IN THE AREA COUNCIL ELECTION PETITIONS TRIBUNAL
HOLDEN AT ABUJA, THE FEDERAL CAPITAL TERRITORY

PETITION NO: FCT/ACET/EP/04/2019

IN THE MATTER OF ELECTION TO THE OFFICE OF THE CHAIRMAN OF THE ABUJA MUNICIPAL AREA COUNCIL HELD ON THE 9TH MARCH 2019

CORAM:

1. SAMUEL E. IDHIARHI ESQ. .....CHAIRMAN
2. MOHAMMED ZUBAIRU ESQ. ..... MEMBER
3. A.A. MOHAMMED ESQ. .....MEMBER

BETWEEN:

1. AWUNOR PRINCESS VIVIAN ANAZODO ..... 1ST PETITIONER
2. PEOPLES DEMOCRATIC PARTY (PDP) ..... 2ND PETITIONER

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) ..... 1ST RESPONDENT
2. ALL PROGRESSIVE CONGRESS (APC) ..... 2ND RESPONDENT
3. ABDULLAHI ADAMU ..... 3RD RESPONDENT

JUDGMENT

(Lead Judgment delivered by Samuel E. Idhiarhi Esq. on the 6th November, 2019)

Following the conclusion of elections into the Chairmanship and Councillorships of Area Councils in the Federal Capital Territory on the 9th March, 2019 as part of the General Elections for this year, and the declaration of the 3rd respondent (Abdullahi Adamu) by the 1st respondent (the Independent National Electoral Commission (INEC)) as the winner of the Chairmanship Seat of the Abuja Municipal Area Council, the 1st and 2nd petitioners, contestants in the said election, on the 29th March, 2019, filed this petition. The petitioners have sought for four prayers/reliefs, as contained in the concluding paragraph of the petition, namely:

a. That the 3rd respondent did not score the highest number of lawful/valid votes cast at the questioned election.
b. That the election was not conducted in substantial compliance with the Electoral Act and INEC Guidelines.
c. An order nullifying the election for substantial non-compliance with the extant laws and guidelines.
d. An order of this tribunal directing the 1st respondent (the INEC) to withdraw the Certificate of Return it issued to the 3rd respondent or in the alternative declare the 1st petitioner as the winner of the election and to direct the 1st respondent to issue Certificate of Return to the 1st petitioner.

As a prelude to above reliefs/ prayers, the petitioners had stated in paragraph 21 of the petition to the effect that if the illegal and void votes in the questioned Wards and Polling Units (earlier alleged in preceding paragraphs of the petition) are subtracted from the votes ascribed to both the petitioner and the 3rd respondent, the petitioner would score higher than the 3rd respondent, and the petitioner, having scored the highest number of valid votes cast at the election ought to be declared as the winner and returned elected as the Chairman, Abuja Municipal Area Council. The petitioner thereby had urged that the Certificate of Return ought to be withdrawn from the 3rd respondent and ought to have been given to the petitioner as the person who scored the highest numbers of lawful/valid votes cast at the election, having scored over 25% of votes cast in at least 2/3 majority of the Registration Areas (Wards).

In paragraphs 7 to 20 of the petition, the petition had made several averments to the following effect. In paragraph 7 it was averred that the declaration and return of the 3rd respondent was undue and invalid while in paragraph 8 it was averred that the 3rd respondent did not score the highest number of lawful votes cast at the election and he ought not to have been returned elected. In paragraph 9 the petitioners set out the twelve (12) Registration Areas (Wards) for the Abuja Municipal Area Council, namely Garki, Gui, Orozo, Karshi, Kabusa, Wuse, Nyanya, Karu, Gwarimpa, Gwagwa,

Jiwa and City-Centre Wards and averred that evidence will be led at the trial to show that in a number of the Registration Areas (Wards) the election was marred by irregularities as there were multiple thumb-printing, inflation of result figures, incidents of over-voting and deliberate non-use of card readers. Flowing from the above, it was contended in paragraph 10 that the petitioner scored the highest number of valid votes cast at the said election contrary to the results declared by the 1st respondent which declared the 3rd respondent as the winner of the election.

In paragraph 11 the petitioners listed the names of all the candidates who participated in the election along with their parties, stating in paragraph 13 the respective scores/votes attributed by the 1st respondent to each of the parties and their candidates in the election but it was averred in paragraph 12 that the parties interested in the petition are only the 1st petitioner, the 2nd petitioner, the 1st respondent, the 2nd respondent and the 3rd respondent. To this extent, it was averred in paragraph 16 that in the result declared by the 1st respondent, the 3rd respondent was said to have garnered 53,538 votes while the 1st petitioner was next with 35,753 votes, leaving every other candidates with distantly low and insignificant votes with no chance of winning the election (paragraph 17). In paragraph 14 the petitioners listed the several documents they will rely on at the hearing of the petition and reiterated in paragraph 15 that the declaration and return of the 3rd respondent by the 1st respondent was done notwithstanding that the majority of the votes allotted to him in the questioned/challenged polling units were void by reason of corrupt practices and non-compliance with the relevant laws and guidelines. In paragraph 18 the petitioners averred that the 1st petitioner scored the highest number of lawful votes cast at the various Wards and Polling Units of the Abuja Municipal Area Council (AMAC) and ought to be declared winner of the election and returned elected as the Chairman of Abuja Municipal Area Council. It was averred in paragraph 19 that the return of the 3rd respondent was undue and illegal as he did not score the highest number of valid votes cast at the election.

The two grounds for the petition are contained in paragraph 20(A) of the petition, namely:

i. The 3rd respondent was not duly elected by majority of lawful votes cast at the election.
ii. The election of the 3rd respondent is invalid by reason of corrupt practices, vote buying, multiple thumb-printing and non-compliance with the Electoral Act, 2010 (as amended) and INEC Guidelines.

In paragraph 20(B) the petitioners offered facts in support of the petition. After adopting the averments in paragraphs 1 to 19, the petition went on to state the complaints Ward by Ward.

In Karshi Ward it was alleged that there was over-voting and hence more total votes cast than number of accredited voters in polling units 002 and 003, and in the said polling units_the agents of the 2nd and 3rd respondents were seen inducing electorate to vote for them by offering and paying huge sums of money while officers of the 1st respondent and security agents looked away and those so induced engaged in multiple voting or thumb-printing while officers of the 1st respondent abandoned the use of biometric accreditation, thus leading to over voting.

In Jiwa Ward it was alleged that there was over-voting and hence more total votes cast than number of accredited voters in polling units 002, 003, 004, 005, 006, 008, 009, 010, 011, 015, 017, 018, 019 and 020 in consequence of which invalid votes attributed to the 2nd and 3rd respondents was 7,973 while the petitioner was allotted 1,620 votes, the petitioners averring that if the invalid votes attributed to both sides are removed, they will respectively have valid votes of 1,492 (for 2nd and 3rd respondent) and 604 (for the petitioners). It was also alleged that there was multiple voting or thumb-printing by voters induced with monetary gifts by the 2nd and 3rd respondents while officers of the 1st respondent abandoned the use of biometric accreditation, thus leading to over voting.

In Gwagwa Ward it was alleged that Biometric card reader accreditation was done in only Karsana Polling Unit 007 and Saburi/Saburi Village Polling Unit 010 where the 2nd respondent got 24 and 218 while the 2nd petitioner got 106 and 233 respectively. It was alleged that the deliberate skipping of the mandatory use of card reader in the majority of the polling units made it possible for the same set of people to engage in multiple thumb-printing of the ballot papers, for unregistered voters to vote and for the bloating of the votes allotted to the 2nd and 3rd respondents far and above the number of people actually cleared via biometric accreditation of the card readers or even manual register to vote with the consequence that the total number of votes cast became higher than the number of accredited voters as a result of which votes of 5,531 was ascribed to APC while PDP was ascribed 2,175 whereas if the votes owing to non-use of biometric accreditation are removed the petitioner will be scored total valid votes of 339 while the 2nd and 3rd respondents will score 242 votes in Gwagwa Ward.

In Gwarimpa Ward it was alleged that in all the Polling Units and Voting Points located in Polling Units 005, 006, 008, 011, 018 and 023, there was over-voting and officials of the 1st respondent in collaboration with the agents of the 2nd and 3rd respondents allowed voters sympathetic to the 2nd and 3rd respondents to vote multiple times, by-pass the use of card reader with the consequence that the total number of votes in the said polling unit far outnumbered the number of voters accredited by the card reader. It was also alleged that voters were seen being induced by the agents of the 2nd and 3rd respondents by giving money to voters to vote for them while officials of the 1st respondent and security agents look the other way.

It was alleged that in some polling units of Wuse Ward, there were incidents of vote-buying by the 2nd and 3rd respondents and multiple voting by induced voters who were not subjected to biometric accreditation via card reader such that the votes cast were higher than voters accredited with card readers. The petition identified the involved polling units as 002, 004, 006, 110, 011, 012, 014, 016, 019, 020, 022, 023, 025, 026, 027, 028, 029, 030, 032 and 034. It was alleged that as a consequence of the above the total votes

attributed to the 2nd and 3rd respondents was 3,252 while the total number of votes attributed to the petitioners was 2,445 but if the total invalid votes of 1,966 allotted to the 2nd and 3rd respondents is removed, then the legitimate total score of the 2nd and 3rd respondents will be 1,286 while that of the petitioners will be 1,028.

Similarly, for the City Centre Ward, it was alleged that in some polling units, there were incidents of vote-buying by the 2nd and 3rd respondents and multiple voting by induced voters who were not subjected to biometric accreditation via card reader such that the votes cast were higher than voters accredited with card readers, identifying the polling units as 001A to 1D, 002, 008, 009, 016, 021 and 026. It was alleged that as a consequence of the above the total invalid votes attributed to the 2nd and 3rd respondents was 1,839 while the total number of invalid votes attributed to the petitioners was 1,261 but if the total invalid votes were removed from the total scores of the 2nd and 3rd respondents and the petitioners, then the valid votes cast will stand at 1,381 for the 2nd and 3rd respondents while that of the petitioners will be 1,340.

For Karu, Garki, Gui, Nyanya, Orozo and Kabusa Wards, the same allegation was made in respect of all six Wards, that is the elections in those Wards were marred by irregularities such as vote buying by the 2nd and 3rd respondents, there was multiple voting by voters induced with monetary gifts by the 2nd and 3rd respondents, and the use of biometric accreditation was abandoned by the officials of the 1st respondents, leading to over voting in the majority of the polling units.

Each of the respondents filed replies to the petition, the 2nd and 3rd respondents filing a joint reply. The 1st respondent (the Independent National Electoral Commission, shortened to 'INEC') in their reply dated 23rd April, 2019 denied the claims and averments of the petitioners, however, admitting paragraphs 1, 3, 4, 5, 6, 11, 12, 13, 16 and 20 of the petition. In response to paragraph 2, the 1st respondent denied that the 1st petitioner has a right to be returned elected as the Chairman of the Abuja Municipal Area

Council and in answer to paragraphs 6, 7, 8 and 18, it was averred that the 3rd respondent was declared winner of the election having satisfied the requirements of the law and scored the highest number of lawful votes cast in the election. The 1st respondent denied paragraphs 7, 8, 9, 10, 15, 18 and 19 of the petition and averred that there were no incidents of irregularities like multiple thumb-printing, inflation of vote result figures, over voting and deliberate non-use of card readers. In specific response to paragraphs 7 and 8, it was averred that the election of 9th March, 2019 was validly conducted and in substantial compliance with the Electoral Act, 2010 (as amended) and that the return of the 3rd respondent was in compliance with the Guidelines of the 1st respondent and the Electoral Act, the 3rd respondent having scored the highest number of the lawful votes cast at the election. In answer to paragraphs 9, 10 and 15 of the petition, 1st respondent maintained that there were no incidents of over-voting, deliberate non-use of the smart card readers nor was the election marred by irregularities such as multiple thumb-printing in any of the twelve Wards or any incident of corrupt practices to warrant voiding the lawful votes cast and that the 1st petitioner did not score the highest number of valid votes cast in the election. The 1st respondent insisted that the declaration of the 3rd respondent was in compliance with the Electoral Act, 2010 (as amended) and denied paragraph 20 of the petition in its entirety, asserting that all the processes in the conduct of the election of 9th March, 2019 and the return and declaration of the 3rd respondent as the winner of the said election were in substantial compliance with the relevant Guidelines and the Electoral Act, 2010 (as amended), the 1st petitioner having lost the election with a wide margin. Consequently, the 1st respondent prayed the tribunal to dismiss the petition as lacking in merit but rather uphold the declaration and return of the 3rd respondent having scored the majority of lawful votes cast at the election.

The 2nd and 3rd respondents on the 18th April, 2019 filed a joint reply dated same 18th April, 2019. The joint reply of the 2nd and 3rd respondents was of same tenor as the reply of the 1st respondent, specifically denying paragraphs 1, 2, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17 and 20 of the petition and

putting the petitioners to the strictest proof of the claims in those averments. It was averred that the declaration and return of the 3rd respondent by the 1st respondent was valid, the 3rd respondent having polled the highest number of lawful votes cast in the election into the office of the Chairmanship of the Abuja Municipal Area Council held on the 9th March, 2019. As a corollary, the 2nd and 3rd respondents averred that the 1st petitioner have no right to be returned elected as Chairman of the Abuja Municipal Area Council having failed to score the majority of lawful votes cast at the election. It was averred that the election was conducted in substantial compliance with the Electoral Act and the Regulations and Guidelines for the Conduct of 2019 General Elections and was free, fair and credible, a fact confirmed by both local and international observers. The 2nd and 3rd respondents denied each of the allegations of irregularities, vote buying, voter inducement with monetary gifts, incidents of over voting, deliberate non-use of card readers, corrupt practices and improper computation of votes and they dismissed the tabulations containing figures in paragraph 20(B) of the petition as figment of the imagination of the petitioners and not reflective of the figures in INEC Form EC8A derived from results from the voting points as entered in INEC Form EC8A VP, the petitioners having based their tabulation mostly from the result of one voting point rather from all the voting points that constitute the polling unit.

To counter the petitioners claim that there was over voting in mentioned polling units as illustrated from total votes cast being in excess of accredited voters, the 2nd and 3rd respondents (extracted from various Forms EC8As) produced their own table of actual total votes cast vis-à-vis actual total number of accredited voters side by side with the table of the petitioner. This was done in respect of the challenged two polling units in Karshi Ward (002 and 003), in respect of the fourteen challenged polling units of Jiwa Ward (002, 003, 004, 005, 006, 008, 009, 010, 011, 015, 017, 018, 019 and 020), in respect of the six challenged polling units of Gwarimpa Ward (005, 006, 008, 011, 018 and 023), in respect of the twenty challenged polling units of Wuse Ward (002, 004, 006, 010, 011, 012, 016, 019, 020, 022,

023, 025, 026, 027, 028, 029, 030, 032 and 034 but leaving out 014), and in respect of the seven challenged polling units of City-Centre Ward (001A to 1D, 002, 008, 009, 016, 021 and 026). For each of the above polling units, the 2nd and 3rd respondents not only listed what they claimed was the actual number of accredited voters and actual numbers of total votes cast, but also provided the serial numbers of each of the INEC Forms EC8A for the respective polling units. For the polling units of Gwagwa Ward, it was averred by the 2nd and 3rd respondents that contrary to the claims of the petitioners, card readers were used in all the polling units as was done in every other Ward, additionally averring that, like in all other Wards there was no case of multiple thumb-printing, vote buying and that the figures supplied by the petitioners exist only in the imagination of the petitioners.

In conclusion, the 2nd and 3rd respondents urged the tribunal to refuse the reliefs sought by the petitioners and consequently dismiss the petition, on the grounds that the 3rd respondent was duly elected by the majority of lawful votes cast at the election and his return as the winner of the election was valid, that the election was conducted in substantial compliance with the Electoral Act, 2010 (as amended) and Regulations and Guidelines of the 1st Respondent, that the petition of the petitioners is not supported by relevant material facts, and that the facts constituting the election did not show that the election was not conducted in substantial compliance with the Electoral Act, 2010 (as amended) and Regulations and Guidelines for the conduct of the 2019 General Elections.

The petitioners filed a reply dated 29th April, 2019, in response to the reply of the 2nd and 3rd respondents while no reply was filed to 1st respondent's reply. In the reply it was averred that the results ascribed to the 3rd respondent in the result sheets i.e. INEC Form EC8A, EC8B, EC8C, etc., are void by reason of over-voting and in some instances deliberate non-use of card reader accreditation, further averring that when all the void votes ascribed to the 3rd respondent was deducted, his return would not be supported by the remainder of the votes, particularly when viewed against the aggregate number of registered voters in the questioned polling units

and voting points vis-à-vis the margin of victory which is less than the number of registered voters in the affected polling units and Wards. As regards the 2nd and 3rd respondents' claim that the over-voting alleged was in the figment of the imagination of the petitioners, it was averred that the claim was a true reflection of the outcome of the election as evidenced by the card reader print-outs which clearly shows the number of accredited voters in each of the questioned polling units as against the number of purported votes cast as entered in the result sheets. The petitioners then went on to make tables for each of the Registration Areas to illustrate over-voting as was done in the original petition with three remarkable differences, namely, a serial number now accompanied each table, the number of registered voters for each questioned unit is now stated except for Gwagwa Ward, and, tables have now been drawn of accredited voters by SCR vis-à-vis total votes cast for Garki, Gui, Orozo, Nyanya, Kabusa and Karu Wards.

Before calling witnesses, counsel to the petitioners tendered from the bar several documents. Thirty-nine (39) copies of Form EC8A for Garki Registration Area were admitted as Exhibit VA1. Twenty (20) copies of Form EC8A for Gui Registration Area numbered 40-59 were admitted as Exhibit VA2. Eighteen (18) copies of Form EC8A for Orozo Registration Area numbered 60-77 were admitted as Exhibit VA3. Seventeen (17) copies of Form EC8A for Karshi Registration Area numbered 78-94 were admitted as Exhibit VA4. Thirty-three (33) copies of Form EC8A for Kabusa Registration Area numbered 95-125 were admitted as Exhibit VA5. Thirty-sis (36) copies of Form EC8A for Wuse Registration Area numbered 126-161 were admitted as Exhibit VA6. Twenty-seven (27) copies of Form EC8A for Nyanya Registration Area numbered 162-194 were admitted as Exhibit VA7. Twenty-five (25) copies of Form EC8A for Karu Registration Area numbered 195-219 were admitted as Exhibit VA8. Forty-five (45) copies of Form EC8A for Gwarimpa Registration Area numbered 220-264 were admitted as Exhibit VA9. Twenty-one (21) copies of Form EC8A for Gwagwa Registration Area numbered 265-284 were admitted as Exhibit VA10. Twenty-six (26) copies of Form EC8A for Jiwa Registration Area numbered 285-311 were admitted as

Exhibit VA11. Thirty-two (32) copies of Form EC8A for City-Centre Registration Area numbered 312-343 were admitted as Exhibit VA12. Six copies of Form EC8B for Garki, Gui, Kabusa, Nyanya, Orozo and Karu were admitted in evidence as Exhibits VA13, VA14, VA15, VA16, VA17 and VA18. Form EC8C (Summary of Results) was admitted as Exhibit VA19. Form EC8E (Declaration of Results) was admitted as Exhibit VA20. INEC receipt for payment of result sheets dated 12th July, 2019 with serial Number 06591 was admitted as Exhibit VA21. Certified True Copy dated 3rd May, 2019 of polling unit by polling unit accreditation print-out was admitted as Exhibit VA22. Copy of INEC Regulations and Guidelines for Conduct of Elections was admitted as Exhibit VA23. Copy of INEC Manual for Electoral Officers was admitted as Exhibit VA24. Nine (9) bundles of voters' registers for Karshi Ward were admitted as Exhibit VA25. Twenty (20) bundles of voters' registers for Jiwa Ward were admitted as Exhibit VA26. Sixteen (16) bundles of voters' registers for Gwagwa Ward were admitted as Exhibit VA27. Twenty-four (24) bundles of voters' registers for Gwarinpa Ward were admitted as Exhibit VA28. Thirty-three (33) bundles of voters' registers for Wuse Ward were admitted as Exhibit VA29. Thirty-Two (32) bundles of voters' registers for City-Centre Ward were admitted as Exhibit VA30. Seventeen (17) bundles of voters' registers for Karu Ward were admitted as Exhibit VA31. Thirty-two (32) bundles of voters' registers for Garki Ward were admitted as Exhibit VA32. Eight (8) bundles of voters' registers for Gui Ward were admitted as Exhibit VA33. Twenty-four (24) bundles of voters' registers for Nyanya Ward were admitted as Exhibit VA34. Eleven (11) bundles of voters' registers for Orozo Ward were admitted as Exhibit VA35. Fifteen (15) bundles of voters' registers for Kabusa Ward were admitted as Exhibit VA36.

The 1st petitioner, Awunor Princess Vivian Anazodo, testified as the PW1. She adopted the witness statements on oath she made on the 29th March, 2019 (accompanying the petition), 29th April, 2019 (accompanying the reply to 2nd and 3rd respondents' reply to the petition) and on the 31st May, 2019 (accompanying the petition after leave was given for its amendment,

essentially same as the one made on the 29th March, 2019). In the statements on oath made on the 29th March, 2019 and the 31st May, 2019, basically repeated the contents of the petition itself and the depositions are more in the nature of evidence proposed or intended to be adduced rather than facts asserted as evidence except on the matter of alleged non-use of card readers and over-voting where figures constituting over-voting were actually adduced though the evidence was silent on how the conclusions were reached. The statement on oath made on the 29th April, 2019 was also basically a repetition of the averments in the reply to the reply of the 2nd and 3rd respondents.

As part of oral evidence, the PW1 referred to paragraph 6 of the amended petition and paragraph 9 of her statement on oath where she had alleged irregularities. She also referred to paragraph 14 of the petition where she had referred to a report of an inspection conducted on 1st respondent's documents and it was tendered as Exhibit VA37. She identified Exhibit VA1 as the results from the polling units while Exhibit VA22 is the card reader printout, alleging that the results from the card readers are not in the polling unit results, explaining that this is because there are three instruments used for accreditation for that election. She alleged that Exhibits VA1, VA2 etc. are the results but they do not correspond with Exhibit VA22. She explained that accreditation by the card readers is different from accreditation from Form EC8A and it is also different from accreditation by manual card reader though they are supposed to correspond. The PW1 then illustrated that in Exhibit VA1 for Garki Ward 001, the card reader accreditation was 70, accreditation in Form EC8A (Exhibit VA1) is 381 while manual reader accreditation was 862. She alleged that Exhibit VA2 is the same pattern, explaining the in Gui Ward in 001, there is no card reader use but accreditation in Form EC8A was 687 while accreditation by manual reader is 392. It was claimed that in Kabusa (Exhibit VA5) polling unit 001, card reader accreditation was 1504 but EC8A accreditation was 668 while manual accreditation was 3741. She said that in Wuse Ward 011, accreditation by card readers was 179 while accreditation in Form EC8A was 213 but manual

accreditation is 824. The PW1 claimed that in Gwarimpa (Exhibit VA9) polling unit 017, card reader accreditation was 923, EC8A accreditation was 894 but manual accreditation was 1963. With Jiwa Ward (Exhibit VA11) polling unit 020, the PW1 claimed that card reader accreditation was 412, EC8A accreditation was 573 but manual register accreditation was 1769. She asserted that in Exhibit VA12, polling unit 001, card reader accreditation was 855, EC8A accreditation was 1069 but manual register accreditation was 3840. In like manner PW1 claimed that in VA10 (Gwagwa Ward), it was only in two units that card readers were used. She finally identified Exhibits VA13, VA14, VA15, VA16, VA17, VA18, VA19, VA20 and VA21 as result sheets from the collation centres.

The PW1 was cross-examined by the counsel to the 1st respondent. Asked if she voted on the day of election, the PW1 answered in the affirmative, giving her voting point as unit 006 Library/Mokwa Street, Garki 2, admitting that she was accredited with a card reader and manual register, but she still maintained that there was deliberate non-use of card reader because even in her polling unit they started with the use of card reader but along the line stopped its use. She restated that there are twelve (12) Registration Areas (Wards) in AMAC and agreed that there was restriction of movement during the polls but claimed that as a candidate she was everywhere and was able to visit 99% of the the total number of polling units which she put at approximately 262. Asked how many hours she spent in voting at the polling unit she voted, she said give or take it took her twenty minutes. Asked what distance was between Karshi and Wuse, the PW1 said that as the roads were free of traffic on Election Day it took only about twenty-five (25) minutes. Asked how many minutes she spent in each polling unit, the PW1 responded that she spent three minutes, sometimes less than one minute. When the PW1 was asked if it was not contradictory for her to say in paragraph 10 that there was deliberate non-use of card readers and multiple thumb-printing only for her to say in paragraph 18 that she scored the majority of the votes cast, she explained that she was not been

contradictory because if the multiple thumb-printing that led to the over-voting is removed, she will have the majority of the votes cast.

Next, counsel to the 2nd and 3rd respondents cross-examined the PW1. After drawing her attention to Exhibits VA22 and VA37, it was put to her that her analysis on Exhibit VA37 was based on Exhibit VA22, to which she replied that it was not based on only Exhibit VA22 but also on the manual register and all the result sheets i.e. EC8A series, EC8B series and EC8E. She conceded that by the results declared by INEC the difference between her votes and that of the 3rd respondent was 17,785. When it was put to the PW1 that the elections started at 8am and ended by 4pm, she disagreed, adding that in her polling unit it lasted till 10pm because there was insistence that the results must be counted before going to the collation Centre. Asked if she was aware that the ballot papers used for the election were not tendered, she answered in the affirmative though she had alleged that there was multiple voting, explaining that they had a hard time getting them and it became late. When it was put to her that she did not personally see any one buy and sell votes, the PW1 claimed that she saw one incident at Saburi where Engr. Nwagba (popularly known as 'Calm Peace') was giving out N5,000.00 to people and she saw one person vote three times, adding that she went to the security men and reported to them the man with APC tag with a car booth full of cash but the police dismissed her that it was not her business and that if she was not satisfied, she should go to court. The PW1's attention was drawn to page 2 of Exhibit VA37 and after reading it she was asked if that was her understanding of over-voting to which she responded that that was the narrow interpretation, explaining that under the broader interpretation in the INEC Guidelines over-voting is when number of registered voters in the polling unit is less than the numbers of votes cast in that polling unit. She further explained that over-voting occurs where the votes cast is more than the card reader accreditation. The PW1 insisted that her analysis in Exhibit VA37 was not based on the narrow interpretation but on the interpretation in the INEC Guidelines. When it was pointed out to the PW1 that from her analysis in Exhibit VA37, she deducted 20,783 votes from

the votes of the 3rd respondent but deducted nothing from her own votes, the PW1 justified that procedure saying it was the 3rd respondent that rigged the election. She conceded that she was aware Exhibit VA23 was used for the conduct of the elections, and she was asked to and she read paragraphs 23(a) and (b) of Exhibit VA23. When she was asked if she was aware that during the election if a card reader fails to authenticate a thumb-print of a potential voter, the voter's name will be ticked in the voters register and he will be allowed to vote, the PW1 answered in the affirmative. The counsel concluded his cross-examination by getting the PW1 to read paragraph 11(B) of Exhibit VA23.

The PW2 was Michael Akachukwu who adopted his statement on oath filed along with the petition and signed by him as 'A2'. He described himself in paragraph 1 as one of the 'agents and coordinators' of the petitioners in Wuse Registration Area (Ward) in the 9th March, 2019 election (see paragraph 4) and therefore he was familiar with the facts (see paragraph 2). In paragraphs 5, 6, 7 and 8, the PW2 claimed as follows:

5 That as agent and coordinator, I visited severally (sic) all the polling units within the said Ward/Registration Area and I saw that the Presiding Officers in some polling units were allowing voters to vote without the use of card readers to the extent that most voters voted multiple times in the said Polling Units.

6 That the number of votes secured by the 2nd and 3rd respondent owing to multiple voting by voters sympathetic to them is significantly higher than the number accredited to vote in all the polling units above enumerated.

7 That in all the polling units stated above in the Registration Area I saw agents of the 2nd and 3rd respondents inducing voters to vote for 2nd and 3rd respondents by giving them money.

8 That when I reported the irregularities to the polling officers and security agents assigned to the Ward on election day, they did nothing but only said I should go to the Tribunal if I am not happy with what was going on.

The only question the PW2 was asked under cross-examination was from the counsel to the 1st respondent and it was whether he was an INEC accredited agent and his response was that he was not.

The PW3 was Henry Samuel Chukwuka who adopted his statement on oath filed along with the petition and signed by him as 'A9'. Remarkably, apart from paragraphs 1 and 4 of the deposition where he described himself as one of the 'agents and coordinators' of the petitioners in Gwagwa Registration Area (Ward) in the 9th March, 2019 election, the deposition was word for word same as the PW2's deposition.

Once again, only counsel to the 1st respondent cross-examined the witness. Under cross-examination, counsel to the 1st respondent asked the PW3 if he was an INEC accredited agent and he answered in the negative, explaining he was a coordinator. Asked if he signed his statement at the lawyer's office, he answered in the affirmative.

The last witness called by the petitioners was Obinna Kalu, testifying as the PW4. He adopted his statement on oath filed along with the petition and signed by him as 'A21'. His deposition was word for word same as those of PW2 and PW3 except that he claimed he was agent and coordinator for the petitioners at Gwarimpa Registration Area (Ward) at the 9th March, 2019 Chairmanship election for the Abuja Municipal Area Council election.

The counsel to 1st respondent was first to cross-examine the PW4. Asked if he was an INEC accredited agent, he replied that he was not an INEC accredited agent but was the 1st petitioner's coordinator. Asked if his deposition was prepared by his lawyers who gave to him to sign, he replied that he signed it in court, confirming that it was prepared by his lawyers and he signed it.

Cross-examined by counsel to the 2nd and 3rd respondents, the PW4 said that he was registered to vote but in Nasarawa State and that he did not vote on the date of the election because the 1st petitioner asked him to come and do coordinating job for her. He confirmed that on the day of election he

saw ballot papers as they were brought in. Asked if he had seen the petition before his taking the witness box, he answered that this was the first time he was seeing it, and that he was not aware that the petitioners did not tender any ballot paper. He also said he was not aware that the petitioners tendered card reader data that included the data of accreditation for polling units in Gwarimpa. The PW4 was given Exhibit VA22 and referred to pages 3 to 4 with serial numbers 87 to 110 to confirm if he can see entries for Gwarimpa and he confirmed there were entries for polling for Gwarimpa with figures for accreditation assigned to them but he claimed the said figures are not the same with the figures in his deposition, expressing he was surprised if told he have no figures in his deposition.

The parties were called upon to file their final addresses. As none of the respondents called witnesses of their own, the petitioners filed first. In an address of fifty-one (51) pages, the petitioners reviewed the evidence before the tribunal and formulated four issues four determination. The issues were:

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 the 3rd respondent by the 1st respondent was not proper.
2. Whether, having regard to the quantum of void votes (ascribed to the 2nd and 3rd respondent) resulting from over-voting, non-use of card readers as part of accreditation procedure at the election, etc., the lawful votes scored by the 3rd respondent at the election can sustain his return as elected Chairman of Abuja Municipal Area Council (AMAC).
3. Whether, in the light of the quantum of void votes vis-à-vis the number of registered voters in the questioned polling units across the entire Registration Areas (Wards), the margin of the 3rd respondent's victory is not less than the number of registered voters to warrant nullification of the polls.

4. Whether the 1st petitioner shall not be returned as the winner after the removal of void votes ascribed to the 3rd respondent.

Arguing issue 1, counsel referred to Exhibit VA23 which is the INEC Regulations and Guidelines for the Conduct of Elections made pursuant to both the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and s153 of the Electoral Act, 2010 (as amended) and specifically referred to paragraphs 8, 10, 11, 12 and 13 of Exhibit VA23 headed 'Accreditation and Voting Procedures at Elections' and submitted that the scope of the Guidelines of 2019 are wider than they were in 2015 and that it was mandatory to use the smart card readers to verify that the potential voter is same as the person on the voters register. Counsel cited paragraph 10(d) to the effect that the accreditation process shall comprise reading of the Permanent Voter's Card (PVC) and authentication of the voter's fingerprint using the SCR; checking of the Register of Voters and inking of the cuticle of the specified finger of the voter and any voter whose PVC fails to be read by the SCR must be politely be asked to leave without voting, referring to paragraph 10(d) of the Guidelines. Counsel then referred to Exhibit VA37 and the unchallenged analysis made thereat by the PW1 and submitted that from a summary/analysis of Form EC8E the total votes of all the political parties in the election in the twelve (12) Wards was 95,928, the total accreditation as per card readers in the twelve (12) Wards was 75,145, thereby producing a difference between card reader results and vote declared of 20,783 and it was submitted that if the votes of 53,538 ascribed to the 2nd and 3rd respondents were reduced by the said 20,783, the 2nd and 3rd will then have scored only 32,755, much lower than the 35,753 scored by the petitioners as to make the tribunal declare them the winners of the election.

Counsel to the petitioners argued issues 2, 3 and 4 together, and it was argued that numerous judgments of courts had outlined how over-voting and invalidity of votes ought to be proved (citing *Nyesom v Peterside (2016) 7 NWLR (Pt. 1512) 452*, *Sa'eed v Yakowa (2012) 2 SCNJ 404*, *Akeredolu v Mimiko (2014) 1 NWLR (Pt. 1388) 402* and *Oke v Mimiko (No. 2) (2014) 1 NWLR (Pt. 1388) 332*). It was also argued and conceded that result sheets and voters

registers being official documents carry the presumption of regularity and hence the burden to rebut that presumption is on the opponent, but it was submitted that where the entries do not tally or where the document tells a lie on its face, the presumption of regularity will be of no consequence and, in such circumstances, it was submitted that the petitioners are entitled to prove their case by reliance on other forms of entry which can checkmate the man-made manipulation of the electoral system, such as by comparing the entries in the register of voters and card reader data (Exhibit VA22). It was submitted that in this case the petitioners have shown patent anomalies on the Form EC8A with the number of accredited voters and number of votes cast, thereby rebutting the presumption of regularity and shifting the burden of proof to the other party to justify the entries, something the 1st respondent has failed to do in this case. Counsel explained that this is not a case where the petitioners' contention was not that entries were made in Forms EC8A despite election not holding but one where all the results tendered are replete with anomalies when compared with the smart card reports. It was submitted that the over-voting in issue in this case is the one where the total number of votes cast exceed the total number of accredited voters as explained in paragraph 2.6.4. of INEC Manual 2019. Counsel then invited the court to compare the Forms EC8A series with Exhibit VA22 which has been facilitated by the analysis in Exhibit VA37 and it can be seen that the number of votes cast exceeded the number of accredited voters, such that by Exhibits VA22 and VA37 the results obtained must mandatorily be declared null and void, being a non-compliance deserving of only that outcome. Counsel once again referred to paragraph 2.5 of the Manual and set out the steps for accreditation before accreditation entries are made on Forms EC8A and submitted that if any part of the process in an election commencing with the accreditation and ending with the announcement of the results is disturbed, it affects the results of the election. It was argued that despite the oral and documentary evidence adduced by the petitioners, the respondents offered no evidence in rebuttal, conceding that though the petitioners' witnesses were cross-examined that did nothing to diminish the conclusion apparent that there was disparity between the CTCs of Forms

EC8A and Exhibit VA22 i.e. the Smart card reader reports and hence the 3rd respondent ought not to have been declared as the duly elected Chairman of the Abuja Municipal Area Council. It was additionally argued that the respondents having failed to call any witness in support of their replies, they are deemed to have abandoned the replies, citing the cases of *Dingyadi & Anor v Wamako & Ors (2008) LPELR4041* and *Ohiaeri & Anor v Akabeze & Ors. [1992] 1 NSCC 139*, the contention being that the respondents failed to elicit any form of evidence during the cross-examination of the plaintiff's witnesses with respect to the various heads of non-compliance in the petition. It was submitted that an invalid vote is no vote at all, and after it has been detected as invalid, it cannot be used to compute the number of votes cast in an election, citing the case of *HDP v Obi (2012) I NWLR (Pt. 1282) 464 at 487*. The tribunal was urged to find that there was a substantial non-compliance with the Electoral Act and the INEC Manual for Elections which substantially affected the result of the election, and the case of *Swem v Dzungwe & Anor (1966) NMLR 297 at 303* was cited to the effect that if at the end of the petitioner's case a case of non-compliance was established which may or not affect the result of the election and it was impossible for the tribunal to say whether or not the result was in fact affected by the non-compliance, unless there was evidence on behalf of the respondent that such non-compliance could not and did not affect the results of the election, the petition is entitled to succeed on the simple ground that civil cases are proved by a preponderance of evidence. In conclusion, the petitioners' counsel cited the case of *Fayemi v Oni (2009) 7 NWLR (Pt. 1160) 223 at 285* to underscore the usefulness and sanctity of the manual and guidelines and urged the tribunal to grant the reliefs of the petitioners.

The 1st respondent filed a reply of ten (10) pages where they formulated a single issue for determination, namely, whether the petitioners have discharged the burden of proof placed on them to establish substantial non-compliance which affected the results of the 3rd respondent's election and return. In their address, the 1st respondent answered the issue in the affirmative, submitting that the requirement of the law in s139 is that non-

compliance with the Electoral Act, 2010 (as amended) must be substantial and it is he who asserts that must prove. It was argued that the petitioners failed to discharge the burden of proof cast on them, as the petitioners' witnesses under cross-examination testified that they were not INEC accredited agents at any of the polling stations where the petitioners were alleging non-compliance. It was submitted that it was only eye-witnesses who were physically present that can testify on what took place at polling units during an election, citing the cases of *Buhari v INEC (2008) 36 NSCQR (Pt. 1) 475 at 693*, *Gindiri v Nyako (2014) 2 NWLR (Pt. 1391) 211 at 245* and *Andrew v INEC (2018) 9 NWLR (Pt. 1625) 507 at 551*. The court was urged to dismiss the case of the petitioners for lacking in merit.

For the 2nd and 3rd respondents, counsel filed a final address of thirty-eight (38) pages. Counsel made an analysis and review of the evidence and set up a table of the pages and paragraphs in pleadings/petition of the petitioners concerning each Ward, the allegations in the petition concerning each such Ward, the corresponding pages in PW1's report and the complaint contained therein and concluded with 2nd and 3rd respondents' general observation, mostly in each case saying the evidence was hearsay. Counsel argued as a preliminary objection that Exhibit VA22 can only be tendered by the maker and having failed to be tendered by the maker in this case, it should be expunged, citing the case of *Kpandegh & Anor v Kyenge & Ors (2016) LPELR41785*. Counsel then listed what were described as pitfalls in the petitioners' case before formulating three issues for determination. The first issue was whether the petitioners have led sufficient and credible evidence to prove that the 3rd respondent was not duly elected or returned by majority of lawful votes cast at the election held on the 23rd day of February, 2019 for the office of Chairman of Abuja Municipal Area Council (AMAC). While the second issue was whether the election of the 3rd respondent to the office of the Chairman of Abuja Municipal Area Council (AMAC) was conducted in substantial compliance with the provisions of the Electoral Act 2010 as amended and the INEC Guidelines for 2019 General Election, the third issue was whether the election of the 3rd respondent to the office of the Chairman

of Abuja Municipal Area Council (AMAC) was marred with irregularities. The three issues were argued jointly, taking in subheads of accreditation voting procedure at elections, the legal consequence of proof of over-voting, the burden of proof in election petitions, the failure of the petitioners to call polling agents or the makers of any of the makers of documents tendered, the value of the evidence of the PW1 and Exhibit VA37 (report of inspection), the allegation of corrupt practices, the dumping of documents, the evidence on polling units not pleaded by the petitioners, the admission against interest by the PW2, PW3 and PW4, and, on the allegation that the 3rd respondent was not elected by the majority of lawful votes cast at the election. By way of conclusion, counsel gave a reply to the address of the petitioners.

On accreditation voting procedure at elections, it was submitted that accreditation is the foundation for a free and fair election and counsel cited the provisions of s53(2) and (3) of the Electoral Act, 2010 (as amended) and Manuals for Election Officers 2019 on the consequence of votes cast exceeding the number of registered voters, identifying the two species of over-voting, namely votes cast is in excess of voters register figure and or in excess of voters accredited. Counsel referred to the definition of over-voting given by the PW1 in Exhibit VA37 to mean 'when the number of the smart card reader accreditation is less than the ticks in the voters register' which was described as unknown to the law, and it was submitted that it was that misunderstanding that has led the 1st petitioner to bring this suit that has no support in the law. Counsel referred copiously to the decisions of the Supreme Court in *Nyesome v Peterside (Supra)*, *Shikafi v Yari (2016) 7 NWLR (Pt. 1511) 340* and *Okereke v Umahi & Ors (2016) LPELR 40035* where the usefulness and relevance of the use of smart card readers was underscored but it was emphasized that it does not take the place of the voters register as a vehicle for conducting acceptable election since while the voters register derives its force from the Electoral Act, the smart card reader derives its force from the INEC Guidelines and Regulation which are subsidiary legislation and the role of the smart card reader is only for authentication. It

was argued that even if there was over-voting, the consequence is for nullification of the votes of the polling units concerned, not the deduction of the votes from one of the contestants in the manner the 1st petitioner have done so that she can have the majority of votes and be declared the winner of the election. It was argued that by s136 of the Evidence Act, 2011 the burden of proof was cast on the petitioners to establish that there was over-voting accentuated by non-use of smart card readers, but they failed to discharge the burden, more so where declarations are being asked for whereby the petitioner must rely on the strength of their case and not on the weakness of the respondents' case, counsel citing several cases, among them *Andrew v INEC (2018) 9 NWLR (Pt. 1625)*, *Okoye v Nwankwo (2003) All FWLR (Pt. 669) 1005* and *Oyebode v Gabriel (2003) All FWLR (Pt. 156) 1043*. The point was made that the failure of the petitioners to call the polling agents or other eye-witnesses to the alleged irregularities except the PW2, PW3 and PW4 who even admitted against interest that they were not accredited INEC agents and in respect of whom there is no evidence that they were in the field, the case of the petitioners was anchored on hearsay evidence, including all the documents tendered through the petitioners' witnesses since they were not the makers, counsel citing among others the case of *Chuka v Okechukwe (2015) LPELR 40443*. Counsel dismissed the evidence of the PW1 and Exhibit VA37, citing the case of *Atiku Abubakar & Anor v INEC & Ors CA/PEPC/002/2019* to the effect that a witness, such as the PW1, who made forensic analysis of forms of which he was not the maker and presented his analysis (such as Exhibit VA37) as evidence gave documentary hearsay evidence, not being a polling agent. On the allegation of corrupt practices, it was submitted that the allegations require proof beyond reasonable doubts and the persons against whom the allegations of crime were made should have been made parties. It was argued that the petitioners merely dumped documents on the tribunal by tendering them from the bar in bulk and calling no witness to link them to relevant aspects of the case, citing the case of *Okereke v Umahi (2016) 2-3 SC (Pt. 1)*. The tribunal was urged to discountenance the evidence on votes from eighty-three (83) polling units which were not contained in the petitioners' petition. Consequently the

tribunal was urged to refuse to find as urged by the petitioners that the 3rd respondent was not duly elected with the majority of lawful valid votes. Counsel referred to paragraphs 10 (d) to 10 (f) of the 1st respondent's regulations and guidelines and submitted that the use of smart card readers is to show successful authentication, not accreditation.

In reply on points of law, petitioners replied the address of the 2nd and 3rd respondents based on each of the subheads of that address. It was submitted that the PW1 amply explained even under cross-examination that the interpretation of over-voting in Exhibit VA37 was the narrow one and counsel cited the case of *Nyesome v Peterside (Supra)* to underscore the place of the smart card reader, that is, to authenticate the owner of a voter's card and to prevent multiple voting, arguing that the Election Manual and Guidelines (Exhibit VA23) provided novel guidelines which were not there in the previous guidelines, thereby eliminating the use of incident forms while authorizing the exclusive use of the smart card reader for authentication of voters. On burden of proof, it was argued that issues were never joined on the pleadings, the respondents having abandoned them by failing to call witnesses. Counsel dismissed the argument that polling unit agents were not called submitting that indeed the witnesses called were polling unit agents who were eye-witnesses apart from the documentary evidence before the court, particularly Exhibit VA37 whereby entries made in the voters register and card reader data were compared. Citing the cases of *PDP v INEC (2014) 17 NWLR (Pt. 1437) 525* and *Andrew v INEC (2018) 9 NWLR (Pt. 1625) 507*, it was submitted that proof by calling agents polling unit by polling unit is unrealistic and what is intended is that qualitative evidence be called to reflect the contested polling units, provided there is other evidence before the tribunal aside of witnesses especially in this case where the evidence was unchallenged. On the issue of not calling the maker to tender the documents put in evidence, counsel cited the case of *Salami v Ajadi (2007) LPELR-8622CA* which is to the effect that public documents can be tendered by the person to whom they were given, the provisions of s83(1) of the Evidence Act not being absolute, and that, besides, ss52, 98(1), 146 and 148 Evidence Act

and ss77, 121 and 151 of the Electoral Act all makes such admission logical, counsel citing in support the case of *Asafa Food Factory Ltd v Alraine Nigeria Ltd (2012) 12 NWLR (Pt. 781) 353*. It was argued that the allegations of corrupt practices were amply proved in Exhibit VA37 and that there was no dumping of documents as it was the duty of the tribunal to evaluate documents tendered before it, more so CTCs from public authorities, provided they are in the language of the court within the contemplation of paragraph 41 of the 1st schedule to the Electoral Act which did not permit oral examination in chief of witnesses. Finally, on the claim that results from polling units not pleaded were adduced in evidence, it was submitted that that was necessary in view of the margin of win by the 3rd respondent which is less than the registered voters in the affected polling units. In conclusion, the counsel referred to the amendment to the Electoral Act contained in a gazette number 41 volume 102 of 31st March 2015 by which the old order was changed and the tribunal was urged to enter judgment in favour of the petitioners.

Before taking a close look at the evidence before the tribunal, the counsel to the 2nd and 3rd respondents has made some arguments that are in the nature of preliminary objection and therefore requires to be attended to right away. Counsel argued that Exhibit VA22 can only be tendered by the maker and having failed to be tendered by the maker in this case, it should be expunged, citing the case of *Kpandegh & Anor v Kyenge & Ors (Supra)*. Exhibit VA22 were certified true copies of seven pages of polling unit by polling unit accreditation sheets. In response, the petitioners' counsel cited the case of *Salami v Ajadi (Supra)* and argued that a certified true copy need not be tendered by the maker. We agree *in toto* with the petitioners counsel. The decision in *Salami's Case* is that 'a person including a party to the proceedings who has in his possession a duly certified public document can dispense with the appearance or presence of the public officer who has proper custody or his designated officer… and the party may tender the document even though he was not a party to it or even his counsel may tender same from the bar', a decision we think that is strengthened more so

in this case where the so called maker is an adversary of the person seeking to rely on the document.

Secondly, the tribunal was urged to discountenance the evidence on votes from eighty-three (83) polling units which were not contained in the petitioners' petition but were included as part of the petitioners' Exhibit VA37. In petitioners' reply on point of law, they responded to this argument by merely saying it was necessary as the tribunal will need the figures with reference to the margin of victory. We must observe that we do not know the particular polling units constituting the eighty-three (83) polling units but we think that the argument of the 2nd and 3rd respondents on this point is quite strong and cogent. We also think that apart from what may have been contained in Exhibit VA37 that was not contained in the petition, in the petitioners' reply dated 29th April, 2019, being a reply to the reply of the 2nd and 3rd respondents reply to the petition, the petitioners had adduced figures of alleged over-voting in Garki, Gui, Orozo, Nyanya, Kabusa and Karu Wards. The consequence was that the respondents did not have the opportunity to now file a rebuttal to the facts so pleaded as the 2nd and 3rd respondents did in their reply of 18th April, 2019. Of course, the approach of the petitioners also runs foul of the provisions of paragraph 16(1)(a) of the First Schedule to the Electoral Act which is to the effect that the petitioner shall not at the stage where they are filing a reply to respondent's reply be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him. The consequence is that no reliance will be made to those figures but the tribunal would rather confine itself only to whether the petition was proved on the allegations of multiple voting, inducement of voters with monetary gifts and the abandonment of the use of biometric accreditation with respect to Garki, Gui, Orozo, Nyanya, Kabusa and Karu Wards.

On the part of the petitioners, they had urged the tribunal to find that by failing to call witnesses, the respondents have abandoned their pleadings and having not been able to elicit any form of evidence during cross-examination of the witnesses called by the petitioner, the tribunal is left with

no option than to uphold the petition. In election petition cases, invariably prayers are for declarations to be made in favour of the petitioners as in this case. In such cases, the petitioner must rely on the strength of his case and not on the weakness of the respondent's case. (See: *Okocha & Anr. v INEC & Ors. (2010) LPELR-4718(CA)*). Besides, there are a long line of cases to the effect that even if no witness of the respondent was called to testify, it is sufficient if a respondent cross-examines witnesses of the petitioner and thereby elicit favourable evidence that goes to offer a defence (see: *Agagu & Ors v Mimiko & Ors. (2009) LPELR-21149(CA)*). We note that the star witness of the petitioner (the PW1) was cross-examined at length on behalf all three respondents. Therefore, we would hesitate to find that the evidence thereby elicited did not offer any defence and we would rather defer the value to be placed on such evidence to when the evidence is fully examined instead of merely rushing to find that the petition has been proved only because the respondents did not call any witness.

As can be seen in the petition of the petitioners, the two grounds for which the petition was brought are anchored on s138(1)(b) and (c) of the Electoral Act, 2010 (as amended) to wit, that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act or that the respondent was not duly elected by majority of lawful votes cast at the election. The precise wordings of the grounds were:

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

The allegations of vote-buying and multiple thumb-printing appear to us to be manifestations of an allegation of corrupt practices. We note that allegations of similar tenor were made in paragraph 9 of the petition where it was averred that the election was marred by irregularities as there were

multiple thumb-printing, inflation of result figures, incidences of over-voting and deliberate non-use of card readers/abandonment of the use of biometric accreditation. In the particulars of facts stated in support of the grounds, the petition had also averred that there were acts of voters' inducement with money to facilitate the acts of thumb-printing etc. All the foregoing can conveniently be encapsulated in the grounds of corrupt practices under s138(1)(b) and if proved, may logically dovetail into 'non-compliance with the provisions' of the Electoral Act (s138(1)(b)) and hence a finding that the 3rd 'respondent was not duly elected by majority of lawful votes cast at the election'. Thus, the duty on this court is to consider if the above infractions have been proved and what legal consequences will attend such proof. To do this, the approach will be to segment the consideration of the evidence and the grounds into two; the first would be on those issues where proof need not be with reference to documents while the second will be where of necessity the claims cannot be resolved without reference to documentary evidence.

To first comment generally on the four witnesses called by the petitioners, the PW1 alone may be considered to have adduced evidence that was worthy of any consideration. The affidavit evidence of the PW2, PW3 and the PW4 were quite weak and were not bolstered by any response to questions put during cross-examination. They both all claimed that they respectively 'visited' all the polling units in Wuse, Gwagwa and Gwarimpa Wards without providing context to support the possibility since Wuse has 35 polling units, Gwagwa has 18 polling units while Gwarimpa has 24 polling units. In all cases, the witnesses said it was in 'some' polling units that they found Presiding Officers allowing voters to vote without the use of card readers to the extent that most voters voted multiple times; however, all three witnesses failed to specifically mention the particular polling units where they observed this. They claimed that the number of votes secured by the 2nd and 3rd respondents was bloated and significantly higher than the number accredited to vote in all the polling units owing to multiple voting by voters sympathetic to them; however, no figure of such votes was given

and no reference made to any document in proof of this claim. Of course, the fact that these witnesses may have been speaking of events of which they had no personal knowledge were exposed by their reference to some earlier 'enumerated polling units' when in fact they had not enumerated any polling units in their statements on oath. Indeed, under cross-examination, the PW4 was given Exhibit VA22 and referred to pages 3 to 4 with serial numbers 87 to 110 to confirm if he can see entries for Gwarimpa with figures for accreditation assigned to them contrary to his claim that SCR was not used, he conceded but he claimed the said figures are not the same with the figures in his deposition, expressing he was surprised if told he have no figures in his deposition when in fact no figures were in fact given by the PW4 in his deposition. While the PW2, PW3 and PW4 claimed that they saw agents of the 2nd and 3rd respondents inducing voters to vote for the 2nd and 3rd respondents by giving them money, there is no evidence of how they determined that the persons in question were agents of the 2nd and 3rd respondents. Overall, therefore, the PW2, PW3 and PW4 do not come across to us as witnesses giving evidence of facts to which they have personal knowledge. Thus, taken together, the PW2, PW3 and PW4 offered little or nothing to aid the case of the petitioners. In any event, given the spread of the places where polling took place, a mere six polling units of Gwarimpa Ward out of twenty-four, sixteen polling units of Gwagwa Ward out of eighteen and twenty polling units of Wuse Ward out of thirty-five, making a total of forty-four, being the only polling units concerning which supposed participants in the election testified, out of about two hundred and sixty-two polling units is so disproportionate as to elicit any serious inquiry as to whether enough has been done by the petitioners to discharge the burden of proof cast on them.

The PW1's evidence on oath is almost word for word the averments in the petition and the reply to 2nd and 3rd respondents, whereby the depositions continue to assume the character of facts intended to be proved rather than facts been proved or asserted. Be that as it may, some other facts were adduced by her oral testimony in elucidation of documents already

tendered, including the inspection report she tendered as Exhibit VA37, comparing Exhibits VA1 to VA12 with Exhibit VA22 (the card reader printout) alleging that the results from the card readers are not in the polling unit results underscoring the existence of disparities in the manual and smart card accreditation arising from electoral malpractice, facts further explained in Exhibit VA37. By the nature of the foregoing evidence, necessarily the tribunal must itself peruse the documents referred to and will defer its decision or opinion thereon till then.

However, telling facts also emerged from the cross-examination of the PW1 by counsel to the various respondents. The PW1 said that she voted at Garki and was accredited with a card reader and manual register, but she still maintained that there was deliberate non-use of card reader because even in her polling unit they started with the use of card reader but along the line stopped. Now, the PW1 was silent on why they stopped the use of the card reader and whether it was for an excusable cause they stopped using card readers since the PW1 seems not to have made what happened in the polling unit she voted as one of her grievances for this petition. Could that same excuse not have applied to the various other polling units?

Despite putting the total number of polling units in AMAC at approximately 262, the PW1 claimed that she was able to visit 99% of the units, spending an average of three minutes in each. We find the claim of visiting 99% of the polling units incredulous and also consider that the time span of three minutes was insufficient for her to have made reasoned observations, more so as it was not likely that she could have arrived at every polling unit at the same stage of the election. When the PW1 was asked what the distance was between Karshi and Wuse, she had said that because the roads were free of traffic on Election Day, it took only about twenty-five (25) minutes; was this to suggest that there was no stop over at any polling unit in between Karshi and Wuse since logically there should be polling units in between? We think that these incongruities suggest to us that it could not have been true that the PW1 was everywhere as she claimed she was as to be

in a position to give direct eye witness evidence of the electoral malpractices that she had alleged aside of the polling unit she voted.

Corrupt practices like any other electoral malpractice amounts to a criminal offence and is required to be proved beyond reasonable doubt. Where it is alleged that the acts in question were perpetrated by an agent, it must also be proved that the alleged agent claimed to be the agent of the elected person and the offences were committed in favour of that elected person with his knowledge or with his knowledge and consent and that the person who is acting did so under the general or special authority of such candidate with respect to the election: see s124(6) of the Electoral Act, 2010 (as amended) and *Kwali & Anor v. Dobi & Ors. (2008) LPELR-4413(CA)*.

Where allegation of multiple thumb-printing is made, to sustain the allegation, the ballot papers allegedly thumb-printed must be produced to the tribunal and the quantity and forensic report to support the multiple thumb-printing of several ballot papers by same person must be presented before the Tribunal (*Goyol & Anor v. INEC & Ors (2011) LPELR-9235(CA)*). In *Igbe & Anor. v Ona & Ors. (2012) LPELR-8588(CA)* it was held that only expert oral evidence could prove that the finger prints appearing on the ballot paper belong to one and the same person thereby leading to the unlawful thumb printing alleged.

Voters inducement with money (or bribery) was alleged by each of the four witnesses called by the petitioners. Of course, inducement with money or other forms of bribery of a voter or the acceptance of such by a voter is an offence under various provisions of the Electoral Act, including ss124 and 130.

Likewise where a petitioner alleges inflation of election result figures, the fact of inflation must first be unequivocally proved and the petitioner must give the particulars of the inflated figures and also show that if the inflated figures were taken from the votes credited to his opponent in the case the result would change in his favour (*Agbaje v Fashola (2008) 6 NWLR (Pt. 1082) 90 at 148*). Of course, if inflation of figures is proved, the tribunal has a right and indeed a duty to compute or collate result where such results

have been inflated and/or wrongly computed (*Agbaje v Fashola (Supra)*). Inflation of figures is another way of saying there was falsification of results and the law is that to prove falsification of result in an election petition, it is basic that there should be in existence at least two results, of which one is genuine while the other considered to be falsified, a burden imposed on the petitioner to discharge (*Bello v Aruwa (1999) 8 NWLR (Pt. 615) 454*).

In this case, no ballot paper was tendered in evidence as would have been expected and no expert or biometric expert was called as a witness to establish that one person thumb-printed several ballot papers contrary to s53(1) of the Electoral Act, even though a thumb-print expert was stated as one of the proposed witnesses in the list of witnesses. Indeed, when the PW1 was cross-examined she was asked why no ballot paper was tendered in evidence and her response was that it became too late to get them from the 1st respondent, from whom it was quite difficult before the voters register could be obtained. Thus, without much ado, it is safe to conclude and we do hereby declare that the claim of alleged multiple thumb-printing was not proved.

With respect to the claims of bribery and voters inducement with money, beyond making the bare assertion, none of the four witnesses in their witness statements on oath gave specific and sufficient details of such acts of bribery and inducement with money, except the PW1 who mentioned that she saw one incident at Saburi where one Engr. Nwagba (popularly known as 'Calm Peace') was giving out N5,000.00 to people and that she saw one person vote three times. Now, it is instructive that this specific assertion was made only consequent upon cross-examination, thereby taking the wind out of the sail of the allegation. Even if it were true, we think one such incident will be insufficient as basis for concluding that it was widespread. The claim of the PW1 that she saw one person who after being induced voted thrice must also be accepted with circumspection given that the PW1 had said she spent only about three minutes in each polling station, a period that may be insufficient to have seen everything alleged. Be that as it may, even if it was true that Engr. Nwagba or any other person may have been involved in

corrupt acts, it must be further proved beyond reasonable doubts that such a person did so in favour of the 3rd respondent, with his knowledge or with his knowledge and consent or Engr. Nwagba or any such person was acting under the general or special authority of the 3rd respondent. In this case the petitioners have not convincingly established the existence of that agency relationship from the depositions made before this tribunal.

On the claim of inflation of figures or falsification of results to the benefit of the 2nd and 3rd respondents, the petitioners had given two sets of results as required by the law but for only four Wards i.e. Jiwa Ward (invalid votes allegedly allotted to 2nd and 3rd respondents was 7,973, while invalid votes allotted to petitioners was 1,620 votes whereas the valid votes of each should have been 1,492 and 604), Gwagwa Ward (invalid votes allegedly allotted to 2nd and 3rd respondents was 5,531, while invalid votes allotted to petitioners was 2,175 votes whereas the valid votes of each should have been 242 and 339), Wuse Ward (invalid votes allegedly allotted to 2nd and 3rd respondents was 3,252 while invalid votes allotted to petitioners was 2,445 votes whereas the valid votes of each should have been 1,286 and 1,028) and City-Centre Ward (invalid votes allegedly allotted to the 2nd and 3rd respondents was 1,839 while invalid votes allotted to petitioners was 1,261 votes whereas the valid votes of each should have been 1,381 and 1,340). Before commenting on the above figures, we must put on record that we had earlier stated that the figures for Garki, Gui, Orozo, Nyanya, Kabusa and Karu Wards filed as part of petitioners' reply to the reply of the 2nd and 3rd respondents to the petition were offensive of the provisions of paragraph 16(1)(a) of the First Schedule to the Electoral Act and hence would not be taken into reckoning. The first comment to make is that these two sets of results were stated in the petitioners' pleadings and, adopted as evidence by the PW1 but no document was tendered containing the said results described as valid, thus making them to be of doubtful provenance. The second comment is that there is no evidence before the court as to how the petitioners determined the quantum of valid votes vis-à-vis the quantum of invalid votes ascribed to the respective parties. The question remains how

were the valid and invalid votes separated from the bulk of votes? Of course, counsel in the final address had simply deducted from the 2nd and 3rd respondents' votes the number of votes allegedly in excess of number of SCR accredited voters, but there is no explanation if the methodology adopted here is the same. Finally, and more importantly, the petitioner must, apart from giving the particulars of the inflated figures, show that if the inflated figures were taken from the votes credited to her opponent in the case the result would change in her favour. Looking at the so called valid votes from the above four Wards, taken alone and without reference to the results from anywhere else, the result would still be in favour of the 2nd and 3rd respondents, thereby making the claim of inflation or falsification of results unavailing.

Now, whereas the complaints of corrupt practices, irregularities such as multiple thumb-printing, inflation of result figures, bribery and voters' inducement with money taken alone and separately may not individually be sufficient to affect the return of the 3rd respondent as the elected Chairman of the Abuja Municipal Area Council as illustrated from the above analysis of the evidence before the tribunal, over-voting has been alleged arising from alleged deliberate non-use of smart card readers for voters accreditation. We think if the allegation is proved, it may validate the other several complaints as what led to the over-voting. Thus, the issue for determination by this tribunal would be whether the petitioners have established a case of over-voting arising from non-adherence to the protocols for accreditation of voters and if so whether it was a substantial non-compliance enough to affect the results as to call for a nullification of the election of the 3rd respondent as Chairman of the Abuja Municipal Area Council (AMAC).

There is a provision on over-voting in both the Electoral Act, 2010 (as amended) and the Regulations and Guidelines for the Conduct of the 2019 Elections made pursuant to s153 of the Electoral Act and ample references was made by both counsels to these provisions. Under s53(2) of the Electoral Act, 2010 there is a situation of over-voting 'where the votes cast at an election in any polling unit exceed the number of registered voters in that

polling unit'. In like manner, the Regulations provide in paragraphs 23(a) and (b) for two classes of over-voting i.e. '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 a Polling Unit exceeds the total number of accredited voters'. Clearly, over-voting arising from disparity in total number of accredited voters and total votes cast is outside the provision of the Act. However, whether under the Electoral Act or under the Regulations, where over-voting occurs, the consequence is to nullify the election where over-voting occurs and order for another election, unless the INEC is satisfied that the result of the election will not substantially be affected by voting in the area where the election is cancelled (see s53(4) of the Electoral Act), otherwise described as the margin of lead rule in paragraph 33 of the Regulations.

Going by s49 of the Electoral Act, it appears that to be eligible to vote, the presiding Officer only need to be satisfied that the name of the person is on the register of voters. On the other hand, the Regulations (tendered in evidence in this case as Exhibit VA23) have made a more elaborate provision for eligibility to vote dependent on fulfilling the prescribed accreditation procedure. To start with, to underscore the importance of the use of the smart card, the side notes to paragraph 10 is 'Mandatory use of Smart Card Reader'. While paragraph 10(a) provides that, in accordance with s49(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 the Regulations and Guidelines, paragraph 10(d) provides that the accreditation process shall comprise reading of the Permanent Voter's Card (PVC) and authentication of the voter's fingerprint using the SCR and then the checking of the Register of Voters and inking of the cuticle of the specified finger of the voter. The APO I shall read the PVC using the Smart Card Reader to ascertain that the photograph on the permanent voter's card is that of the voter and that the Polling Unit details correspond with those of the Polling Unit after which he will request the voter to place the appropriate finger in the place provided on the Smart Card

Reader for authentication and if the fingerprint matches, request the voter to proceed to APO II. The APO II will do another layer of checks i.e. request for the permanent voter's card and check the Register of Voters to confirm that the voter's name, details, and Voter Identification Number (VIN) are as contained in the Register of Voters. If satisfied that the person's name is on the Register of Voters, the APO II shall tick the appropriate box of the horizontal boxes on the right margin beside the voter's details on the Register, showing the category of election. However, the APO II will tick the appropriate box at the left margin of the Voter details in the case of SCR failure to read (FR) or failure to authenticate (FA). Further provisions are made in paragraph 11(b) for where there was failure by the SCR to authenticate any particular PVC. Where a voter's PVC is read but his/her fingerprint is not authenticated, the APO I shall refer the voter to the APO II who shall request the voter to thumbprint the appropriate box in the Register of Voters, provide his/her phone number in the appropriate box in the Register of Voters, continue with the accreditation of the voter and refer the voter to the PO or APO (VP) for issuance of ballot paper(s). It is clear from the above that under the Regulations, the smart card reader play a key role in whether or not a person is eligible to vote.

The petitioners case is hinged on over-voting consequent on total number of votes cast being in excess of total number of accredited voters rather than votes cast being in excess of the number on the voters register. Reference has been made to Exhibit VA22 said to be print-out of the number of voters who underwent accreditation with the Smart Card Reader. It is a document Certified as True Copy of seven (7) pages purporting to be unit by unit record from the use of the SCR and titled 'Abuja Municipal Area Council in the Council Chairmanship Election in FCT – 9th March 2019 PU by PU Accreditation'. It ended with a grand total of 75,145. It is the case of the petitioners that the figure of 98,543 declared as total votes cast is far in excess of 75,145 and therefore a case of over-voting has been established.

Now, among the several documents tendered by the petitioners was a Certified True Copy of the Summary of Results from Electoral Wards for

AMAC with Code 06 admitted in evidence as Exhibit VA19. Exhibit VA19 is INEC Form EC8C with serial number 000001 and has entries for the scores of each of the twenty-nine (29) political parties that participated in the election. It also has entries for each of the twelve (12) Electoral Wards summed up under the following heads: Number of Registered Voters (677,421), Number of Accredited Voters (99,443), Total Valid Votes (of 95,928), Rejected Votes (2,615) and Total Votes Cast (98,543).

Now, we have to revert back to the understanding of over-voting under the various provisions earlier identified. Under s53(2) of the Electoral Act there would be over-voting where the votes cast at an election in any polling unit exceed the number of registered voters in that polling unit. From Exhibit VA19 the aggregate of registered voters was stated as 677,421 while the aggregate of votes cast was stated to be 98,543 far less than 677,421 and consequently, there cannot be said to be any over-voting. On the other hand, under paragraph 23(b) of the Regulations, there would be over-voting where the total number of votes cast at a Polling Unit exceeds the total number of accredited voters. From Exhibit VA19, the aggregate of total votes cast was stated to be 98,543 while the aggregate of accredited Voters was 99,443; thus, once again there is no case of over-voting as defined under paragraph 23(b) of the Regulation.

However, Exhibit VA22 has been tendered as records of accreditation from the use of card readers and the figures contained therein (75,145) is far less than the 99,443 figure for accredited voters in Exhibit VA19 as well as the figure for total votes cast of 98,543 in Exhibit VA19. Taking 75,145 against 98,543, one could be persuaded that a case of over-voting has been established. The only way to resolve this is by reference to decisions by the Superior Courts on the place accreditation by Smart Card readers in the electoral process.

There have been quite a number of cases on this subject-matter. In the case of *Ikpeazu v. Otti & Ors (2016) LPELR-40055(SC)*, several notable

pronouncements came from the Supreme Court regarding the place of the Smart Card reader. Some of these were reproduced below:

1. 'As I stated in SC.18/2016 that until Section 49 of the Electoral Act is amended to bring in the process of electronic voting, the manual voters 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'ahs, 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 a handmaiden in the accreditation process. Thus any attempt to prove over-voting or non-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 card readers would be relevant for nullifying elections'. Per Rhodes-Vivour, JSC.

Apart from *Ikpeazu v Otti & Ors (Supra)*, the Supreme Court has held to the same effect in the cases of *Shinkafi & Anor v Yari & Ors 7 NWLR (Pt. 1511) 340*, *Okereke v Umahi & Ors (2016) LPELR-40035(SC)*, and *Nyesom v*

Peterside & Ors (2016) LPELR-40036(SC), precedents which were recently followed by the Presidential Election Petitions Tribunal in the case of *Abubakar & Anor v INEC & Ors CA/PEPC/002/2019*.

To our knowledge, the provisions of s49 of the Electoral Act have not been amended as to nullify the above decisions. In the final address of the petitioners counsel, it was argued that there was an amendment to the Electoral Act as published in a gazette of the Federal Government of Nigeria dated 31st March 2015. Indeed, while s49 of the Electoral Act, 2010 was not amended there was an amendment made in s52 of the Electoral Act. Whereas before March, 2015, s52(2) of the Act provided that 'The use of electronic voting machine for the time being is prohibited', by the 2015 Amendment, s52(2) now reads 'Voting at an election under this Act shall be in accordance with the procedure determined by the Independent National Electoral Commission'. Thus, it is arguable that there has been a change in the law as to accommodate the mandatory use of the smart card reader as have been emphasized in the Regulation by INEC. However, luckily for this tribunal, the Presidential Election Petitions Tribunal in *Atiku Abubakar & Anr v INEC & Ors. CA/PEPC/002/2019* (delivered on 11th September, 2019) had cause to revisit the above authorities and decide on the place of the Smart Card reader and it was held that despite the amendment, the above authorities remain the law. Both s49 and s52(2) of the Electoral Act were amply made reference to in that decision.

We have taken repeated looks at the petition filed by the petitioners. There is no doubt that no complaint has been made regarding the non-accreditation of voters by reference to the voters registers. Rather, the complaint of the petitioners was on non-accreditation of voters by the smart card readers, in fact the precise complaint being that there was deliberate non-use of the card readers. In our opinion, based on the state of the law at present as above espoused, such deliberate non-use of card readers is not sufficient reason to nullify an election.

Besides, even though in the marginal note to paragraph 10 of the Regulations it was stated that accreditation by card readers was mandatory, it is obvious that there was room for departure. Thus, in paragraph 10(f) the APO II was required to tick the appropriate box at the left margin of the Voter details in the case of SCR failure to read (FR) or failure to authenticate (FA) and proceed to let the voter vote. Indeed, when the PW1 was being cross-examined by counsel to the 2nd and 3rd respondents, the question was put to her if she was aware that where, during the election, a card reader fails to authenticate the thumb-print of a potential voter, the voter's name will be ticked on the voters register and he will be allowed to vote, the PW1 answered in the affirmative. Now, there is no evidence before the tribunal that there was any incident of card reader failure as to activate the above exception; however, there was equally no claim from the petitioners too that there was no incident of card reader failure as to activate the exception, particularly considering that the PW1 claimed that even in her polling unit the use of card reader was stopped and she was obviously not aggrieved by that. This is more so as there is a presumption of regularity in favour of official acts.

The PW1 identified Exhibit VA1 (i.e. Form EC8A) (as with Exhibits VA2 to Exhibits VA12) as the results from the polling units while Exhibit VA22 is the card reader printout. She alleged that the results from the card readers are not in the polling unit results and that the result of accreditation by the Smart Card reader and the manual accreditation must tally, which is not the case here. We have looked at the top copies of Exhibits VA1 to Exhibits VA12 (Form EC8A (Statement of Results from polling units) and indeed also Exhibits VA13- VA18 (Form EC8B (Summary of Results from polling units)), Exhibit VA19 (Form EC8C (Summary of Results from Electoral Wards)) and Exhibit VA20 (Form EC8E (Declaration of Results)). Obviously, there is a column in all these forms for total number of accredited voters for which figures have been entered. However, there is nothing to suggest that 'total number of accredited voters' contemplated was to be from voters accredited

by the SCR or voters manually accredited with the voters register or that the Forms were required to contain records from both means of accreditation.

Remarkably, in Exhibit VA37, the PW1 had suggested that over-voting occurs 'when the number of the smart card reader accreditation is less than the ticks in the voters register' and when she was taken up under cross-examination, she had explained that that was the narrow interpretation. Counsel to 2nd and 3rd respondents has dismissed that 'narrow interpretation' as unknown to the law. We think differently and believe that if the petitioners had rather than merely rely on Exhibit VA22 compared Exhibit VA22 with ticks on voters registers and establish before the tribunal that there was disparity between the two, barring that there were no machine failures or if such happened the supplementary procedure was followed, the tribunal may well find in favour of the petitioner. Unfortunately, though the voters' registers were tendered, this was done in bundles and no reference was made to any such ticks or absence of such ticks on them for the tribunal to make any such finding.

To conclude therefore, we find and hold that the petitioners failed to prove the several corrupt practices alleged, whether of multiple-voting, bribery or inducement of voters with money, inflation of figures or falsification of results. We also find and hold that the petitioners have failed to establish that the 3rd respondent was not elected by the majority of lawful votes cast and that his return was not lawful. We find and further hold that the petitioners failed to establish that the 3rd respondent did not score the highest number of lawful/valid votes cast at the election of 9th March, 2019 into the office of Chairmanship of the Abuja Municipal Area Council. Finally, we find and hold that the petitioners failed to establish that the election of 9th March, 2019 into the office of Chairmanship of the Abuja Municipal Area Council was not conducted in substantial compliance with the Electoral Act and INEC Guidelines.

Consequently, we find and hold that the petition with Petition Number: FCT/ACET/EP/04/2019 filed by the petitioners lacks merit and it fails. It is consequently hereby dismissed.

SAMUEL E. IDHIARHI ESQ.
CHAIRMAN
6TH NOVEMBER, 2019

I concur.

MOHAMMED ZUBAIRU ESQ.
MEMBER
6TH NOVEMBER, 2019

I concur.

A.A. MOHAMMED ESQ
MEMBER
6TH NOVEMBER, 2019

REPRESENTATION:

PETITIONERS:	Ikechukwu Ezechukwu (SAN), with Jideofor I. Nwosu Esq., Emeka Chukwudi Esq., Gibbedibra Wilson Esq. and Wilson Igwe Esq.
1St RESPONDENT:	Owabie Emeka Esq., with Grace Ogbona Esq., and Franca Osagiede Esq.
2ND AND 3rd RESPONDENTS:	Y.G Haruna Esq., with S. Tijanni Esq., K. Ezenagu Esq., C.O. Achebe Esq., Idris Talle Esq., N. Ukut Esq., Umar Farida Esq., Michael Odey Esq., O.A. Omolase Esq. and Adokwe Adams Esq.