify and belong to the 2nd Respondent in respect of whom they were issued.

I am of the solemn view that upon all the pieces of evidence given, both oral and documentary on issue of non-qualification or allegation of Affidavit containing false information tendered or proffered in this case there is no doubt that Exhibits R19 and R21 relate to the 2nd Respondent.

In conclusion, after careful and calm perusal and examination of the relevant pleadings, oral and documentary evidence proffered and tendered, as well as the various submissions of Learned Senior Counsel for the parties, I have no doubt in my mind that the Petitioners have not proved or established that the 2nd Respondent does not possess the educational qualifications to contest the election to the office of the president of the federal republic of Nigeria as prescribed and stipulated under Section 131,137 and 318 (1) (a) (b) (c) (i) (ii) (iii) and (d) of the constitution of the Federal Republic of Nigeria 1999 as amended.

I am also of the firm view that the Petitioners failed to prove or show that the 2nd Respondent had submitted to the 1st Respondent Affidavit containing false information of a fundamental nature in aid of his qualification for the election as prescribed by section 35(1) of the Evidence Act 2011 and settled decision of the Apex Court (the Supreme Court of Nigeria). Before leaving the issues, the Learned Senior Counsel for the 3rd Respondent had argued what he termed ***"subsidiary issue" under the subhead "NON-QUALIFICATION OF THE 1ST PETITIONER",*** at page 20 of the 3rd Respondent's Final Address. All that needs be .said on the subsidiary issue and the arguments there on go to no issue since the paragraphs of the 3rd

Respondent's Reply to the Petition on the 1st Petitioner's qualification to contest the election have been struck out for being incompetent in the Ruling by the Court on the Petitioners' Motion of 13/5/2019, delivered earlier.

As a consequence, all the evidence elicited under cross examination by the 3rd Respondent's Learned Senior Counsel on the issue goes to no issue in the absence of the material and relevant pleadings it could be based on.

Consequently issues 1 and 2 are hereby resolved against the Petitioners.

ISSUE 3

Whether from the pleadings and evidence led it was established that the 2nd Respondent was established that the 2nd Respondent was duly elected by majority of lawful votes cast at the election.

Learned silk to the 1st Respondent YUNUS USTAZ USMAN, SAN commenced his argument with reference to section 131 of the Evidence Act 2011 which requires any party who desires any reliefs from the Court to adduce sufficient evidence in support of facts giving rise to the reliefs he claims to submit that the onus to first establish that the 2nd Respondent was not elected by majority of lawful votes lies with the petitioners who must satisfactorily discharge the burden on the before onus would shift on the Respondent. He relied on BUHARI V INEC (2008) 12 SCNJ.

He argues that where a petitioner alleges that an election was manned by over voting, underage voting, impersonation and wrongful deduction of petition votes, it must be satisfactorily proved. He relied on the cases of:

1. PDP VS INEC (2014) LPELR-23808 SC
2. PDP & ANOR VS INEC & ORS (2012) LPELR-8429 CA
3. UZU & ANOR V. OGBU & ORS (2012) LPELR-977 SCA

He stated that the petitioners called 62 witnesses, majority who he said confirmed that were accredited before they voted. That more than 50 of them confirmed being accredited to vote.

He submitted that accreditation is not invalid by reason that it was not fully done by card readers. He relied on the case of IKPEAZU V OTTI 2016 8 (NWLR) (PT 1513) 38 AT 53F -H.

He stated that despite the allegation of over voting and unlawful votes, Petitioner failed to tender voter's registration in prove of their case but they rather dumped their documents on the Court. He relied on IKPEAZU V OTTI Supra page 105F-H. That Petitioners tendered Forms EC8A'S which they failed to link or demonstrate them through their witnesses to any part of their case that the FORMS EC8AS tendered by the Bar was linked to any polling unit by petitioners witness. This he submitted is fatal to Petitioners case. he cited the case of ANDREW V. INEC (2018) 9 NWLR (PART 1625) 507 at 588 C-F) and SENATIR RASHIDI ADENOLU LADOJA V SENATOR A. AJIMOBI & ORS SC. 12/2016.

According to Learned silk, desperate effort was made to use PW62 to remedy the situation that even when he tried to link the documents he made, no mention of voters Register and pulling unit result but only identified exhibits P1, P3, P17, P17, P167 and p173 all of which he said were not relevant to move Petitioners allegation.

That the Petitioner tendered Exhibit P90 which purports to be an executive summary analysis of Forms EC8AS EC8BS and EC8CS for 11 States and tried to link the Exhibits through PW60 who according to USMAN, SAN, regrettably admitted under cross examination that he never used the voters register in his analysis that this makes that evidence PW60 irrelevant.

He submitted that evidence led grossly fall short of the standard required as according to Learned Silk none of the 62 Witnesses could have one single official or staff of INEC that were engaged in alleged vote suppression or vote inflation.

That, even though some of them claimed to have reported incident to the police but they could not confirm prosecution or conviction of any official of 1st Respondent.

On specific allegations contained in paragraphs 34 and 35 of the petition to the effect that the votes cast for petitioners in Abia State was 664, 659 but they were credited with 219,698 votes and that in Adamawa they scored 646,080 votes but Petitioners were credited with 235,824 and that the same trend were repeated for AKWA IBOM, ANAMBRA, BAUCHI, BAYELSA, BORNO, BENUE CROSSS RIVER, DELTA, EBONYI, EDO, EKITI, ENUGU, GOMBE, FCT ABUJA, IMO, JIGAWA, KADUNA, KATSINA AND KEBBI STATE.

That Petitioner also complained of same thing in respect of LAGOS, NASARAWA, NIGER, OGUN, ONDO, OYO, OSUN, PLATEAU, RIVERS, SOKOTO, TARBA, YOBE and ZAMAFARA STATE.

He submitted that the allegations of all the electoral malpractices mentioned by petition are criminal in nature and ought to be proved beyond reasonable doubt. He relied on the cases of;

1. CHIME V ONYIA (2009) 2 NWLR (PT .1124) at 46C and
2. OGU V EKWEREMADU (2006) 1 NWLR (PT 961) 2554

On the pleadings and totality of the evidence, he submitted that there was no proof of beyond reasonable doubt of the aforelisted allegations

On the existence or reliance on figures obtained from a central server, the Learned Silk to the 1st Respondent stated that the Petitioner pleaded what he called "some ploy figures" in paragraphs 24 of their motion as the correct and actual result of the 2109 presidential election and also alleged that 1st Respondent collated and transmitted the election result electronically via smart card readers into what he called a unisory central server belonging to the 1st Respondent.

He drew attention to paragraphs 5 and 5 of PW59 (DAVID NJOGA) statement on oath and his expert report admitted as Exhibit P91, where in the PW59 stated that his statement is based on technical review and analysis he conducted from data obtained

from a strange website called WWW. Facts don't lieng.com and that PW59 confirmed that the result was created on March 12, 2019, 21 days after the result of Presidential election was declared by INEC that the strange website according to PW59 was created by an anonymous person.

That the PW59 confirmed the unreasonability of his evidence (PW59) when PW59 admitted that the information in the said website www.factsdontlieng.com could have in fact been doctored under cross examination by 3rd Respondent counsel, if an expert, it is possible to use scientific method to de crypt data source and tamper or alter information contained therein.

That PW59 evidence falls within the exclusion rule of documentary hearsay evidence which is inadmissible.

He referred to paragraphs 5, 7, and 8 of Exh. P91 to contend that facts contained in Exhibit P91 are not within the knowledge PW59. That oral evidence of a witness must be direct. He relied on section126 and 83 of the Evidence Act 2011.

That expert opinion rendered without the personal knowledge of the expert cannot be relied upon. He relied on the case of;
UWA PRINTERS NIGERIA LTD V INVESTMENT TRUST CO. LTD (1988) 5 NWLR (PT. 92) 121-122 Per Wah, JSC and ALL STATES TRUST BANK PLC V REGISTERED TRUSTEE OF MISSSION HOUSE INTERNATIONAL & ORS (2018) LPELR-443489 CA.

He stated that the law is clear that the exclusive responsibility for the conduct, collation declaration and publication of Presidential election rests on the 1st Respondent INEC and that the

responsibility is not shared with any person or body including the owner of www.factsdontlieng.com

That the totality of evidence adduced by PW59 based on the data obtained from the said www.factsdontlieng.com unbelievable, untrue and lacking in merit.

The Learned silk also dealt with the evidence of PW60 another expert MR JOSEPH GBENGA called by the petitioner who he said described himself as analyst and designer who claimed that from his analysis is by forms EC8AS, EC8BS and EC8CS from Kaduna , kano, katsina, kebbi, niger, Gombe, Jigawa bauchi, Adamawa, Yobe and Zamfara state.

He observed various irregularities to wit; total number of votes exceeding number of accredited voters on EC8A; Polling units with no accreditation where votes were returned and pooling unit where number of votes exceeded the total number of registered voters.

But that the said PW60 admitted that he did not rely on the voters Register in arriving at the purported irregularities.

That PW60 admitted that he had not been certified as a data analyst. That this admission its flawed ab initio vide section 682 of Evidence Act showing that PW60 is not an expert. He urged the Court not to rely on his testimony.

On allegation of whether transmission of results was by manual collation or through Electronic Transmission of result, the Learned Silk to 1st Respondent drew attention to evidence of PW2 per Obi Peter Ijeoma and PW3 Adejutijam Olanikan who he said tried to say that 1st Respondents claim promised that election result

would be collate and transmitted via smart Card readers into INEC central server and that the results collated and so transmitted shows that petitioners won the 2019 presidential Election and that the results declared by INEC was materially different.

He submitted that the evidence of PW2 and PW3 goes to touch the face of Section 52 and 73 of the Electoral Act which provided that there shall be no electronic transmission/ collation of result that any form of collation different from what the Electoral Act 2010 as amended or the INEC guidelines EXH P27 or even 2019 Election Administration manual Exh P28 is invalid. He relied on the case of IKPEAZU VS OTTI Supra pages 88, 100-101, 106-107 HC.

That the above submission was confirmed under cross examination of OSITA CHIDOKA PW62 who was the National collation Agent for the 2nd Petitioner who said he was not present when results were purportedly being transmitted to server and that he has never the alleged server and that the Presidential Election was collated by INEC manually.

That PW62 also confirmed that Presidential Election at Local Government and National level and state Level, both regulations and manual do not make provisions for electronic collations and/or transmission of election results.

That the Court cannot speculate or assume about anything. That the Petitioners have failed to prove that 2nd Respondent did not score majority of lawful votes cast at the election

The Petitioners response to the above submissions could be found on pages 16-27 of petitioner's final written address in response to the 1st Respondents final written address

The Learned senior counsel to the petitioners DR LIVY UZOUKWU, SAN also commenced his argument on burden of proof and the settled rebuttable presumption of law that the result of an election as declared by Electoral body are correct until proved otherwise by the Petitioners. Thus according to him, the initial onus or burden of leading evidence rests on Petitioners to show that return of 2nd Respondent is wrong. He relied on the cases of;

1. NWOBODO V ONOH (1984) 1SCNLR
2. HASHIDU V GOJE (2003) 15 NWLR (Pt 842) 352 at 386 and
3. BUHARI V OBASANJO (20050 13 NWLR (PART 941) at 122 C-D per UWAIS CJN

What is required according to UZOUKWU SAN of the Petitioner contesting the legality or lawfulness of votes cast at an election has clearly been settled in long time of cases and he cited among other cases the following;

1. MUSA & ANOR V ADAJI & ORS (2015) LPELR-41776 CA
2. PDP & ANOR V INEC & ORS (2012) LPELR 8424 CA
3. HDP V OBI (2012) I NWLR (Pt 1282) 464 at 487 E-H
4. AGBOM & ANOR V AZA & ORS (2015) LPELR-40534 CA

He referred to paragraph 18 of the Petition wherein the Petitioner averred that 1st Respondent wrongfully and unlawfully credited the 2nd Respondent with votes which were not valid or

lawful at various stages of the election polling units to state collating centres with the result that the 2nd Respondent was wrongly returned when according to the Learned silk, the said 2nd Respondent did not score majority of lawful votes.

To establish this ground the petitioners believe it is necessary to draw the Courts attention to two areas of evidence viz;

1. The votes in the servers inputted through the smart card reader and
2. Analysis of votes/Results obtained as reelected in the certified true copies of forms EC8A, EC8B, EC8C and EC8D from the 11 Local states namely; Kaduna, Katsina, Kebbi, Kano, Bauchi, Borno, Gombe, Jigawa, Niger, Yobe and Zamfara States.

He drew attention to what he called the votes in the server inputted through the smart card Readers (SCR) as pleaded in paragraphs 16-0106 of the Petition as facts in support of ground one (1).

That the facts pleaded include result transmitted through card reader during the election who were presiding officers (pos) and/or Assistant Presiding Officers (APOS) and that paragraph 21 (Exhibits P87, P88 and P89 and evidence of PW59 shows the votes inputted into the 1st Respondents server through smart card readers from 35 states and FCT except in RIVERS STATE.

According to the Learned silk, the figures from the 35 states and FCT shows that the 1st Petitioner scored a total of 18, 356,732 valid votes while the 2nd Respondent scored 16,741,430 votes that

by this the 1st Petitioner won the election with the margin of 1,615,302 lawful votes. That if the final votes from Rivers state are added to the scores of the 1st Petitioners and the 2d Respondent, the 1st Petitioners votes will be 18,356,732 + 473,971= 18, 830, 703 while 2nd Respondents vote will be 16, 741, 430 + 150, 710 = 16, 892, 140 that the victory margin is 1,938,563 in favor of Petitioners.

According to the Petitioners they specifically pleaded and led evidence on data from 1st Respondents server pursuant to the provisions and directives contained in EXH P33 INEC manual on election technologies (use trouble shooting and maintenance 2019). That it was 1st Petitioner who scored majority of lawful votes through electronically transmitted result to and contained in 1st Responden6ts server.

That through it the 1st Petitioner who scored majority of lawful votes and satisfied mandatory constitutional threshold and spread across the Federation ought to have been returned and declared duly elected at the said election. He referred to Exhibit P87 and evidence of PW59. He also relied on the evidence of PW2 (REGISTRATON AREA TECHNICIAN-RATECH) PW3, PW4, PW 16, PW 17 and PW36 who Learned silk said were presiding officers and Assistant Presiding Officers of the 1st Respondent all of who he said gave unchallenged evidence that they electronically transmitted results of presidential Election that held on 23/2/19 to 1st Respondent server and PW59 described as expert who testified to existence of the server belonging to 1st Respondent.

That the 1st Respondent did not produce oral or documentary evidence of the facts that PW2, PW3, PW4 PW16, PW17 and PW36 were its ad hoc staff and that their evidence that they electronically transmitted result to 1st Respondent server through smart card Reader was not challenged.

That argument of 1st Respondent in paragraphs 30, 31, 38 and 39 of its final address purporting through the testimony of PW2, and PW3 on the existence of server as well as electronic transmission of result is non sequitor in that counsel address is no substitute for evidence.

He conceded that 1st Respondent pleaded in paragraph 16 that it did not adopt voting by electronic means not having been adopted by Electoral Act. That since the 1st Respondent failed to lead evidence on its pleading it is deemed abandoned on the import of amendment to section 52(2) of the Electoral Act, the Learned silk to the Petitioner Submitted that INEC is now clothe with power to determine the procedure for voting during elections relying also on section 153 and 160 of the CFRN 1999 as amended, Exh P33, P27 and P28 to contend that it cannot. Transmission of election result is perfectly within INEC procedure. He relied on the case of FALEKE V INEC (2016) 18 NWLR (PART 1543) 61 at 120 Kekere Ekun JSC.

According to him Exhibits P27, P28 P33 being subsidiary legislations that must be enforced and applied by INEC. THAT INEC conceded in paragraph 35 of its rely to petition that its card reader data will always show that the votes recorded by the 1st Respondent truly reflects valid accreditation of voters in each of the polling units

all over the Federation. To Learned silk, this is an admission against interest by INEC. He relied on the cases of MIFORD EDODOMINAN V KENNETH OGBEFUN *(1996) LPELR-1019 SC page 25 and Exhibit 182 the statement of card reader buy FESTUS OKOYE ESQ. The 1st Respondent National commissioner and chairman information and voter education committee.

He also relied on Exhibits P74-P80 as being the transcripts of videos tendered in evidence to commemorate mandatory use of smart card reader for accreditation of voters, e-collation and transmission of results.

That petitioner so establish that based on the lawful votes from manual collation the Petitioners still scored the majority of lawful Votes cast.

He also relied on all the Exhibits tendered in 11 states and report Exh. P90 A-K.

That from his analysis in paragraphs 446 and 447, the affected votes are of two categories and he relied on pages 23-24 on how the votes scored in 11 states by the Petitioners and 2nd Respondent looks like in the 11 Local states.

He urged the Court to place premium on the evidence of the two experts and not to wave their evidence aside that Is evidence off PW59 and 40. He relied on the cases of MIA & SONS V FHA (1991) 8 NWLR 9Pt 209) SC 295 E-H and SDPC

ISAIAH 91997) 6 NWLR (PART 508) 236 at 249-251. He urged the Court to resolve issue 3 in favour of the Petitioners.

In his reply on point of law, the Learned Silk to the 1st Respondent submitted that Form EC8 series and E40H were dumped on the Court and were objected to. That the petitioners cannot rely on evidence of PW59, 60 and 62 and document tendered from the Bar without a single witness specifically identifying any of the forms which Petitioners heavily relied upon.

That the documents were not related by any witness to the appropriate part of Petitioners case. He relied on the case of ESEZOBOR V SAID (2018) LPELR-46653CA

He also stated that evidence of the PW59 and 60 have not satisfied the requirement of the law for their admissibility or remark on them.

That the PW60 said he has not been certified by data analysis while PW5 admitted that information he used in this analysis did not come from 1st Respondent but from a source established more than two weeks after the return of the election by 1st Respondent.

He relied on the case of MOHAMMED & ANOR VS ADUDA & ORS (2009) LPELR-4554 CA

On Exhibits P90 A-K Leaned silk to 1st Respondent also stated that the documents are worthless because the witness who purported to have extracted the information from form EC8 series forms was not shown any of the forms to specifically identify and link any of the report per polling unit. That the witness admitted that he did not use the voter's registration in the course of his analysis. He relied on the case of LADOJA V AJIMOBI & ORS Supra

On the sub missions of Learned Senior Counsel to the Petitioners by the import of on the import of section 52(2) of the Electoral Act USMAN SAN for the 1st Respondent opined that the section does not govern collation of results. He relied on section 63 of the Electoral Act on how votes are counted and collated by presiding officer. He relied on the case of ALAKI V SHAAO (1999) 3 NWLR (PART 595) 387 at 397-398.

He submitted that none of the rules, guidelines or manual of 1st Respondent makes provision for electronic collation and transmission of results to a central server. That section 52(1) (b) of electoral Act is unequivocal and he further submitted that section 52(2) cannot relate to electronic.

2ND RESPONDENT'S SUBMISSION

I must say at the onset that the submissions of Learned counsel to the 2nd Respondent CHIEF WOLE OLANIPEKUN SAN is in every material particular in tandem with the copious submission of the 1st Respondent. The 2nd Respondent submissions are contained on pages 12-35 of 2nd Respondents final writt3en address. None the less Court will renew the said submission as germane to the issue under consideration.

The Learned Silk stated the Petitioners are virtually from their pleadings contesting the result of the election including the state won by them. He stated that no evidence was called to support the Petitioners Pleadings. He made elaborate reference to the paragraph of the petition relating to Petitioners complaints in the various

states. He made extensive review of the evidence led by the Petitioners and witnesses called by the Petitioner. He listed them as follows;

1. PW2 for Rivers state
2. PW3 for Enugu state
3. PW4 for FCT Abuja
4. PW5 from Jigawa
5. PW5, 12, 13, 14 and 15 for Niger State
6. PW18, 19, 28 and 30 were called from Bauchi State
7. PW 20, 22, 24 AND 25 WERE CALLED FROM Kaduna state
8. For Borno PW 27, 34, 38, 54 AND PW 56 were called
9. PW 43, 44, 48, 50, 51 and PW 52 were called from Nasarrawa state
10. For Kogi state PW57 and PW 61 were called.

He therefore submitted that the Petitioners have abandoned their pleadings and they have chosen not to call evidence in respect of 22 states namely Lagos, Ogun, Osun, Ekiti, Oyo, Edo, Akwa Ibom, Cross River, Ebonyi, Delta, Bayelsa, Anambra, Imo, Abia, Sokoto, Taraba, Adamawa, Plateau, Benue, Kebbi and Kwara state and as such all Petitioners Pleading relating to them are deemed abandoned. He cited among other cases the case of ALAHAJI ATTAH (2004) 2 SCNJ 200 AT 235

On what he called peculiar restitution of KATSINA, he referred to Paragraph 21 of the petition which he said pleaded the actual result scored by the 2nd Respondent and 1st Petitioner where

respectively on Katsina acknowledgment that the result declared for Katsina is correct. He submitted that Petitioners are bound by their Pleadings and that evidence of PW10, , 11 and 55 who were called from Katsina goes to no issue. He relied on OGBORU V. OKOWA (2016) 11 NWLR (PT 1522) 84 at 122-123.

That this means that the Petitioners have by their Pleadings conceded valid election in 23 states. Chief Olanipekun took time to review the pleas of evidence given by PW1, 12, 20, 21, 22, 23, 24 25, 26, 27 28, 29, 30 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, PW 50-62 and submitted that their evidence are not strong enough in that there are largely hearsay evidence. He submitted that the evidence of PW40 media adviser to 1st Petitioner was merely a criminal session in that he was not asked to link his film exercise to his witness statement or document.

That he did not identify any body or any picture or photograph That he did not identify INEC chairman; he also did a critique of evidence of PW59. He submitted that Exhibit 8 tendered by PW59 was not dated and was not signed that the document is worthless. He relied on the case of O. vs. JOPRIMATE ADEJOBI (1978) 3 SC 72 at 75. That PW59 did not attach his certificate to his report to disclose his expertise in the areas upon which he testified. He relied on numerous cases including UDE V. OSUJI (1990 5 NWLR (PT 151) 488 at 573.

The Learned silk to the 2nd Respondent Chief Wole Olanipekun SAN said PW59 admitted under cross examination the fictitious and anonymous nature of his sources. The domain which PW59 relied

upon is www.factsdontlieng.com which learned silk said it is not ascertainable that it is suspect. He annoted what PW59 said on pages 6 of his report. He submitted that the entire report is based on manipulation; conjecture among many and peradventure it is a guess work. That no Court of Law can rely on it, he cited law of Defamation and the internet 3rd edition by Matthew Collins pages 20-21. He made the same submission on PW60, that PW59 was not able to interpreted, deconstruct or decode the report. He also referred to Exhibit 6.

That PW 59 plagiarized from anonymous source he read it to the Court.

He urged us to read the report as a whole as the Court cannot be and choose. He relied on KAJIL V YILBUK & ORS (2015) LPELR 243 235 (at 68)

That under cross examination PW59 also said he was not authorised to reveal the specific name therein which Learned senior Counsel see as other possibility for the data to be tampered with without authorization.

On PW60 Learned silk submitted that his evidence is not that of an expert. That he did not attach any certificate to his report to show evidence of his qualifications.

That he claimed to have carried out analysis on states and conceded under cross examination that he did not use voters register. He admitted that hacking into phone, computers are universal phenomenon.

That PW60 does not know what EC8C stand for and yet in paragraph 10 of his deposition he said he based his forms EC8AS, EC87BS, and EC8CS. That his evidence goes to nothing. He also stated that petitioners merely dumped Government with no witness of theirs to identify or relate them. He relied on the case of APGA VS AL MAKUNRA (20160 5 NWLR (PT 1505) 316 at 345 and UDOM V UMANA (2016) 12 NWLR (PT 1526) 179 244

On presumption of election results he submitted that the petitioners have not discharged the burden of rebutting the presumption that the INEC result is correct. He relied on many cases including;

ANDREW V INEC Supra. P560. He next dealt with Exhibit P27 and P28 to state that paragraph 22 of Exh. P27 sub paragraph (c) (x) mandated the presiding officer to transmit the result as prescribed in the Electoral Act. That Paragraph 2.6 of Exhibit P28 also provide for step by step of collation of manual collation. He relied on section 62 and 65 of Electoral Act 2010 as prescribing how results are to be announced. He urged the Court to apply internal rule of construction.

He submitted that it is now well settled in Nigeria particularly under the electoral jurisprudence that while the card reader innovation in commendable, no party or Petitioner can ground his claim on the use or non use, application or non-application of card reader. He relied on the case of AGBAJE V. INEC (2016) 4 NWLR Part 1501) 151 (2) NYESOM V PETERSIDE (PT 1552) 452 AT 528 (3) SHINKAFI V YARI (2016) 7 NWLR (PT 1526) 176 AT 237

That card reader has not replaced the voter's registrar or taken the place of statement of result in appropriate forms.

That evidence of PW59 in conjunction with Exh. 8 cannot stand. That allegation of noncompliance of violence, thuggery, intimidation and harassment were not proved that such allegation must be proved beyond reasonable grounds. He relied on GUNDIRI V NYAKO (2014) 2 NWLRE (PT 1491) 211 at 284. He submitted that allegation of over-voting were not establish and were abandoned by the Petitioners. He relied on OGBORU V OKOWA (2016) 11 NWLR (PART 1522) 84 at 120-121

He urged the Court to resolve the issue against the Petitioners.

REPLY OF PETITIONERS TO 2ND RESPONDENT'S FINAL ADDRESS

The introductory parts of the Petitioner's Reply are on all fours with the submissions in reply to 1st Respondent's Final Address.

The Petitioners submitted that the 2nd Respondent led no evidence to support his denial that he was not elected by majority of lawful votes and urged the Court to deem his pleadings as having been abandoned. He relied on the cases of ILODIA V NIGERIA CEMENT COY LTD (1997) LPELR -1494(SC) and UBN PLC VS EMOLE (2001) LPELR – 3392 SC.

On the submissions of 2nd Respondent that Electoral Act prohibited the use of electronic voting machine that 2nd Respondent placed reliance on irrelevant Section 51. That it was section 52(2) of the Electoral Act as amended that amended Section 52 of the Electoral Act to provide that INEC can determine procedure for

voting at election. He submitted that the section prohibiting electronic voting machine has been removed from Nigeria Electoral Jurisprudence.

He urged the court to discountenance the submissions in paragraphs 5.40 - 5.46 of 2nd Respondent's final Address as being grossly misconceived.

Dr Livy Uzoukwu, SAN for Petitioner's further relied on Sections 153, 160 of the Constitution and Section 52(2) of the Electoral Act 2010 as amended as empowering INEC to use electronic voting method. He relied on Exhibits P27, P28 and P33. He made reference to paragraphs 870, 11, 12 and 13 of Exhibit P.27 on use of card readers. He also relied on pages 15 - 32 of Exhibit P33.

That can it now be rightly be argued that the provisions and procedure adopted by 1st Respondent in its Guidelines and Manuals on e-collation and e-transmission are not legal? He said the procedures are legal. He relied on the case of FALEKE V INEC (2016)18 NWLR (PT 1543) 61. That under cross examination by RW 7 he said smart card readers were used for accreditation.

On denial of the existence of INEC SERVER, the Learned silk to Petitioner is of the view that it was lack of appreciation of what a server is that made the Respondent to deny its existence. He then defined server 'as a computer program or a device that provides functionality for other programs or devices, called "clients" and that servers are database servers, file servers, mail servers, print servers..." en.m.wikipedia, org. accessed on 15 March, 2019."

He also relied on Oxford Advanced Learners Dictionary Oxford University Press 2010 p. 1349 as "a computer program that controls or supplies information to several computers connected in a network."

He also relied on Section 258(1) of the Evidence Act on definition of computer. He submitted that definition of computer clearly accommodates the 'server'.

On the analysis of Results from 11 focal states, he relied on the Forms EC8A^{S}, EC8B^{S} and EC8C^{S} tendered from the said 11 States pleaded in paragraph 113 to 363 of the Petition. That it is clear from results tendered that collated results as contained in the Forms EC8A tendered from polling units are irreconcilably different from electronically collated results that were transmitted or imputed to the 1st Respondent's server from smart card reader deployed by the 1st Respondent for the purpose of accreditation of voters and transmission of results to the 1st Respondent's server. The Learned counsel repeated all his argument contained in paragraphs 4.43 – 4.53 contained in Petitioner's reply to 1st Respondent's final Address in paragraphs 4.43 – 4.61 of the Petitioner's reply to 2nd Respondent's final Address.

The Learned silk submitted that the Respondent did not utilize the opportunity they had of impugning the oral and documentary evidence led by the Petitioners. That having regard to the totality of the sufficient credible evidence led and the contents of Exhibits tendered, Petitioners, according to their Learned Silk are entitled to judgment.

On the allegation of dumping of documents, the Learned Counsel to the Petitioners said the Learned Counsel to the Respondent failed to identify the documents that were dumped. That the Respondents also participated in demonstration of the documents vide cross examination. He said the Petitioners did not dump their exhibits that in all the four depositions of PW62, he linked the results to his evidence. That in chief he identified Exhibits P130 – P 137, P3, P17 – P25, P29 – 35. That PW60 identified Exhibit P90 –K and confirmed that results were made available for work.

He stated that PW40 tendered Exhibits P36 – P83 before concluding his evidence in chief and further identified Exhibits 74 - 80 and 84 that all the exhibits were read. He relied on the case of MTN V CORPORATE COMMUNICATION INVESTMENT LTD (2019) LPELR - 47042 SC. He urged the Court to found in favour of the Petitioners.

In Reply on point of law the Learned Senior Counsel to the 2nd Respondent said that the Petitioners did not plead that INEC server they alleged is one and the same with that of website: www.factedonthing .com

That PW59 informed the Court that the data on the website used by him was uploaded by someone who claimed to have worked in INEC. That the results obtained is fictitious.

On dumping of documents the 2nd Respondent said that the mere fact that Learned Silk to Petitioners said PW62 identified Exhibits P130 –P137, P1,P3, P17 – P25 and P29 – P35; that PW60

identified Exhibits P90 –K and that PW40 identified Exhibits P74 – P78, P80 and 84 are admissions that the other documents were dumped.

3RD RESPONDENT'S FINAL ADDRESS

IN RESPECT OF ISSUE 3

The Learned Senior Counsel to the 3rd Respondent L. O. FAGBEMI, SAN adopted the submissions of Learned Senior Counsel to the 1st and 2nd Respondents and further proceeded to deal with the evidence led by the Petitioners and came to the conclusion that the Petitioners led scanty evidence through 62 witnesses in their efforts to prove irregularities in a total of 119,973 Polling Units, 8809 Wards and 774 Local Government Areas and Local Area Councils cutting across the entire Federal Republic of Nigeria. That Petitioners called only 62 witnesses in respect thereof. He did the grouping of the witnesses on pages 5 – 6 of the Written Address. He relied on the case of BUHARI V OBASANJO (2005) 13 NWLR (PT 941) 1 AT 299 F – H on the herculean and daunting task placed on Petitioners by law if they are to prove their case. That the Petitioners must lead credible evidence to prove their allegations in each of the Polling Unit alleged. That the evidence of the Wards Agents, Local Government collation Agents, State Collation Agents and National Collation Agents of the Petitioners was that they received reports from the polling units agents in their respective units, examined them upon which they came to the conclusion that there were over voting, multiple voting, irreconcilable entries in Forms EC8A^{S}, EC8B^{S}, improper ballot accounting, violence and

disruption of election and deliberate depletion of Petitioners votes. That the evidence were not direct and constitutes hearsay. That those who testified were not the Units or Polling Agents of the Wards, LGAs and States. He relied on the of DOMA V INEC (2012) 13 NWLR (1317) 297 AT 328 – 329. That even if they visited polling units, they could not have been in all polling units at the same time

That 5 Polling Units Agents gave evidence out of 119,973 Polling Units being challenged. He urged the Court to hold that Petitioners have abandoned their pleadings and they should be struck out.

That under cross examinations, the Petitioners witnesses confirmed they voted in their respective units which according to him show evidence of substantial compliance. On the evidence of PW62 who is the National Collation Agent of the Petitioners, Learned Counsel said he gave evidence of covering 119,973 Polling Units, 8809 Wards and 774 LGAS covering 119,973 Polling Units. That he (PW62) not being a super man was clearly not competent to give evidence in respect of election in the entire Federation. He relied on the case of CHIEF A. O. OKE V DR. MIMIKO (2014) 1 NWLR (PT. 1388) 332 AT 376D – G per PETER-ODILI, JSC.

That what PW62 did was a reharsh of the Petition. That this he PW62 cannot do. He relied on the case of AJADI V AJIBOLA (2004) 16 NWLR (PT. 898) 91 AT 201G.

On the existence of server/Electronic transmission of result he referred to the evidence of PW4, PW16, PW17, PW36, PW40, PW42 and PW59 and submitted that the pieces of evidence given by them

were punctured under cross examination. He drew attention to PW40 evidence under cross examination. That in the video Exhibit P85 – VCD the INEC Chairman clearly stated and explained that electronic transmission of results to server was not possible for 2019 general election due to network problems.

That the evidence of PW40 is puerile and worthless.

He submitted that PW59 evidence was destroyed under cross examination. That an expert called to testify in a case must state his qualifications and satisfy the Court that he is an expert on the subject in the area he wishes to give opinion. That this PW59 does not fall into category of an expert. He relied on the cases of:-

1. OTUNBA SOWEMIMO & ANOR V THE STATE (2004) 4 SCM 207;
2. ANPP V USMAN (2008) 12 NWLR (PT. 1100) 1;
3. PDP V INEC (2012) 7 NWLR (PT. 1300) 358 AT 365 per FABIYI, JSC.

That the above cases destroyed the evidence of PW59 and PW64.

That the consequent effect is that Petitioners fail to establish the existence of INEC Server allegedly meant for the purpose of transmission of results in that evidence of PW4, PW16 and PW17 that they transmitted result electronically is incredible and not worthy of being believed.

He rounded up his submissions on this issue on pages 36 – 37 of the Address whereat he stated that prove of over voting must be

done in accordance with the law relying on EMERHOR V OKOWA (2016) 11 NWLR (PT. 1522).

That witnesses called are limited to 13 States and FCT only and their evidence is scarily and unreliable. That this means that the Petitioners have abandoned 100,000 polling units. That the Petitioners are bound to call at least one witness from each of the disputed Polling Units. He relied on GUNDIRI V NYAKO supra and WALGO V BILL HA (1999) 3 NWLR (PT. 597) 539.

He urged the Court to dismiss the Petition.

REPLY OF THE PETITIONERS TO 3RD RESPONDENT'S FINAL ADDRESS.

I will also start here by stating that the Petitioners Address are virtually the same as their Replies to 1st Respondent's Final Addresses.

The Learned Senior Counsel to the Petitioners informed the Court that the Petitioners clearly pleaded in paragraph 18 of the Petition that 1st Respondent wrongfully credited the 2nd Respondent with votes that were not valid or lawful at various stages of the election from Polling Units to State Collating Centre with the result that the 2nd Respondent was wrongly returned when the 2nd Respondent did not score majority of lawful votes. He referred to paragraphs 16 – 106 of the Petition as pleading votes in the server inputted through the smart card readers. According to him the Petitioners the victory margin is 1,938,563 votes in favour of the Petitioners.

The Learned Silk stated that 1st and 3rd Respondents failed to call evidence or tender any document. That the witnesses called by 2nd Respondent and documents tendered did not controvert the pleadings and evidence adduced by the Petitioners to prove ground 3 of the petition. That the pleadings of the 1st and 3rd Respondents are therefore deemed abandoned and not proved. He relied on the case of NWOKAFOR V UDEGBI (19630 1 SCNLR 184 and EMMANUEL UMANA (2016) ALL FWLR (PT. 856) 214.

The Learned Senior Counsel to the Petitioners further submitted that his Court is bound to accept the credible evidence adduced by the Petitioners since 1st Respondent have failed to challenge the same. He urged the Court to use documentary evidence tendered as hanger to assess the oral testimonies. He relied on NDAYAKO V MOHAMMED (2006) 4 NWLR (PT. 1009) 655.

He also repeated that the evidence of the PW59 and 60 who gave expertise evidence was not discredited under cross examination and therefore urged the Court to accept the evidence relying on MIA & SONS V FHA (1991) 8 NWLR (PT. 209) SC 295 AT 331 and SPDC V ISAIH (1997) 6 NWLR (PART 508) 236 AT 249 – 251.

The Learned Senior Counsel stated that the Respondents did not object to votes pleaded by Petitioners as required by paragraph 15 of the First Schedule to the Electoral Act, 2010 as amended and therefore the results tendered by the Petitioners are deemed unchallenged. He relied on the case of AGAGU V MIMIKO (2009) 7

NWLR (PT. 1140) 342 AT 414 – 415 and HASSAN V MIMU (1999) 10 NWLR (PART 624) 710 AT 712.

That the Petitioners tendered Exhibits P3 Form EC8E – final National Collation of Presidential Election) as evidence of unlawful allocation of votes pleaded in paragraph 4 and 5 of the Petitioners Reply to 1st Respondent's Reply.

He urged the Court to find in Petitioners favour.

Replying on Point of Law on the refusal of INEC to call evidence, the Learned Silk to 3rd Respondent is of the view that once an adversary has elicited enough evidence in cross examination supporting his case it does not mean he failed to call evidence because the evidence elicited has proved facts asserted in his defence of 1st and 3rd Respondents and constitute their evidence in the case. He relied on OMISORE V AREGBESOLA (2015) (PT. 1482) 205 AT 281 E – G and AKOMOLAFE V GUARDIAN PRESS LTD (2010) 3 NWLR (PT. 1181) 338.

That there was no abandonment of pleadings by 1st and 2nd Respondent.

TABLE OF ANALYSIS

The Learned Counsel to 3rd Respondent submitted that the Table of Analysis constructed by Petitioners do not derive from any admissible evidence by the Petitioners and cannot be allowed at address stage. He relied on ANDREW V INEC (2018) 9 NWLR (PT. 1625) 507 AT 545 C – H and GUNDIRI V NYAKO (2014) 2 NWLR (PT. 1391) 211 among other cases.

That the mathematical calculation cannot be relied upon. He relied on OMISORE V AREGBESOLA supra pages 323 – 324 H – B.

That Court cannot act on speculation.

RESOLUTION OF ISSUE NO. 3

Issue 3 deals with ground 15(a) of the Petitioners' Petition and it reads:-

> **"15 The Petitioners state that the Grounds upon which this Petition is based are as follows:-**
>
> **(a) The 2nd Respondent was not duly elected by majority of lawful votes cast at the election."**

The ground is predicated on Section 138(1)(c) of the Electoral Act, 2010 as amended which provides:-

> **"(c) That the Respondent was not duly elected by majority of lawful votes cast at the election."**

The law is that where at an election conducted by Independent National Electoral Commission including Presidential Election a return is made and a candidate is declared as elected as in this case, Section 68(c) of the Electoral Act 2010 as amended makes the declaration and the return made by the designated Returning Officer final subject to review by a Court or Tribunal in an election Petition proceedings under the Electoral Act.

Sections 147, 148, 167 and 168(1) of the Evidence Act 2011 presume the result of the Presidential election declared by the 1st Respondent on 27th day of February, 2019 as correct and authentic until proved otherwise.

The presumption is however rebuttable in an election Petition as the one under consideration. The burden is therefore on the Petitioners in this Petition to rebut the presumption.

The position is well enunciated in the cases of;-

1. CHIEF AKIN OMOBORIOWO VS CHIEF MICHAEL AJASIN (1984) 1 SC 206 AT 227 - 228 per BELLO, JSC (later CJN, Rtd.) of blessed memory who held:-

"Now, as I stated in Nwobodo v Onoh (supra), there is in law a rebuttable presumption that the result of any election declared by the returning officer is correct and authentic by virtue of sections 115, 148(c) and 149(1) of the Evidence Act and the burden is on the person who denies the correctness and authenticity of the return to rebut the presumption. Where such denial is based

Again, polling booths are the base of the pyramid which forms the electoral process under the provisions of the Electoral Act, 1982. The booths are the roots which nourish the whole electoral process. Where a petitioner challenges the correctness of the return of an election declared by the returning officer then, except in respect of arithmetic errors in collation, the petitioner must lead evidence which will directly or indirectly establish the votes scored by him and his opponent at the polling booths."

2. GENERAL MUHAMMADU BUHARI V INEC & ORS (2008) 19 NWLR (PART 1120) 246 AT 354 C – D per NIKI TOBI, JSC also of blesses memory who had this to say:-

"Election results are presumed by law to be correct until the contrary is proved. It is however a rebuttable presumption, In other words, 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 the presumption, See Omoboriowo v. Ajasin (1984) 1 SCNLR 108, Jalingo v. Nyame (1992) 3 NWLR (Pt.231) 538; Finebone v. Brown (1999) 4 NWLR (Pt.600) 613; Hashidu v. Goje (2003) 15 NWLR (Pt.843) 352 and Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1."

The Petitioners pleaded in paragraphs 16, 17 and 18 of their Petition as follows:-

> **"16. The Petitioners state that the 2nd Respondent was not duly elected by a majority of the lawful votes cast at the said presidential election and did not score one-quarter of the lawful votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.**

17. **The Petitioners state that contrary to the result declared by the 1st Respondent, it was the 1st Petitioner who indeed won majority of lawful votes cast and satisfied the mandatory constitutional threshold and spread across the Federation and ought to have been declared winner and returned as duly elected President of Nigeria at the said election to the office of President which held on 23rd February 2019.**

18. **The 1st Respondent wrongly and unlawfully credited the 2nd Respondent with votes which were not valid or lawful votes at various stages of the election, namely, at the polling units, the ward collating centres, local government collating centres and the State collating centres, with the result that the 2nd Respondent was wrongly returned when the said 2nd Respondent did not score majority of lawful votes."**

In order to prove the above assertins the Petitioners are under legal obligation to call oral and documentary evidence through witnesses who are eye witnesses who can give cogent and direct evidence and demonstrate before the Court any misapplication of votes scored by the parties at the aforesaid election.

1. ALHAJI ATIKU ABUBAKAR, GCON & ORS V. ALHAJI UMARU MUSA YAR'ADUA & ORS (2008) 19 NWLR (PART

1120) 1 AT 173 E - G per NIKI TOBI, JSC (of blessed memory) who said:-

"Petitioner who contests the legality or lawfulness of votes cast in an election and subsequent result must tender in evidence all the necessary documents by way of forms and other documents used at the election. He should not stop there. He must call witnesses to testify that the illegality or unlawfulness substantially affected the result of the election. The documents are among those in which the results of the votes are recorded. The witnesses are those who saw it all on the day of election not those who picked the evidence from eye-witness. No. They must be eye witness too.

Both forms and witnesses are vital for contesting the legality or lawfulness of votes and the subsequent result of the election. One cannot be substitute for the other. It is not enough for the Petitioner to tender only the documents. It is incumbent on him to lead evidence in respect of the wrong doings or irregularities both in the conduct of the election and recording of the votes; wrong doings and irregularities, which affected substantially the result of the election."

2. EDWARD NKULEGU OKEREKE VS NWEZE DAVID OMAHI & ORS (2016) 11 NWLR (PART 1524) 438 AT 489 B - G per KEKERE-EKUN, JSC who said:-

"It has been settled by a long list of authorities of this court that:

(1) Where a party seeks declaratory reliefs, the burden is on him to establish his claim. He must succeed on the strength of his own case and not on the weakness of the defence (if any), Such reliefs will not be granted even on the admission of the defendant. See: Emenike v. PD.P. (2012) LPELR - SC 443/2011 p. 27, D-G: (2012) 12 WLR (Pt. 1315) 556: Dume: Ltd. v. Nwakhoba (2008) 18 NWLR (Pt. 119) 361 at 373-374: Omisore v. AregbesoLa (2015) 15 NWLR (Pt. 1482) 205,297 - 298 F - A: Ucha v. ELechi (2012) 13 NWLR (Pt. 1317) 330.

Documentary evidence relied upon by a party must be specifically linked to the aspect of his case to which it relates. A party cannot dump a bundle of documentary evidence on a court or Tribunal and expect the court to conduct an independent enquiry to provide the link in the recess of its chambers. This would no doubt amount to a breach of the principle of fair hearing. See: Ucha v. ELechi (supra): Iniama v. Akpabio (2008) 17 NWLR (Pt. 1116) 225 at 299D

- F: Awuse v. Odili (2005) 16 WLR (Pt.952) 416: A.N.P.P. v. INEC (2010) 13 WLR (Pt. 1212) 549. Hearsay evidence, oral or documentary, is inadmissible and lacks probative value. See section 37 of the Evidence Act, 2011 particularly sub-section: (b) See: Buhari v. Obasanjo (2005) 13 NWLR (Pt.941) 1 at 317: Doma v. INEC (2012) All FWLR (PT 28) 813 at 829: (2012) 13 NWLR (Pt. 1317) 297."

The Petitioners are fully conscious of the onus of proof hence the pleaded in paragraph 19 of their

"19. The Petitioners shall lead oral and documentary evidence at the trial to show that the results of the election as announced by the 1st Respondent and especially the votes credited to the 2nd Respondent do not represent the lawful valid votes cast. Lawful votes were deducted from the 1st Petitioner's scores by the 1st Respondent in order to return the 2nd Respondent."

The Petitioners through their Learned Senior Counsel tendered from the Bar Forms EC8AS, EC8BS, EC8CS, EC8E and other electoral documents particularly for 13 States including FCT Abuja and called 62 witnesses as earlier stated in this judgment.

The order in which the said witnesses testified and the state or areas of their testimonies have been well captured in the addresses of the Parties. I will however reproduce from pages 5 and 6 of the 3rd

Respondent's Final Written Address viz:-

"3.4 Specifically, petitioners called a total of 62 witnesses only in a failed attempt to prove their allegations concerning the 119, 973 Polling Units, 8,809 Wards and 774 Local Government Areas and Local Area Councils being challenged by them. The Petitioners called witnesses from only 11 States including the Federal Capital Territory Abuja, A breakdown IS graphically captured thus:

STATE	NO. OF WITNESSES CALLED/DESIGNATED
Jigawa	2 Witnesses Only. PW5 - polling unit agent for unit 008, Zamdam Nagogo ward, Gwaram L.G.A.) PW6 - polling unit agent for unit 009, Farin Dutse ward'; Gwaram L.G.A.)
Niger state	Five witnesses Only - PW7 - State collation/returning agent PW12 - PDP polling unit agent - unit 009, Tanko Kuta I, Nasarawa B ward Chamchanga L. G. A. PW13 - PDP LGA collation agent, Lapai LGA PW14 - PDP ward collation officer, Kurebel Kushaka, Shiroro PW15 - PDP ward collation agent, Nasarawa B ward, Chamchanga LGA
Federal Capital Territory	Four witnesses PW4 - Assistant Presiding officer, Wako Unit 001, Kwali - FCT PW16 - Assistant Presiding Officer, Wako Unit 001, Kwali - FCT PW17 - Assistant Presiding Officer, LEA Primary School, Galadima, Gwarimpa PW36 - Assistant Presiding Officer

Bauchi state	**Four witnesses only** **PW18 - PDP LGA Agent, Jamare** **PW19 - PDP LGA Agent, Warji LGA** **PW30 - PDP LGA Collation Agent, Zaki LGA** **PW32 - PDP LGA Collation agent, Ningi LGA**
Kaduna State	**Five witnesses only** **PW20 - LGA Collation Agent, Kaduna Sough LGA** **PW21 - LGA Collation Agent, Zaria LGA** **PW22 - LGA Collation agent, Kaduna North LGA** **PW24 - LGA Collation Agent, Sanga LGA** **PW25 - LGA Collation Agent, Kubau LGA**
Borno State	**Nine Witnesses Only** **Pw26 - LGA Collation Agent, Jere LGA** **PW27 - LGA Collation agent, Dambo LGA** **PW28 - LGA Collation Agent** **PW34 - LGA Collation Agent, Askiral UBA LGA** **,PW35 - LGA Collation Agent, Mafa LGA** **PW38 - LGA Collation Agent, Chiboke Agent** **PW34 - Ward Collation Officer, Ngoli ward, Askiral UBA LGA** **PW37 - LGA Collation Agent, Kukawa** **PW23 - State Collation Agent**
Gombe State	**Five Witnesses Only** **PW8 - PDP State Collation Agent** **PW9 - LGA Collation Agent, Funtua LGA** **PW10 - LGA Collation Agent, Kufur LGA** **PW11 - PDP LGA Collation Agent, Katsina** **PW55 - LGA Collation Agent, Danja**
Nassarawa State	**Nine Witnesses Only** **PW34 - Ward Collation Agent, Agyaragu - Tofa, Lafia LGA** **PW44 - LGA Collation Agent, Lafia LGA** **PW46 - Polling Agent, Sharp Corner 009, Karu Ward, Karu LGA**

	PW47 - LGA Collation Agent, Karu, LGA **PW48 - Ward Collation Agent, Kokona ward, Kokona LGA** **PW49 - Polling Unit Agent - 001 Moro 9, Akwanga** **PW 50 - Ward Collation agent, Doka ward, Doma LGA** **PW51 - Ward Collation Agent, Karu** **PW52 - Ward Collation Agent, Madaki Ward, Awe LGA**
Yobe State	**Three Witnesses Only** **PW33 - LGA Collation Agent, Potiskum** **PW39 - Ward Collation Agent, Daya Chana 04, Fika LGA** **PW45 - LGA Collation Agent, Jakusko**
Kogi State	**Three Witnesses Only** **PW57 - Ward Collation Agent, Abocho Ward, Dekina** **PW58 - Ward Collation Agent, Iyale Ward** **PW61 - State Collation Agent**
Kano State	**PW53 - LGA Collation Agent, Gave LGA**
Rivers State	**PW2 - RATECH & ward Collation Officer**
Enugu State	**PW3 - Presiding Officer - 005 Civic Centre**
Expert witnesses	**Two Expert Witnesses** **PW59** **PW60**
Adamawa State	**PW42, Village Head of Koioli**
Media Adviser to the 1st Petitioner - Atiku's Friend	**PW40** **PW41** **PW62 - National Collation Officer** **PWI - Buba Galadima**

The Petitioners Learned Senior Counsel had in paragraphs 4.09 – 4.17 of his Final Written Address in Reply to the 1st Respondent's Final Address stated as follows:-

"4.09 To establish this ground, the Petitioners humbly invite your lordships to two areas of evidence adduced, to wit:

(1) The Votes in the servers inputted through the

Smart Card Reader; and

(2) Analysis of Votes/Results obtained as reflected in Certified True Copies of Forms EC8A, EC8B, EC8C and EC8D from the 11 focal States, namely: Kaduna, Katsina, Kebbi, Kano, Bauchi, Borno, Gombe, Jigawa, Niger, Yobe and Zamfara States.

4.10 The Votes in the Server inputted through the Smart Card Readers (SCR): Paragraphs 16, 17, 18,19,20,21, 22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,3 8,39,40,41,42,43,44,45,46,47,48,49,50,5',52,53,54, 55,56,5~58,59,60,61,62,63,64,65,66,67,68,69,71,72 ,73,74,75,76,77,78,79,80,81,82,83,84,85,86,87,88, 89,90, 91,92, 93,94,95,96,97, 98, 99, 100, 101, 102, 103, 104, 105 and 106 of the Petition detailed out facts in support of Ground one (1).

4.11 The facts pleaded above include the results inputted directly into the 1st Respondent's server through the use of the Smart Card Reader by the trained and authorized handlers of the Card Reader during the election who were the Presiding Officers (POs) and or Assistant Presiding Officers (APOs).

4.12. The table in Paragraph 21 (Exhibits P87, P88 and P89) and evidence of PW59 of the Petition clearly shows the votes inputted into the 1st

Respondent's server through the Smart Card Readers from 35 States and the FCT excepting Rivers State.

4.13 The figures from the 35 States and the FCT show that the 1st Petitioner scored a total of 18, 356, 732 valid votes while the 2nd Respondent scored 16, 741, 430 votes. By this, the 1st Petitioner won the election with a margin of 1,615,302 lawful votes. If the final votes from Rivers State are added to the scores of the 1st Petitioner and the 2nd Respondent, the 1stpetitioner's votes will be 18, 356, 732 + 473, 971 18, 830, 703 while 2nd Respondent's votes will be 16, 741, 430 + 150, 710 = 16, 892, 140.

4.14 The victory margin from the above is 1,938,563 in favour of the Petitioners.

4.15. The Petitioners specifically pleaded and led evidence on the data from the 1st Respondent's Server and contended that upon a proper collation and summation of scores of candidates electronically transmitted to and contained in the 1st Respondent's Server, pursuant to the provisions and directives contained in Exhibit P33 INEC Manual on Elections Technologies (use, Troubleshooting and Maintenance 2019), it was the 1st

Petitioner who indeed scored the majority of lawful votes cast and thereby satisfied the mandatory Constitutional threshold and spread across the Federation and ought to have been declared winner and returned as duly elected President of the Federal Republic of Nigeria at the said election. See Exhibits P87, P88, P89 and the evidence of PWS9.

4.16 In further proof, the Petitioners called PW2 (Registration Area Technician - RATECH), PW3, PW4, PW16, PW17 and PW36 who were Presiding Officers and Assistant Presiding Officers of the 1st Respondent who gave unchallenged evidence that they electronically transmitted results of the Presidential Election that held on 23rdFebruary, 20'9 to the 1st Respondent's Server and PW59, an expert Who testified to the existence of the server belonging to the 1st Respondent, thereby proving not only the existence of the 1st Respondent's Server, but also the authenticity of its contents and the election results contained therein.

4.17 The 1st Respondent did not produce oral or documentary evidence of the fact that PW2, PW3, PW4, PW16, PW17 and PW36 were its ad hoc Staff in the said election, let alone challenging their evidence that they electronically transmitted results to 1st Respondent's Server

through the Smart Card Reader. Thus, the arguments of the 1st Respondent at paragraphs 30, 31, 38 and 39 in its Final Address purporting to impugn the testimony of PW2 and PW3 on the existence of Server as well as electronic transmission of results thereto is completely a non sequitur for the simple reason that Counsel's address is no substitute for evidence."

The 1st Respondent stoutly denies existence of server referred to and pleaded by the Petitioners. The 1st Respondent also vehemently contended that results of Presidential Election 2019 was never transmitted electronically via Smart Card Readers into any server belonging to INEC and that there is no provisions in the Electoral Act 2010 as amended that prescribes transmission of election results from Polling Booths or Units, Ward Levels, LGA Levels, State or at National Level. The same position was taken by the 2nd and 3rd Respondents.

The Learned Senior Counsel to the Petitioners however insisted that by the Electoral (Amendment) Act 2015 No, 15 which came into effect on 26th March, 2015 Section 9 thereof amended Section 52 of the principal Act by inserting the following words:-

"(2) Voting at an election under this Act shall be in accordance with the procedure determined by Independent National Electoral Commission."

This to the Learned Silk to INEC was empowered to transmit

results of election from Polling Units via Smart Card Reader direct to INEC Server by the Presiding Officers or Assistant. He further submitted that it was as a result of the amendment that INEC made:-

1. MANUAL ON ELECTIONS TECHNOLOGIES (Use Troubleshooting and Maintenance 2019 (EXHIBIT P. 33);
2. REGULATIONS AND GUIDELINES FOR THE CONDUCT OF ELECTIONS (EXHIBIT P27) and
3. MANUAL FOR ELECTION OFFICIALS 2019 (EXHIBIT 28).

The Learned Senior Counsel to the Petitioners strongly submitted that combination of the above Exhibits P27, P28 and P33 constitute the authority and power of INEC under Section 52(2) of the Electoral Act 2010 to transmit result of the Presidential Elections from Polling Units electronically into INEC Server and that it was the results uploaded into the server through the process he mentioned that gave 1st Petitioner an edge over the 2nd Respondent relying on the pieces of evidence given by PW3, PW4, PW16, PW17, PW36, PW 59 and PW60.

The issue here is can it really be said that Section 52(2) of the Electoral Act 2010 as amended actually empowered or authorized INEC to electronically transmit the result of the election from all the Polling Units Booths across the Nation vide Smart Card Reader.

The law is settled that if the word of statute are clear and unambiguous they must be scrupulously followed and interpreted in such a manner that will best bring out the manifest intention of

the law maker. The bottom-line is that it is the duty of the Court to ascertain the intention of the legislature and give effect to it. If there is any lacuna or imperfection in the law or statute it is not the function of the Court to amend the law. That is in the domain of the legislature. See:-

1. HON. HENRY SERIAKE DICKSON VS CHIEF TIMIPRE MARLIN SYLVA & ORS (2017) 8 NWLR (PART 1567) 167 AT 233 D – F per KEKRE-EKUN, JSC who said:-

   "The law is settled that in the interpretation of Statutes, where the words are clear and unambiguous, they must be given their natural and ordinary meaning. See: Ibrahim v. Borde (1996) 9 NWLR (Pt. 474) 513 @ 577 B-C; Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377 @ 402 F-N. The exception is where to do so would lead to absurdity. See: Toriola v. Williams (1982) 7 SC 27 @ 46; Nnonye v. Anyichie (2005) 1 SCNJ 306 @ 316, (2005) 2 NWLR (Pt. 91 0) 623. Where an interpretation will result in breaching the object of the statute, the court would not lend its weight to such an interpretation. See: Amalgamated Trustees Ltd. v. Associated Discount House Ltd. (2007) 15 NWLR (Pt. 1056) 118."

2. RT. HON. ROTIMI AMAECHI V INEC & ORS (2008) 5 NWLR (PART 1080) 227 AT 314 per OGUNTADE, JSC who said:-

   "It is settled law that the Court in interpreting the provisions of a statute or Constitution must be read together related provisions of the Constitution in order to

discover the meaning of the provisions. The Court ought not to interpret related provisions of a statute or Constitution in isolation and then destroy in the process the true meaning of a particular provision."

And quite recently the Supreme Court of Nigeria reiterated the above principles in the case of PROFESSOR JERRY GANA, CON VS SOCIAL DEMOCRATIC PARTY (SDP) & ORS (2019) 11 NWLR (PART 1684) 510 AT 533 B – C per EJEMBI-EKO, JSC who said:-

"The cardinal principle of interpretation is that when the words of the statute or instrument are clear and unambiguous they must be given their ordinary natural simple meaning. A Court of law, it its interpretative jurisdiction, lacks jurisdiction to import or impute into a statutory provision words which are not therein used. Its duty being only to interpret the provisions in order to bring out the meaning of the words used in the statute and the intent of the lawmaker: Unipetrol vs E.S.B.I.R. (2006) ALL FWLR (PT. 317) 413 AT 423, (2006) 8 NWLR (PT. 983) 624, OBUSEZ V OBUSEZ (2007) 3 ONSCQR 329, (2007) 10 NWLR (PT. 1043) 430."

At page 541H his Lordship of the Supreme Court said:-

"It is not one of the canons of interpretation for the Court to merely adopt the wishful thinking of a litigant in its interpretative jurisdiction. Lord

Goddard, CJ in Barnes v Jarris (1953) 1 WLR 649 at 652, had advocated that the Court, in construing a statute or document must apply certain amount of common sense. See also Nigeria-Arat Bank Ltd v Comex (1999) 6 NWLR (Pt. 608) 648 at 669 per OGUNTADE, JCA as he then was"

The entire provisions of Section 52 of the Electoral Act as amended now read:-

"52.(1)(a) Voting at an election under this Act shall be by open secret ballot.

(b)The use of electronic voting machine for the time being is prohibited.

(2) Voting at an election under this Act shall be in accordance with the procedure determined by the Independent National Electoral Commission.

(3) All ballots at an election under this Act at any polling station shall be deposited in the ballot box in the open view of the public."

In exercise of the power vested in it by the provision in subsection (2) above, the 1st Respondent (INEC) made and issued Exhibits P27; Regulations and Guidelines for the Conduct of Elections and Exhibit P28; the Manual for Election Officials 2019 for the purpose of the procedure to be adopted or used for the Conduct of the 2019 Elections. In Paragraph 8(a) of Exhibit P27 dealing with the accreditation and voting procedure at Election, it is provided as follows:-

"Voting shall be in accordance with the Continuous Accreditation and Voting System (CAVS) Procedures as specified in these Regulations and Guidelines; the Election Manual and any other Guide issued by the Commission.

Then, Paragraph 10(a) says that:-

"In accordance with Section 49(2) of the Electoral Act, a person intending to vote shall be verified to be the same person on the Register of Voters by use of the Smart Card Reader (SCR) in the manner prescribed in these Regulations and Guidelines."

Elaborate procedure was then set out in Paragraph 10(c) – (f) for accreditation and in Paragraph 11(a) for voting at an election.

At the end of voting or at close of voting, Paragraph 22(a)(b) and (c) of Exhibit P27 provides for the procedure for the collation, counting, recording, announcement/declaration and transmission of the results of the election from the polling units or voting points to the Registration Area or Ward Level. The provisions are thus:-

"22-(a) At the close of voting the Presiding Officer shall:

(i) cancel all the unused ballot papers by crossing;

(ii) sort out the ballot papers by party and thereafter loudly count the votes scored by each political party in the presence of the Polling Agents and observers;

(iii) allow recount of votes on demand by a Polling Agent, provided that such a recount shall only be allowed once;

(iv) cross-check the scores;

(v) enter the scores of the candidates in both figures and words in the appropriate forms EC8A/EC8A(VP) series; and

(vi) fill the Form EC60E and paste it conspicuously. Pasting of Form EC60E is mandatory and failure to do so may amount to dereliction of duty.

(b) Where Voting Points have been created the APO1 shall:

(i) enter the result on form EC8A (VP); and

(ii) submit to the presiding officer who shall consolidate the result using form EC8A and attach the EC8A(VP) to form EC8A.

(c) The Presiding officer shall then:

(i) sign, date and stamp the appropriate EC8A forms;

(ii) announce loudly the votes scored by each political party;

(iii) request the candidates or their polling agents where available at the Polling Unit to countersign;

(iv) refusal of any candidate or polling agent to countersign the appropriate

form EC 8(A) series shall not invalidate the result of the Polling Unit;

(v) keep the originals of EC8 series and the first pink copies for the Commission;

(vi) give to the polling agents and the Police, a duplicate copy each of the completed forms;

(vii) post the completed Publication of Result Poster EC60(E) at the polling Unit·

(viii) complete the EC 40H(I) for PWD Information and Statistics;

(ix) Complete the PWD information boxes in the PU booklet;

(x) transmit the result as prescribed in the Electoral Act;

(xi) take the card reader and the original copy of each of the forms in tamper-evident envelope to the Registration Area/Ward Collation Officer, in the company of security agents; and

(xii) The polling agents may accompany the Presiding Officer to RA/Ward Collation Centre."

Paragraphs 27(vii), 28(b)(i) – (xiv), 30, 31 and 32 of Exhibit P27

provide for the procedure for the collation and transmission of election results from Ward to the National Levels in respect of Presidential Election. The procedure elaborately set out in the above Paragraphs of Exhibit P27, are repeated in Chapter Three, Paragraphs 3.1(a)(vii), (b), (c), (d) and (e) of Exhibit P28. At page 68 of Exhibit P28, "ELECTION COLLATION FLOW CHARTS, PRESIDENTIAL" was provided, clearly demonstrating the procedure provided for in the aforementioned paragraphs.

Undeniably, the procedure for collation and transmission of election results in the above Paragraphs of Exhibits P27 and P28 is manual and by the Election Officials at the different and all levels or stages of the election from the polling units/voting points, which are the foundation of every election conducted under the Electoral Act, to the final stage; for our purpose, the National Level. There is no provision in either Exhibit P27 or P28 for transmission of election results electronically either by the use of the Smart Card Reader or other means, at any level of an election.

In addition, there is no provision in the Amended Electoral Act authorizing or empowering 1st Respondent or any of its officer or official including Presiding Officers I, II and III (mentioned in Exhibits P27 and 28 (Regulations And Guidelines for the Conduct of Elections and Manual for Election Officials 2019 respectively) to transmit results of the election electronically to any server through the use of Smart Card Reader.

There is also nothing even in Exhibits P27 and P28 empowering or authorizing Election Officials of 1st Respondent to

use Smart Card Reader(s) for Electronic Collation and transmission of Results.

The reliance placed on Exhibit P33 Manual on Elections Technologies pages 15 – 32 thereof is misplaced as there is no evidence before the Court that Exhibit P33 was deployed for use in the 2019 elections. Exhibit P85 VCD tendered through PW40 points to the contrary. The 1st Respondent's Chairman had informed the public that due to logistics problems (transmission of results of election vide electronic transmission was not feasible or attainable.

Exhibits P27 and P28 show that the results of the elections were to be manually collated; entered into various appropriate forms by Election Officials and results announced publicly at every stage of the electoral process. The evidence of PW62 bears vital testimony to the fact that there was no electronic voting and results were not transmitted electronically even during collation and announcement of results of the Presidential Election at the National Level by the 1st Respondent's Chairman.

Evidence of PW2, PW4, PW16, PW17 and PW36 which invariable are in respect of only five Polling Units did not establish electronic transmission of results of the elections vide Smart Card Reader.

The said witnesses under cross examination informed the Court that they did not know the identity or particulars of the alleged INEC Server into which they allegedly transmitted results of the Election. Some of them gave evidence that INEC gave them pin

code to transmit the result electronically but when asked for the pin number for the code, some of them stated that they could not disclose the code while others said they could not remember.

The pieces of evidence given by the said five witnesses do not make any impact. It is like a drop in the ocean. Their evidence either alone or together failed to establish the clain of the Petitioners on the issue of electronic transmission of results. In effect that aspect of the Petitioners case is not proved or established.

I am not unmindful of the submission of the Learned Silk to the Petitioners who while relying on Section 153 of the Electoral Act 2010 as amended stated that:-

> ***"4.24 It is pursuant to the above provisions that the 1st Respondent prescribed elaborate procedures for electronic collation and electronic transmission of results for the 2019 elections. It is clear that the 1st Respondent under the heading "Accreditation and Voting Procedure at Elections" in its 2019 Guidelines (Exhibit P27), made elaborate provisions on the use of Voters Registers and Card Readers in the accreditation of voters and voting procedure. See paragraphs 8, 10, 11, 12 and 13 of Exhibit P27. It is noteworthy that the scope covered by the above procedure is wider than the Guidelines for the 2015 general elections. (See also pages 23 - 28 of the Manual for Election Officials 2019 (Exhibit P28)."***

I have closely examined Exhibit P27 there is nothing therein contained on electronic collation and electronic transmission of results for 2019 General Elections. It was also the contention of the Petitioners that the scope covered by Exhibit P27 is wider in scope that the Guidelines for the 2015 general elections. Exhibit P27 does not, with profound respect supports the surmise or submissions of the Learned Senior Counsel.

Contrary to the submissions of the Petitioners that Section 52(2) of the Electoral Act now gives statutory backing to 1st Respondent to transmit results of the election electronically via Smart Card Reader, there is no such statutory backing. The position on the use of Smart Card Reader in election has not changed for the simple reason that Electoral Act outlawed the use of electronic voting, it is for the time being prohibited. That remains the law and it is inviolate until necessary amendments are carried out on the Electoral Act 2010 as amended by the National Assembly.

The controversies engendered or generated by the use or non-use of Smart Card Readers in 2015 elections and whether card reader report can be used to determine the actual votes or results in an election including Presidential Election still persist.

The Supreme Court of Nigeria has settled the law on the position of the use of Smart Card Reader in an election and had interpreted Section 52(1)(b) of the Electoral Act 2010 as amended which provides that the use of electronic voting machine for the

time being is prohibited in numerous cases suffice to refer to some of them viz:-

1. WIKE EZENWO NYESOM V HON. DR. DAKUKU ADOL PETERSIDE & ORS (2016) 7 NWLR (PART 1512) 452 AT PAGE 522 A – C per KEKERE-EKUN, JSC who said:-

"It would not therefore be out of place to say that both lower courts placed considerable reliance on the testimony of PW49 and the Card Reader report (Exhibit A9) and exhibits A301, 830, 831 in reaching the conclusion that the 1st and 2nd respondents had successfully proved the alleged discrepancy between the number of voters accredited in exhibit A9 and those reflected in exhibit A 10 (Form EC8E series). This court in a number of recent decisions has commended the introduction of the Card Reader in the 2015 elections by INEC. The court has noted however, that its function is solely to authenticate the owner of a voter's card and to prevent multi-voting by a voter and cannot replace the voters' register or statement of results in appropriate forms. See: Shinkaji v. Yari (supra); Okereke v. Umahi (unreported) SC.1004/2015 delivered on 5/2/2015 at pages 31- 34."

At page 525A-H – 526A-F his Lordship of Supreme Court of Nigeria held:-

"I had stated earlier in this judgment that INEC is to be commended for the innovation of the Card Reader

machine to bolster the transparency and accuracy of the accreditation process and to maintain the democratic norm of "one man one vote" by preventing multi-voting by a voter. Nevertheless, section 49(1) and (2) of the Electoral Act, 2010 (as amended) which provide for manual accreditation of voters is extant and remains a vital part of our Electoral Law. The section provides thus:

"49(1) Any person intending to vote with his voter's card, shall present himself to a Presiding Officer at the polling unit in the constituency in which his name is registered with his voter's card.

(2) The Presiding Officer shall, on being satisfied that the name of the person is on the Register of Voters, issue him a ballot paper and indicate on the Register that the person has voted."

In the recent decision of this court in Shinkafi v. Yari (2016) 7 NWLR (Pt. 1511) 340 Okoro, JSC stated thus:

"My understanding of the function of the Card Reader Machine is to authenticate the owner of a voter's card and to prevent multi-voting by a voter. I am not aware that the Card Reader Machine has replaced the voter's register or has taken the place of statement of results in appropriate forms."

Again, Nweze, JSC in Okereke v. Umahi & Ors. (Unreported) SC.1004/2015 delivered on 5/2/2016 reiterated the position thus at pages 33 -34:

"Indeed, since the Guidelines and Manual (supra), which authorised the use and deployment of the electronic Card Reader Machine, were made in exercise of the powers conferred by the Electoral Act, the said Card Reader cannot, logically, depose or dethrone the Voters' Register whose juridical roots are, firmly embedded or entrenched in the self same Electoral Act from which it (Voter's Register), directly derives its sustenance and currency.

Thus, any attempt to invest it (the Card Reader Machine procedure) with such overarching pre-eminence or superiority over the Voters' Register is like converting an auxiliary procedure - into the dominant procedure of proof, that is proof of accreditation."

In order to prove non-accreditation and/or over voting, the 1st and 2nd respondents were bound to rely on the Voters' Registers in respect of all the affected Local Governments. The Voters' Registers tendered were in respect of only 11 out of 23 Local Governments. They were tendered from the Bar as exhibits A271 - A28I. No attempt was made to link them with exhibitA9.lt is also noteworthy that Forms EC8A were tendered in respect of only 15 out of 23 Local Government Areas. An attempt was made to confront some of the defence witnesses with Forms EC8A (Exhibits A282 - A300) to show that the number of accredited voters stated

therein was in conflict with the number of accredited voters as per exhibitA9. This cannot meet the required standard of proving over voting polling unit by polling unit. Furthermore, the Voters Register could not be jettisoned in the exercise.

In any event, as rightly submitted by learned counsel for the appellant, the tendering of Exhibits A9, A10, A12 - A31, A32-A270, A271 - A281 , A282 - A300, A301 , A303 - A307, B30 and B31, from the Bar, without their makers being called, amounted to documentary hearsay and the tribunal and the lower court were wrong in placing reliance on them. I am of the view and I do hold that the tribunal and the lower court were unduly swayed by the INEC directives on the use of the card readers. As held by this court, the INEC directives, Guidelines and Manual cannot be elevated above the provisions of the Electoral Act so as to eliminate manual accreditation of voters. This will remain so until INEC takes steps to have the necessary amendments made to bring the usage of the Card Reader within the ambit of the substantive Electoral Act."

My Lord I. T. MUHAMMAD, JSC, now CJN in his contribution in the WIKE'S case said on pages 540E-H TO 541A as follows:-

"My Lords, let it be appreciated from the outset that Smart Card Reader Machine or simply Card Reader (SCRM for short), is an innovation in our Electoral

Process. It was not known, or rather, it was never put in practice before in our political development. From my general reading and my comprehension of the literature surrounding the Smart Card Reader Machine, it appears to me and, put in a concise form, that the Smart Card Reader Machine is a technological device set up to authenticate and verify, on election day, a permanent voter's card (PVC) issued by INEC. Smart Card Reader Machine is designed to read information contained in the embedded chip of the Permanent Voter's Card (PVC) issued by INEC to verify the authenticity of the PVC and also carry out a verification of the intending voter by matching the biometrics contained from the voter on the spot with the ones stored on the PVC.

INEC's motive, which became public in introducing the technologically-based device, barring any technical mishap, breakdown or malfunction, was to ensure a credible, transparent, free and fair election for the country.

Now, the main issue under consideration in this appeal vis-a-vis the Smart Card Reader Machine is whether it has acquired the force of law either under the Constitution of the Federal Republic of Nigeria, 1999 (as amended), or, under the Electoral Act, 2010 (as amended)."

My Lord TANKO MOHAMMAD, JSC now CJN provides solution on pages 545F-H – 547A-H of the Report as follows:-

"The court below, then, to my understanding, raised the status of the Smart Card Reader Machine which came into play in the 2015 election through Manuals/Guidelines made by INEC to that of an Act (i.e. the Electoral Act). This is what the court below said:

> ***"My understanding of the above provision of the Electoral Act, 2010 as amended, is that the Act (sic: act) or omission of any Electoral official of INEC, which is contrary to the provisions of the Electoral Act committed after instruction or directive of INEC to its officials concerned can be a ground for questioning the election and it comes under Section 138(l)(b) of the Electoral Act, which is one of the grounds upon which the petition was predicated. A failure to follow [NEC's Manual and Approved Guidelines and Regulations constitutes direct violation of sections 49, 57, 58, 73 and 74 of the Electoral Act. The Manual and Approved Guidelines form an integral part of law and regulations for the conduct of election and INEC officials must scrupulously and dutifully comply with it." (see page 3008 of Vol.5 of record of appeal) (All Italics for emphasis)***

Thus, from the excerpts set out above from the decisions of the tribunal and the court below, it is clear to me, beyond any doubt, that the tribunal relied very heavily on the Card Reader Report (esp. Exh. A9 tendered by PW 49) and exhibits A301, B30 and B31 to nullify the election of the appellant as the Governor of Rivers State. But, permit me my Lords, to consider relevant provisions of the Principal Law, i.e. the Electoral Act, 2010, (as amended):

"49(1) A person intending to vote with his voter's card, shall present himself to a Presiding Officer at the polling unit in the constituency in which his name is registered with his voter's card.

"49(2) The Presiding Officer shall, on being satisfied that the name of the person is on the register of voters, issue him a ballot paper and indicate on the Register that the person has voted138(1) An election may be questioned on any of the following grounds: That is to say:

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

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

(c) That the respondent was not duly elected by majority of lawful votes cast at the election; or

(d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

138(2) An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of the election but which is not contrary to the provisions of this Act shall not of itself be a ground for questioning the election.

153. The Commission may, subject to the provisions of this Act, issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of this Act and for its administration thereof."

In section 138(2) of the Act as above, it is clear that as long as an act (commission) or omission in relation to the Guidelines and or, Regulations is not contrary to the provisions of the Act, it shall not of itself be a ground for questioning the election. One of the complaints of the petitioners at the tribunal, is that of the non-user of the Smart Card Reader Machine in the election.

I agree with my learned brother, Kekere-Ekun, JSC, that the failure to follow the Manual and Guidelines which were made in exercise of the powers conferred by the Electoral Act, cannot in itself render the election void. And, this should not be understood to mean that the innovation of the Card Reader is in conflict with the relevant sections of the Electoral Act.

Permit me, again, Your noble Lordships, to state, with emphasis, that the Card Reader was introduced by INEC with good intentions. However, a distinction must always be drawn between the effect of a law made by the legislature (National Assembly: i.e. the Electoral Act; the Constitution, etc) and a rule of procedure by whatever name called) by any other authority with a view to facilitating the smooth running or operation of a given institution.

Breach of the former can be severe and fatal than breach in case of the latter. In this appeal, section 138(2) decisively settles the issue.

In conclusion, I must commend INEC for its introduction of the Smart Card Reader Machine. I must, at the same time, draw attention of the authorities that be, that there is dire need, because of the importance and relevance of the Smart Card Reader Machine, in this our 21st Century of technological development, to recognise the indispensability of the use of the Smart Card Reader Machine in our electioneering processes. But, till today, voting through the voters Register, supersedes any other technology that may be introduced, through Guidelines or Manuals. To this effect, it is my humble suggestion that the earlier the better, INEC/any other relevant authority takes steps to recommend to the National Assembly, further amendment to the Electoral Act, 2010 (as

amended) by incorporating in the Act, the use of the Smart Card Reader Machine in future elections."

2. PDP V ALEX OTTI & ORS (2016) 8 NWLR (PART 1513) 111 AT 122 A – B where GALADIMA, JSC said:-

"In view of my very robust and elaborate reasons set out in SC.18/2016 on the error of the court below placing reliance on exhibit PWC2 - the card reader report to cancel the result of the elections in Osisioma, Obingwa and Isiala Ngwa Local Government Areas of Abia State on the basis that the result of the election in those 3 L.G.A. was vitiated by over-voting. I adopt my decision on the said exhibit PWC2 in SC.18/2016 as my humble view on the same issue in this appeal. For the umpteenth time the recent decision on the point in Mahmud Aliyu Shinkafi & Anor v. Abdul- Azeez Abubakaryari & Ors, unreported SC.907/2016 delivered on 8th January, 2016, has settled the issue beyond resurrection."

3. UDOM GABRIEL EMMANUEL VS UMANA OKON UMANA & ORS (2016) 12 NWLR (PART 1526) 179 AT 237E-H TO 239A per NWEZE, JSC now reaffirmed the position of the law thus:-

"In the recent decision in Okereke v. Umahi and Ors (unreported) judgment of this court in appeal No. SC.1004/2015 of February 5, 2016), I had this to say about the card reader:

Prior to the authorisation of its use by the Guidelines and Manual (supra), the Electoral Act, 2010 (as

amended), in sections 49(1) and (2), had ordained an analogue procedure for the accreditation process. As a corollary to the procedure outline above, the Act, in section 53(2), enshrines the consequences for the breach, negation or violation of the accreditation procedure in section 49 (supra). With the advantage of hindsight, INEC, pursuant to its powers under the said Electoral Act, authorised the deployment of the said card readers.

Even with the introduction of the said device, that is, the card reader machine, the National Assembly, in its wisdom, did not deem it necessary to bowdlerise, or even amend, section 49 (supra) from the Electoral Act so that the card reader procedure would be the sole determinant of a valid accreditation process. Contrariwise, from the Corrigendum No.2, made on March 28, 2015, amending paragraph 13(b) of the Approved Guidelines, it stands to reason that the card reader was meant to supplement the voters' register and was never designed or intended to supplant, displace or supersede it.

Indeed, since the Guidelines and Manual (supra), which authorised the use and deployment of the electronic card reader machine, were made in exercise of the powers conferred by the Electoral Act, the said card reader cannot, logically, depose or

dethrone the voters' register whose juridical roots are, firmly, embedded or entrenched in the selfsame Electoral Act from which it (the voters' register), directly, derives its sustenance and currency.

Thus, any attempt to invest it (the card reader machine procedure) with such overarching pre-eminence or superiority over the voters' register is like converting an auxiliary procedure - into the dominant method procedure - of proof, that is, proof of accreditation.

This is a logical impossibility. (pages 32 - 33 of the judgment)

I have no reason for departing from the above pronouncements which I adopt as part of my reasoning in this appeal. I, therefore, vacate the judgment of the lower court woven on the said exhibit 317. I, entirely, endorse, the conclusion of the trial Tribunal that "the burden to establish non-accreditation of 1,222,836 votes was on the petitioners squarely," page 3768, Vol. 4 of the record.

They failed to do because as the trial Tribunal found "the petitioners relied heavily or solely on the number of accredited voters as contained in exhibit 317 (the card reader report) to conclude that there were only 438,127 accredited voters for the 11th April Governorship election in Akwa Ibom State," (italics supplied).

I, also, agree with the trial Tribunal that it was "presumptuous, fallacious ... and (a) jurisprudential absurdity for the petitioners to ascribe to exhibit 317 such magnitude of credence." With respect, the lower court was, equally, caught in this web of "presumptuous fallacious (...) jurisprudential absurdity" of ascribing "to exhibit 317 such magnitude of credence." (pages 3764 - 3765 of Vol. 4 of the record)

The submissions of the Learned Senior Counsel to the Petitioners on import of Section 52(2) of the Electoral Act 2010 as amended and on Exhibit P27, P28, P33 and P74 – P80 are not well founded.

EXPERT EVDIENCE AND RELIANCE PLACED ON EVDIENCE OF PW5.9 AND PW60.

Section 68 of the Evidence Act 2011 provides:-

"68(1) When the court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible.

(2) Persons so specially skilled as mentioned in subsection (1) of this section are called experts."

See:

1. A.G. FEDERATION & ORS VS ALHAJI ATIKU ABUBAKAR & ORS (2007) LPELR – 3 SC PAGES 198 per P. O. ADEREMI, JSC who said:-

"In legal parlance, an expert is any person who is specially skilled in the field he is giving evidence. But I hasten to add that whether or not such a witness can be regarded as an expert is a question for the Judge to decide. See Azu v. The State (1993) 6 NWLR (Pt.299) 303. The word "OPINION" as it relates to an expert has been defined in The New Webster's Dictionary of the English Language International Edition as: "a formal expression by an expert of what he Judges to be the case or the light course of action."

It has been said that the opinion of an expert is always necessary where he (the expert) can furnish the court with scientific or other information of a technical nature that is very much or even likely to be outside the experience and knowledge of the Judge. See Seismograph Services Nigeria Ltd. v. Ogbeni (1976) 1 All NLR 198. But expert evidence on matters which reasonably fall within the knowledge and experience of the Judge or a tribunal may not be called. In fact, expert evidence is not usually admitted on questions of credibility of a witness even where the witness under consideration is a child. See "Blackstone's Civil Procedure, 2004"

paragraph 52.2. In the two cases I have referred to above and in several other cases in which expert opinions were made use of by the courts, those experts were called as witnesses to testify before the court and he was subjected to cross-examination as to his qualifications, experience and the credibility of his opinion to enable the court determine whether his testimony is of any evidential value or not."

2. KAYDEE VENTURES LTD VS THE HON. MINISTER FCT (2010) 2 NWLR (PART 1192) 171 AT 216H TO 217A per MUHAMMAD, JSC.
3. ABIODUN V FRN (2018) 1 NWLR (PART 1629) 86 AT 106 A-B per GALINJE, JSC.

The PW59 was specifically called to establish existence of INEC SERVER and to show that by the results imputed into the alleged server through Smart Card Readers (SCR) the Petitioners proved all the irregularities complained of in 35 States of the Federation and FCT, Abuja except Rivers State as pleaded in paragraphs 16 – 106 of the Petition. Reliance was also placed on Exhibits P87 – P88 and P89.

The Petitioners also relied on what they described as analysis of votes. Results obtained as reflected in certified True Copies of Forms EC8A, EC8B and EC8C from ***"the 11 focal States, namely, Kaduna, Katsina, Kebbi, Kano, Borno, Gombe, Jigawa, Niger, Yobe and Zamfara States are pleaded in paragraphs 113 to 363 of the Petition and that they called***

PW60" who is referred to as a Statistician and an expert who reports were admitted as Exhibits P90 A – K in respect of the 11 States aforesaid.

PW59 testified on 19-07-2019 when he adopted his witness statement on oath. His evidence revealed that his Report is based on a website whose owner he did not know. The said website is www.factsdontlieng.com, according to PW59 and that the author of the website relied upon by him claimed to be an INEC. The website was created on 12/3/2019 about two weeks after the result of Presidential election was announced.

On page 6 of Exhibit 8 attached to his witness statement on oath PW59 said he copied into page 6 INEC's diagram for Training Manual and concluded on page 6 of Exhibit 8 attached to his witness statement as follows:-

> ***"Whistleblower's Data Analysis Facts don't Lie Website - www.factsdontlieng.com***
>
> ***II. The Website was created on the 12th of March, 2019. A look at the website will show that apart from the information on the INEC records, nothing else appeared there. It has no other basic information or navigation features as to what a regular website ought to contain such as Contact; About, etc. The author of the content of the website revealing the information on INEC server, claimed to be an INEC staff. He remained anonymous and hence, christened Whistle Blower."***

In paragraphs 18 and 19 of his witness statement on oath he concluded as follows:-

"18. CONCLUSION

(a) Bearing a simplified and common understanding of the 'server' as "a computer, a device or a program that is dedicated to managing network resources such as storage, communication, security, centralized applications and database management systems"; and acknowledging the INEC' s Guidelines which outlined a transparent and integrated electronic process of voters accreditation, votes collation and transmission; indeed, there existed a robust system of servers whose extensive use in the presidential elections is undeniable.

(b) The analysis of the data held at the whistle blowers website using standard professional data analysis tool and techniques authoritatively demonstrates Accuracy and Precision, Legitimacy and Validity, Reliability and Consistency, Timeliness and Relevance, Completeness and Comprehensiveness, Granularity and Uniqueness of the data whose source can be nothing but INEC Servers.

(c) An expertise corroboration and correlation of the technical processes, data and description of

whistle blowers data herein and INEC's setups is an explicit and implicit demonstration that the server from whose data the whistle blowers was drawn is INECs tallying servers.

19. That a report of my findings are attached and marked as Exhibit 8."

His evidence is that it is the ***Whistleblower's Data Analysis Facts don't Lie Website - www.factsdontlieng.com*** that Report of his expertise evidence was based. He variously referred to the owner of the of the website as whistle blowers, Anonymous and "the author of the content of the website, claimed to be an INEC Staff". PW59 a could be seen in his evidence did not rely on any data gotten by him from an INEC Server. He stated that the Server he relied upon for his Report as an Expert was an anonymous website which to me is of doubtful and unreliable source by all accounts, PW59 gave in his evidence and the Report he authored. Whatever results he claimed to have got, according to him came from server belonging to Whistle blower not INEC.

When asked under cross examination the source of the results he claimed were found in the Anonymous website he said, the author of the content of the website may be an INEC Staff but that the said anonymous author of the contents of the website got the information or the results from INEC Servers which he PW59 said he could not access without the consent of INEC.

Under cross examination he admitted that the information in the website ***Whistleblower's Data Analysis Facts don't Lie Website - www.factsdontlieng.com*** could have been doctored. Under further cross examination by L. O. FAGBEMI, SAN for 3rd Respondent, PW59 said as an expert, that it is possible to use scientific method to decrypt data source and tamper or alter the content or information contained therein. PW59's Report and evidence is thus hanging on third party information from an undisclosed source.

PW59's evidence is no doubt caught by Section 37 of the Evidence Act which provides:-

> ***"37. Hearsay means a statement-***
>
> ***(a) oral or written made otherwise than by a witness in a proceeding; or***
>
> ***(b) contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it." (underlined mine)***

As can be seen the evidence of the PW59 cannot under any stretch of imagination be classified as expert opinion as it is not supported by any direct knowledge of what his Report contains and it is not supported by anything he did directly with regard to the existence or otherwise of an INEC SERVER. He relied on third party information not derived from his knowledge. Worse still, his informant the author of the contents of the website relied upon by

PW59 cannot be identified. Even if he could be identified, it is the alleged whistleblower or anonymous who claimed to be INEC Staff that could give the evidence of anything relating to the existence of the alleged Server which Petitioners heavily relied upon as containing results of elections transmitted electronically vide the Smart Card Readers.

PW59's evidence is hearsay and it is unreliable.

See:-

1. DR. OLUBUKOLA SARAKI V FRN (2018) 16 NWLR (PART 1649) 405 AT 449F-G per NWEZE, JSC who said:-

   "Now, as it is well-known, hearsay evidence, oral or documentary, is inadmissible and lacks probative value, sections 37 and 38 of the Evidence Act, 20 11; Ozude v. Inspector General of Police (1965) I All NLR 102; Okoro v. The State (I 998) LPELR-2493 (SC) 17; B-C, (1998) 14 NWLR(Pt. 584) 181; Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1, 317; Doma v. INEC (2012) All FWLR (Pt. 628) 813,829, (2012) 13 NWLR (Pt. 1317) 297; Okpara v. Federal Republic of Nigeria (1977) NSCC 166; Management Enterprises v. Otusanya (1987) NSCC 577, (1987) 2 NWLR (Pt. 55) 179; Ojukwu v. Onwudiwe (1984) 1 SCNLR 247."

2. MARTIN OPARA V A.G. FED. (2017) 9 NWLR (PT. 1569) 61 AT 113F – H TO 114 A – C per NWEZE, JSC who said:-

   "Exhibit PD.III (Exhibit PD.4) was, at page 39 of the record, admitted in evidence as the statement under caution of

the victim, Micah Eteng Ibe, through the PWA, one Odudare Oluremi Fidelis, an intelligence Officer of NAPTIP who recorded it. Exhibit PD.III (Exhibit PD.4) was no doubt admitted in evidence for a purpose. That is to establish the truth of what Micah Eteng Ibe, the victim, experienced in the hands of the appellant. To that extent it amounts to hearsay. On the other hand, if exhibit PD.III (Exhibit PD4) was admitted in evidence to merely show or establish the fact that Mr. Odudare Olurerni Fidelis (PW.4) , an investigator, interviewed and recorded a statement from the victim, Micah Eteng Ibe, it is not hearsay. This distinction was made in Kasa v. The State (1994) 5 NWLR (Pt. 344) 269 at 286 at paras. C-D by Uwais, JSC (as he then was) thus –

> ***"Evidence of a statement made to a witness by a person who is, not himself called, as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by evidence, not the truth of the statement, but the fact that it was made".***

See also Subramanian v. Public Prosecutor (1956) 1 WLR 965 at 970; Theophilus v. The State (1996) 34 LRC 74, (1996) 1 WLR (Pt. 423) 139".

PW59 also went out of his way to interpret INEC's Manuals as

providing for electronic transmission of results of the 2019 general elections. It is within the province or domain of the Court to give interpretation to Manuals and Regulations of INEC.

In effect, evidence of PW3, PW4, PW16, PW17, PW36 and PW59 together with the expert Report Exhibit P91 cannot be relied upon to come to the conclusion that there was an INEC Server(s) wherein results are transmitted electronically from Smart Card Readers in the 2019 Presidential Election. The pieces of evidence given by those witnesses lack probative value.

EVIDENCE OF PW60

The Petitioners relied on evidence of PW60 regarded as expert by them to establish the anomalies or irregularities they pleaded occurred in 11 focal States earlier listed in this judgment and constructed various tables to show vote loss and vote gains by the Petitioners and 2nd Respondent and came to the conclusion that if the errors committed by INEC Officials are done away with. Petitioners would be leading by 222, 332 votes.

I think for a proper appreciation of what the Petitioners have done in the Tables aforesaid it will not be out of place to set out the submissions or facts stated by Learned Silk to the Petitioners of the final Address from paragraph 4.46 through 4.52 which are as follows:-

"4.46 For Forms EC8A, the focus was on the following:

a) Number of votes exceeding accredited voters as stated on Form EC8A

b) Polling units where Forms E(BA did not have any

accredited voters at all.

c) *Polling units where number of votes exceeded the number of registered voters.*

d) *Po ling units where Forms EC8A were not signed by INEC Presiding Officers.*

e) *Polling units where Forms EC8A were not stamped by INEC Presiding Officers.*

f) *Polling units where Forms EC8A were altered or tampered with to reflect new votes/scores.*

4.47 With regards to Forms EC8B and EC8C (collation Forms), the focus was on the following:

a) *Difference in total votes between the Forms EC8A and Forms EC8B for each polling unit.*

b) *Difference between the total votes between Forms EC8A and Forms EC8C for each ward.*

c) *Difference in votes credited to the Petitioners, the 2nd and 3rd Respondents and other parties on Forms EC8A, EC8B and EC8C.*

d) *Difference in the number of accredited voters between Forms EC8A, EC8B and EC8C.*

4.48.1 It is submitted most respectfully, that flowing from the foregoing, the affected votes are of two categories, namely; (1) Votes from errors on Forms EC8A and (2) votes from collation errors (Forms EC8B and EC8C). The summary of such votes for each of the 11 focal States is as contained in the table below:

BAUCH I	PDP	APC	OTHERS
EC8A	100,955	432,465	8,301
Collation Error	10,567	40,781	866
BORNO	**PDP**	**APC**	**OTHERS**
EC8A	35,985	402,546	6,405
Collation	6,852	76,637	978

Error			
GOMBE	PDP	APC	OTHERS
EC8A	88,315	250,931	8,483
Collation Error	14,038	35,405	2,297
JIGAWA	PDP	APC	OTHERS
EC8A	142,5	376,586	8,650
Collation Error	117,7	312,857	7,199
KADUNA	PDP	APC	OTHERS
EC8A ERROR	1355,779	594,987	14.439
COLLATI ERROR	49, 814	82,572	3,716
KANO	PDP	APC	OTHERS
EC8A Errors	1250, 174	926,258	21,693
Collation Error	34,649	113, 623	6,929
KATSINA	PDP	APC	OTHERS
EC8A Error	165.5,6	683,582	9,346
Collation Error	26,032	95,947	1,301
KEBBI	PDP	APC	OTHERS
EC8A Error	98,692	396,728	12,194
Collation Error	14,790	59,618	6,308
NIGER	PDP	APC	OTHERS
EC8A Error	144,650	416,735	13,884
Collation Error	21,778	59,414	13,052
YOBE	PDP	APC	OTHERS
EC8A Error	27,029	278,612	5,116
Collation Error	4,859	50,497	874
GRAND TOTAL	1,740,850	5,686,781	152.031

4.49 Adding tl for Zamfara State), the collation errors are as captured in the table below:

ZAMFARA	PDP	APC	OTHERS
Collation	96,046	301,316	

Error			

4.50 Therefore, with the addition of the figures derived from the analysis of Results Sheets from Zamfara State, the new overall void votes are as shown in the table below:

PDP	APC
1,836,896	5,988,097

4.51 It is submitted that when the votes credited to the Parties on account of various errors listed respectively above are deducted from the results declared in the 11 focal States, the under-listed figures now represent the overall lawful votes cast in the Presidential Election held on 23rd February, 2019 across Nigeria:

PW60 said he is an Independent Database Analyst and Designer and a graduate of Industrial Chemistry from the University of Ilorin.

The Table constructed in the Learned Senior Counsel's address was lifted from the Exhibit attached to the Witness Statement on Oath of the PW60. A calm perusal of the Exhibit attached (Exhibits PK90A – K shows a conglomerate of examination of Forms EC8AS from Polling Units with observations by him of which Polling Units results were signed or not signed, which one shows bad votes or mutilated results and sundry other criminal allegation, malpractices and or irregularities. It is a strange attempt by the Petitioners to use PW60 as a Witness testifying in respect of all the anomalies or evidence of crimes allegedly committed at Polling Units and doctoring of results by unnamed persons. No witnesses were called to establish all the allegations made against

the results of elections in Polling Units Wards and Local Government Levels.

The witness PW60 testified that he used duplicate copies (red copies) of Form EC8AS to carry out his job and that he utilized Forms EC8AS, EC8BS and EC8C series.

Under cross examination he recoiled and stated that he in fact used Certified True Copies of Forms EC8A's. He did not know Form EC8C.

All the things he did in Exhibits P90A-K, ended up in what he called an Executive Summary on his findings on votes recorded in Certified True Copies of Forms EC8As for the 11 focal States. He failed to demonstrate to this Court how he came about the conclusion reached by him and upon which Petitioners Learned Senior Counsel raised the Tables reproduced.

It is my decision that PW60 cannot be regarded as an expert under any guise. As a matter of fact, he admitted under cross examination that he was not certified by any institution. His evidence like the evidence of PW59 lacks probative value and the pieces of evidence he gave are not worthy of any weight.

Consequently I hold that the Petitioner did not prove any of the complaints laid out in respect of the 11 focal States just as they failed to prove the facts in paragraph 106 of the Petition result of which they claimed was derived from votes in the server inputted through smart card readers.

Again, the tables injected or constructed in the final address of the Petitioners in reply to each of the three Respondents final

written address contained in paragraphs 448 to 452 in the Petitioners reply to 1st Respondents reply are not covered by the pleadings of the Petitioners contained in paragraphs 16-106 of the Petition in relation to issue 3 under consideration. The law needs no restatement because it is now sacrosanct that parties are bound by their pleadings and any evidence led which is at variance with the averments in the pleadings of the parties goes to and would be granted by the Court. See:-

1. GODPOWER ORLU VS CHIEF GODWIN ONYEKA (2018) 3 NWLR (PART 1607) 467 at 486H to 487 A-B per M. D. MUHAMMAD, JSC.
2. HON CHIEF OGBUEFI OSOMGBACHI V MR DENIS AMADI & ORS (2018) 17 NWLR (PART 1647) 171 at 198 E-G per PETER ODILI, JSC.
3. CHIEF TIMIPRE MARLIN SYLVIA & ANOR VS INEC & ORS (2018) 18 NWLR (PART 1651) 310 at 347 A-B Per I. T. MUHAMMED, JSC (now CJN) who said;

"Perhaps, I only need to remind ourselves that the settled principle of the law is that parties are bound by their pleadings. This principle of law is rightly supported by plethora of decided cases, for instance, this court held in Mogaji v. Cadbury Nig. Ltd. that in such an instance, the compound conflict can result in nothing less than the breakdown of the case for the plaintiff as set out in the pleading. Again, not very long ago, this court, per

Tobi, J.S.C. (Rtd. and now late) in Odi v. Iyala (2004) 8 NWLR (Pt. 875) 283 at 310 D - E, held, inter alia:

> ***"I cannot see better evidence against a party than one from a witness called by him who gives evidence contrary to the case of that party. This is because the party is calling the witness to testify in favour of his case as pleaded in his pleadings".***

It also follows that the brilliant address of counsel cannot take the place of pleadings and evidence which ought to be led through witnesses conversant with the fact in issue.

The aforesaid tables computing votes ascribed to the Petitioners and the Respondent as representing correct votes by the parties cannot be countenanced. Court do not accord or allocate votes to Parties in an election Petition or arbitrary evidence that has no support in the pleadings and evidence adduced before the Court. See SYLVIA V INEC supra page 351F-G per I. T. MUHAMMED, JSC (now CJN) who again said:-

> ***"It is clear from this piece of evidence that the appellants did not themselves know the number of votes alleged by them to have been cancelled by the 1st respondent. It is known to all that a court of law is not a magician who would begin to allocate votes and or reduce votes arbitrarily. It relies and makes its decision upon tested evidence placed before it.***

So, as the appellants have failed to lead evidence as to the actual number of votes alleged to be cancelled at the Bayelsa State Government election held on 5th and 6th of December, 2015 and the 9th of January, 2016, their claim as pleaded goes to no issue at all, further, the case of Otti v. Ikpeazu (supra) relied upon by the appellants is not helpful to them as it is quite distinguishable from the present appeal."

Another important point to recall is that the relief sought in ground 15(a) of the petition is that it may be determined that the 2nd Respondent was not duly elected by the majority of lawful votes cast at the election. It has been acknowledged by the parties that it is a declaratory relief and the law placed heavy burden on the Petitioners to prove the relief or entitlement in it on the merit.

The allegation contained in paragraphs contains imputation of crimes committed in the electoral process against the Respondent and their officials/ Agents. Some of the allegations area as follows;

1. ***Inflation and deflation of votes.***
2. ***Alteration of figures and votes cast in favour of Petitioners.***
3. ***Over-voting***
4. ***That 1st Respondent wrongly credit Petitioners.***
5. ***That 1st Respondent wrongfully and unlawfully credited 2nd Respondents with votes that were not valid or lawful***

pooling units, wards, collating centres and states collating centre.

6. ***That 1st Respondents officials did not correctly collate votes from polling units in Abia, Adamawa, Akwa-Ibom, Anambra, Bauchi, Bayelsa , Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, FCT Abuja, Gombe, Imo, Jigawa, Kaduna, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara States.***

The Petitioners did not call any witness in respect of all the sundry allegations made in respect of each state to give evidence of the wrongdoings and/or crimes allegedly committed in the Presidential election conducted in the aforesaid states.

Apart from the fact that the allegation must be proved beyond reasonable doubt, it is also incumbent on the Petitioners to call evidence polling unit by polling unit to establish all the accusations, irregularities and the gross misconduct alleged against INEC officials, the 2nd and 3rd Respondent and other persons. That is the state of the law. See;

1. WIKE EZENWO NYESOM VS HON. (DR) DAKUKU PETERSIDE & ORS (20160)7 NWLR (PART 1512) 452 AT 534 B – G where KEKERE-EKUN, JSC said:-

"The purport of the appellant's submission in respect of the evaluation of evidence by the tribunal, which was affirmed by the lower court is that had the tribunal and the lower court applied the decisions of this court in Kakib v. PDP and Ucha v. Elechi (supra), they would have reached a

different conclusion.

It is significant to note that there are 23 Local Government Areas in Rivers State. According to PW53 , a State collation agent, there are 4442 polling units and 1350 voting points in the State making a total of over 5,000 voting points. Some of the allegations made by the 1st and 2nd respondents include:

(i) Non-voting due to violence, thuggery and intimidation of voters;

(ii) Snatching of election materials; Non-use of card Readers;

(iii) Non-collation of results at ward collation centres;

(iv) Arbitrary allocation of figures;

(v) Non-provision of Forms EC8A;

(vi) Result sheets not showing results of all the political parties that contested the election.

(vii) In order to prove the alleged acts of non-compliance, it was necessary for the petitioners to call witnesses from all the affected polling units to give first hand testimony of what transpired. Out of the 56 witnesses called by the 1st and 2nd respondents, 18 were ward collation agents who received information from polling agents in the various units. Their evidence was, not tied to any of the exhibits tendered.

Some of the witnesses (PWs' 19, 20, 24 and 35) who were

Local Government Collation agents for the 2nd respondent gave sweeping testimony covering four Local Government Areas (Obio Akpor, Asari Toro, Tai & Ikwerre) on non-use of card readers, hijacking of materials, illegal thumb-printing of ballot papers, etc. The polling agents from the affected wards were not called to testify.

The trial tribunal made special reference to the testimonies of PWs' 40,49, 53 & 54. The evidence of PW49 has been dealt with extensively earlier. PW40 was the Head of Election and Party Monitoring Department, INEC, Rivers State. He described the election as a sham, warfare, a mockery of democracy. His evidence was that his team monitored elections in 19 Local Government Areas but he later stated that he visited 8 Local Government Areas with three National Commissioners of INEC. The report of the, team was admitted as exhibit A2. He however admitted under cross-examination that he did not personally visit all the Local Government Areas. He also admitted that Election Officers reported the hijacking of materials to the team when they visited but he did not witness hijacking of materials himself (page 23 of Vol. 4).

I am inclined to agree with learned senior counsel for the appellant that the evidence of PW40 cannot take the lace of polling agents or voters who were disenfranchised."

2. MARKUS NATINA GUNDIRI & ANOR VS REAR ADMIRAL M. H. NYAKO & ORS (2014) 2 NWLR (PART 1391) 211 AT 245C-H TO 246A-F per OGUNBIYI, JSC who said:-

"The significance of the polling units agents cannot therefore be underestimated in the case at hand if the appellants must have the facts to prove their case. The best evidence the appellants could have had was that of the agents at the polling units who were physically on ground and in true position to testify as to what transpired at an election. The consequence of shutting them out for whatever reason is very detrimental to the appellants' case. See the case of Hashidu v. Goje (2003) 15 NWLR (Pt. 843) 352 and Buhari v. Obasanjo (2005) All FWLR (Pt. 273) 1 at 164 - 165, (2005) 13 NWLR (Pt. 941) 1 at 248, paras. B-C wherein Ejiwunmi, J.S.C. said amongst others:

" ... The evidence required to establish a crime must be evidence of a witness who saw or heard or took part in the transactions upon which he was giving evidence. It is written law that hearsay evidence is not admissible for the purpose of establishing a crime. See section 77 of the Evidence Act ... "

On the fatal effect of failing to call a polling agent, the case of Agballah v. Sullivan Chime (2009) 1 NWLR (Pt. 1122) 373 at 433 - 434, para. H is relevant "Wherein it was held in part thus:

"None of the appellant's party agents that allegedly represented the appellant at, signed and collected the said election results forms from the numerous polling units was, called to testify in the petition. A fortiori, the failure of the appellant to call the party agents that represented and served as his representative at the various polling units to give evidence was fatal to the petition."

It is pertinent to restate that from the evidence of all the witnesses called by the appellants they admitted that their polling agents signed all the result sheets and did so voluntarily on the instruction of their party, the 1st respondent. The implication is therefore obvious as it would have authenticated the validity of the documents, in other words, the results sheets. The agents, law were all presumed to understand what they appended their signatures thereto. They could not in the circumstance have turned around to deny the contents of their signatures.

See the case of Egbase v. Oriareghan- (1985) 2 NWLR (Pt. 10) 884 ~ also that of Okoya v. Santilli (1994) 4 NWLR (Pt. 338) 256 at P. 280 - 281.

I also hasten to add that as a ward supervisor such person is a competent witness under the Evidence Act; the issue in this case however is the failure to

distinguish the clear cut evidence between information which is within his personal knowledge as against the information given him by the polling agent, who ought to have been called as a witness, but was not.

Where a petitioner complains of non-compliance with the provisions of the Electoral Act, he has a duty to prove the non-compliance alleged based on polling unit by polling unit. See again the case of Ucha Anor. v. Elechi & 1774 Ors (2012) 3 SC (Pt. 1) P. 26, (2012) 13 NWLR (Pt. 1317) 330.

It is therefore physically impossible for one person to have supervised the election in ten polling units given the fact that witnesses are to be called from each polling unit. See the case of Senator Julius Ali Ucha v. Chief Martin Elechi & Ors. (supra) 2012 3 SC (Pt. 1) p. 26, (2012) 13 NWLR (Pt. 1317) 330. There is also no evidence indicating or giving the reason why they (agents) were not called or available. The reports by the agents in respect of which all the witnesses spoke so much about were also not tendered in evidence. One therefore wonders whether the appellants were really set out to prove their petition."

3. ANDREW V INEC (2018) 9 NWLR (PART 1625) 507 AT 551 – 552 and 566F-G and 582E-F.

No eye witness account was called by the Petitioners to proof

the scathing allegations of crime and misconduct in electoral process.

What is more, the Petitioners tendered all their FORMS EC8As, EC8Bs, EC8C, EC8E, EC40G and other relevant Forms used by INEC for the recording of votes and declaration of results the subject matter of complaints in paragraphs 16 – 106 of the Petition through their Learned Senior Counsel from the Bar without calling the makers or their Agents who are signatories to the documents and those who did not sign the documents but are Agents of the Petitioners to testify concerning the irregularities and allegations made against the Respondent.

The Petitioners in effect dumped their exhibits on this all important issue of unlawfulness of votes on the Court without calling their makers or those with knowledge of the documents to testify. This Court is not in a position to use or accord them any weight or probative value. It is the bounden duty of the Petitioners to tie their documents/exhibits to this aspect of their case and to lead their witnesses to demonstrate the misapplication of votes complained of in their pleadings and other evidence of alteration, inflation or deflation of votes, racking up figure in favour of the parties by the Electoral Officials or other person. See:-

1. IKPEAZU V. OTTI (2016) 8 NWLR (PT. 1513) 38 ATT 93 B per GALADIMA, JSC who said:-

"It is settled law that a party who did not make a document is not competent, to give any evidence on it. This is the situation here PW19 did not make Exhibit PWC2, she cannot competently tender it. The maker

must be called to testify to credibility and veracity."

2. SENATOR RASHIDI ADEWOLU LADOJA *VS* SENATOR ABIOLA A. AJUMOBI & ORS (2016) 10 NWLR (PT. 1519) 87 AT 146 F - H TO A - B PER OGUNBIYI, JSC who said:-

"This Court in the case of Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205 at 323/332 drove home the point when it held "Documentary evidence no matter its relevance cannot on its own speak for itself without the aid of an explanation relating its existence."

At page 6146 of the record the lower court found that PW1 not being the maker of exhibits 1 - 192/ 201 and 203 - 216 was not competent to lead evidence on the contents of those documents. It is also held that PW1 not being a polling unit or ward agent for the appellant was not privy to the making of any of the electoral forms or documents neither was he present when they were made. This was how their Lordships concluded on PW1.

> ***"Any evidence so adduced by him as to the contents of those documents would be hearsay and therefore inadmissible."***

The view taken by the lower court cannot be faulted moreso where the appellant has not presented any cogent argument to the contrary upon which this court may be invited to interfere with the well

reasoned finding of the lower court. Premised on the unassailable and the detailed review, of the evidence of PW1 by the lower court therefore it was proper that it upheld the decision of the trial tribunal in rejecting the report/analysis qua opinion of PW1."

3. UDOM GABRIEL EMMANUEL VS UMANA OKON UMANA & ORS (2016) 12 NWLR (PART 1526) 270 AT 286 G - H TO A - B per NWEZE, JSC who said:-

"However, I wish to further emphasize on the rather reckless behavior of the court below in refusing to be guided by the decision of this court but relied on its own decision to decide that it was unnecessary to call the makers of documents exhibits 317 and 322 to testify in this case. The law is well settled that documents produced by parties in evidence in course of hearing are to be tested in open court before the court can evaluate them to determine their relevance in the determination of the case upon which the documents are relied upon. For this reason, any document tendered from the bar without calling the maker thereof attracts no probative value in the absence of opportunity given to the other party to cross-examine for the

purpose of testing its veracity. See Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205 at 322-323 which the court below refused to apply in place of its own decision in Aregbesola v. Oyinlola (2011) 9 NWLR (Pt. 1253) 458. See also the cases of Sa'eed v. Yakowa (2013) 7 NWLR (Pt.l352) 124 at 149 - 150 and Osigwelem v. INEC (2011) 9 NWLR (Pt. 1253) 425 at 451."

4. EDUARD NKWEGU OKEREKE V. NWEZE DAVID UMAH & ORS (2016) 11 NWLR (PT. 1534) 438 AT 472 B - E per NWEZE, JSC.

The Learned Senior Counsel for the Petitioners has submitted that the established position in these and many other cases, has changed and that a party is no longer required to tie or link the documents put in evidence, to the specific areas of his case to which the documents relate. He cited and relied, with relish, on the case of MTN V CORPORATE COMM. INVEST. LTD. (2019) LPELR – 47042 (SC), PAGE 36, PARAGRAPH A – B, which is also reported in (2019) 6 SCM, 100, on the submission. The facts of the case, the documentary and other pieces of evidence involved in the case, are however distinguishable. The facts of that case involved a contract between the parties and the document in question, was the written contract which was admitted at the trial Court, as Exhibit A. Exhibit 'A' was admittedly the binding agreement between the parties and the Appellant before the Supreme Court used it as the basis for termination of the contract by issuing

Exhibit 'B' in the case. At the trial the Respondent's witness had given evidence on the terms of Exhibit A and was cross examined by the Appellant's Counsel. On the argument before it by the Appellant's Counsel that the Exhibit 'A' was not demonstrated, the Apex Court, per KEKERE-EKUN, JSC, stated inter alia that:-

> ***"It is therefore not correct, to contend that the terms of Exhibit A were not demonstrated before the court."***

The salient point to be noted in the case is that the Exhibit 'A' in question was an agreement between the parties, the terms of which were not in dispute, but expressly admitted by them.

On the contrary, the contents of the documents tendered by the Petitioners from the Bar are and have been frontly, directly and specifically disputed in the pleadings of the parties such that proof, as required by law, becomes absolutely necessary if the documents were to be used and relied on in the determination of the petition. The allegations in respect of which the documents were put in evidence, as contained in the paragraphs of the petition, are varied, distinct, different and diverse in context, character and nature for each to require specific link or connection to the evidence of the witnesses who testified in proof thereof.

The facts and circumstances of the case of MTN V CORPORATE COMM. INVEST. LTD (supra) are therefore clearly different for it to be an apposite authority that would avail the Petitioners here.

This position, as it is, the MTN's case did not change the

position of the apex Court in the cases cited earlier on the law that a party who tendered documents or documentary evidence in support of his case, has a duty to link, connect and demonstrate the specific aspect of the case in respect of which the documents were tendered if the Court was to accord any probative value to them in the evaluation of evidence. The case is therefore unhelpful to the Petitioner on the points.

I am conscious of the submissions of the Learned Senior Counsel to the Petitioners that this Court should hold that 1st and 3rd Respondents have abandoned their pleadings because they did not call any witness to testify on their behalf.

The trite position of the law is that a Defendant to an action or a Respondent in an election Petition is entitled to rest his case on that of the Claimant or the Petitioner where he has through devastating cross examination elicited or extracted sufficient evidence to support and prove the facts or assertions contained in his pleadings. In such circumstance a Defendant or Respondent can decide not to call any witness. It does not amount to not calling evidence or failure to call evidence. See PASTOR IZE-IYAMU ANDREW & ANOR V INEC (2018) 9 NWLR (PART 1625) 50 7 AT 582E-F per KEKERE-EKUN, JSC who said:-

> ***"With regard to the contention that the court below was wrong to affirm the finding of the Tribunal that the 1st respondent did not abandon its pleadings by failure to call evidence in support thereof, I hold the considered view that both lower courts were correct in their finding.***

Having tendered documents in evidence, albeit from the Bar, and having thoroughly cross-examined and discredited the appellants' witnesses, it could not be said that the 1st respondent had abandoned its pleadings. In Akomolafe v, Guardian Press Ltd. (2010) 3 NWLR (Pt 1181) 338 @351 F-H and 353-354 H-B, this court held:

> ***"Evidence elicited from a party or his witness under cross-examination, which goes to support the case of the party cross- examining, constitutes evidence in support of the case or defence of the party. If at the end of the day the party cross- examining decides not to call any witness, he can rely on the evidence elicited from cross-examination in establishing his case or defence. One may however say that the party called no witness in support of his case, not evidence, as the evidence elicited from his opponent under cross- examination which are in support of his case or defence constitute his evidence in the case.,***
>
> > ***"The exception is that the evidence so elicited under cross- examination must be on facts pleaded by the party concerned for it to be relevant to the determination of the question/issue in controversy between the parties having regard to the fact that the relevant evidence elicited from the appellants relate to the***

facts pleaded by way of defence to the action, they form part of the respondent's case and can be relied upon by the respondents in establishing their defence to the action without calling witnesses to further establish the said defence."

See also ADEOSUN V GOV., EKITI STATE (20120 4 NWLR (PT. 289) 581 AT 602, (2012) 1 SCM, 1, MTN V CORPORATE COMM. INVEST, LTD (supra) at 118 – 119.

I agree with the submissions of the 1st and 3rd Respondents' Learned Senior Counsel to the effect that they have elicited sufficient evidence under cross examination of the Petitioners witnesses to support the 1st and 3rd Respondents' averments as contained in their pleadings.

The facts remains that the Petitioners have not discharged the onus on them to establish that the 2nd Respondent was not elected by majority of lawful votes cast at the election. The evidence of all the 62 witnesses called by the Petitioners is not sufficient to prove the monumental allegations of electoral malpractices pleaded in paragraphs 16-106 of the Petition. PW62 who is the star witness for the Petitioner admitted under cross examination that he was not at any of the polling units, ward collation centres, Local Government collation centres, State collation centres to witness voting, collation and computation of votes scored by the parties in the election. PW62 was in Petitioners situation room of the Petitioners in Abuja during voting exercise and announcement of results at polling units and other stages at state level.

He admitted that collation and declaration of results of Presidential election were done manually in his presence in Abuja and he was present when the chairman of 1st Respondent announced the result of presidential election even though he did not sign the final result. On existence of INEC server, he PW62 stated that he has never seen it and he did not know its particulars. All he said is that INEC kept assuring them that electronic voting would take place but from his evidence under cross examination, no such thing took place. All the pieces of evidence given under cross examination by PW62 were for the benefit of the Respondents.

I agree with the submission of the Learned silk to the three Respondents herein that the Petitioners have not proved that the 2nd Respondent was not duly elected by majority of lawful votes cast at the election.

In the result issue 3 is hereby resolved against the Petitioners.

ISSUES 4 AND 5

4. **Whether the. Presidential Election conducted by the 1st Respondent on 23rd February, 2019 was invalid by reason of corrupt practices.**

5. **Whether the Presidential Election conducted by the 1st Respondent on 23rd February, 2019 was invalid by reason of non-compliance with the Electoral Act, 2010 (as amended) and the Electoral Guidelines 2019 and Manuals issued for the conduct of elections.**

The Learned Counsel to 1st Respondent submitted that any act or misconduct during election which is calculated to truncate the process can come within the scope of corrupt practice. He relied on cases dealing with corrupt practices and how a Petitioner should prove the allegation. He relied on the cases of:

(1) **YUSUF V. OBASANJO (2003) 16 NWLR (PT. 847) 544**

(2) **UKPONG & ORS V. ETUK & ORS P. 47 PER GARBA, JCA**

(3) **IYIOLA OMISORE VS. OGBENI RAUF AREGBESOLA & ORS (2016) LPELR**

He stated that the Petitioners must show that the corrupt practices alleged substantially affected the result of the election. It must also be shown that Respondent personally committed the corrupt act or aided and abetted or counsel or procured the commission of the alleged act of corrupt practice.

That in many of the paragraphs of the Petition the Petitioners made weighty allegations that are criminal in nature and that some of the paragraphs alleged intimidations, arrests and harassment by Nigeria Police and the Nigerian Army. That some of the paragraphs of the petition also alleged that some named individuals were engaged in criminal acts. That paragraphs 364-372 also made serious allegations of corrupt practices against individuals including Prof. Yemi Oshinbajo who is not a party to the proceedings. That all the said corrupt allegations have been criminalized vide Section 130(1) (a) and (b) of the Electoral Act punishable with a fine of N100,000.00 or 12 months imprisonment.

He submitted that the petition is *ab nitio* incompetent as it seeks to determine the culpability of persons who are not parties in the petition. That the non-joinder affects the substance of the petition. He relied on **EGOLUM V. OBASANJO (1999) 7 NWLR (PT. 611) 355 AT 397 E-D and IHO & ANOR V. WOMBO & ORS (2010) LPELR- 915 CA.** He referred to the evidence of PW 10 and PW19 who said they were not aware of the number of parties that contested the election. That PW19 did not know what happened in other Polling Units during the election and was basically informed of the incidents by others. That PW57 and PW58 who were educated Igbiras adopted depositions within Jurat purportedly translated from Hausa to English. That PW19 admitted being told of what happened which were contained in his deposition. That PW19 also said he was seeing his witness statement on oath for the first time when he came to give evidence in Court.

He urged the Court not to accept the evidence of Petitioners' witnesses relying on **OKEREKE V. UMAHI & ORS (2016) LPELR-46035 SC**, that the evidence given by those witnesses amount to hearsay evidence. He submitted that a reasonable and critical examination of the evidence placed before this Court shows that the elements of the alleged corrupt practices against the Respondent have not been proved beyond reasonable doubt. He relied on the cases of **AUDU V. FRN (2018) LPELR-45646 CA and EMMAUNEL UGBOJI V. THE STATE (2017) LPELR-4327 SC.**

That the Petitioners also failed to establish the allegations of purported violence and multiple thumb printing of ballot papers were not proved. That there is no nexus between the commission of an illegality or corrupt practices. He urged the Court to strike out the grounds. He relied on the case of OYEGUN V. IGBINEDION. He urged the Court to hold that the Petitioners have failed to prove corrupt practices.

On whether it could be said that the election of 2nd Respondent is invalid by reason of non-compliance with the provisions of the Electoral Act, submitted that there is before the Court the presumption that the official result of the Presidential Election declared by the 1st Respondent is correct and valid in accordance with the Electoral Act and Section 150 of the Evidence Act. He relied on the case of OMOBORIOWO V. AJASIN (1984) 15 NSCC 81 AT 90. That the Petitioners ought to prove by concrete evidence first that the irregularities took place and that they affected the result of the election before the presumption enjoyed by the result can be rebutted. He then listed out the key allegations listed under the allegation of non-compliance by the Petitioners. That the 62 witnesses called by the Petitioners were largely Ward Collation Agents, Local Government Collation Agents, State Collation Agents as well as the National Collation Agents, who Learned Senior Counsel to 1st Respondent Yunus Ustaz Usman, SAN, described as "only five (5) of them who were Polling Agents." He again listed out that relevant paragraphs containing the State by State allegations of improper accreditation, non-authentication of results, over voting and deflation and inflation of votes and wrong entries

in Form EC8A, non-counting of ballot papers, non-announcement of scores of candidates and alteration of results.

That these allegations mostly occurred at polling units or voting points. That those who could give evidence in respect of the allegations are the Polling Agents. He treated each allegations and submitted that by virtue of Section 138(2) of the Electoral Act, an act of omission which may be contrary to an instruction or directive of the Commission or an Officer appointed for the purpose of election but which is not contrary to the provisions of Electoral Act shall not of itself be a ground for questioning the election. He relied on the cases of **AMADI V. EKE (2004) 119 NWLR (PT. 892) 1 CA and OJO & ANOR V. RASAKI & ANOR (2009) LPELR-4704 CA.**

He submitted that the Petitioners in this case have not been able to prove the allegations of non-compliance nor have they shown how the alleged non-compliance substantially affected the result of the election to their detriment. He urged the Court to resolve the issues against the Petitioners.

In response to the above submissions, the Learned Silk to the Petitioners referred to the averments relating to corrupt practices in paragraphs 368-387 of the Petition and their particulars. He informed the Court that the Petitioners called several witnesses in support of their case on corrupt practices and substantial non-compliance by reason of which the election and return of 2nd Respondent ought to be invalidated. He set out the summaries/particulars of evidence led in support of allegation of

corrupt practices and non-compliance which he said cut across the country to demonstrate the complaints in 11 (eleven) focal States vide PW40, PW60 and PW61. He said that the Petitioners tendered documents in form of originals and Certified True Copies and computer generated documents in Forms EC8C, EC8BS and EC8AS as tendered for each of the eleven (11) States and the receipts issued for payment for certification of the documents. He stated that witnesses who gave evidence in respect of facts pleaded in respect of each State (11) beginning from JIGAWA as follows: -

1. JIGAWA PW5 and PW6
2. NIGER SATE - PW7, PW12, PW13 and PW14 and PW15.
3. KATSINA STATE – PW8, PW9, PW10, PW11 and PW 55.
4. BAUCHI STATE - PW18, PW19, PW30 and PW32.
5. KADUNA STATE - PW20, PW21, PW22, PW24 and PW25
6. BORNO STATE - PW23, PW26, PW27PW 28, PW34, PW35, PW37, PW38, PW54 and PW56
7. GOMBE STATE - PW29 and PW 31
8. YOBE STATE - PW33, PW39 and PW45.
9. NASARAW STATE PW43, PW44, PW46, PW47, PW48, PW49, PW50, PW51 and PW52
10. KANO STATE - PW 53; and

11. KOGI STATE - PW 57, PW58 and PW61.

That PW40 gave evidence and identified exhibits P36 to P84 being Video CDS, transcripts and printouts together with an authentication certificate. That he gave evidence that he kept records of press briefing, interviews, publications and other related print and electronic media materials relating to the activities of the 1st Respondent and the conduct of election. He stated that PW40 made use of Exhibits P76 and P80 and Exhibit P74 and Exhibit P83.

He also relied on evidence of PW60 who said gave expert evidence on how he was professionally engaged to conduct a comprehensive analysis of CTCs of EC8As, EC8Bs and EC8Cs deployed for Presidential elections in the eleven (11) States. He also relied on the evidence of PW62 who he said chronicled litanies of incidence of non-compliance with the provisions of the Electoral Act and corrupt practices by reason of which the election and returning of 2nd Respondent should be invalidated. He relied on paragraphs 107 to 368 of his witnesses Statement on Oath deposed on 18th March, 2019; 15th April 2019; 26th April, 2019 and 18th April, 2019.

He also relied on PW1's evidence BUBA GALADIMA who he said told the Court of series of intimidation, harassment, threat of arrest and detention by various Security Agencies including the Nigerian Army during and after 2019 general election. He submitted that all are the heads of the allegations of corrupt practices and non-compliance.

He relied on the paragraphs of the petition dealing with non-compliance with the provisions of the Electoral Act. He also relied on the evidence of PW62, PW57, PW58 and PW61. That evidence elicited under cross examination of RW6 and RW7 lend evidence to the allegations made.

He acknowledged the burden of proof placed on the Petitioners to sustain the ground relating to corrupt practices and non-compliance in that they must proof that such corrupt practices and non-compliance took place and that such corrupt practice and non-compliance substantially affected the outcome of the election relying on the case of **NYESOM V. PETERSIDE & ORS (2016) LPELR-40036**, per KEKERE-EKUN, JSC, and the case of **UCHA V. ELECHI (2012) 13 NWLR (PT. 1317) 330 AT 363 B-C.**

He nonetheless submitted that the Petitioners have by the evidence given and the Exhibits tendered and the evidence of PW62, Petitioners discharged the burden of proof on them on this issue.

The Learned Silk submitted that PW62 was not cross-examined on his evidence that the Petitioners adduced evidence to graphically demonstrate how the 1st Respondent and its agents deliberately and in appropriately entered wrong results in the eleven (11) States they listed and that INEC violated paragraph 34(e) of their Regulations and Guidelines for 2019 General Elections.

That the INEC Guidelines and Regulations were also violated in respect of the use of Card Reader in the process of accreditation which he said occasioned over voting rendering the election null and void according

to the Learned Silk for the Petitioners. He also submitted that the 1st Respondent breached Sections 12, 43(3) & (4), 47, 49(1) & (2), 53, 61(1) & (4) and 63 of the Electoral Act with respect to manipulation of Ballots, Ballot boxes, compromising production of electoral materials, non-adherence to poll time, lack of proper accreditation, over voting, etc. That Trader Moni was also introduced whereby traders across the country were compromised to vote for 2nd Respondent in gross violation of Section 130 of the Electoral Act. That there were intimidation, militarization arrest and detention of Petitioners supporters.

That by the decision of Supreme Court in **MTN V. Corporate Communication Investment Ltd (2019) LPELR-47042 SC P. 36, A-B,** issue of demonstrating evidence and linking same with Exhibits tendered is no longer necessary, that the case silences the submissions in paragraphs 86, 87, 88 and 89 of Final Address of 1st Respondent.

He also submitted that the failure to call evidence by 1st Respondent tantamount to admission of Petitioners case. He relied on the cases of –

1. **AKANNI V. MAKANJU (1978) 11-12 SC, 10 AT 18 and**
2. **DINGYADY V. WAMAKO (2008) 17 NWLR (PT. 1116) 395 AT 449-450, G-A.**

He submitted that the 1st Respondent is deemed to have abandoned his pleadings that Exhibit P3 is studded with scandalous incidence of underhand deal and incomprehensible blunder by the Respondent. That the 1st Respondent Returns Officer committed grave errors in the collation

exercise in Form EC84 to wit Exhibit P10 by falsely crediting **OKOTIE CHRISTOPHER V REV. DR. ONWUBAYA OJINAKA JEFF CHIZEE AND ABAH LEWIS ELAIGWU** with wrong political parties and scores respectively. He relied on PW62 witness statement on Oath in reply on 1st Respondent's Reply.

He urged the Court to resolve Issues 4 and 5 in their favour.

He also urged the Court to grant the alternative relief (f) of the Petition by nullifying the election of 2nd Respondent and in consequence ordering a fresh election to the office of President of Nigeria in the unlikely event that the Honourable Court declines to grant substantive or main relief sought in paragraph 409 of the Petition.

In reply on point of law the Learned Silk for the 1st Respondent emphasized that in the case of **OMISORE & ANOR. VS. AREGBESOLA & ORS (2015), LPELR-24803 (SC)** the Supreme Court held that corrupt practices touch on the realm of criminality and same must be proved beyond reasonable doubt.

He stated that all the testimonies of Petitioners' witnesses during trial are based on hearsay that are legally inadmissible and thus did not meet the quality of evidence required. He relied on DOMA V. INEC & 7 ORS (2012) LPELR-7822 SC.

That mere allegation of non-compliance will not be held to have affected result of an election. He urged the Court to dismiss the Petition.

ADDRESS OF 2ND RESPONDENT

It is the submission of the 2nd Respondent through his Learned Senior Counsel Chief Wole Olanipekun, SAN that the Petitioners have not discharged the heavy burden placed on them to prove beyond reasonable doubt allegation of multiple voting, allocation and falsification of figures, inflation/deflation of votes, manipulation of Card Readers and deliberate wrong entries among others which are criminal in nature. He relied on the case of **UDOM V. UMANA (2016) 12 NWLR (PT.1526) 179 AT 232** and **OKECHUKWU V. INEC (2014) 17 NWLR (PT. 1436) 250 AT 262** among many cases cited.

That all these allegations have not been proved. He relied on the case of **GUNDIRI V. NYAKO (2014) 2 NWLR (PT. 1391) 211 AT 284** per ODILI, JSC.

Learned Silk submitted that Petitioners have jettisoned allegation of over voting in that they failed to tender Voter Registers to show the number of registered voters in each unit. They failed to relate each document to speak the areas of their case and they failed to show that if figures representing over voting are removed it would result in voting for the Petitioners. He relied on the case of **OGBORU V. OKOWA (2016) 11 29-30 and OGBORU V. OKOWA (2016) 11 NWLR (PT. 1522) 1 AT 29 - 30 and OGBORU V OKOWA (2016) 11 NWLR (PT. 1522) 84 AT 120 - 121.**

That Petitioners should be taken to have abandoned that aspect of their case. He went through the pieces of evidence given by the

Petitioners' witness and urged the Court to hold that allegations of non-compliance with provisions of Electoral Act and Corrupt Practices have not been proved by the Petitioners as submitted by the Learned Senior Counsel to the 2nd Respondent under Issue 3.

On allegations of intimidation violence, non-compliance, thuggery, the Learned Silk submitted that they all border on criminalities. He relied on the case of **ABUBAKAR V. YAR'ADUA (2008) 19 NWLR (PT. 1120) 1 AT 173** per NIKI TOBI, JSC (of blessed memory) to support and submitted that Petitioner have not proved the issues. He drew attention to Section 139 of the Electoral Act which he said sets the Bar and standard of complaint required in order to invalidate an election on the basis of non-compliance, corrupt practices. That the effect of the section is that the complaint of non-compliance must not only be substantial, it must also substantially affect the result of the election. That hard and cogent evidence must be led to prove it. He relied on the case of **BUHARI V. INEC Supra**, that it must be juxtaposed with the fact that Petitioners are claiming declaratory reliefs and the onus casts on the Petitioners.

He relied on **CPC V. INEC (2011) 18 NWLR (PT. 1279) 493 AT 539-540 and AKEREDOLU V. MIMIKO (2014) 1 NWLR (PT. 1388) 402 AT 465-466.** He urged the Court to resolve the allegations against the Petitioners in that there is no evidence proffered by the Petitioners whether oral or documentary to argue that there was non-compliance and corrupt practices. He urged the Court to dismiss the Petition.

REPLY OF THE PETITIONERS TO THE 2ND

RESPONDENT'S FINAL ADDRESS

I have to state that the responses to the submissions of 2nd Respondent by the Petitioners in the Final Address' reply to the 2nd Respondent particularly paragraphs 5.01 - 5.29 thereof are the same as their Reply Address to 1st Respondent's Final Address.

Under the title of NON-HOLDING OF ELECTION/CANCELLATION OF ELECTION IN SOME POLLING UNITS AND THE EFFECT ON THE RESULT DECLARED BY INEC which covers the remaining part of the Address, the Learned Silk to the Petitioners drew the attention of the Court to paragraphs 107, 108 and 111 of the Petition and stated that during the National collation of results, it was announced that results were cancelled in 4171 Polling Units and that 2,906,384 registered voters were thereby affected. He relied on, VCD's Exhibits P36-P83. That Petitioners tendered Form EC40G(3) summary of registered voters in polling units where election was not held in 3958 Polling Units in 36 States of the Federation. He relied on PW62 deposition to argue that 2,739,533 voters were affected. That the number of voters affected exceeded 3,928,869 claimed by 1st Respondent to be the difference between 1st Petitioner and 2nd Respondent.

That the 1st Respondent thereby breached paragraph 34(e) of Exhibit 27 which he said forbid INEC from declaring result of the election without a rerun in polling units affected. PW62 was not challenged as he was not cross examined on this aspect of their case. He relied on the case of EZEANUNA V. ONYEMA (2011) 13 NWLR (PT.1262) 36 AT 28 A.

Still on non-compliance, he said the Petitioners adduced evidence to graphically demonstrate how 1st Respondent and its Agents deliberately and inappropriately entered wrong result in eleven (11) States mentioned by the Petitioners. That by these 1st Respondent breached paragraphs 10(a) (b) (c), 11(d) and 23 (a) and (b) of 163 on Regulation and Guideline along violation of Sections 12, 43(3) & (4), 47(1) (2), 53, 61 (1) & (4) and 63 of the Electoral Act.

The petitioners thereafter repeated their submissions in paragraphs 5.41 - 5.48 of their Reply to 1st Respondent's Final Address, on Trade Moni, failure to call evidence and abandonment of pleadings by 1st and 3rd Respondents. That the 2nd Respondent did not defend that allegation of corrupt practices and or non-compliance with the Electoral Act and this ended up not substantiating paragraphs 108-324 of his reply to the Petition, that he is deemed to have abandoned his defence. He relied on **OWNERS OF M/V GONGOLA HOPE VS. S. C. NIG. LTD (2007) 15 NWLR (PT 1056) 189 AT 207, A-C.**

He finally submitted that the Petitioners have established grounds B and C of the petition. He also urged the Court to grant alternative Relief (f) at page 138 Vol. 1 of the petition by nullifying the election of 2nd Respondent and in consequence orders fresh election to the office of President of the Federal Republic of Nigeria if the Court declines to grant the main reliefs.

In reply on points of law the 2nd Respondent's Learned Senior Counsel amplified his submissions in the main. He stated that the allegation of non-compliance and corrupt practices cut across virtually all the States of the Federation as pleaded in paragraphs 107-363 of the Petition and that the submission of the Petitioners that they proved the allegations vide PW62 is misplaced in that PW62 not being an oracle or omnipresent could not have been at PDP situation room as admitted under cross examination, and at the same time be touring Polling Units allocated in 36 States of the Federation. He submitted that at best his evidence of the several places are merely hearsay because he said "deposition/statement on oath are from facts received from agents"

He relied on the cases of -

(1) PDP V. INEC & ORS SUPRA

(2) BUHARI V. OBASANJO (2011) 13 NWLR (PT. 941) 1 AT 315.

(3) A. C. N. V. LAMIDO (2012) 8 NWLR (PART 1303) 560.

(4) GUNDIRI V. NYAKO (2014) 2 NWLR (PT. 1391) 211 and

(5) OKE V. MIMIKO (2014) 1 NWLR (PT. 1388) 332.

In urging the Court to discountenance everything relating to PW62 and submissions in paragraph 5.28, 5.30, 5.31, paragraphs 34-35 of the Petitioners' Address in respect of allegation of cancelled results in 4,171 Polling Units. That the case of **ANDREW V. INEC** is against the submission of the Petitioners.

3RD RESPONDENT'S ADDRESS

The Learned Silk to the 3rd Respondent first adopted the submissions of Learned Senior Counsel to the 1st and 2nd Respondents.

On Issue 4 relating to corrupt practices he submitted that the allegations of the Petitioners is studded allegations of crime and that the standard of proof is that of prove beyond reasonable doubt under Section 135(1) of the Evidence Act and the cases of –

1. **BANTOYE V. KANYE (2009) 4 NWLR (PT. 1130) 13 AT 32033.**
2. **NWOBODO V. ONOH (1983) NSCC 470 AT 472.**
3. **WAZIRI V. GEIDAM (2016) 11 NWLR (PT. 1533) 230 AT 277-278 E-B.**

He listed the particulars of the corrupt practices as pleaded on paragraphs 121-130 Vol. 1 of the Petition by the Petitioners and pages 12-122 of the Petition all at which he said has to be proved beyond reasonable doubt.

The Learned Silk stated that the evidence of Petitioners' witnesses is not reliable. That virtually all Petitioners' witnesses except PW5, PW6, PW12, PW46 and PW49 (Polling Unit Agents) admitted in their evidence-in-chief and under cross examination that their testimonies were not based solely on what they personally witnessed rather they were based on their personal observations and reports which they claimed to have received from PDP Polling Agents or Ward Agents or Local Governments Collation

Agents that their testimonies were based on report of others. He cited numerous cases including: -

1. **ABUBAKAR V. YAR'ADUA (2008) 19 NWLR (PT. 1120) 1 at 155; and**
2. **OKE V. MIMIKO (NOS. 2) (2014) 1 NWLR (PT. 1388) 332 AT 376.**

That PW56, 9, 10, 11, 13, 15, 19, 20, 21, 24, 26, 28, 30, 31,32, 33, 34, 37, 38, 39, 43, 44, 45, 48, 50, 52, 53, 54, 55, 56 and 58 did not specifically give evidence of what happened in each of the Polling Units they claimed that Wards and Local Governments they claimed to be giving evidence as they really relied on reports of some unapproved agents. That the pieces of evidence given are inadmissible relying on **ANPP V. USMAN & ORS (2008) 12 NWLR (PT. 110) 1 AT 67.**

On the evidence of PW62, Learned Silk to 3rd Respondent said his evidence is a mere reproduction of the Petition and in that he admitted under cross examination that he was in ABUJA in the PDP situation room on the days of election. That his evidence on what went on at various polling units of the Federation on the day of election is nothing more than hearsay evidence. He submitted that whatever any person did in form of unsolicited aid of which candidate is ignorant cannot be held against the candidate, that cogent evidence must be led. He relied on the cases of WALI V. BAFARAWA (2004) 16 NWLR (PT 898) 1 AT 44 and WAZIRI V. GEIDAM (2016) 1 (523) 230 AT 277-278E-B.

He submitted that out of 62 witnesses, eleven (11) witnesses were called by Petitioners in proof of the said corrupt practices namely PW14, PW15, PW39, PW43, PW48, PW50, PW51,PW52, PW56, PW57, PW58, PW13, PW14, PW15 AND PW 51 who he said are ward Collation Agents from Niger, Yobe, Nasarawa and Kogi States while Learned Silk stated that 29 other witnesses namely PW9, PW 10, PW11, PW13, PW18, PW19, PW21, PW22, PW24, PW25, PW26, PW11, PW13, PW29, PW30, PW31, PW33, PW34, PW35, PW37, PW38, PW44, PW45, PW47, PW53, PW54 and PW 55 are Local Government Collation Agents from KATSINA, KADUNA, BORNO, GOMBE, NIGER, BAUCHI, YOBE, NASARAWA STATES LOCAL GOVERNMENT AREAS.

The Learned Silk stated that three witnesses - State Collation Agents PW7 - NIGER, PW8- KATSINA, PW23 - BORNO and PW61 - KOGI were called while PW2 was called as National Collation Agent. That PW5, PW6, PW12, PW46 and 49 were called to testify as Polling Units Agents from Jigawa, Nassarawa and Niger States. He submitted that the evidence of the said witnesses cannot be relied upon to establish allegations of corrupt practices. He relied on GUNDIRI V. NYAKO (2014) 2 NWLR (PT, 1391) 211 AT 220 to submit that only Polling Agents could give evidence of corrupt practices at polling units not National Collation Agent, State Agent, Local Government Collation Agent or Wards Collation Agents.

He submitted that the Petitioners abandoned their pleadings and dumped tendered documentary evidence before the Court without relating

them to specific aspect of Petitioners' petition. He relied on the case of **MAKU V. AL-MAKURA (2016) 5 NWLR (PT, 1505) 201 AT 230, C-H.**

That out of 119,973 Polling Units in Nigeria where allegations of corrupt practices were made the Petitioners called only 5 Polling Units Agents.

On Issue five (5) dealing with non-compliance with the Electoral Act, he laid out the facts relied upon by the Petitioners. He submitted that the Petitioners must prove and show that there was substantial non-compliance which substantially affected the result of the election. He relied on **JACOBSON MBINA V. INEC (2007) LPELR-43248 CA and MAKU V. ALMAKURA.**

He submitted that the Petitioners have failed to prove the allegation of non-compliance relied upon. He relied on long line of cases including –

1. **ANDREW V. INEC SUPRA page 506.**
2. **NYESOM V. PETERSIDE SUPRA P. 533.**
3. **OMISORE V. AREGBESOLA**

He submitted that allegations of over voting which Petitioners raised as part of non-compliance was not proved. That scanty number of witnesses were called to prove allegations spread over 13 States including FTC.

That it also the Petitioners' duty not only to prove the alleged non-compliance but they must also show how same affected the overall result

of the election. He urged the Court to resolve issues 4 and 5 against the Petitioners and to dismiss the Petition.

PETITIONERS' REPLY ADDRESS TO

3RD RESPONDENT' FINAL ADDRESS.

All the submissions made in paragraphs 5.00 – 5.24 of the Petitioners' Reply to Final Address of the 1st Respondent's Final Address were replicated in paragraphs 5.00 – 5.20 of the Petitioners' Reply to 3rd Respondent's Address.

The Learned Senior Counsel submitted that the evidence of PW62 support ground 2 of the Petition. That evidence elicited from RW6 and RW7 which talked of addition of votes with respect to Polling Unit 009 **Sharp Corner, Karu** lend credence to the pleaded case of the Petitioners. He acknowledged that by the cases of **NYESOM V. PETERSIDE & ORS supra and UCHA V. ELECHI supra p. 330** the Petitioners has the onus to prove that the corrupt practices and non-compliance took place and that they affected the outcome of the election. He again dwelt heavily on the evidence of PW62 as proving that Petitioners allegations have enabled the Petitioners to discharge the onus of proof on them. He relied on the cases of **ADINDUNZE V. CHRISTIAN NJOKU & ORS (2017) LPELR-42440 CA and NZE V. NPA (1997) LPELR-6254 CA.**

He again said that PW6 was not cross examined on his evidence in-chief. That 1st Respondent is bound by its Manual, Guidelines as well as Regulations. He relied on the case of **ANDREW V. INEC supra 563 D-A.**

He submitted that the evidence led by the Petitioners in this case through various witnesses as well as documents tendered by Petitioners is sufficient proof of grounds 2 and 3 of the Petition. He also stated that 1st and 3rd Respondents blundered when they failed to call evidence and that amount to admission of Petitioners' case. He relied on the cases of **AKANNI V. MAKANJU (1978) 13 AT 22 (sic) and DINGYADI VS. WAMAKO (2008) 17 NWLR (PT. 116) 395 AT 449-450 G-A.**

That pleadings without evidence is deemed abandoned. He relied on **OGUNTADE V. OSHUNKEYE (2007) 15 NWLR (PT. 1057) 218 AT 286 G-H.** He urged the Court to hold that grounds 2 and 3 of the Petition have been established and that Petitioners proved their entitlements to the reliefs sought.

In reply on point of law the Learned Senior Counsel debunked the submissions on abandonment of pleadings and failure to call evidence to submit that there was enough evidence extracted from Petitioners' witnesses under cross examination and since the Petitioners lead insufficient evidence the onus remains on them and not on the Respondents.

He relied on **OMISORE V. AREGBESOLA Supra.** He submitted that evidence of PW59 and PW60 is caught under Section 83(3) of the Evidence Act and that even then the pieces of evidence given by PW39 and PW60 have been destroyed under cross examination. That PW60 did not identify Pink Copies of Result he relied on for his analysis of Exhibits P87 -

89 and PK90-AK . He relied on **UTB V. AWANZIGANA ENT. LTD (1994) 6 NWLR (PT 348) 56 AT 77 B-F** to submit that no probative value should be accorded Exhibits P90-AK more so that the allegations involves criminality. He relied on the case of **OKE V. MIMIKO No. 2 Supra**. He submitted that allegations of corrupt practices and non-compliance were not established as laid down by law. He relied on the cases of ANDREW V. INEC supra and WAZIRI V. GEIDAM supra that contrary to the position of the Petitioners on onus of proof and documents tendered, the current position of the law is as abated in **UDOM V UMANA** supra; **NYESOM V. PETERSIDE** supra and **ANDREW V. INEC supra**.

He also stated that current position of the law on what this required of a Petitioner who alleges non-compliance is that he must call eye witness in each of the Polling Units which the allegation was made relying on **AREBESOLA V OYINLOLA supra and ANDREW V. INEC supra.**

The relevant paragraphs of the Petition in respect of the allegation of corrupt practices can be found in paragraphs 364-387 of the petition while portion pertaining to allegation of non-compliance with all provisions of the Electoral Act 2010 as Amended. The elements of corrupt practices are given as follows: -

(a) Compromised printing/production of electoral materials.

(b) Manipulations/misuse of staff resources.

(c) Manipulation of the ballots and ballot boxes.

(d) Manipulation of Card Readers.

(e) Manipulation of accreditation and collation

(f) Manipulation of Security Agencies and militarization of the election.

(g) Manipulation of election material delivery.

(h) Arbitrary arrest and detention of Petitioners' members and supports.

(i) Massive thumb printing of Ballot papers.

Particulars of non-compliance with the provisions of the Electoral Act 2010 as amended are stated as follows: -

1. Non holding of elections and cancellation of results.

2. Wrong and deliberate entry of wrong results.

3. Non Accreditation.

4. Non-Authentication of results by President Officers.

5. Over-voting.

6. Inflation and deflation of votes.

7. Wrong Entries the Forms EC8As.

8. Non Accreditation.

All of these were said to have affected eleven (11) States – of BORNO, YOBE, BAUCHI, GOMBE, JIGAWA, KADUNA, KANO, KATSINA, KEBBI, NIGER and ZAMFARA STATES.

Pursuant to Section 135(1) of the Evidence Act and settled position of the law the Petitioners are under a duty to prove all the allegations under the two issues beyond reasonable doubt and by witnesses who can give an eye witness account of the allegations since they are all criminal in nature. See –

1. UDOM GABRIEL EMMANUEL V. UMANA & ORS (2016) 12 NWLR (PT. 1526) 179 AT 216, E-H TO 217 A, per NWEZE, JSC, who said:-

   "In one word, the lower court, relying on an opinion in a Newspaper article, purported to abrogate section 135(1) of the Evidence Act, 2011 by judicial fiat. That section provides that:

   > ***"135(1) If the commission of a cri me by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt. In my humble view, it is difficult to see how the lower court could have, legitimately, wished away the position of this court which, interpreting the above section, has maintained that a petitioner who makes an allegation of the commission of a crime the basis of challenging the election of a candidate who was returned, must prove that allegation beyond reasonable doubt. Buhari v. Obasanjo (2005) SCNJ 147; (2005) 13 NWLR***

(Pt. 941) 1; Nwobodo v. Onoh (1984) 1 SCNLR 1 at 28.

Now, as pointed out above, the allegations of violence, voter intimidation, hijacking and snatching of electoral materials, kidnapping, and others, (in paragraphs 27, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 54, 61(i-iv), 61(x), (xi), 72(ii), 26 - 43, 76, 77, 78, 82, 83, 88 and particularly paragraph 15(1) of the first and second respondent's petition are criminal in nature and ought to be proved beyond reasonable doubt."

2. ALH. ADAMU M. WAZIRI & ANOR VS. ALH. IBRAHIM GEIDAM (2016) 11 NWLR (PT. 1523) 230 AT 277 H TP 278 A-D, per ONNOGHEN, JSC later CJN (Rtd.) who said:-

"In the case of Omisore v. AregbesoLa (2015) 15 NWLR (Pt. 1482) 205 at 234 - 235), this court has this to say: "I need to emphasize that in election petitions, where allegation of corrupt practices are made, the petitioner making these allegations must lead cogent and credible evidence to prove them beyond reasonable doubt because they are in the nature of criminal charges. Being criminal allegations, they cannot be transferred from one person to another. It is personal. Thus, it must be proved as follows:

(1) that the respondent whose election is being challenged personally committed the corrupt acts or aided, abetted, consented or procured the

commission of the alleged corrupt practices. that where the alleged acts was committed through an agent, hat the agent was expressly authorized to act in that capacity or granted authority; and that the corrupt practice substantially affected the outcome of the election and how it affected it."

3. WIKE EZENWO NYESOM V. HON. DR. YAKUBU PETERSIDE & ORS (2016) 1 NWLR (PT. 1512) 453 AT 532 H TO 533 A-G, per KEKERE EKUN, JSC, who said: -

"The law is trite that the results declared by INEC enjoy a presumption of irregularity. In other words, they are prima facie correct. The onus is on the petitioner to prove the contrary. See: Buhari v. Obasanjo (2005) 13 NWLR (Pt.941) 1; Awolowo v. Shagari (1979) 6 - 9 SC 51; Akinfosile v. Ajose (1960) SCNLR 447.

Section 139(1) of the Electoral Act, 2010 (as amended) provides:

"139(1) An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or court that the election was conducted substantially in accordance with the principles of the Act and that the non- compliance did not substantially affect the result of the election."

Where a petitioner complains of non-compliance with the provisions of the Act, he has an onerous task, for, he must prove it polling unit by polling unit,. ward by ward and the standard of proof is on the balance of probabilities. He must show figures that the. adverse party was credited with as a result of the non-compliance e.g. Forms EC8A, election materials not signed/stamped by Presiding Officers. It is only then that the respondents are to lead evidence in rebuttal. See: Ucha v. Elechi (2012) 13 NWLR (Pt.1317) 330 at 359, E-G. It is also the law that where the commission of a crime by a party to a proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. See: section 135(1) of the Evidence Act, 2011. The burden of proof is on the person who asserts it. See: section 135(1) of the Evidence Act 2011. See also: Abubakar v. Yar'Adua (2008) 19 NWLR (Pt 1120) 1 at 143, D; 144, B; Buhari v. Obasanjo (supra) Omoboriowo v. Ajasin (1984) 1 SCNLR 108; Kak. 7. D.p. (2014) 15 NWLR (Pt. 1430) 374 at 422 - 423, B-C."

4. PASTOR IZE-IYAMU OSAGIE ANDREW & ANR. VS. INEC & ORS (2018) 9 NWLR (PT. 1625) 507 AT

"The appellants' reliefs were founded on non-compliance with the provisions of the Electoral Act. The settled position of the law is that where a petitioner alleges non-compliance, he has the onus of presenting evidence from

eye witnesses at the various polling units who can testify directly in proof of the alleged non-compliance, particularly where the allegations relate to non accreditation/improper accreditation, inflation or reduction of scores, alteration of results, over voting, etc. See: Buhari v. Obasanjo (2005) 13 NWLR (Pt.941) 1 @ 315-316 B-C; Buhari v. LN.E.C. (2008) 19 NWLR (Pt.1120) 246 @ 391-392 H-A; Amosun v. LN.E.C. (2010) LPELR - 49431 @ 120-121, Okereke v. Umahi (2016) 11 NWLR (P.t.1524) 438 @ 473; Nyesom v. Peters ide (2016) 7 NWLR (Pt.1512) 452; Ucha v. Elechi (2012) All FWLR (pt.625) 237; (2012) 13 NWLR (Pt. 1317) 330.

In the instant case, the trial court painstakingly considered the evidence of each and every witness who testified on behalf of the appellants and further considered the evidence adduced on Local Government basis to determine whether they had discharged the burden of making out their case. After this thorough exercise the court held, rightly in my view, that the burden of proof was not discharged and queried whether in the circumstances the burden had shifted to the defence.

Notwithstanding its finding that the, appellants had not discharged the burden placed on them, the court still went ahead to consider the evidence of the

respondents' witnesses in the same manner as it had done with the appellants' witnesses and ascribed or did not ascribe probative value to their evidence accordingly before reaching its final conclusion that the petition lacked merit. In other words the same treatment was given to the testimony of the respondents' witnesses."

5. PDP V. INEC (2014) 17 NWLR (PT. 1437) 525 AT 569 B-G per OKORO, JSC, who said: -

"Again the appellant alleged that 1,900 polling units were created by INEC at the eve of the election. In the court, the appellant was talking about "polling points" as if polling units are the same as polling points. Be that as it may, there is no iota of evidence to support this allegation. The appellant on page 37 of Vol. 1 of the record of appeal stated the document it will rely on to prove this issue. These are (1) certified true copy analysis of voting points to be obtained from INEC on subpoena and (2) certified copy of all documents relating to the additional polling points. With due respect, none was produced. Thus, the appellant failed woefully to prove this issue.

This court has held in Ucha v. Elechi (2012) 3 SC (Pt. 1) 26 at 59; (2012) 13 NWLR (Pt. 1317) 330 at p. 359 paras. E-G that:

"Where a petitioner complains of non-compliance

with the provisions of the Electoral Act, 2010 (as amended), he has a duty to prove it polling unit by polling unit, ward by ward. He must establish that the non- compliance was substantial, that it affected the result of the election. It is only then that the respondents are to lead evidence in rebuttal."

As it turned out in this case, the appellant failed woefully to bring its case within the parameters set by this court. Since the appellant failed to prove its case, the 1st respondent, though had tendered some document in proof of his case, had no business rebutting as nothing was there to rebut. See Chime v. Onyia (2009) 2 NWLR (Pt.1124) 1; Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1.

In all, I must say that the appellant has not shown that the election was not conducted substantially in accordance with the principles of the Electoral Act 2010 (as amended). I agree with the lower court that the tribunal was right to hold that the alleged non-compliance, if any, did not affect the result of the election.

Accordingly, this issue does not avail the Appellant"

The position of the law is thus settled that a Petitioner who alleges non-compliance with the provisions of the Electoral in the conduct of

election or in the Electoral process particularly in Polling Units where the election took place has the onerous duty of calling eye witnesses polling units by polling units to give evidence of the non-compliance. It is also apposite to say that the position of the law today as settled by this Court and by the ultimate court in the land, the apex Court is that where allegations of non-compliance with the provisions of Èlectoral Act and allegation of corrupt practice are made coupled with allegations of commission of crimes in electoral processes, eye witness account must be called and the allegations will have to be proved beyond reasonable doubt.

How have the Petitioners fared in the quest to upturn the election on the two allegations under Issues 4 and 5?

Now under ground 2 of the petition dealing with non-compliance with the provisions of the electoral Act 2010 as amended, the Petitioners pleaded in paragraphs 227, 231, 232, 233, 234, 236, 250, 293, 299, 302, 303, 306, 308, 309, 310, 317, 322, 328, 329, 333, 335, 373, 380 and 381 of the petition that the Agents of the Respondents were stationed at polling units in Yobe State, Kebbi State, Kaduna State, Bauchi State – Gamawa Local Government, Misau Local Government Area, Kogi State – Delema Local Government comprising of 12 Wards, Zamfara State – Anka LGA, Shinkafi LGA, Bukkuyum LGA and in paragraphs 373, 380 and 381 (under corrupt practices) connived with members of Security Agents namely members of the Armed Forces –

(1) Intimidating and chasing away supporters of Petitioners and members of PDP.

(2) Stuffing of Ballot Boxes with Ballot papers.

(3) Assisting the members of APC and supporters of the 2nd Respondent to carry out multiple voting.

(4) The Army and Police Forces connived with Respondents to carry out massive rigging in the strongholds of the Petitioners.

(5) That the election was marred in Bauchi State by irregularities, violence, harassment and intimidation of Petitioners Agents by policemen and Military men aided by Respondents and that there was unlawful cancellation of votes.

(6) That no real voting or election took place in Dekina LGA of Kogi State as heavily armed thugs and fake policemen sponsored by 3rd Respondent invaded several Polling Units.

(7) That Nigerian Army were used by Respondents in Zamfara State to chase away PDP supporters and that other criminal acts were committed by them.

(8) That in Nassarawa State that out of 1496 Polling Units the 1st Respondent returned nil accreditation in 68 Polling Units.

(9) That 2nd Respondent manipulated and used security agencies to influence the outcome of the election to favour him by retaining

Genera Tukur Yusuf Buratai, Chief Army Staff, Admiral Ibok Ekwe Ibas, Chief of Naval Staff and Air Marshal Sadique Abubakar, Chief of Air Staff with a view to using them to intimidate supporters of the opposition to prevent them from voting.

(10) That in rivers State, Oyo State, Kaduna State notable members of PDP were detained or arrested.

(11) That in Rivers, Borno, Benue,Kogi, Yobe, Kebbi, kaduna, Zamfara, Nasarrawa, Plateau and practically in all States of the Federation, Military and Police Officers actively informed members and supporters of Respondents to attack, terrorized and scare away 2nd Petitioners and supporters of 1st Petitioner to prevent them from voting.

(12) That soldiers invaded several LGAs in Rivers State to disrupt elections.

(13) That there was massive multiple thumb printing of Ballot papers by Agents of 2nd and 3rd Respondents in connivance of the 1st Respondent.

(14) That prominent members of PDP were detained in those States (11) by Security Forces at the instance and promptings of the 2nd and 3rd Respondents.

All the above inventories of criminal allegations as pleaded and alleged by the Petitioners in their pleadings were not and are not

established before the Court as none of the party Agents or Polling Agents of the Petitioners were called to prove the various criminal allegations made against the Respondents and members of the Nigerian Army and the Police Force.

The only Polling Agents called are PW5, Unit 008 Zamfara Nagogo Gruaram-Jigawa.

2. PW6 – Unit 001. Farm – Dutse – Gwaram – Jigawa.

3. PW12 – Unit 009. Tanko Kuba1 - Nasarawa.

4. B Chanchanga. Niger State

5. PW46 009. Sharp Corner Karu Nasarawa State and

6. PW49 – 001 Muroa Akwanga, Nasarawa State.

The other witnesses who gave evidence that is PW14, 15, 39, 43, 48, 50, 51 52, 56, 57, 58, PW13, PW14, PW15, PW51 are Ward Collation Agents from Niger state, Nasarawa State, Yobe State, Borno State, Kogi State who virtually testified of information passed to them by their Agents at Polling Units.

Those who testified as LGA Collation Agents are PW9, PW10, PW11, PW13, PW18, PW19, PW20, PW21, PW22, PW24, PW25, PW26, PW27, PW28, PW29, PW30, PW31, PW32, PW33, PW34, PW35, PW36. PW37, PW38, PW44, PW45, PW47, PW53, PW54 and PW55 from Katsina State,

Niger State, Bauchi State, Kaduna State, Borno State, Gombe State, Nasarawa State, Yobe State, Katsina State.

Those who testified as State Collation Agents are PW7 Niger State, PW8 Katsina State, PW23 Borno and PW61 from Kogi State. Though some Ward Collation Agents said they visited some of the Polling Units under them where there were complaints of violence or anomalies but none of them covered all Polling Units and none of them stayed at any particular Polling Units throughout the duration of the election. Apart from two or three who said they did not vote, all, the witnesses voted and were duly accredited by their own account.

However apart from the five witnesses from Polling Units, the other witnesses are hearsay evidence of what allegedly took place at the Polling Units. Their pieces of evidence either alone or taken together did not establish all or any of the facts pleaded under grounds 2 and 3 of the Petition and all the criminal allegations contained in paragraphs 227, 231, 232, 234, 236, 250, 293, 299, 302, 306, 308, 309, 310, 317, 322, 328, 329, 333, 335, 373, 380 and 381 of the petition are not proved by the evidence of the aforementioned witnesses.

Those witnesses are also not in a position to prove or establish any of the allegations under Issues 4 and 5 they not being eye witnesses of all that were alleged as having taken place at Polling Units. The Polling Agents whose could have testified to the horrendous allegations of crimes were not called. See –

1. GUNDIRI V. NYAKO (2014) 2 NWLR (PT. 1391) 211 AT 244 C-H, TO 245 A-H per OGUNBIYI, JSC, now said:

"It is also relevant to mention that the burden of proof was on the appellants as the petitioners to prove their petition. They are therefore under a duty if they must succeed, to prove their case with all the available evidence they could find. It is intriguing I hold, that the polling agents of the appellants, although they were themselves appointed specifically to witness the elections and are recognized under the Electoral Act, were not however called as witnesses. At least there is not evidence of such on the record.

At page 3655 of the record, the trial tribunal in that respect held and said:

> ***"for some unexplained reason, the petitioners failed to call a single polling unit agent who was at the polling units and witnessed first hand, the entire election process at the said units from commencement of election to announcement of result."***

The failure to call the polling agents was very detrimental to the appellants' case. There is also no appeal against the said findings. As rightly submitted by the learned 1st and 2nd respondents counsel therefore, the tribunal could not be expected to assume that their evidence would have been

favourable to the case of the appellants had the polling agents testified. The law to the contrary would require the tribunal to presume that, had the polling agents been called, their evidence would have been detrimental to the appellants' case and hence their reason for refusing them to testify. As a corollary, a case in reference is INEC v. Anthony (2011) 7 NWLR (Pt. 1245) p. 1 at 22 - 23 wherein it was held thus:

"By the provision of section 46(1) of the Electoral Act, 2006, each political party may by notice in writing addressed to the Electoral Officer of the Local Government or Area Council appoint a person as aSuch polling agents by the provision of section 44(3) of the Electoral Act, 2006, shall be present at the distribution of Electoral Materials from the office to the polling booth. Therefore from the above the only persons who are entitled by law to testify as to whether or not election result sheets were distributed and the time of the arrival of electoral materials at the polling units are the polling units agents."

The significance of the polling units agents cannot therefore be underestimated in the case at hand if the appellants must have the facts to prove their case. The best evidence the appellants could have had was

that of the agents at the polling units who were physically on ground and in true position to testify as to what transpired at an election. The consequence of shutting them out for whatever reason is very detrimental to the appellants' case. See the case of Hashidu v. Goje (2003) 15 NWLR (Pt. 843) 352 and Buhari v. Obasanjo (2005) All FWLR (Pt. 273) 1 at 164 - 165, (2005) 13 NWLR (Pt. 941) 1 at 248, paras. B-C wherein Ejiwunmi, J.S.C. said amongst others:

> *... The evidence required to establish a crime must be evidence of a witness who saw or heard or took part in the transactions upon which he was giving evidence. It is written law that hearsay evidence is not admissible for the purpose of establishing a crime. See section 77 of the Evidence Act ... "*

On the fatal effect of failing to call a polling agent, the case of Agballah v. Sullivan Chime (2009) 1 NWLR (Pt. 1122) 373 at 433 - 434, para. H is relevant "Wherein it was held in part thus:

> *"None of the appellant's party agents that allegedly represented the appellant at, signed and collected the said election results forms from the numerous polling units was, called to testify in the petition. A fortiori, the failure of the appellant to call the party agents that represented and served as his representative at the various polling unit to give*

evidence was fatal to the petition."

2. CHIEF ALEX O. OKE & ANOR VS. DR. R. O, MIMIKO & ORS (2014) 1 NWLR (PT. 1388) 332 AT 376 D-H per PETER ODILI, JSC who said:

"On a revisit of the evidence of PW 45 who testified on what transpired in over 1000 polling units. That witness assumed the role of a polling agent whose functions are defined by section 45 of the Electoral Act. Polling agents represent the respective political parties at the numerous polling units in obvious recognition of the enormity of the task of those monitoring the election in all the polling units of the State. Even though the 1st appellant was at liberty to perform the duty of polling agent for himself and his party, being human he can only be physically present at only one polling unit at a given time and so cannot perform the same task with the same title as polling agent in any or all the other polling units and so when the evidence is to be provided as to what happened in disputed units other than the one he is physically available at then he is not qualified to testify thereto. This is because section 45(2) Electoral Act expects evidence directly from the relevant field officer at the required polling unit. Therefore when PW45 set out to testify as a State agent armed with all the evidence of what occurred throughout the State in relation to each polling unit, he did so under a misguided

understanding of what the Electoral Act had prescribed. I place reliance on Buhari v. Obasanjo (2015) 13 NWLR (Pt. 941) 1 at 315; ACN v. Nyako (2012) 11 MJS 1 reported as A.CN. v. Lamido (2012) 8 NWLR (Pt. 1303) 560"

3. ANDREW V. INEC & ORS (2018) 9 NWLR (PT. 1625) 507 AT 563 H, per OKORO, JSC who said:

"It stands to reason that only persons who were physically present at the polling units who could give evidence as to what transpired there. They apparently failed to bring such category of witnesses to testify. As I had held before, this is the bane of Appellants case. See Oke v. Mimiko supra."

The Petitioners did not call any of the persons detained or arrested by security Agents as the alleged agents of the 2nd and 3rd Respondents to give evidence of their arrests or detention or harassment, except PW1 BUBA GALADIMA who gave evidence that he was before and after the election harassed or invited by Security Agents. His evidence has nothing to do with allegations of wrong doing at Polling Units.

All paragraphs of the Petition pleading allegations of misconduct by the Army or the Police are not established by the Petitioners. There is no admissible evidence on record to support them. It is also worthy of note that none of the witnesses was shown any Forms EC8As, EC8Bs or EC8Cs to identify in relation to the Polling Units, Wards, LGA or State Collation

Centres he operated on the day of election and no documents were tendered through them except through the Bar, PW40 and PW62.

It is also here pertinent to refer to paragraphs 277, 319, 326, 334, 336, 338, 349, 350, 352, 358, 368, 369, 370, 371, 372 and 383 of the petition falling under grounds 2 and 3 (Issues 4 and 5) where certain individuals were accused of various electoral offences, acts of thuggery and compromise.

There is also no admissible evidence from any of the witnesses to link all the individuals therein mentioned with any of the allegations of corrupt practice and non-compliance and non-compliance with the Electoral Act 2010 as amended. The allegations against the said individuals were not established. Whatever evidence lead, and there is none, tantamount to hearsay evidence as none of the witnesses actually witnessed any of the facts pleaded in the just mentioned paragraphs of the petition.

What is more none of the personalities accused including the Security Agents are parties to these proceedings and this Court will be acting in violation of their right as enshrined in Section 36(1) of the Constitution 1999 as amended to adjudged them as guilty of the allegations against them in their absence. See WIKE EZENWO NYESOM V HON. (DR) DAKUKU ADOL PETERSIDE & ORS (2016) 7 NWLR (PART 1512) 453 AT 536 C - G per KEKERE-EKUN, JSC who said:-

"Furthermore, serious allegations of crime were made throughout the length and breadth

of the petition, such as hijacking and diversion of election materials, illegal thumb-printing of ballot papers, falsification of results, violent attacks on voters, kidnapping, etc. The 1st and 2nd respondents had the burden of proving the allegations beyond reasonable doubt. Where crimes are alleged, the ingredients of the offences must be proved. This they failed to do. None of the alleged perpetrators was joined in the petition.

Interestingly, the tribunal in its judgment at page 2682 Vol. 4 of the record, made the following observation:

> ***"Before we proceed into the issue distilled or determination, we wish to state that in our ruling delivered on 9/9/2015, certain paragraphs were struck out in the circumstance. In the course of its judgment, the tribunal did not revisit the issue to ensure that no evidence of criminal allegations concerning unidentified individuals, security agents, etc was led. The generalised evidence led by mobile policemen, officers of the Department of State Security and Military officers wert against unidentified individuals***

and unidentified PDP thugs."

The allegations contained in paragraphs above mentioned against different individuals are unproved and are hereby discountenanced.

It must also be stated that serious and criminal acts of electoral offences and other criminal acts, irregularities, anomalies, rigging, etc., as laid out at the onset of treatment of Issues 4 and 5 were made against the Respondents and those perceived to be their agents on the day of election. The wide spectrum of criminal allegations and other wrong doings are pleaded in paragraphs 107 to 387 of the petition yet the Petitioners called 62 witnesses who could not give direct evidence or firsthand information about the facts pleaded.

I am not unmindful of the strong submissions of Learned Senior Counsel to the Petitioners who stated that the evidence of PW60 and PW62 actually proved and established grounds 2 and 3 of the petition (Issues 4 and 5) in that their evidence was not challenged under cross examination.

In the Petitioners' Final Address in reply to 1st Respondent's Final Written Address, paragraphs 5.02, 5.03, 5.17 and 5.18 thereof the learned Senior Counsel to them said:-

"5.02 Beyond averments in their Petition, the Petitioners called several witnesses in support of their case on corrupt practices and substantial noncompliance by reason of which the election and return of the 2nd Respondent should be

invalidated. For ease of reference, we set out hereunder the summaries/particulars of evidence led in support of this aspect of the Petitioners' case, showing as well the spread of electoral malpractices across 11 focal States and substantial noncompliance across the country as demonstrated most especially by PW40, PW60 and PW61.

5.03 On 4/7/2019, 5/7/2019, 8/7/2019 and 19/7/2019, the Petitioners tendered documents (Certified True Copies, Originals and Computer generated documents) among which were: CTCs of EC8C, EC8Bs and EC8As, for Niger State, together with receipt of payment for certification, all tendered and admitted as Exhibits PNG1 to PNG3465; Exhibits PYB1 to PYBt732 in respect of Yobe State. CTCs of EC8C, EC8Bs and EC8As, together with receipts of payments for certification, were tendered for Kastina, Kebbi, Borno, Jigawa and Gombe as Exhibits PKT 1 to PKT 3377, Exhibits PKB 1 to PKT 2105, Exhibits PBO1 to PBO 3,471, Exhibits PJG1 to PJG 3,161 and Exhibit PGB 1 to Exhibit PGB 1911 while CTC of ECBBs and EC8As were equally tendered for Bauchi State as Exhibit PBC 1 to Exhibit PBC 359B and CTCs of EC8C, ECBBs and

ECBAs for Kaduna were equally tendered and admitted in evidence as Exhibit PKD 1 to Exhibit PKD 3334. The tendering of CTCs of EC8C, EC8Bs and EC8As for Kano started on 5/7/2019 and were concluded on 8/7/2019 and same were admitted as Exhibit PKN 1 to Exhibit PKN 5B06 and on same date Pink copies of EC8C, EC8Bs and EC8As for 1st Respondent's Zamfara State Headquarters were tendered and admitted as Exhibit PZF ~ to Exhibit PZF 1000. Additional CTCs of EC8Bs and EC8As together with receipt of payments for certification were tendered and admitted for Kano State as Exhibits PKN 507 to PKN 7196. lastly, CTCs of EC8As, EC8Bs and EC8Cs, as subpoenaed from Zamfara, were tendered together with receipt of payments for certification and admitted as Exhibits PZF1001 to PZF4901. Likewise, CTCs of EC8Ds, EC8D(A), EC40G (2), Form EC40G (3), Report of Card Reader Accreditation for 2019 Election, Report on all PVCs used for the 2019 Elections from Card Reader 1-29, 053, as subpoenaed from the 1st Respondent's Headquarters, were tendered together with receipt of payments for certification and admitted as Exhibit P93- 129, P130, P131-166, P167, P168, P169, P170 -172, P173 and-P174

5.17 PW60, a subpoenaed expert also gave evidence of how he was professionally engaged to conduct a comprehensive analysis of CTCs of EC8As, EC8Bs and EC8Cs deployed for the Presidential elections in Kaduna, Kano, Katsina, Bauchi, Borno, Gombe, Yobe, Kebbi, Niger and Jigawa; as well as Petitioners' pink copies of EC8As, EC8Bs and EC8Cs deployed for the Presidential elections in Zamfara. (See paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of statement contained on pages 2 to 5, Expert Witness Statement on Oath filed18/7/2019). He found incidence of over voting, uttering or mutilation, cancellation and lack of 1st Respondent's stamp or signatures on a large number of these forms. He opined that from the documents under his purview, no less than 5,967,042 votes polled by the 2nd and 1st Respondents are voidable, while no less than 1,821,972 votes polled by the Petitioners are voidable too. (This was not discredited under cross examination. And assuming without conceding that the final results announced by the 1st Respondent as stated in Exhibit P3 was correct, the final standing of the two contestants after deduction of these voidable votes will be

9,224,805 and 9,441,006 for APC and PDP respectively. As such, the return of the 2nd Respondent by the 1st Respondent, as duly elected is not in compliance with the provisions of the Electoral Act on the required vote for making such a return).

5.18 PW62 testified and adopted his 4 depositions which spoke to all the Petitioners Pleadings and Replies. He chronicled litanies of incidence of non compliance with the provision of the Electoral Act and corrupt practices by reason of which the election and return of the 2nd Respondent should be invalidated. Please see paragraphs 107 to 368 of his Witness Statement on oath deposed to on 18/3/2019. See also the statement on oath of this witness deposed to on 15/4/2019, 26/4/2019 and 18/4//2019."

PW61 is a State Collation Agent of the Petitioner Kogi State for the Petitioners. He is Captain Joe Agada, Rtd. Under cross examination he stated that he voted in a polling unit at Olaruaboro Unit 18. That in some cases disturbances started before election. He visited four Polling Units on the day of election and there are about 2,300 Polling Units in his State. He visited four Polling Units where violence was perpetrated. This was under cross examination by Usman, SAN.

Under cross examination by Chief Wole Olanipekun, SAN, he said among other things that he was duly accredited before he voted by the Card Reader. He did not have Form 40G to evidence the recording of the violence. He did not have Form EC8D with him. He did not sign and he refused to collect the state result. He did not have Voters Register in respect of places complained about that despite these complaints the state result was released.

PW60 was engaged to carry out comprehensive analysis of CTC's of Forms EC8As, EC8Bs and EC8Cs deployed in eleven (11) States. The evidence of PW60 was comprehensively examined under issue 3 relating to whether 2nd Respondent was elected by majority of lawful votes and his evidence was adjudged to be of no probative value. He produced documentary hearsay as he was not the maker of any of the election Forms he allegedly did forensic analysis upon. It is not for him to sit in the recess of his office examined Forms EC8As, EC8Bs and EC8Cs and then come to give evidence as in Exhibit P90-90AK to the effect that there was inflation and deflation by votes or over voting, alteration of document and mutilation of the result sheets. His evidence (PW60) is clearly worthless as he was not a Polling Agent. He cannot even give any purported expert opinion on any of the exhibits tendered through him as he lacks knowledge of them and their import under the relevant electoral laws. PW60 clearly lacks the requisite competence in the examination of Forms EX8A, EC8B, and EC8C to determine over voting, inflation or deflation, etc., he not being

an expert in Electoral law and he not being a Polling Agent or Official of INEC.

PW62 is the star witness for the Petitioners and his witness statements on oath covers virtually all facts pleaded in the petition.

Under cross examination by all the learned Senior Counsel to the Respondents he left no one in doubt that he had no personal knowledge of all that happened in all the various Polling Units across the country whereat the petitioners based their allegations in paragraphs 107 to 387 of the petition. He was at the Situation Room of PDP on the day of the election and the information contained in his witness statement on oath about wrongdoings at Polling Units Ward levels, LGA levels and State levels across Nigeria were gathered from third parties who were their agents in the various Polling Units, Ward collation Centre, State Collation Centres and Local Government, Collation Centres. He was not an eye witness to any incident except at the National Collation Centre where he was the National Collation Agent. He told the Court that the collation were done all over including at National level manually.

PW62's evidence cannot in the least or at all command any probative value and the whole quantum of the pieces of evidence led by him do not at all establish or prove any of the components, ingredients or elements of monumental allegations of corrupt practices and non compliance with Electoral Act set up in paragraphs 107-387 of the petition. He cannot be in Situation Room at his party's office and be at any Polling Units or Ward,

LGA or State level on the date of election. See NYESOM V. WIKE Supra (2016) 7 NWLR (PT. 1512) 452 AT 522 D-E per KEKERE-EKUN, JSC who said:

> ***"It is worthy of note that at the point of tendering exhibit A9, PW49 an Assistant Director ICT with INEC, acknowledged that the report was in fact prepared by one Mrs. Eneua (sic: Mrs. Nnenna Essien), a member of staff in her unit. She admitted under cross- examination that she was not in Rivers State for the election and did not examine any of the card readers after the election. She stated that the machines were in Port Harcourt. She did not participate in any stage of accreditation of voters. She was certainly not in a position to testify as to how the card readers functioned during the election in Rivers State."***

And on pages 534 to 535 his Lordship of Supreme Court said:

> ***"The purport of the appellant's submission in respect of the evaluation of evidence by the tribunal, which was affirmed by the lower court is that had the tribunal and the lower court applied the decisions of this court in Kakin v. PDP and Ucha v. Elechi (supra), they would have reached a different conclusion.***
>
> ***It is significant to note that there are 23 Local Government Areas in Rivers State. According to PW53, a State collation agent, there are 4442 polling units and 1350 voting points***

in the State making a total of over 5,000 voting points. Some of the allegations made by the 1st and 2nd respondents include:

(i) Non-voting due to violence, thuggery and intimidation of voters; Snatching of election materials; Non-use of card Readers;

Non-collation of results at ward collation centres; Arbitrary allocation of figures;

Non-provision of Forms EC8A;

Result sheets not showing results of all the political parties that contested the election.

In order to prove the alleged acts of non-compliance, it was necessary for the petitioners to call witnesses from all the affected polling units to give first hand testimony of what transpired. Out of the 56 witnesses called by the 1st and 2nd respondents, 18 were ward collation agents who received information from polling agents in the various units. Their evidence was, not tied to any of the exhibits tendered.

Some of the witnesses (PWs' 19, 20, 24 and 35) who were Local Government Collation agents for the 2nd respondent gave sweeping testimony covering four Local Government Areas (Obio Akpor, Asari Toro, Tai & Ikwerre) on non-use of card readers, hijacking of materials, illegal thumb-printing of ballot papers, etc. The polling agents from the affected wards were not

called to testify.

The trial tribunal made special reference to the testimonies of PWs' 40, 49, 53 & 54. The evidence of PW49 has been dealt with extensively earlier. PW40 was the Head of Election and Party Monitoring Department, INEC, Rivers State. He described the election as a sham, warfare, a mockery of democracy. His evidence was that his team monitored elections in 19 Local Government Areas but he later stated that he visited 8 Local Government Areas! with three National Commissioners of INEC. The report of the team was admitted as exhibit A2. He however admitted under cross-examination that he did not personally visit all the Local Government Areas. He also admitted that Election Officers reported, the hijacking of materials to the team when they visited but he did not witness hijacking of materials himself (page 23 of Vol. 4).

I am inclined to agree with learned senior counsel for the appellant that the evidence of PW 40 cannot take the place of polling agents or voters who were disenfranchised."

See also BUHARI VS. INEC supra.

PW40's evidence did not touch on any issue relating to Polling Units or any of the level of collation. His evidence is about Press briefings by

INEC and it is Chairman and news pertaining to preparation of INEC for the 2019 general elections.

The Petitioners under ground 2 of the Petition dealing with non-compliance with the provisions of the Electoral Act 2010 as amended pleaded in paragraphs of his petition that there was over voting in so many Polling Units. For example in paragraph 115(3) of the Petitioners aver thus:-

> *"115(3) Over voting:*
>
> ***"The Petitioners shall contend that out of 1941 polling units in the affected 26 Local Government Areas in the State, the 1st Respondent in respect of 490 Polling Units reflected results showing that the number of votes returned exceeds the number of accredited voters. The Petitioners shall rely on the Statistician Report."***

They also pleaded that many voters on the voters Registers across 11 focal States were disenfranchised on various allegations of violence, manipulations and compromise.

The Petitioners also pleaded in paragraph 406(26) that:-

> "406 At the hearing of this Petition, the Petitioners shall rely on all necessary and relevant documents including the following, namely.

26. Certified True Copy of all the voters registers in all the polling units spanning all the Local Governments of all the States of Nigeria and the FCT, Abuja."

The law is settled that the only way to prove over voting, inflation and deflation of votes at Polling Units or manipulation of voters registers by INEC Officials as pleaded by the Petitioners can only be proved; attained is achieved by a Petitioner, by tendering voters register and Forms EC8As, EC8Bs, EC8Cand all other relevant forms used in the election to enable the Petitioners show that if the figures of scores representing over voting is removed from the declared result the Petitioner would win.

The Petitioners failed to do in this case. No voters Registers were tendered and the Forms EC8As, EC8Bs, EC8Cs, EC8E and other forms tendered were not utilized or demonstrated before this Court by of the 62 witnesses called by the Petitioners. This no doubt is also detrimental to the Petitioners' case. See:-

1. SENATOR RASHIDI ADEWOLU LADOJA V SENATOR A. A. AJIMOBI (2016) 10 NWLR (PART 1519) 87 AT 147 H TO 148 A – H per OGUNBIYI, JSC said:-

"It goes without saying that there are crucial electoral documents which must be tendered by a petitioner in proof of over-voting and how such must be tendered. The most important of such are the voters' register used in the challenged election, and forms EC8A.

These are the documents which the appellant, through its witness PW 1, admitted they did not tender and thus an admission against interest. See Ipinlaye v. Olukotun (1996) 6 WLR (Pt 453) 148 at 165.

Also in the recent decision of this court in SC.907/2015 _ Mahmud Aliyu Shinkafi & Anor v. A. Abdularee; Abubakar Yari & 2 Ors (unreported) delivered on 8th January, 2016 (now reported in (2016) 7 NWLR (Pt. 1511) 340) it was held that:-

"To prove over-voting, the law is trite that the petitioner must do the following:-

1. ***Tender the voters register.***
2. ***Tender the statement of results in the appropriate forms which would show the number of accredited voters and number of actual votes.***
3. ***Relate each of the documents to the specific area of his case in respect of which the documents are tendered.***
4. ***Show that the figure representing the over-voting, if removed would result in victory for the petitioner ---."***

Also in the case of Ucha & Anor v. Elechi & Ors (2012) 13 NWLR (Pt.1317) 330 at 360, paras. E-G it was held thus:-

"When a party decides to rely on documents to prove his case, there must be a link between the document

and the specific area(s) of the petition. He must relate each document to specific area of his case for which the document was tendered. On no account must counsel dump documents on a trial court. No court would spend precious judicial time linking documents to specific areas of the party's case. See ANPP v. INEC (2010) 13 NWLR (Pt.l212) 549."

It cannot be over emphasized that a party must relate each document to specific area of his case without such link, no court would act on such dump documents."

2. GREAT OGBURU & ANOR VS SENATOR DR OKOWA & ORS (2016) 11 NWLR (PART 1522) 84 AT 120E –H 121A-D per M. D. MUHAMMAD, JSC who said:-

"Learned senior counsel for, all the three respondents are absolutely right in their submissions that in spite of its introduction and the requirement by the 3rd respondent that the card reader be mandatorily used in the April 2015 Governorship Election in Delta State, the proof of over-voting which appellants allege has marred the election cannot and is not by reference to the card reader vis-a-vis the actual votes cast at the election. Rather, the proof of the fact of over-voting still remains by reference to the voters register, which provide the number of accredited voters, vis-a-vis the number of

votes actually cast as recorded in the Form EC8 series. In affirming its earlier decisions on the proof of substantial non- compliance with the Electoral Act as a result of over-voting, this court in one of its most recent and yet to be reported decision, appeal No. Sc. 907/20 15, Mahniud Alivu Shinkafi and Anor. v Abdulazeet Abubakar Yari delivered on January 2016. (2016) 7 NWLR (Pt. 1511) 340 at p. 38], paras. B-D, p, 382. paras, F-G restated the position of the law in spite of the advent of the card reader thus:-

"To prove over-voting, the law is trite that the petitioner must do the following:

1. *Tender the voters register.*
2. *Tender the statement of result in the appropriate forms which would show the number of registered accredited voters and number of actual votes.*
3. *Relate each of the documents to the specific area of his case in respect of which the documents are tendered.*
4. *Show that the figure representing the over-voting if removed would result in victory for the petitioner.*

There is no doubt that a petitioner is entitled to contend that an election or return in an election be invalidated by reason of non-compliance with the provisions of the Electoral Act. For a petitioner that the non-compliance substantially affected the result of the election. (italics mine for emphasis).

The submissions of Learned Silk to the Petitioners that the evidence of PW40, PW60, PW61 and PW62 supported or proved grounds 2 and 3 of the petition (Issues 4 and 5) cannot with profound respect to him, be right or correct. The pieces of evidence given by PW40, PW60, PW61 and PW62 and indeed all the witnesses called by the Petitioners do not support allegations of non-compliance and corrupt practice capable of affecting the result of the election substantially. Petitioners have not been able to prove the grounds as required by law. See NYESOM V. WIKE Supra pages 5.20 H to 521 A, per KEKERE-EKUN, JSC who said:

> ***"Furthermore, where the ground for challenge the return of a candidate in an election is by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, the Petitioner must prove (a) that the corrupt practice or non-compliance took place; and***
>
> ***(b) that the corrupt practice or non-compliance substantially affected the result of the election. See Yahaya v. Damkwabo (supra); Awolowo v. Shagari (1979) All NLR 120; Buhari v. Obansjo (2005) 2 NWLR (Pt. 910) 241 and Sections 138(1) of the Evidence Act, 2011."***

(2) ANDREW V. INEC & ORS (2018) 9 NWLR (PT. 1625) 507 AT 574 D-F per AKAAHS, JSC.

The Petitioners also made allusion to the fact that the 1st and 2nd Respondents rested their defence on evidence given by petitioners and

submitted they are deemed to have abandoned their pleadings and have admitted the Petitioners case.

I have dealt with this issue in the course of this judgment and found that it cannot be said that the 1st and 3rd Respondents abandoned their pleadings or that they have conceded the Petitioners case. No facts and evidence on record has shown that the Petitioners have discharged the initial onus or burden of proof cast on them by sections 131-136 of the Evidence Act 2011 and Electoral Act and Regulations/Guidelines made thereunder in respect of any of the grounds upon which the Petition is based. It is true as borne by the record that the evidence elicited under cross examination of Petitioners witnesses by 1st and 3rd Respondents Learned Counsel established their defence in the petition. The evidence elicited are on facts and issues joined on the petition and replies to the petition by the party. See the case of ANDREW V. INEC Supra page 581 B-H and 584 C-H where my Lord said:

> ***"With regard to the contention that the court below was wrong to affirm the finding of the Tribunal that the 1st respondent did not abandon its pleadings by failure to call evidence in support thereof, I hold the considered view that both lower courts were correct in their finding. Having tendered documents in evidence, albeit from the Bar, and having thoroughly cross-examined and discredited the appellants' witnesses, it could not be said that the***

1st respondent had abandoned its pleadings. In Akomolafe v. Guardian Press Ltd. (2010) 3 NWLR (PUI81) 338 @ 351 F-H and 353-354 H-B, this court held:

> *"Evidence elicited from a party or his witness under cross- examination, which goes to support the case of the party cross- examining, constitutes evidence in support of the case or defence of the party. If at the end of the day the party cross-examining decides not to call any witness, he can rely on the evidence elicited from cross-examination in establishing his case or defence. One may however say that the party called no witness in support of his case, not evidence, as the evidence elicited from his opponent under cross- examination which are in support of his case or defence constitute his evidence in the case.*
>
> *The exception is that the evidence so elicited under cross- examination must be on facts pleaded by the party concerned for it to be relevant to the determination of the question/issue in controversy between the parties.*
>
> *.....having regard to the fact that the relevant evidence elicited from the*

appellants relate to the facts pleaded by way of defence to the action, they form part of the respondent's case and can be relied upon by the respondents in establishing their defence to the action without calling witnesses to further establish the said defence."

It is also pertinent to deal with the submissions of the Respondents that Petitioners merely dumped documents tendered before the Court on the Court without relating them to any aspect of their case and as such the Court cannot hold that Petitioners have proved their case. That the Court cannot help the Petitioners do their job. The Learned Senior Counsel to the Petitioners argued the contrary and contended that having tendered the documents from the Bar they become evidence.

The law is now firmly settled that when documents are tendered from the Bar or tendered by a person who is not the maker the Court cannot accord such documents any probative value unless the makers are called to testify on the documents and answer questions in cross examination on them. That the iron cast position of the law. See:-

1. IKPEAZU *V.* OTTI (2016) 8 NWLR (PT. 1513) 38 AT 93 B per GALADIMA, JSC who said:-

"It is settled law that a party who did not make a document is not competent, to give any evidence on it. This is the situation here PW19 did not make Exhibit

PWC2, she cannot competently tender it. The maker must be called to testify to credibility and veracity."

2. SENATOR RASHIDI ADEWOLU LADOJA VS SENATOR ABIOLA A. AJUMOBI & ORS (2016) 10 NWLR (PT. 1519) 87 AT 146 F - H TO A - B per OGUNBIYI, JSC who said:-

"This Court in the case of Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205 at 323,332 drove home the point when it held "Documentary evidence, no matter its relevance, cannot on its own speak for itself without the aid of an explanation relating its existence."

At page 6146 of the record, the lower court found that PW1, not being the maker of exhibits 1-192, 201 and 203-216 was not competent to lead evidence on the contents of those documents. It is also held that PW1, not being a polling unit or ward agent for the appellant was not privy to the making of any of the electoral forms or documents neither was he present when they were made. This was how their Lordships concluded on PW1 .

> ***"Any evidence so adduced by him as to the contents of those documents would be hearsay and therefore inadmissible."***

The view taken by the lower court cannot be faulted, moreso where the appellant has not presented any

cogent argument to the contrary upon which this court may be invited to interfere with the well reasoned finding of the lower court. Premised on the unassailable and the detailed review, of the evidence of PW1 by the lower court therefore, it was proper that it upheld the decision of the trial Tribunal in rejecting the report/analysis qua opinion of PW1."

3. E. N. OKEREKE *VS* NWEZE DAVID UMAHI & ORS (2016) 1 NWLR (PART 1524) 438 AT 472 A - H per NWEZE, JSC who said:-

"Surely, since the witness (PW1), was not "in any polling unit in Ebonyi State on the day of election"; "had never worked at INEC office"; "did not participate in the off-loading of information from the Card Reader Machine to the INEC Data base" and "was not part of the team that came to Abakaliki for the exercise", the lower court, rightly, affirmed the position of the trial Tribunal that no weight could be attached to his evidence for he was "ignorant of(their) content".

As this court explained in Buhari v. I.N.E.C (2008) 18 NWLR (Pt. 1120) 246, 391 - 392, paras H-A.

"Weight can hardly be attached to a document tendered in evidence by a witness who cannot or is not in a position to answer questions on the

document. One such person the law identifies is the one who did not make the document. Such a person is adjudged in the eyes of the law as ignorant of the content of the document."

4. UDOM GABRIEL EMMANUEL VS UMANA OKON UMANA & ORS (2016) 12 NWLR (PART 1526) 270 AT 286 G - H TO A - B per NWEZE, JSC who said:-

"However, I wish to further emphasize on the rather reckless behavior of the court below in refusing to be guided by the decision of this court but relied on its own decision to decide that it was unnecessary to call the makers of documents exhibits 317 and 322 to testify in this case. The law is well settled that documents produced by parties in evidence in course of hearing ~re to be tested in open court before the court can evaluate them to determine their relevance in the determination of the case upon which the documents are relied upon. For this reason, any document tendered from the bar without calling the maker thereof attracts no probative value in the absence of opportunity given to other party to cross-examine for the purpose of testing its veracity. See Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205 at 322-323 which the court below refused to apply in place of its own decision in Aregbesola v. Oyinlola (2011) 9 NWLR (Pt. 1253) 458. See also the cases of Sa'eed v. Yakowa (2013) 7 NWLR (Pt.1352) 124 at 149-150 and Osigwelem v. INEC (2011) 9 NWLR (Pt. 1253) 425 at 451."

5. BASHIRU POPOOLA V THE STATE (2018) 10 NWLR (PART 1628) 485 AT 498 H TO 497 A - B per RHODES-VIVOUR, JSC.

This Court is duty bound to follow and ensure the enforcement of all the decision of the apex Court cited above.

The Respondents are therefore right in their submissions that the Petitioners dumped on the Court all the documents tendered from the Bar particularly Forms EC8As, EC8Bs, EC8Cs, EC8G, EC8E and among other documents. None of them was utilized by any of the 62 witnesses who testified on behalf of the petitioners and as such the said documents have no evidential value. See

(1) MR. LABARAN MAKU V. ALHAJI UMARU TANKO AL-MAKURA 7 ORS (2016) 5 NWLR (PT. 11505) 201 AT 221 E-H to 223 A, per M. D. MUHAMMAD, JSC who said:

"It is incumbent on him, in addition to pleading material facts which constitute miscalculation of votes or falsification of results, to plead such other malpractices and non-compliance with the Electoral Act and to further lead evidence in support of these pleadings. The tribunal at page 3115 of the record found that appellant only "dumped" the various documents on it did not tie them to specific aspects of his case.

Accordingly, the tribunal found, appellant did not prove his case. The lower court affirmed these findings of the tribunal at pages 3349-3350 of the record. These are the

findings of the two courts below the appellants asserts are perverse.

On scrutinizing the record of appeal one' must agree with learned counsel to the respondents that the findings of the two courts below that the appellant only "dumped" the documents which would otherwise have sustained his case remain unassailable. Indeed, as counsel rightly further submitted, most of the documents produced by the 3rd respondent on subpoena were never even tendered by the petitioners let alone have the tribunal admit them in evidence. To establish his case, the principle is indeed not only for the appellant to tender and have admitted the evidence he relies in making his case, he must go the extra mile of linking the evidence, here the various documents, to specific aspects of his case. Appellant's contention in his brief that it was impracticable to link the various documents he tendered to specific aspects of his case is a subtle admission that he did not. Learned counsel to the respondents are again on a firm wicket that the demonstration of the value of the various documentary exhibits resorted to by the learned appellant counsel at paragraphs 4.65 to 4.87 on pages 14-19 of the appellant's brief is a desperate and belated effort at doing not only the needful but the necessary.

The reliance of the two courts on the decisions of this court in determining the fortunes of appellant's

petition, given his failure to tie the various documents to specific aspects of his case, is as apposite as it is mandatory. In Abubokar v. Yar'adua (2008) 18 NWLR (Pt.1120) 1 at 173 paras. D-F this court re-stated the principle thus:

> ***"A petitioner who contests the legality or lawfulness of votes cast at an election and subsequent return must tender in evidence all the necessary evidence by way of forms and other documents used at the election. He should not stop there. He must call witnesses substantially affected the result of the election. The documents are among those in which the results of the votes are recorded. The witnesses are those who saw it all on the day of the election not those who picked that evidence from an eye-witness. No, they must be eye witnesses too."***
>
> ***See also Iniama v. Akpabio (supra); Ucha v. ELechi (supra) and Omisore v. Aregbesola (supra).***"

And at page 230 of the report RHODES-VIVOUR, JSC said on pages 230 C-H to 231 A-B of the report thus: -

> ***"Documents were tendered from the bar. It is the duty of the party tendering the said documents to***

relate each documents tendered to the part of the case he intends to prove. Both courts below were correctly of the view that the appellant failed to relate documents tendered to the part of the case he intends to prove. This could be very fatal, and usually is. Indeed in Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) p. 330 @ page 360, paras. E-H.

On dumping of documents I said that:

> *"When a party decides to rely on documents to prove his case, there must be a link between the document and the specific areas of the petition. He must relate each document to the specific area of his case for which the document was tendered. On no account must counsel dump documents on a trial court. No court would spend precious judicial time linking documents to specific areas of a party's case. See N.P.P. v. INEC (2010) 13 NWLR (Pt. 1212) p. 549. A Judge is to descend from his heavenly abode, no lower than the tree tops, resolve earthly disputes and return to the Supreme Lord. His duty entails examining the case as presented by the parties in accordance with standards well laid down. Where a Judge abandons that duty and starts looking for irregularities in electoral documents, and*

investigating documents not properly before him he would most likely be submerged in the dust of the conflict and render a perverse judgment in the process."

Several documents after being admitted in evidence as exhibits were of no evidentiary value as there was no oral evidence to explain why they were tendered. It is the duty of appellant's counsel to link documents tendered to specific areas of the appellant's case, a procedure he failed to follow with obvious consequences.

The well settled position of the law is that an appellate court (in this case this court) will rarely upset findings of fact made by a trial court and affirmed by a Court of Appeal. The reason is simple. Such findings were made by the trial Judge after cross-examination of witnesses, the Judge observing the demeanour of the witnesses, their reactions and assessing the veracity of their testimony. Such findings should not be treated lightly. But such findings of fact would be set aside by this court if found to be perverse, or cannot be supported from the evidence before the court, or there was miscarriage of justice. See Haruna v. A.-G., Federation (2012) 3 SC (Pt. IV) p. 40; (2012) 9 WLR (Pt. 1306) 419; Adekoya v. State (2012) 3 SC (Pt. 111) p. 36 (2012) 9 NWLR (Pt.

1306) 539; Anekwe & Anor. v. Nweke & 2 Ors. (2014) 4 SC (Pt. 111) p. 65; (2014) 9 NWLR (Pt. 14]2) 353; Akoma & Anor. v. Osenwokwu & 2 Ors. (2014) 5-6 SC (Pt. IV) p. 1; (2014) 11 NWLR (Pt. 1419) 462.

Both courts below were correct in their findings that relevant documents tendered by the appellant's we e not properly linked to specific areas of their petition. Ballot papers were not tendered, thereby resulting in serious flaws."

(2) PASTOR O. ANDREW V. INEC (2018) 9 NWLR (PT. 1625) 507 AT 558 C-H TO 559 A-C per OKORO, JSC who said:

"On issue of dumping documents on the Tribunal, both the Tribunal and the court below are in concurrence that the appellants dumped their documents (Exhibits) on the tribunal. The court below said this much on page 13018 of the record of appeal (Vol. 14) as follows:

> ***"What the law requires is that first of all, the maker of the document must tender it and testify to its contents. Then, the documents must be subjected to the test of veracity and credibility and where it involves mathematical calculations, how the figures were arrived at must be demonstrated in the open court and finally, the correctness of the final figure must also be shown in the open court. What the appellants did here was to dump the***

documents on the court by tendering it from the Bar, got a few witnesses to identify or recognize some of the documents and left the Tribunal to figure out the rest in its chambers is not the duty of the court to sort out the various exhibits, the figures and do calculations in chambers to arrive at a figure to be given in judgment particularly in an election petition which is challenging the number of valid votes scored by a candidate declared and returned as the winner of the election."

Without much ado, I agree with the view expressed by the court below in this matter. Both the trial Tribunal and the lower court have stated clearly in their judgments that the stated exhibits were not demonstrated in the open court by the appellants and their witnesses. My attention has not been drawn to any part of the record showing the contrary state of affairs at the trial. So, believe the views of the two courts below to be the true position.

Let me lend my voice to the trite position of the law which has been expounded in this court severally that tendering documents in bulk in election petition is to ensure speedy trial and hearing of election petitions within the time limited by statute. But that does not exclude or stop proper evidence to prop such dormant

documents. As this court stated int4.c.N. v. Lamido (2012) 8 NWLR (Pt. 1303) 560 at 592, paras. C - F, it is not the duty of a court or tribunal to embark on cloistered justice by making enquiry into the case outside the open court not even by examination of documents which were in evidence but not examined in the open court. Ajudge is an adjudicator, not an investigator I need to state clearly that demonstration in open court is not achieved where a witness simply touches a bundle of numerous documents with numerous pages.

The frontloading of evidence and tendering documents in bulk from the bar do not alter this requirement which is an element of proof. See Ogboru v. Okowa (2016) 11 NWLR (Pt. 1522) 84, Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205.

From the record of appeal, almost all the documents tendered by the appellants were tendered, by their counsel from the Bar.

Hence the decision of the Tribunal as upheld by the court below in this regard cannot be faulted.

The serious lacuna in the appellants' case is their failure to link the said documents to the relevant aspects of their case by calling the appropriate witnesses to speak to them and demonstrate their applicability to appellants' case in open court. The law is clear on the duty of a party tendering documents to ensure that such

documents qua exhibits are linked to the relevant aspects of his case to which they relate. See Ladoja v. Ajumobi (supra), Audu v. INEC (No.2) (2010) 13 NWLR (Pt. 1212) 456, Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330 at 360.

As can be seen/above, this aspect of the appellants' issue goes not avail them at all."

The exhibits remain dormant and of no probative value to the Petitioners.

In the final result, for the reasons set out in this Judgment, I have come to the inevitable decision and conclusion that the Petitioners have not proved any of the grounds contained in Paragraph 15 of the Petition, as required by the law.

For failure by the Petitioners to satisfactorily discharge the burden or onus of proof placed on them by the law, this Petition is liable to be and is hereby dismissed in its entirety.

Before I end the Judgment, I would like to commend the Learned Senior Counsel for the parties for their industry and the brilliant Final Addresses on the issues canvassed in this Petition which were very helpful to the Court in the determination of the Petition. We appreciate the cooperation of the Learned Senior Counsel and other Counsel for the parties in the conduct of proceedings before the Court.

The parties shall bear their respective costs of prosecuting the Petition.

MOHAMMED LAWAL GARBA
JUSTICE, COURT OF APPEAL

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SHERIFAT ADEBAYO
SECRETARY 1

PETITION NO: CA/PEPC/002/2019
ABDU ABOKI

I participated in the conference relating to the judgment just delivered by my Lord, M. L. GARBA, PJCA and I completely agree with the judgment just delivered. I also abide by the orders therein contained.

ABDU ABOKI
JUSTICE, COURT OF APPEAL

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SHERIFAT ADEBAYO
SECRETARY 1

PETITION NO: CA/PEPC/002/2019
PETER OLABISI IGE

I completely agree with the comprehensive, incisive and very detailed judgment of my Learned Brother M. L. GARBA, PJCA just delivered on the Petition herein.

The Petitioners have failed to prove any of the reliefs claimed in the main and the relief claimed in the alternative in the Petition.

I abide with the orders made in the lead judgment.

PETER OLABISI IGE
JUSTICE, COURT OF APPEAL

13/09/19
CERTIFIED TRUE COPY
SIGN.....
SHERIFAT ADEBAYO
SECRETARY 1

APPEARANCES:

PETITIONERS' COUNSEL

1. DR. LIVY UZOUKWU, SAN
2. K. T. TURAKI, SAN
3. CHIEF CHRIST UCHE, SAN
4. MR. PIUS AKUBO, SAN,
5. CHIEF BOLAJI AYORINDE, SAN
6. ADEBAYO O. ADELODUN, SAN
7. SAKA ABIMBOLAISAU, SAN
8. ISIYAKU IBRAHIM, SAN
9. PAUL EROKORO,
10. K. C. O. NJEMANZE, SAN
11. EYITAYOJEGEDE, SAN
12. S. T. HON, SAN
13. CHIEF MIKE OZEKHOME, SAN
14. CHUKWUMA MACHUKWU-UME, SAN
15. PROF. MAXWELL GIDADO, SAN
16. AKINPELU ONIGBINDE, SAN
17. EMEKA B. ETIABA, SAN
18. CHIEF GORDY UCHE, SAN
19. DR. MRS V. J. O. AZINGE, SAN
20. EMEKA OKPOKO, SAN
21. A. K. AJIBADE, SAN
22. OLADEKAN OJO, SAN
23. EBENEZER OBEYA, ESQ.

13/09/19
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SIGN.....
SHERIFAT ADESAYO
SECRETARY 1

24. PETER AFUBA, ESQ.
25. EMMANUEL ENOIDEM, ESQ.
26. PROF. YUSUF DANKOFA, ESQ.
27. AHMED T. UWAIS, ESQ.
28. ALEXANDER O. EJESIEME, ESQ.
29. ABDULAZIZ IBRAHIM, ESQ.
30. CHIKE OKAFOR, ESQ.
31. SHIKAMMAH K. SHELTU, ESQ.;
32. JABIRU BASHIR MOHAMMED, ESQ.;
33. SILAS JOSEPH ONU, ESQ.
34. JUDE DANIEL ODI, ESQ
35. MOHAMMED MALABU, ESQ.

1ST RESPONDENT'S COUNSEL

1. YUNUS USTAZ USMAN, SAN.,
2. O.AOMONUWA, SAN.,
3. PROF. FABIAN AJOGWU, SAN
4. SAM TOMI OLOGUNORISA, SAN.
5. TANIMUM.INUWA, SAN.,
6. ABDULRAHMAN MADAKI, ESQ.,
7. B. M. SALIHU, ESQ.,
8. MOHAMMED IBRAHIM-TOLA, ESQ.,

13/09/19
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SIGN.....
SHERIFAT ADEBAYO
SECRETARY 1

9. UDU DIEGBE, ESQ.

10. S. O. IBRAHIM, ESQ.,

11. A. I. ADEROGBA, ESQ.,

12. ADEYEMI OLUFEMI, ESQ.,

13. ODINAKA IKOROHA, ESQ.,

14. P.M.AYAMESQ.,

15. ITUAH IMHANZE, ESQ.

16. OWOLONA AAKO – ADEKWU, ESQ.,

17. A.I. IHEJIRIKA, ESQ.,

18. MATHEW ECHO, ESQ.,

19. JUSTINA FAKULUDE, ESQ,

20. PEREBOH SANAMI, ESQ.

21. WENDY KUKU, ESQ.,

22. ALHASSAN UMAR, ESQ.,

23. OKECHUKWU EKWEANYA, ESQ

24. ABDUL MUTALLAB USMAN, ESQ.

25. GUDAJI HAMZA AHMED, ESQ.,

26. GONI AHMED ISMAIL, ESQ.,

27. SUSAN IMOESI, ESQ.,

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SIGN.....
SHERIFAT ADEBAYO
SECRETARY 1

28. AHMAD KHALIL, ESQ.,

29. A. G. YIRVOMS, ESQ.,

30. ADEOLA ADENIYI, ESQ,

31. EMMANUEL EDU, ESQ.,

32. I. S. MOHAMMED, ESQ.,

33. BASHIR M. ABUBAKAR, ESQ.,

34. A. R. OGBOLE, ESQ.,

35. ONYEMAUCHE IBEZIM, ESQ.,

36. DAYO DAHUNSI, ESQ.,

37. OGBOJI CIDJIOKE O., ESQ.

38. SADIYA ABDULRAHMAN, ESQ.,

39. KADIRI OHIOLE, ESQ.,

40. ZECHARIAH MALEEKS JNR., ESQ.,

41. AMINA AHMADU, ESQ.

42. CIDDUBEM EZEILO, ESQ.,

43. GENEVIEVE OZOKA, ESQ.;

44. OLUYEMI ADEBO, ESQ.

45. A. O. AROLOYE E, SQ.

46. MUHAMMED AHMED, ESQ

13/09/19
CERTIFIED TRUE COPY
SIGN.....
SHERIFAT ADEBAYO
SECRETARY 1

2ND RESPONDENT'S COUNSEL

1. CHIEF WOLE ·OLANIPEKUN, OFR, SAN.
2. YUSUF ALI, SAN
3. DR. ALEX IZINYON, SAN
4. A. B. MAHMOUD, SAN
5. PROF. TAIWO OSIPITAN, SAN
6. FEMI ATOYEBI, SAN
7. MIKE IGBOKWE, SAN
8. OSARO EGHOBAMIEN, SAN
9. KEN MOZIA, SAN
10. DAYO AKINLAJA, SAN
11. NNAMONSO EKANEM, SAN
12. CHIEF OLUSOLA OKE, SAN
13. AKIN OSINBAJO, SAN,
14. STEPHEN ZAKARI ADEHI, SAN
15. BODE OLANIPEKUN, SAN
16. AINA O. SALAMI
17. OGHENERO IDEH
18. MRS. BOMA ALABI, *OON*
19. AYOOLA AJAYI
20. FEMI LIJADU
21. DAPO AKINOSUN
22. KUNLE ADEGOKE
23. SAM KARGBO

13/09/19
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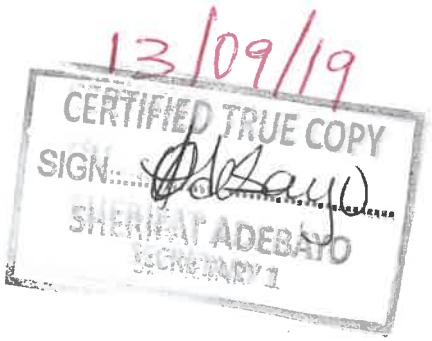
SHERIFAT ADEBAYO
SECRETARY 1

24. EDWIN ANIKWEM
25. CHRIS ONWUGBONU
26. LANRE AKINSOLA
27. ADESINA AGBEDE
28. ALEX AKOJA
29. JIDE ADEJANA
30. EMMANUEL UWADOKA
31. M.I HANAFI
32. ALEX IZINYON II
33. PATRICIA IKPEGBU
34. ABIOLA OLAWOLE
35. SEFINAT LAMIDI
36. ADELANI AJIBADE
37. CHARLES NDUKWE
38. AKINTOLA MAKINDE
39. OLAJIDE SALAMI
40. HARRY UKAEJIOFOR
41. C. NDUKWE
42. KOLAWOLE ARO
43. MOHAMMED SULEIMA
44. ADESEWA ADEGBILE
45. BRIGHT ODIA
46. PIUS OWHOAVWODUA
47. OMOJO WADA
48. C. U. ADAH
49. O.A IBADIN
50. H. HUSSAINI



51. IKECHUKWU.P. NWAKANM
52. YUSUF KADIRI
53. A. D. ATANDA
54. AYOMPE UNGTOH
55. S. OKENLA
56. A.OLATUBORA
57. OGHENETEJIRI GBEMRE
58. BISOLA OMOTOSHO
59. BINTU ALABE
60. ABDULSALAM SULEIMAN
61. J. O. AKINLAJA
62. C. MJOKU
63. I. ABUBAKAR WAZIRI
64. GBEYIDE VICTOR BIDEMI
65. A. O. USMAN

3RD RESPONDENT'S COUNSEL

1. L.O FAGBEMI, SAN, FCIArb
2. CHIEF AKIN OLUJINMI, CON, SAN
3. CHIEF CHARLES U. EDOSOMWAN, SAN
4. FUNKE ADEKOYA, SAN, C.Arb
5. ADENIYI AKINTOLA, SAN, FCIArb
6. BENBELLA ANACHEBE, SAN
7. OLADIPO OKPESEYI, SAN, FCIArb
8. Y. C. MAIKYAU, SAN
9. IBRAHIM BAWA, SAN

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SIGN.....
SHERIFAT ADEBAYO
SECRETARY 1

10. DR. MUIZ BANIRE, SAN
11. NASIR A. DANGIRI, SAN
12. FESTUS KEYAMO, SAN
13. NICHOLAS AKINTOLA LADAPO, ESQ.
14. AKIN OLADEJI, ESQ.
15. ABATUNDE OGALA, ESQ.
16. P.ROF. BAGONI A. BUKAR, ESQ.
17. MAMMAN LAWAN YUSUFARI, ESQ.
18. MUTIU GANIYU, ESQ.
19. FUNSO OLUKOGA, ESQ.
20. P. A. ABAH, ESQ.
21. JAPHET OPAWALE, ESQ.
22. CHRIS NEVO, ESQ.
23. OLUSOLA A. DARE, ESQ.
24. DR. KAYODE AJULO, ESQ.
25. OMOSANYA POPOOLA, ESQ.
26. S. A. SANNI, ESQ.
27. B. R. GOLD, ESQ.
28. CHUKA IGUH, ESQ.
29. JENIFFER ANDERSON ACHILIKE, (MRS.)
30. ABDULWAHAB ABAYOMI, ESQ.
31. OLUSEYI ADETANMI, ESQ.
32. OLUKA YODE ARIWOOLA (JNR), ESQ.
33. THOMAS OJO, ESQ.
34. ABDUL FAT AI OYEDELE, ESQ. MCIArb
35. ABIMBOLA AKINTOLA, (MISS)
36. T.A. RAPU, (MISS)

13/09/19
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SIGN.....
SHERIFAT ADEBAYO
SECRETARY 1

37. MUYIDEEN OBANS, ESQ.
38. SEUN AWOLADE, ESQ.
39. T. OLUJIDE-POKO, ESQ .
40. ARINZE S. EGBO, ESQ.
41. KHALIL O. AJANA, ESQ.
42. REJOICE GODSON IGWE, (MISS)
43. TOLULOPE K. SALAWU, (MISS)
44. ABDULRAHMAN BELGORE, ESQ.
45. ADENIYI ADERINBOYE, ESQ.
46. CHRISTIANA OKOH, (MISS)
47. TEMITOPE ADEYEMI, (MISS)
48. NURATU UMAR, (MRS)
49. FATIMA SULEIMAN ABBA, (MISS)
50. MAJEED BALOGUN, ESQ.
51. SADIQ AHMAD, ESQ.
52. JOE ABRAHAM, (JNR), ESQ.
53. OLUWATOSIN KAMILU, ESQ.
54. LUQMAN SIRAJO, ESQ.
55. TEMITOPE OBEMBE, (MISS)
56. Y. A. YUSUF, ESQ.
57. OLUWADARA KOMOLAFE, ESQ .
58. K. N. BEMEKUN, (MRS)
59. MAHMOOD HARUNA, ESQ.
60. A. ADETIMILEYIN, (MISS)
61. A. M. SAMINU, (MISS)
62. OLUWAFEMI OPEYEMI ABIMBOLA, ESQ.
63. RABIU ALHASSAN BAWA, ESQ.

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64. MUKAILA YAHAYA MAVO, ESQ.

65. OLA YEMI OLUWOLE - AKANDE (MRS)

66. M. M. GAJO, ESQ.

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