IN THE AREA COUNCIL ELECTION TRIBUNAL
OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT FCT HIGH COURT JABI- ABUJA

PETITION NO: FCT/ACET/EP/05/2019

BETWEEN

1. **ANSLEM OBIORA ARINZE**
2. **PEOPLES DEMOCRATIC PARTY (PDP)** — **PETITIONERS**

AND

1. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
2. **ALL PROGRESSIVE PEOPLES CONGRESS**
3. **DOGARA JOHN BASSA** — **RESPONDENTS**

JUDGEMENT

The petitioners filed this petition on the 29th of March, 2019 against the declaration of the 3rd Respondent as the winner of Counsellorship election into the office Counselor, City Centre Ward, Abuja Municipal Area Council FCT Abuja held on the 9th March, 2019 and conducted by the 1st Respondent.

The petitioners before this Tribunal sought the following reliefs:-

i. The 3rd Respondent did not score the highest number of lawful/valid votes cast at the questioned election.
ii. That it be determined that it was the 1st petitioner Anslem Obiora Arinze who scored the highest number of lawful/valid votes at the questioned election and ought to be returned elected.

iii. An order declaring the 1st petitioner Anslem Obiora Arinze, the winner of the election held on the 9th day of March, 2019 and returning him as elected.

iv. An order of this Tribunal directing the 1st Respondent, Independent National Electoral Commission (INEC), to issue a certificate of return to the 1st Respondent Anslem Obiora Arinze as the winner of the election forthwith.

The main grounds of the petition are contained in paragraph 20 of the petition as follows:-

1. That the 3rd Respondent was not duly elected by majority of lawful votes cast at the election.
2. Election of the 3rd Respondent is invalid by reason of corrupt practices votes buying, multiple thumb printing or non compliance with the 2010 Electoral Act, (As Amended) and INEC Guidelines.

The petition was duly served on all the Respondents and all the Respondents filed their replies. The petitioners did not file a reply to the reply of the Respondents.

The pre-hearing session was conducted on the 21st of May, 2019. The hearing of the petition commenced on the 15th of July, 2019 with the petitioner tendering the following documents from the Bar with the agreement of the Respondents:

i) Regulation and Guidelines for the conduct of elections- Exhibit AD1.
ii) Polling Unit Result for City Centre Ward. Exhibit AD2.
iii) Smart Card Reader printout- Exhibit AD3.

iv) Certificate of Compliance with S84 of the Evidence Act- Exhibit AD4.

The Affidavit of Loss of Receipt by the petitioner was tendered but rejected. The petitioners called 4 witnesses and closed their case. The Respondents cross examined the witnesses.

All the three Respondents did not call any witness. They relied on the evidence elicited during cross examination.

The Tribunal ordered the parties to file and exchange their final written addresses all of which were duly filed and exchanged. The adoption of the aforesaid written addresses was fixed for 28th of October, 2019.

On the 28th of October, 2019, before the adoption of the written addresses, the Petitioners Counsel, Mr. Nrialike informed the tribunal that he has a motion to regularize the petition i.e to affix the NBA Stamp of the counsel to petitioner to the petition, but by consensus with the counsel to the 2nd and 3rd Respondents, that he is withdrawing his Preliminary Objection on the issue of failure of the petitioner's counsel to affix NBA STAMP & SEAL and he agreed that the petitioner should regularize by affixing their counsel's stamp to the petitioner.

Mr. Y.G Haruna, the counsel to the 2nd & 3rd Respondent confirmed the position. He agreed that the counsel to the petitioner should affix his NBA STAMP to the petition. The tribunal thereafter, struck out the motion of the petition dated the 16th October, 2019 seeking the order of the court to regularize by affixing the NBA STAMP of the petitioners counsel to the petition.

The learned counsel to the petitioners adopted their brief and adumbrated briefly. The counsel to the petitioner formulated three (3) issues for determination. The issues are:

1) Whether on the basis of non compliance with the Electoral Act, 2010 (As Amended) and the Electoral Guidelines 2019 and Manuals issued for the conduct of the Election the Return of 3rd Respondent by the 1st Respondent was not proper.
2) Whether having regards to the quantum of void votes (ascribed to the 2nd and 3rd Respondents) resulting from over voting, non use of card readers as part of accreditation procedure at the election E.t.c the lawful votes scored by the 3rd Respondent at the Election can sustain his return as councillorship of City Centre Ward.
3) Whether the 1st Respondent shall not be returned the winner after the removal of void votes ascribed to the 3rd Respondent.

In arguing issue 1, the counsel to the petitioners refer to Exhibit AD1 which is the INEC REGULATION AND GUIDELINES FOR THE CONDUCT OF ELECTION made pursuant to the constitution of the Federal Republic of Nigeria and the Electoral Act, 2010 (As Amended) applicable also to the FCT for the conduct of the elections into the Chairmanship and Councillorship positions.

A specific reference was made to the provision of S153 of the Electoral Act which empowers INEC to make regulations, guidelines or manuals for conduct of elections.

The petitioners made specific reference also to paragraphs, 8,10,11,12 and 13 of Exhibit AD1 (headed Accreditation and voting procedure at Elections) it was pointed out that the 2019 Guidelines is wider than

that of 2015. The learned counsel referred to paragraph 10a of Exhibit AD1- detailing accreditation process as followed:

The use of Smart Card Reader to verify the voter, the reading to verify the voter, the reading of the permanent voters card, authentication of the voters finger print using the Smart Card Reading (SCR) checking the register of voters, inking of the cuticle of the specified finger of voter.

The counsel submitted that any voter whose PVC fails to be read must be politely be asked to leave without voting.

The counsel further referred to paragraph 11a,d,e of INEC Guidelines. Exhibit AD1.

The counsel further referred to the evidence of PW1 vide Exhibit AD1, AD2 & AD3 for 001, 002, 008, 009, 016, 021, 026 which he submitted provided ample evidence of the petitioner being the winner and the 3rd Respondent being awarded votes he was not entitled to.

The Petitioner contended that Biometric Accreditation through card reader was not carried out in the following units. Polling Units No.: 001, 002, 008, 009, 016, 021 and 026 where the 2nd and 3rd Respondents were credited with 1168 votes and the Petitioner with 731 votes, it was submitted that if the invalid votes were removed from the votes of the 3rd Respondent and 1st Petitioner, the Petitioner will have 1542 votes while the 3rd Respondent will have 1499 votes. The Petitioner would have scored 43 votes above the scores of the 3rd Respondent. And the 3rd Respondent ought not to have been returned as winner of councillorship seat. The Tribunal was urged to resolve the first issue in favour of the petitioner.

The issue 2, 3 were argued together it was argued that numerous judgments of court had outlined how over-voting and invalidity of votes ought to be proved. The case are: NYESOME V PETERSIDE (2016) 2 SC NJ 404; AKEREDOLU V. MIMIKO (2014) INWLR (Pt 1388) 322.

It was argued and admitted that result sheets and the voters register E.t.c are official documents with presumption of regularity and the burden is on the opponents of the document to rebut the presumption. It was argued also that where entries do not tally or where on the face of a document it tells a lie, the presumption of regularity (S168 of the Evidence Act 2011) will be of no assistance to validate such a lie. The Petitioners are then entitled to prove their case by reliance on other forms of entry which can checkmate the man made manipulation of the electoral system. This should be done by the petitioner comparing entries in forms EC8A and card reader Data (Exhibit AD3) it was argued that the petitioners have shown patent anomalies on the EC8A with respect to number of accredited voters, number of votes cast, whereof the presumption of regularity would have been rebutted and the burden of proof is shifted to the Respondents to justify the entries. This, it was stated the 1st Respondent and others have failed to do.

The petitioner contended that this is not a case where entries in form EC8A were made despite the election not holding, but where results tendered are full of anomalies when compared with smart card readers. It was argued that the Respondents should through voters register and ballot booklets establish the anomalies on the form EC8A when compared with the smart card reader.

It was submitted by the Petitioner that Independent National Electoral Commission 2019 Manual for Election official paragraph 2.64, step 10 page 51 over-voting was defined "Where, the total numbers of votes cast at the Polling Unit exceeds the number of registered voters in the polling unit, the result of the polling unit shall be declared null and void. Similarly, where the total number of votes cast at polling units exceeds the total number of accredited voters, the outcome shall be declared null and void.

The Tribunal is invited to consider forms EC8A series and compare with Exhibit AD3, smart card reader report. The number of vote cast on form EC8A is higher than the content of Exhibit AD3. The counsel submitted that oral evidence cannot be allowed to contradict the content of documentary evidence. The counsel submitted that comparing the figure of EC8A with that of Exhibit AD3 – the election occasioned over-voting which should be declared null and void.

The counsel referred the Tribunal to paragraph 2.5 under step 3, 4,5,6 paragraph 45 of the Manual for election official containing steps to be followed before entries are made on form EC8A, if any step to be taken is disturbed or omitted it affects the result (this process starts with accreditation and ended with announcement of result).

The petitioners submitted that despite oral and documentary evidence adduced by them, the Respondent adduced no evidence to rebut the allegations. The cross examination of the petitioners witness did not help the Respondent: it was further submitted that where the Tribunal finds that the alleged acts of non compliance were established, the election from those affected polling units will be set aside – see ONUIGWE V EMELUMBA (2008) 9 NWLR PT (1092) 371 at 395, 396,

Para- H-H; 405-406 JOLASUN V. BAMGBOYE (2010) 18 NWLR PT 1225) 285, 318-319 Para H-A; INEC V OSHIOMOLE.

The counsel further submitted that if irregular votes are deducted from the votes declared by the 1st Respondent, the 3rd Respondent ought not to have been declared the winner of the election. It was further argued that the Respondents should be deemed to have abandoned their replies for their failure to call any witness- referred to Dingyadi & another V Wamako & ors (2008) LPELR 4041. The Petitioner also submitted that an invalid vote is not vote at all and after it has been detected to be invalid, it cannot be used to compute the number of votes cast. The petitioners urged the Tribunal to find that there was a substantial non compliance with the Electoral Act, and Guidelines issued by the 1st Respondent for the conduct of the election. This, it was submitted substantially affected the result. The case of SWEM V DZUNGWE & ANOR (1966) NMLR 297 at 303 was cited to the effect that if at the end of the petitioners case, a case of non compliance was established which may or may not affect the result of the election, and it is impossible for the Tribunal to say whether or not the result were affected by the non compliance established unless there be evidence on behalf the respondent that such an non compliance as found could not and did not in fact affect the result of the election, the petition is entitled to succeed on the simple ground that civil cases are proved by a preponderance of evidence.

The petitioner submitted that it has discharged the burdened of establishing non compliance and the onus has shifted to the Respondents. ASAD V IFEANYI (2010) ALL FWLR (PT 517) 742 at 754 was cited.

The Tribunal was urged to strike out the replies of the Respondents for failure to call any evidence. DINGYADI & ORS V WAMAKO (2008) 17 NWLR (PT 1116) 935 AT 431, OHIAERY & ORS AKABEZE (1992) 2 NWLR (PT 396) FCDA V NAIBI (1990) 3 NWLR (PT 138) 270 AT 281

The Petitioners submitted that Tribunal should uphold the petition in view of the issue of non compliance with the provision of the Electoral Acts and manual for the Election Official as well as various irregularities in said councillorship election of 19th March, 2019. YUSUF B OBASANJO (2005) 18 NWLR; OYEGUN V IGBINEDION (1992) 2 NWLR (PT226) 747, EBEBE V EZENDUKA (1998) 7NWLR (PT556)74

The Petitioner urged the Tribunal to resolve all issues in their favour and grant the reliefs as contained in the petition.

The 1st Respondent filed a reply of five (5) pages and formulated one issue for determination to with.

Whether the petitioner have discharged the burden placed on them by establishing substantial non compliance that affected the result of election.

The 1st Respondent submitted that the petitioner failed woefully to discharge the burden placed on them to establish and prove substantial non compliance that affected the result. It was argued that all agents of the petitioner that testified during the trial were not accredited agents and as such were not trained by the 1st Respondent and were not in a position to know whether there was substantial non compliance or not. The 1st Respondent referred the Tribunal to S139 (1) of the Electoral Act 2010 (as amended) which is to the effect that an

election will not be invalidated by reason of non compliance with the provision of the Act if appears to the Tribunal or Court that the Election was conducted substantially in accordance with the act and that non compliance did not affect the result of the election.

The 1st Respondent referred the Tribunal to the case of UDOM V UMANA (NO1) (2016) 12 NWLR (PT 1526) 179 AT 253 and YAHAY V DANKWAMBO (2016) 7 NWLR (PT 1511) 284 AT 313.

The counsel further submitted that it is only few witnesses who were physically present at polling unit that testify on what happened at polling unit. The Tribunal was referred to the case of ANDREW V INEC (2018) 9 NWLR (PT1625) 507 AT 551-552. Where the Supreme Court held as follows:

"The requirement of the law is that a petitioner must call eye witnesses who were present when entries were being made and can testify to how the entries in the documents were arrived at. In an election petition matter, the evidence require is not the one which was picked up from perusing documents made by others"

It was submitted that the four (4) witnesses of the petitioner were not maker of the result sheet tendered by the petitioner neither were they accredited agents.

The Tribunal was urged to dismiss the petition for failure of the petitioner to prove the allegation of substantial non compliance and for their inability to adduce credible evidence to support their claims.

The 2nd and 3rd Respondents filed a joint final Written Address of 31 pages. The counsel made analysis and review of evidence of witness of

the petitioner that he did not participate in the computation of figures in Exhibit AD3.

The counsel submitted that evidence of the witnesses of the petitioner did not satisfy the requirement of the law to establish over-voting. He called the documentary evidence adduced by the petitioners as documentary hear say. The evidence required to prove over-voting, irregularities, vote buying and inducement are required to prove by evidence of eye witnesses who were at the polling unit when these infractions happened.

The written address of the 2nd & 3rd Respondents also contain a Preliminary Objection as to the petition not being authorized, endorsed & signed by the 2nd Petitioner, recognized or accredited officer of it and failure of the petitioners' counsel to affix the mandatory NBA STAMP & SEAL.

It was contended that failure of the petitioners' counsel to affix his NBA STAMP makes the petition voidable until cured. The counsel referred to the case of Bello Sarki Yaki B Abubakar Bagudu & Ors (2015) LPELR-25721 and Rule 10 (1) (2) & (3) of the Rules of Professional Conduct 2007.

This objection will be addressed quickly before going into the issues formulated for determination. On the 28th of October, 2019, when this matter came up for adoption of written address, the petitioner had an application dated the 16th October, 2019 to regularize the process by affixing the stamp & seal of the counsel to the petitioner.

The counsel applied to withdraw the application based on the agreement with the counsel to 2nd & 3rd Respondent that he conceded to the petitioner's affixing his stamp & seal to the petition. The

Learned Counsel to the 2nd & 3rd Respondent confirmed this to this Honourable Tribunal. The motion dated the 16th October, 2019 was struck out. The stamp and seal of the petitioner's counsel was affixed to the petition. In view of this, the objection has been overtaken by that event. The petition has been regularized. The objection is lifeless and it is hereby struck out.

The 2nd & 3rd Respondents Counsel formulated three (3) issues for determination:

1. Whether the totality of the evidence led in this petition, the petitioners have proven their case as to be entitled to the Relief Sought.
2. Whether the election of the 3rd Respondent to the office of Councilor, City Centre Ward Abuja Municipal Area Council was conducted in substantial compliance with the provision of the Electoral Act 2010 (as amended) and INEC Guidelines for 2019 elections.
3. Whether the election of the 3rd Respondent to the office of the 3rd Respondent to the office of the Councilor, City Centre Ward Abuja Municipal Area Council (AMAC) was marred with corrupt practices.

The counsel argued issues 1 &2 together it was submitted that he who asserts has the onus of proof. BUHARI V OBASANJO (2005) &SC (PT 1)

The counsel submitted that the petitioner claim are for declaratory especially relief a, b, c and d at paragraph 8 of the petition. The petitioners must succeed on the strength of their case and not on the admission or failure refusal to evidence by the Respondent citing the case of OKEREKE V UMAHI. The counsel argued that the first ground

of the petition of the petitioners is that "The 3rd Respondent was not duly elected by the majority of lawful votes cast at the election "The pleading in support of this ground is contained at paragraph 18 & 19 of the petition. It is argued that no evidence was led in support of the pleading and as such pleading not supported by evidence go to no issue and deemed abandoned. See S139 (1) Electoral Act, Emmanuel V. Umana & 5 ors (No 1) (2016) 2 SC.

The counsel argued that Ground One of the petition is deemed abandoned and argued the Tribunal to so hold.

The 2nd and 3rd Respondents submitted on the ground that the election of the 3rd Respondent is in invalid by reason of corrupt practices, vote buying, multiple thumbs printing and non compliance with the 2010 Electoral Act (As Amended). The case of NGIGE V INEC (2015) 1 NWLR (PT 1440) PG 281 at pages 329 to 330 Para H-E was referred to. The SC per Ariwoola JSC stated that before a Tribunal or Court can invalidate an election, it must be shown that such an election was not conducted substantially in compliance with the principle of the Act and that non compliance actually affected the result. The counsel submitted also that a petitioner can only prove non compliance if he can tender document in evidence and call eye witnesses. The case of ABUBAKAR V. YAR ADUA (2008) 19 NWLR PT 1120 cited: The case of ANDREW V INEC (2018) 9NWLR (PT 1625) 507 P575-576 cited to point home the role of the polling agent who can only be at only one polling at a given time and who is competent to testify on what happened where he was. It was also stated that a public document should be tendered by a witness who participated in its making to persuade the court on the truth of the content. And to prove over-voting the best evidence is that if the polling agent. GUNDIRI V

NYAKO (2014) 2 NWLR, the submitted that tendering a document through a person who is not the maker makes it a documentary hearsay, BUHARI V INEC, the counsel argued that failure of the petitioner to call a polling agent to testify is fatal. He submitted that reliance on PW1-P4 by the petitioner is not helpful as they were not in the field. He submitted that the evidence of PW1-PW4 amount to hearsay evidence & inadmissible in law. BUHARI V INEC (2008) 36 (PT1) NSCQR 475 Pg 693 was cited to emphasize the importance of an agent and any evidence given by a person who was not at the Polling Units hearsay.

The issue 3 was whether the election of 3rd Respondent was marred with corrupt practices. It was submitted that where a petitioner makes an allegation of commission of crime, the burden of proof lies on the petitioner and the standard of proof is beyond reasonable doubt: IKPEAZU V OTTI (2016) 2SC (S139 (1) Evidence Act), OKECHUKWU V INEC S125 OTHER 2014 9SC S137(1) Evidence Act cited "Where in an election petition, the petitioner make an allegation of crime, the onus is on him to prove beyond doubt. The counsel urged the Tribunal to discountenance the petition as it did not lead evidence in proof allegation of corruption.

On dumping of documents, it was submitted that the petitioner has a duty to link the documents tendered to the aspect of the case he wishes the court to predicate his relief. He submits that the petitioner only dumped the documents on the Tribunal without linking.

The petitioner filed a reply on point of law where it addressed the (objection) preliminary objection raised by the 2nd and 3rd Respondents on failure to of the petitioner counsel to affix his stamp to the

petition. The counsel cited the case of MEGA PROGRESSIVE PEOPLES PARTY V. INEC (SC/6552015) where the Supreme Court held that failure to affix the NBA STAMP does not invalidate the process and NYESOM V. PETERSIDE, the Supreme Court that failure to affix the stamp does not render the process null and void. It is an irregularity that can be cured. The petitioner urged the Tribunal to discountenance the objection.

On whether the petitioners are entitled to the reliefs sought and on burden of proof of the petitioners submitted that they have led credible evidence to deserve the relief sought and the Respondent abandoned their replies by not calling witnesses. They urged the Tribunal to hold that the petitioners have discharged their burden.

The petitioners argued that the petitioners complied with the case of ABUBAKAR V YAR'ADUA. The witness who testified were eye witnesses, they also compared the result of the votes cast with Exhibit AD3. In an attempt to reply to the requirement of proving non compliance Polling Unit by polling unit as stated by the case of PDP V INEC (2014) 17NWLR Pt 1437, ANDREW V INEC (2018) (PT1625).

The petitioners argued that it does not require calling witnesses in all polling units. A distinction was made between witness and evidence it was argued that witnesses were called and random witnesses called. Including Exhibit AD3-card readers repost.

On dumping of document it was argued that the petitioners did not dump document on the Tribunal. The documents were tendered from the bar and demonstrated through PW1 who was cross examined by the Respondents. The counsel argued that petitioners witnesses were not required to given oral testimony again after the adoption of their

statements on oath relying on the case of AGAGU V RAHMAN MIMIKO & Others (2009) 7NWLR (PT1140 and TERAB V LAWAL (1992) 2NWLR (PT231)569.

The petitioners replied further that documents speak for themselves and once a CTC of a document is tendered like the card reader report calling the maker to tenders them is not unnecessary and such documents also speak for themselves citing USMAN DANFODIYO UNIVERSITY, SOKOTO V PROF S.U BALOGUN & OTHERS (2006) 9NWLR (PT984) 124.

On the evidence of PW1 and Exhibit AD3, the petitioners replied that PW1 witnessed what happened firsthand and the BUHARI V INEC and ATIKU V BUHARI cited should be discountenanced. CTC of documents can be tendered by people to whom they were issued citing SALAMI V AJADI (2007) LPELR S83 (2) was also cited.

The petitioners argued that insisting on calling a maker of a document to tender it in an election petition may be difficult. The Tribunal was urged to accept the computation of the petitioner.

PRELIMINARY ISSUES

In the final address of the petitioners, it was submitted that this Honourable Tribunal should hold that the Respondents have abandoned their pleadings. The Tribunal was urged to strike out the replies of the Respondents.

It should be noted that the reliefs sought by the Petitioners are declaratory in nature. The petitioners in an action of this nature must succeed in the strength of their case and not on the weakness of the case of the Respondents.

We are convinced that the Respondents have elicited enough evidence through cross examination of the Petitioners Witnesses to support and sustain their replies.

Similarly the 2nd and 3rd Respondents in their final address submitted that the Petitioners did not lead evidence in support of their pleadings in paragraph 18 and 19 of the petition. They urge this Tribunal to deem paragraph 18 & 19 abandoned.

After the review of the evidence we are of the opinion that the petition adduced evidence in support of those paragraphs but the evidence lead was not credible and sufficient enough. We so hold.

REVIEW OF EVIDENCE OF THE PETITIONER

The petitioners in an attempt to establish or prove their case called four witnesses and tendered four Exhibits. AD1, INEC GUIDELINES, AD2 EC8A – POLLING UNIT RESULT, AD3 SMART CARD READER, AD4 CERTIFICATE OF COMPLIANCE.

The grounds of the petition are two:

(a) The 3rd respondent was not duly elected by the majority of lawful votes cast at the election.
(b) The election of the 3rd respondent is invalid by reason of corrupt practices, votes buying, multiple thumb printing of ballot papers and non compliance with the Electoral Act, 2010 (as amended).

These two grounds are based on S138 (1) (b) of the Electoral Act.

The allegations of votes buying are allegations of corrupt practices. The allegation is captured by paragraph 9 of the petition where it was

alleged that the election was marked by irregularities, thumb printing, inflation of the result figures, and incidences of over voting and non use of card reader.

The star witness of the petition PW1 who is the petitioner. He testified that he voted after been properly accredited. He listed polling units 001, 002, 008, 009, 016, 021 and 026 as polling units where accreditation via card readers was not used as a result of which votes cast were higher than accredited voters as per card reader.

Votes cast were higher than accredited voters as per card reader. He said from accreditation, he said the result from accreditation is not the same with the card reader. He testified that the result of votes cast in 008, 009 and 016 are higher than accredited voters by card reader. During cross examination, he said he voted after being accredited. He said no voter register was used and voter register was not tendered in this case. He said he was not involved in computation of figure that produced the result. He alleged that APC induced voters. It was agents of APC that induced. He cannot say whether APC induced in all units because he was not everywhere.

The PW2 (Edwin Emile), he testified that he was an agent and a coordinator. He voted at polling unit 005 and started going round as a supervisor for 001^{A} – 001^{D} & 005 – 011. He claimed to be an agent but without a tag or I.D. but had a letter of introduction to the Returning Officer. He said there are 32 polling units in the ward. He said it was not all parties that participated in the election that were allowed to vote without the use of the card reader. He said he saw agents of 2^{nd} & 3^{rd} Respondent inducing voters, he did not know how much was given and did not know the denomination that was given and the purpose and

that, it was not all the polling units he visited that inducement happened.

PW3 – (Haruna Ibrahim), He adopted his statement on oath where he stated that voters were allowed to vote without the card reader and that agents of 2nd & 3rd Respondents induced voters with money. During cross examination, he said he does not know the denomination given. He said people who collected money voted but he did not know the party they voted for.

PW4 (Moses Eze), He adopted his statement on oath. He also stated that he saw voters being allowed to vote without the use of card readers and that agents of the 2nd & 3rd Respondents induced people with money. He was an accredited agent for 009. He agreed that as an agent at 009, it was not possible to be at 2 polling units at the same time. He saw agents of 2nd & 3rd Respondents giving money but did not know how much because he was not close to them. He also did not know how many voters were given money. He did not know what was said to the voters at the time of exchange of money.

The four witnesses testified for the petitioner but were agents/coordinators. The PW2, PW3 and PW4 deposed to the same type of statement on oath. PW2 said not all voters at same polling unit he visited voted without the use of card reader. PW1 voted and card reader was used. PW2, PW3 & PW4 did not know the denomination of many given to voters. That it was not privy to their discussion. PW2 who was at 001^{A}. 001^{B}, 001^{C} & 001^{D}, stated that it was not all voters that voted without the use of card readers.

The statement on oath of PW1 is almost word for word the averment in the petition. The deposition were mostly not supported or proved. PW1 himself stated he was accredited before he voted.

It should be noted, this petition is hinged on a ground of corruption which is a criminal offence. The proof should be beyond reasonable doubt. The inducement with money alleged to be by agent of the 2nd & 3rd Respondents. It should be proved that the agent is the agent of the 3rd Respondent the offences/inducement was committed in favour of the 3rd Respondent with his knowledge and consent. See Kwali & Another V Dobi & Ors. (2008) LPER -4413 LPELR, S124 (6) Electoral Act 2010 (As amended).

There was no evidence of the agents alleged to have induced voters with money doing so with the authority and consent of the 3rd Respondent.

The petitioner also alleged that there was multiple thumb-printing occasioned by failure of the 1st Respondent to use the card reader. The petitioner was expected to produce to the tribunal the ballot paper alleged thumb printed. The quantity and the forensic report to support the allegation of multiple thumb printing of several ballot papers by same persons must be presented before the tribunal. See Goyol & Anor V INEC & Ors (2011) LPERR – 9235 (CA). The Court of Appeal also held in Igbe & Anor V Ona & Ors (2012) LPELR 8588 (CA) that only expert evidence could prove that finger prints appearing on the ballot paper belonging to one and the same person thereby leading to unlawful thumb printing alleged.

In this case, the petitioner did not present ballot papers allegedly thumb-printed and there was no forensic report nor an expert invited to give oral evidence.

It is glaring from the above analysis that the requirements to establish the allegation of vote buying and multiple thumb printing have not been established. The other leg remaining from the 2nd ground upon which the petition is predicted is the allegation over voting. What is over voting as envisaged by the Electoral Act?

The Electoral A ct S53 (2) states that there is over voting "where the votes cast at an election in any polling unit exceeds the number of registered voters in that polling unit. Similarly, Regulations & Guidelines for the conduct of the 2019 Election Paragraph 23 (a) states that over voting may occur "where the total number of votes cast at a polling unit exceeds the number of registered voters in the polling unit and where the total number of votes cast at an polling unit exceeds the total number of accredited voters." These are the two situations where over voting can occur. The consequence of over voting is the nullification of the election and order for another election, unless INEC is satisfied that the result of the election will not substantially be affected by the voting in the area where the election is cancelled. See S53 (4) Electoral Act. The Guideline in para 33 (i) provides for a conduct of a supplementary election where it is ascertained that the total registered voters in the affected polling units many affect the overall result of the election.

By virtue of S49 of the Electoral Act, to be eligible to vote, the presiding officer only needs to confirm that the name of the person is on the register of voters. The Guidelines (Exhibit AD1) provides for

accreditation steps. A person intending to vote shall be verified to be the same person on the Register of voters by the use of the Smart Card Reader in the manner provided in the Regulations Guidelines, Para 10.

Para 10 (a) (d) regulates the procedure for accreditation using the Smart Card Reader, states what APO I will do before, the voter proceeds to meet APO I, states what APO II will do till the voters votes.

Para 11 (b) provides for where there is failure of authentication, what to do. The voter is referred to the PO or APO (VP) and the voter will then vote.

This petition is hinged on over–voting occasioned as a result of total number of votes cast being in excess of the total number of accredited voters, rather than the votes cast being in excess of the number on the voters register.

The petitioners in trying to establish over voting, tendered Exhibit AD2 (EC8A) and Exhibit AD3. These documents were tendered from the bar. PW1 was examined to demonstrate and link the document with the others to the aspect of his case; he wishes the court to predicate his reliefs. PW1 testified alleging over voting in polling units 001, 008 and 009.

In an election petition, when documents are tendered from the bar in election petition matters, the purport is to speed up the trial in view of time. Such tendering is not the end itself but a means to an end. The maker of such tendered document must be called to speak to those documents and be cross-examined on the authenticity of the

documents. The law is trite that a party who did not make a document is not competent to give evidence on it. It is also a tested position of the law that where the maker of a document is not called to testify, the documents would not be accorded probative value by the court. That indeed is the fate of Exhibit AD2 & AD3 in this case. ATIKU & ANOR. V INEC & 2 ORS, UDOM EMMANUEL V UMAN UMANA, WIKE V PETERSIDE (2016) 7 NWLR (PT 1512)

The petitioners have the duty to call the presiding officers of the affected polling units or voting points to testify. PW1, PW2, PW3 and PW4 are not makers of various documents tendered from the bar.

Further, to establish this case of over voting, the petitioner has the duty of tendering the voters register for the polling units whose results are being challenged and Form EC8A. The petitioners failed to tender the voter register of the affected polling unit.

The voter register is the foundation of any competent election in any society. Without the register, it will be difficult if not impossible to determine the actual number of voters in an election. And if the number of registered voters is not known, how can the court determine whether the numbers of votes cast at the election are more than the voters registered to vote. This is why this court said this much in Shinkafi V. Yari (2016) (PT 1511) 340 that to prove over voting, the petitioner must tender the voters register and form EC8A.

The petitioners in this case did not tender the voter register. They only tender Form EC8A, Exhibit AD2.1. Without the Voters register, the issue of over-voting cannot be determined. See Ladoja V Ajimobi (2016) 10 NWLR (PT 1519) 87 at 147, Wike V Peterside.

This Tribunal will want to examine Exhibit (EC8A) AD2 to find out whether there was over voting or not. A close scrutiny of Exhibit AD2 reveals:

No. of polling units	No. of Votes cast	No. of Accredited Voters	No. voters on Register
001	265	271	3,405
001[A]	278	293	2,401
001[B]	202	212	2,375
001[C]	195	205	2,825
001[D]	107	130	1,733
002	372	384	3,008
008	187	187	2,179
009	197	212	2,074
016	169	169	2,144
021	246	248	3,707
026	94	94	1,844

To arrive at the total numbers of vote cast, the score of all parties has contained on Exhibit AD 2 were added together. This is contrary to the figure contained on page 6 of the petition which was restricted to scores obtained by the petitioner and the 3rd Respondent alone. The only polling unit where there is a cancellation is polling unit with code 0016, where 88 looked like 98 and the score written in words Ninety was written but cancelled and Eighty-Eight written in words and PDP scored 62. If the result of this polling unit is cancelled, the cancellation will not affect the final result to give victory to the petitioner.

The computation by this Tribunal reveals that there was no over-voting and we so hold.

On the present position of the law on the issue of over-voting, especially on the determination of over-voting via the (card reader) Smart Card Reader, the Supreme Court has decided as follows:

"As I stated in SC18/2016 that until S49 of the Electoral Act is amended to bring in the process of electronic voting, the manual voter register will continue to play a prominent role in ascertaining whether there was over voting or not by its production and comparing it to the number of those accredited to vote and those who actually voted. It is only then that the information captured in the Smart Card Reader can be used to establish the actual number of persons who voted in the election per Aka'ah, JSC.

2. "This Court also held that the introduction of the card reader machine has not eliminated manual accreditation of voters. Laudable as the innovation of the Card Reader may be, it is only handmaid in the accreditation without reference to the voter's registers of the affected Local Government Areas, as in this case, was bound to fail'. Per Kekere-Ekun, JSC.

3. Where a petitioner seeks to prove that there was over voting in the election in which he participated, he would succeed if he is able to show that the number of votes exceeds the number of would be voters in the voter register. If the petitioner decides to rely on Card Reader Report as in this case to show that the number of votes exceeds the number of voters recorded by the card reader but less than would be voters on the voters register, he would fail. That explains the plight of the petitioner in this petition/appeal. The card reader may be the only

authentic document if and only if the National Assembly amends the Electoral Act to provide for card readers. It is only then that the card readers would be relevant for nullifying elections'. Per Rhodes-Vivour, JSC.

The Supreme Court has taken the same position in the following cases:

Shinkafi & Anor V Yari & Ors 7 NWLR (Pt. 1511) 340, Okere V Umachi & Ors (2016) LPELR – 40035 (SC), and Nyesom V Peterside & Ors (2016) LPELR-40036 (SC). This position was also followed by the Presidential Election Tribunal in the case Abubakar & Ors V INEC & Ors CA/PEPC/002/2019. And finally, the Supreme Court in Atiku Abubakar & 1 Other V INEC & Others SC 1211/2019 reaffirmed this position.

NON COMPLIANCE AND IRREGULARITY

The law is trite that there is a presumption of correctness and regularity in favour of the results of election declared by the Independent National Electoral commission in the conduct of an election. This means that except it is proved or rebutted that such results are not correct, they are accepted for all purpose by the Election Tribunal or Court. The onus, of course is on the Petitioner to prove the contrary. See Buhari V Obasanjo (Supra), Wike V Peterside (2016) 7 NWLR (PT 1512) 452 at 532-533.

There is no doubt the task of establishing a petition on the ground of non-compliance is a herculean and daunting one placed on the petitioner by law. A petitioner who desires and urges the court to set aside the result of an election on ground of non-compliance with the Electoral Act has the onerous duty of providing the alleged non-compliance by

calling witnesses from each of the polling units complained of. It has to be noted that he does not just call any witness. He must present eye-witnesses, i.e. those who were present at the various polling units across the election area. In the instant case, the entire seven (7) polling units whose result are been challenged. The evidence of the Petitioners Witnesses are not strong and convincing enough to establish a case of non-compliance with the Electoral Act 2010 (as Amended) and INEC Electoral Guidelines. PW1 during cross examination said he voted and he was accredited before voting and he moved around and was not at a particular polling unit throughout the period of election. The best evidence would have been that of a witness who witnessed what happened throughout the period of election so as to be able to testify to the fact the card reader was not used in that polling unit at all as alleged in the petition.

This Tribunal holds that the alleged non-compliance and irregularity if any is not strong and substantial enough to invalidate the result of the election. See section 139 (1) of the Electoral Act 2010 (As Amended) UDOM V UMANA (No 1) (2016) 12 NWLR (PT 1526) 179 at 253

CONCLUSION

There is no doubt the task of establishing a Petition on the ground of non – compliance is a herculean and daunting one placed on the Petitioner by law. The task the Petitioners have failed to discharge in this case. We find and hold that the Petitioners also failed to establish the allegation of multiple thumb printing and inducement of voters as

required by law. We find and hold also that the return of the 3rd Respondent was not improper. We also find and hold that the election of Petitioner failed to establish that the election of 9th March, 2009 for the position of Counselor, City Centre Ward, Abuja Municipal Area Council was not conducted in substantial compliance with the Electoral Acts and INEC guidelines.

Finally, we find and hold that the Petition, with Petition No. FCT/ACET/EP/05/2019 filed by the Petitioner, lacks merit and it fails.

Consequently, it is hereby dismissed.

Hon. A.A. Muhammad

MEMBER

20th January, 2020

Petition No. FCT/ACET/EP/05/2019

I concur with the lead judgment.

HON. SAMUEL E. IDHIARHI

CHAIRMAN

20th January, 2020

HON. MOHAMMED ZUBAIRU

MEMBER

20th January, 2020

Petition No. FCT/ACET/EP/05/2019