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

PETITION NO: FCT/ACET/EP/18/2019

IN THE MATTER OF ELECTION TO THE OFFICE OF THE CHAIRMAN OF THE KWALI AREA COUNCIL HELD ON THE 9TH AND 23RD MARCH 2019

CORAM:

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

BETWEEN:

1. DANIEL IBRAHIM ..... 1ST PETITIONER
2. PEOPLES DEMOCRATIC PARTY (PDP) ..... 2ND PETITIONER

AND

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

JUDGMENT

(Lead Judgment delivered by Samuel E. Idhiarhi Esq. on the 16th January, 2020)

The 1st petitioner, Daniel Ibrahim, was the candidate of the Peoples Democratic Party (the PDP) (the 2nd petitioner) for election into the office of the Chairmanship of the Kwali Area Council in the Federal Capital Territory held on the 9th March, 2019. The 1st respondent (Danladi Chiya) was the candidate of the All Progressives Congress (the APC) (2nd respondent). The 3rd respondent was the body constitutionally empowered to conduct elections into the Area Councils in the FCT and, after a rerun held on the 23rd March, 2019, the 3rd respondent declared the 1st respondent the winner of the

Chairmanship election into the Kwali Area Council. It is consequent on that declaration that this petition was filed by the 1st and 2nd petitioners.

In paragraph 20 of the petition, the two grounds for the petition are:

1. That the election and return of the 1st respondent was invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended).
2. That the 1st respondent was not duly elected by majority of lawful votes cast at the Chairmanship election of Kwali Area Council, FCT, Abuja, held on the 9th and 23rd March, 2019.

From paragraphs 21 to 68 of the petition, the petitioners pleaded facts in support of the alleged non-compliance with the Electoral Act, 2010 (as amended) and of the fact that the 1st respondent did not score the majority of the lawful votes cast. The petitioners flagged four polling units as the source of their complaints. First was Sheda Sarki 1 Primary School code 005 in Kilankwa Ward where they claimed election held peacefully and successfully on the 9th March, 2019 and the result computed and announced but the polling unit officer declined to enter the results so announced in the relevant forms, saying he would do so at the collation centre for Kilankwa Ward, only for the result to be illegally cancelled by the Ward collation officer because one of the card readers used for the election cannot be found. The supplementary election fixed for the polling unit on the 23rd March, 2019 was aborted as thugs invaded the venue, attacked the polling officers and scattered electoral materials. Subsequently the final result for the election was declared with the 1st respondent as winner without taking into account the results for the polling unit, whereas, if the results for the election of 9th March, 2019 has been included the 1st petitioner would have won with 96 votes ahead of the 1st respondent.

For Ijah Tampe polling unit with Code 006 in Yangoji Ward the petitioners pleaded over-voting by five (5) votes (being that total number of accredited voters in Form EC8A was voters was 311 while total number of valid votes was 315) and that there are disparities between entries in Form

EC8B for the Ward and the result for the polling unit from Form EC8A from which the results were derived. For Sheda Galadima polling unit with code 004 in Kilankwa Ward, firstly, it was pleaded that the total number of votes recorded in Form EC8A for all the parties was 177 whereas the total number of valid votes recorded for all the parties in Form EC8A was 176, and, secondly that the total number of rejected votes in Form EC8A was five (5) votes, which if added to the total number of votes recorded in Form EC8A for all the parties (177) would sum up to 182, one (1) more than the total number of accredited voters of 181, thereby showing there was over-voting by one vote. For Health Centre polling unit VP1 with code 001 in Kwali Central Ward, the petitioners pleaded that the total number of accredited voters was 168 whereas the sum of valid votes of 167 and rejected ballots of 3 would be 170, thereby indicating that there was over-voting by two (2) votes.

Subsequently, in paragraph 69, the petitioners asked for five (5) reliefs, as stated below:

1. That it may be determined that the return of the 1st respondent as the Chairman of Kwali Area Council in the election held on the 9th and 23rd March, 2019 is void for corrupt practices and substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended).
2. That it may be determined that the 1st respondent was not duly elected or returned by the majority of lawful votes cast at the Chairmanship election held on the 9th and 23rd March, 2019 in the polling units complained of in Sheda Sarki 1 Primary School code 005 in Kilankwa Ward, Ijah Tampe Code 006 in Yangoji Ward, Sheda Galadima code 004 in Kilankwa Ward, and Health Centre VP1 code 001 in Kwali Central Ward, all of Kwali Area Council, FCT, Abuja.
3. An order nullifying the election and return of the 1st and 2nd respondents as winners of the Kwali Area Council Chairmanship election held on the 9th and 23rd March, 2019.

4. A declaration that the 1st petitioner is the winner of the Chairmanship election for Kwali Area Council held on the 9th and 23rd March, 2019, having polled the majority of the lawful votes cast and is therefore entitled to be returned accordingly.

ALTERNATIVELY

5. An order for supplementary election to be conducted by the 3rd respondent for the office of the Chairman of Kwali Area Council in Sheda Sarki 1 Primary School polling unit (Code 005) in Kilankwa Ward (04) of Kwali Area Council, Federal Capital Territory, Abuja.

All three respondents filed replies to the petition. The 1st respondent's reply is coupled with a preliminary objection of 4 paragraphs the substratum of which was that the petition in breach of paragraphs 4 and 7 of the First Schedule to the Electoral Act, 2010 (as amended), that the petition failed to comply with the mandatory provisions of Part 1, Regulation 1 (1)(u) of the mandatory use of the National Identity Number Regulations 2017 made pursuant to s27(1)(1) and 31 of the National Identity Management Commission Act, 2007 and that paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 51 of the petition are incompetent for contravening s285(9) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as to time within which to file an action to challenge the alleged wrong doings. The 1st respondent's reply itself comprised of 41 paragraphs which in substance justified the cancellation and non-inclusion of the poll results from Sheda Sarki 1 Primary School code 005 in Kilankwa Ward, denied the claim for over-voting in Ijah Tampe polling unit with Code 006 in Yangoji Ward, Sheda Galadima polling unit with code 004 in Kilankwa Ward and Health Centre VP1 of polling unit with code 001 in Kwali Central Ward. The 1st respondent then objected to the votes secured by the petitioners in Ijah Dabuta polling unit of Yangoji Ward and Sadu village polling unit in Wako Ward for reasons of over-voting and prays the tribunal to dismiss the petition for being frivolous, vexatious and lacking in merit.

The 2nd respondent also filed an amended reply to the petition which, apart from generally and specifically traversing the averments in the petition, like the 1st respondent, justified the cancellation and non-inclusion of the poll results from Sheda Sarki 1 Primary School code 005 in Kilankwa Ward, denied the claim for over-voting in Ijah Tampe polling unit with Code 006 in Yangoji Ward, Sheda Galadima polling unit with code 004 in Kilankwa Ward and Health Centre VP1 of polling unit with code 001 in Kwali Central Ward, and, then objected to the votes secured by the petitioners in Ijah Dabuta polling unit of Yangoji Ward and Sadu village polling unit in Wako Ward for reason of over-voting. In substantiation of the objection to the results obtained in Ijah-Dabuta polling unit of Yangoji Ward, it was averred that there was a failure to subject voters Permanent Voters' Cards of 222 voters to be read by Smart Card Readers as required as mandatory by the Guidelines and Manuals for the Conduct of the elections. The 2nd respondent then urged the tribunal to dismiss the petition for being frivolous, vexatious and lacking in merit.

In like manner, in response to the petition, the 3rd respondent filed a reply of 52 paragraphs. In substance, the reply denied generally and specifically all the averments in the petition. The reply particularly justified the non-inclusion of the results from Sheda Sarki 1 Polling unit and denied that it was the Ward collation officer that cancelled the results but that, rather, the returning officer rejected the results while the 3rd respondents cancelled the results because the presiding officer could not produce the card reader to enable a reconciliation of the total votes cast with the total number of accredited voters. For the 3rd respondent, the tribunal was urged to dismiss the petition for lacking in merit as the reliefs sought are devoid of particulars sufficient to sustain the allegation of non-compliance and corrupt practices, averring that the petitioners did not score the majority of lawful votes cast and urging that there was no need to order for a second supplementary election in Sheda Sarki polling unit with code 005, the supplementary election held on the 23rd March, 2019 having been aborted and returned zero vote for all the parties.

The petitioners filed separate and individual replies to the replies by the three respective respondents to the petition. In substance they are a reiteration of the facts already averred in the petition and the crux of those averments will be considered closely when the issues they relate come up for resolution.

To prove the petition, the petitioners called five witnesses. The witnesses called by the petitioners were Matthew Ayuba (the PW1) whose deposition is at pages 39 to 41 of the petition, Usman Suleiman (the PW2) whose deposition is at pages 42 to 45 of the petition, Joshua Naphtali (the PW3) whose deposition is at pages 51 to 53 of the petition, Abraham Adamu Yakubu (the PW4) whose deposition is at pages 54 to 56 of the petition, and Abdullahi Kaura (the PW5) whose deposition is at pages 57 to 59 of the petition. The PW1 and PW2 gave evidence concerning Sheda Sarki 1 Primary School Polling unit code 005 of Kilankwa Ward. While the PW1's evidence was on the events of 9th March, 2019, the PW2's evidence was on the events of 23rd March, 2019. The PW3, PW4 and PW5 respectively gave evidence concerning what happened at Ijah Tampe Polling unit code 006 of Yangoji Ward, Health Centre Voting Point 1 code 001 of Kwali Central Ward and Sheda Galadima Polling unit code 004 of Kilankwa Ward. All five witnesses called by the petitioners were exhaustively cross-examined by the counsels to the three respondents.

On the part of the respondents, the 1st respondent alone called a witness, Sunday Ibrahim (the DW1), whose deposition is at pages 24 to 25 of the 1st respondent's reply to the petition. The DW1 gave evidence concerning what happened at Ijah Dabuta Polling Unit of Yangoji Ward on the 9th March, 2019 and during the re-run election of 23rd March, 2019. The DW1 was cross-examined by both the petitioners and the 2nd and 3rd respondents. The 2nd and 3rd respondents chose to rest their case on that of the petitioners and the 1st respondent.

Before the witnesses were called and also in the course of taking witness at the trial, several documents were tendered by both sides to which we shall

make reference, so far as necessary, in the course of this judgment. However, before considering the substantive issues, some preliminary issues have to be considered. Both the 1st and 2nd respondents have filed and argued motions whether calling for the dismissal or striking out of the petition. In fact the 1st respondent's reply was coupled with a preliminary objection which essentially was on the same points that were the subject-matter of their motion number FCT/ACET/M/19/2019. Pursuant to s285(8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the tribunal had deferred ruling on those motions to when judgment is to be delivered. Now is the time.

THE 1ST RESPONDENT'S MOTION TO DISMISS THE PETITION

The motion number FCT/ACET/M/14/2019 dated 28th May, 2019 was filed on the 3rd June, 2019. The motion was brought pursuant to paragraphs 18(1), (3), (4) and (5) of the First Schedule to the Electoral Act, 2010 (as amended) and under the inherent powers of the tribunal. What was asked for from the tribunal was to deem that the petition has been abandoned because the petitioners failed to apply for the issuance of pre-hearing notice within the time stipulated by paragraph 18(1) of the First Schedule and, consequently, for same reasons to dismiss the petition pursuant to paragraph 18(4) and (5) First Schedule. The grounds for the application to dismiss (more or less same as the facts deposed to in the supporting affidavit of Pius Agbo Joseph) were chronicled. A précis of the grounds was that, for the election that was concluded on the 23rd March, 2019, the petition was filed on the 12th April, 2019, served on the 1st respondent on the 18th April, 2019, and in response the 1st respondent filed and served their reply on the 8th May, 2019 to which in return the petitioners filed a reply on 10th May, 2019 though served on the 1st respondent on the 13th May, 2019. The petitioners then wrote a letter dated 20th May, 2019 but submitted to the Secretary of the Tribunal on the 21st May, 2019 (reference Exhibit CHIYA 3) applying for the issuance of pre-trial conference forms before the Secretariat issued Forms TF007 and TF008 dated 23rd May, 2019 fixing pre-trial Conference for 11th June, 2019. The argument of counsel, as apparent on the grounds and in the

address filed along with the motion was that it was statutorily prescribed that the application for pre-hearing should be made 7 days after the petitioners filed and served their reply which should be on the 20th May, 2019 but in this case the application was made on the 21st May, 2019 though by means of a letter dated the 20th May, 2019 whereas the period prescribed lapsed on the 20th May, 2019. In urging the court to dismiss the petition, counsel cited several cases, among them *Gebi v Dahiru (2012) 1 NWLR (Pt. 1282) 560*, *Ikoro v Izunaso (2009) 4 NWLR (Pt. 1130) 45*, *Preye Oseke & Anr v INEC & Anr (2011) LPELR 14249CA*, *Action Congress of Nigeria & Anr v Martin Amaewhule & Ors. (2011) LPELR 14264CA*, *Sir Hon. Tamunoitemeoku Charlie Koko (JP) v Irene M. Inimgba & Ors. (2011) LPELR 14251CA)*, and *Yaki v Bagudu (2015) All FWLR (Pt. 810) 1069*.

In response, the petitioners filed a counter-affidavit of 13 paragraphs which was accompanied with a written address. The key points as disclosed in the affidavit of Benjamin Anchi was that there are three respondents in this petition all of whom are contesting the petition and that the application for pre-hearing on 21st May, 2019 was done at the close of pleadings which was on the 17th May, 2019 being the date the petitioners filed the last of their replies (i.e. reply of petitioner to 3rd respondent's reply) which was served on all the parties on the 20th May, 2019. Supporting arguments were canvassed in the address filed to the effect that 21st May, 2018, was well within the 7 days period stipulated by paragraph 18(1) of the First Schedule to the Electoral Act, 2010 (as amended). Counsel cited several authorities, among them *Gebi v Dahiru (Supra)*, *Ikoro v Izunaso (supra)*, *APGA & Anr v Ohazulike & Ors (2011) LPELR 9175CA*, *Nwankwo & Ors v Yar'adua & Ors (2011) LPELR 19739CA*, and *Nwobodo v Onoh (1984) 1 SCNLR 1 at 92*, while distinguishing the cases of *Preye Oseke & Anr v INEC & Anr (Supra)* and *Sir Hon. Tamunoitemeoku Charlie Koko (JP) v Irene M. Inimgba & Ors. (Supra)* as having been decided *per incuriam* being later in time and counsel arguing that the relevant time period to be considered in whether or not application for pretrial was within time is the close of pleadings.

The provisions for pre-hearing session are provided in paragraph 18 of the First Schedule to the Electoral Act, 2010 (as amended). Now, it is beyond dispute and affirmatively established in several cases that failure to apply for the issue of pre-hearing notice within the seven days prescribed means that the petition has been abandoned. It is a matter that goes to the jurisdiction of the court and the point was emphatically made in *Okereke v Yar'adua & Ors (2008) LPELR-2446(SC)* where Paragraph 3 of the Election Tribunal and Court Practice Directions, 2007 (*in pari materia* with paragraph 18 of the First Schedule to the Electoral Act, 2010 (as amended) was considered) and it was held thus:

> … sub-paragraph 4 of paragraph 3 as quoted above, makes it mandatory that where neither the petitioner nor the respondent files an application for a Pre-Hearing Session the tribunal or Court is under a duty to 'dismiss' the petition as abandoned and no application for extension of time to take that step shall be filed or entertained. Now, although the stipulation under sub paragraph (4) of paragraph 3 of the Practice Direction, appears to me to be harsh on the petitioner by making an order for dismissal of the petition which forecloses any chance for him to re-present the petition, it still had to be complied with by the tribunal or Court as such steps are a condition precedent to the hearing of any matter in relation to the petition pending before the tribunal or Court. Non-compliance thereof will strip off the tribunal or Court of jurisdiction as one of the factors which confer jurisdiction on a Court of law is not complied with. In the case of *Madukolu v. Nkemdilim (1962) 1 All NLR, 589, (1962) 2 SCNLR 341*, a Court is said to be competent to determine a matter before it when the following are present: 1) If it is properly constituted with respect to the number and qualification of its membership; 2) The subject matter of the action is within its jurisdiction; 3) The action is initiated by due process of law and; 4) Any action (condition precedent) to the exercise of its jurisdiction has been fulfilled…

Condition No. 4 above will be the determining factor as to the competence of the Court below.

The fact as deduced from the supporting and countering affidavit shows that the application for issue of notice for pre-hearing session was made to the Secretary of the Tribunal on the 21st May, 2019. The petitioner's reply to 1st respondent's reply to the petition was served on the 1st respondent on the 13th May, 2019, and, reckoned from that day, the 7 days window for applying for issue of notice for pre-hearing should lapse on the 20th May, 2019. The petitioners' agreed that the application was made on the 21st May, 2019, but they have adduced evidence in their counter-affidavit that the 3rd respondent served their reply to the petition on the petitioners on the 14th May, 2019, and the petitioners' filed their reply to the 3rd respondent's reply on 17th May, 2019 and served same on all the respondents on the 20th May, 2019 before applying for the issue of pre-hearing notices on the 21st May, 2019. Reckoned from the 17th May, 2019, the 7 days prescribed for pre-hearing should lapse on the 24th May, 2019 as to make the application made on the 21st May, 2019 within time.

Thus, the issue is whether, where there are multiple respondents to an election petition, the 7 days prescribed for applying for issue of notice for pre-hearing session shall be reckoned from the day the last of the pleadings was filed or from when, as between individual respondent and the petitioner, issues were joined and the reply of the petitioner was received. In other words, should one application for issue of notice for pre-hearing session suffice at the conclusion of all pleadings or should separate and individual applications for notice for pre-hearing session be made as the petitioner replies to each respondent.

The first respondent has cited the cases of *Preye Oseke & Anr v INEC & Anr (supra)*, *Action Congress of Nigeria & Anr v Martin Amaewhule & Ors. (Supra)* and *Sir Hon. Tamunoitemeoku Charlie Koko (JP) v Irene M. Inimgba & Ors. (Supra)*, all of them incidentally from the Port-Harcourt Division of the Court of Appeal and reaching the same conclusion. Taking the case of

Preye Oseke & Anr v INEC & Anr (supra) as our guide, after considering paragraph 18 along with paragraph 49, the court held that: (a) when there are more than one respondents the election petition against each of the respondents shall be deemed to be a separate petition, (b) where the petitioner is to apply for issuance of pre-hearing notice as in form TF007 under the said Paragraph 18, he is to do so within 7 days after each respondent files and serves his reply or after the petitioner had filed and served petitioner's reply to each of the respondent's reply, (c) If the petitioner fails to do so in respect of one of the respondents that respondent is empowered to invoke the provision of Paragraph 18(3) to have the petition dismissed, (d) The petitioner is not to wait for all the respondents to file and serve their respective replies before applying for pre-hearing notice. The same Court in *Nwibie v Kwanee & Ors. (2012) LPELR-14246(CA)* stated thus:

> It needs be emphasized that in a case of multiple respondents in which one or some of such respondents have filed and served his or their reply or replies on the petitioner and the petitioner has failed to apply for pre-hearing notice in view of the provision of Paragraph 49 of the 1st Schedule of the Electoral Act it is *only* the petition against such respondent or respondents that shall be dismissed. The petition against the remaining respondents who were yet to serve their respective replies on the petition will survive...

The court in *Nwibie v Kwanee & Ors. (Supra)* further held that the implication of dismissing the case against one of the respondents, particularly where the respondent in question was alleged not to be duly elected by a majority of lawful votes cast, is that a necessary party, by virtue of s137(3) of the Electoral Act has become non-joined which makes the petition incompetent and divesting the tribunal of jurisdiction to entertain the petition.

In their counterargument, the petitioners cited the cases of *APGA & Anr v Ohazulike & Ors (2011) LPELR 9175CA* and *Nwankwo & Ors v Yar'adua &*

Ors (2011) LPELR 19739CA. In *APGA & Anr v Ohazulike & Ors (supra)* it was held that by a combination of paragraphs 7 (1), 12 (1) 16 (1) and 18 (1) of the 1st schedule to the Electoral Act 2010 (as amended), pleadings in elections matters are deemed to have closed upon the filing and service of the Respondent's reply to the petition or at the expiration of the 21 days within which a Respondent is to file his reply; or where the petitioner intends to reply to the respondent's reply, then upon filing and service of the petitioner's reply on the Respondents or at the expiration of 5 days within which he is allowed by the law to do so. With reference to paragraph 18 (1) of the Electoral Act and s14 of the Interpretation Act, it was stated that words in the singular include the plural and words in the plural include the singular and so, pleadings in the instant petition will be deemed to close when all the Respondents have filed and served their reply to the petition and the petitioner has, where necessary, filed and served his reply to the Respondent's reply on the Respondents and that until then the computation of time for application for pre-trial session cannot run. The case of *Nwankwo & Ors v Yar'adua & Ors (Supra)* was decided based on the provisions of Paragraph 3(1) of the Election Tribunal and Court Practice Directions, 2007. After determining that the petitioner's last reply to the respondents was filed on the 27/8/07, the Court of Appeal held thus:

> So by virtue of the provisions of Paragraph 3(1) above, the Petitioners had the duty to apply for the issuance of the pre-hearing notice within seven (7) days from the 27/8/07. It was mandatory for them to make the application within the period of time prescribed by the provisions otherwise they would be in clear breach or non-compliance with them. The period of seven (7) days from the 27/8/07 ended or expired on the 2/9/07. I can find no record in Court's file on the petition that the Petitioners had applied to the Court as required by the provisions of Paragraph 3(1) for the issuance of the pre-hearing notice within the period of seven (7) days after filing their last Reply to the Respondents' Replies.

Of course neither in the case of *APGA & Anr v Ohazulike & Ors (supra)* nor *Nwankwo & Ors v Yar'adua & Ors (supra)* was the question directly in issue whether multiple applications for issue of pre-hearing notices ought to have been made correspondingly as the respondents file their responses or the petitioners responded to individual respondents (as was the case in *Preye Oseke's Case* and the others cited by the 1st respondent) but it is implicit in the decisions that time begins to run from the close of pleadings. Though the petitioner's counsel has argued that *Nwankwo's Case* was affirmed on appeal by the Supreme Court, there is no proof of that. The reported case of *Nwankwo & Ors v Yar'adua & Ors (2010) LPELR-2109(SC)* was an earlier appeal which remitted the case for retrial by the Court of Appeal.

In view of these apparently contradictory decisions of the Court of Appeal, the petitioners have argued that the decisions cited by the 1st respondent were later in time and decided *per incuria*, a point not supported by the fact since there was no proof of the Supreme Court affirming the case of *Nwankwo & Ors v Yar'adua & Ors (supra)*. On the other hand, the 1st respondent has argued that the authorities cited by them should prevail as they were later in time, the law being that if there are conflicting decisions of courts of coordinate jurisdiction, the later in time prevails, citing the case of *Alao v UNILORIN (2008) 1 NWLR (Pt. 1069) 421 at 450*.

Fortunately, in 2016 same issue came before the Court of Appeal in *Labour Party v Bello & Ors (2016) LPELR-40848(CA)*. Approving an earlier decision of the Court of Appeal, Mbata JCA held as follows:

> It sounds really absurd, in my view, to expect the Petitioner to file separate pre-hearing notice to each Respondent (on the claim that separate petition is filed against each respondent). In that case, will the Tribunal invite parties, each time, calling for separate pre-hearing sessions with each Respondent, separately, and issue separate directions in the same petition? That does not appear to be the case and it does not make much sense to me. I agree with the reasoning of my learned brother, P. O. Ige JCA in the case of

Onyereri v. Nwadike (2015) 8 LAR 117 when he said: "where you have more than a Respondent in a petition, pleadings will not close until the expiration of the time limited in those Paragraphs of the Schedule, particularly 16 thereof. In effect, an Appellant must wait for the time frame or period of time allocated to the parties to file Replies before the Appellant can take out Form TF 007 within 7 days of the service of the Respondents Reply, filed within time permitted under Paragraph 12(1) of the 1st Schedule, on the Appellant. Paragraph 16(1) applies *mutatis mutandis* to each and every Respondent to this petition, otherwise it will be a breach of Section 36(1) of the 1999 Constitution of Nigeria, as amended".

We need not add more. Of course it is not lost on us that in this case the Court of Appeal also considered the appeal an academic exercise because Appellant had abandoned the appeal he raised earlier against the decision of the lower Tribunal reached on 09/03/2016, and had elected to incorporate same into the final decision of the Tribunal. It nevertheless did not affect the precedent value of the decision.

Consequently, having found that the 3rd respondent's reply was served on the petitioners on the 14th May, 2019, and the petitioners' filed their reply to the 3rd respondent's reply on 17th May, 2019 and served same on all the respondents on the 20th May, 2019 before applying for the issue of pre-hearing notices on the 21st May, 2019, the petitioners were not out of time when they applied for issue of pre-hearing notice on the 21st May, 2019. The 1st respondent's motion number FCT/ACET/M/14/2019 to dismiss the petition is accordingly lacking in merit and it is hereby dismissed.

THE 2ND RESPONDENT'S/OBJECTOR'S NOTICE OF PRELIMINARY OBJECTION

This objection was brought on two accounts; the first is pursuant to paragraph 49 of the First Schedule to the Electoral Act, 2010 (as amended) while the second is pursuant to s72(1) of the National Identity Management

Commission Act, 2007 and Part 1 of the Mandatory Use of the National Identification Number Regulation, 2007. The complaint anchored on paragraph 49 was that 'the hearing notice for pre-hearing served on the 2nd respondent/objector is incompetent and liable to be set aside for failure to comply with the provision of Paragraph 49 of the First Schedule to the Electoral Act, 2010 (as amended)'. Going through the accompanying affidavit and address, it is obvious enough that the 2nd respondent's argument was that the application for pre-hearing conference made on the 21st May, 2019 was out of time whereas the petitioner's reply to the reply of 2nd respondent was filed on the 13th May, 2019. This was exactly the issue in motion number M/14/2019 earlier decided. We hold once again that this argument is lacking in merit provided the petitioners' filed their reply to the 3rd respondent's reply on 17th May, 2019 and served same on all the respondents on the 20th May, 2019.

The second arm of the objection was that it was a requirement pursuant to s27(1)(l) of the National Identity Management Commission Act, 2007 and the Regulations on Mandatory Use of the National Identification Number, 2017 where it was required that the use of the NIN shall be mandatory in the filing of criminal and civil actions in courts or other arbitration processes. It was argued by counsel that failure to comply with mandatory statutory provisions have the effect of nullifying any act done in such breach and all courts have a duty to give effect to the provisions of statutes, counsel citing, among others, the cases of *Ugboji v The State (2017) LPELR43427SC* and *FBN Plc v Maiwada (2013) 5 NWLR (Pt. 1348) 485*. In response, the petitioners have cited the case of *APC & Ors. Marafa & Ors Suit No. SC/377/2019* where the Supreme Court held that the provisions of s27 of the National Identity Management Commission Act, 2007 are not part of the rules of the court and cannot apply to processes filed in the court. Even though counsel to the 2nd respondent filed a reply on points of law, there was no effective rebuttal to the reference to the *APC & Ors. Marafa & Ors* cited other than saying the authority is seeking to elevate rules of court over provisions of a statute contrary to the decision of the Supreme Court in *Maiwada's Case* earlier

cited. We do not think that is exactly the case since the provision relied on by 2nd respondent's counsel is not of the NIMC Act but regulations made pursuant to the Act but even if it were so, it is not the place of this tribunal to go against the clear decisions of the Supreme Court. Consequently, the 2nd respondent also fails in the second ground of objection. In the circumstances, the 2nd respondent's notice of preliminary objection with motion number FCT/ACET/M/16/2019 fails and it is hereby dismissed.

THE 1ST RESPONDENT'S MOTION NUMBER FCT/ACET/M/19/2019

This motion seeks for order of the tribunal to strike out and dismiss this petition for lack of competence, and, to strike out paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 51 of the petition for being incompetent. As a matter of fact, notice of this objection was first made in the 1st respondent's reply to the petition and hence our consideration of motion FCT/ACET/M/19/2019 is a consideration of the preliminary objection in the reply to the petition.

Offering the particulars for the application, it was stated that, in breach of paragraphs 4 and 7 of the First Schedule to the Electoral Act, 2010 (as amended), the petition did not state the holding of the election and the scores of the candidates who contested for the for the office of Chairman for the Kwali Area Council as required by s111(4) of the Electoral Act, 2010 (as amended). It was also stated that the reliefs in support of the petition are inconsistent in that while contending that the election was invalid by reason of corrupt practices and non-compliance with provisions of the Electoral Act, 2010 (as amended), the petitioners at the same time claim they scored the majority of lawful votes cast in the election adjudged to be invalid. Another ground for the application was that the petition did not comply with the mandatory provisions of s27(1)(l) of the National Identity Management Commission Act, 2007 and the Regulations on Mandatory Use of the National Identification Number, 2017 which requires that the petition carry the National Identity Number of the signatory to the petition. Finally, it was stated that paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 51 of the petition are incompetent for contravening s285(9) Constitution of the

Federal Republic of Nigeria, 1999 (Fourth Alteration No. 21) Act, 2017, in that, since the jurisdiction of this tribunal is activated only after a return has been made and a winner declared, the events complained of which occurred on the 9th March, 2019 are pre-election matters which ought to have been raised within 14 days of the complaint in accordance with the provisions of the Fourth Alteration Act, 2017. The petitioners filed a counter-affidavit and an address in contending the arguments made by the 1st respondent's counsel. We shall consider the arguments *pari passu*.

With regards to the alleged non-compliance with paragraph 4 (1)(a) and (c) to the First Schedule to the Electoral Act, we think the 1st respondent's counsel by linking the provisions to s111(4) of the Electoral Act, 2010 (as amended) is importing into paragraph 4 extraneous requirements. Agreed, by s111 (4) of the Act, for a candidate for an election to the office of Chairman to be deemed elected where, there being more than two candidates for the election, he is required have a particular spread of votes, unless the petition is anchored on the absence of such spread, it is not required that the existence of such spread must be specifically stated as part of the petition. We are of the opinion that stating the spread of votes is a matter that goes to the quality of the petition, not to its validity under paragraph 4. We are also satisfied that the petitioners stated the holding of the election and the scores of the candidates in paragraphs 8 and 18 of the petition in satisfaction of paragraph 4 (1)(a) and (c) to the First Schedule to the Electoral Act.

It has also been argued that the petitioners failed to accompany the petition with copies of documents relied upon, notwithstanding that they have those documents in their possession, citing the case of *Ukpo v Ngaji (2010) All FWLR 166 at 167* for the proposition that where the petitioner has the documents in his possession, he cannot choose to list rather than accompany the petition with them. It was argued that the Secretary ought to have rejected the petition on that account but it nevertheless remains incompetent and liable to be struck out, citing the case of *Maitumbi v Baraya (2017) 2 NWLR (Pt. 1550) 347*. Even if the decision in *Ukpo v Ngaji (Supra)* is correct, it is dependent on proof that the petitioners have the said

documents in their possession as at the time the petition was filed. There is no claim to that effect in the 7 pages affidavit supporting the motion. Indeed it is on record that on the 7th May, 2019, well after the petition was filed on the 12th April, 2019, counsel to the petitioner applied to this tribunal for leave to have access to electoral materials in the custody of the 3rd respondent and obtain copies thereof, suggestive that they do not have the said materials in their custody. In any event, the provisions of paragraph 4(5)(g) of the First Schedule to the Electoral Act are unambiguous, namely that the petition shall be accompanied with copies or list of every document to be relied on at the hearing of the petition. It will be doing violence to those clear provisions by removing the disjunctive 'or'.

On the matter of the non-use of the National Identity Number (NIN), the issue has been exhaustively dealt with when we considered motion number M/16/2019 earlier. We adopt our reasoning and the conclusions earlier reached and hereby dismiss the ground of objection anchored on the National Identity Management Commission Act, 2007 and the regulations made pursuant thereto.

It has also been argued that the petitioners pleaded inconsistent grounds for the petition, by saying, on one hand, that the election was invalid on account of corrupt practices and non-compliance with the provisions of the Electoral Act and then, on the other hand, inconsistently, proceed to claim the petitioners scored the majority of lawful votes cast in the election adjudged by them to be invalid. It would indeed be paradoxical, for if the election was void it can only be liable to nullification and there can be no winner. However, we have looked at the two grounds for the petition as contained in paragraph 20 of the petition. The first ground is that the election and return of the 1st respondent was invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended). The second ground was that the 1st respondent was not duly elected by majority of lawful votes cast at the Chairmanship election of Kwali Area Council, FCT, Abuja, held on the 9th and 23rd of March, 2019. Looking at those two grounds, it cannot be said that it is being claimed that the election qua election was

invalid; rather, it is the return and declaration of the 1st respondent as winner of the election and the lawfulness of the votes ascribed to the 1st respondent that is being challenged. Thus, we find no incongruity when the petitioner prayed the tribunal to find that the return of the 1st respondent was void for corrupt practices and substantial non-compliance with the electoral laws or that the 1st respondent was not elected by the majority of lawful votes cast and hence his return as elected should be nullified and, as a corollary, in his place the 1st petitioner should be declared the winner of the election.

Finally, counsel has argued that since the declaration of the result was after the rerun election of 23rd March, 2019, all the complaints regarding the events that transpired were pre-election matters over which this tribunal has no jurisdiction. We will dissipate no energy on this issue but rather take refuge in the decision of the Court of Appeal in *Igbekele & Anor v INEC & Ors. (2019) LPELR-48536(CA)* where a supplementary election was ordered on the 9th of March, 2019 for the Ondo South Senatorial District after the election earlier held during the general election of 23rd February, 2019 was inconclusive because election in 56 polling units were cancelled, same having been marred with hijacking and snatching of ballot papers and other election materials. A suit was filed at the High Court challenging the declaration that the election of 23rd February, 2019 was inconclusive and the notice of intention to conduct a supplementary election on the 9th March, 2019 without publishing the mandatory statutory notices to the plaintiffs within 14 days before the election. The High Court declined jurisdiction on the ground that it was a post-election matter over which only the election petitions tribunal has jurisdiction, a decision affirmed by the Court of Appeal. The point was made as follows by Mahmoud JCA:

> I think that the singular most important issue for resolution is whether or not the complaint of the appellants in the lower Court is a pre-election or post-election matter and whether the trial Court rightly declined jurisdiction? An answer to this question will no doubt resolve all the related ancillary issues. What then is a pre-election matter?... a pre-election matter is any matter which

relates to the selection, nomination of candidates and participation in an election or time table for an election, registration of voters and other activities of the commission in respect of preparation for an election. This Court gave a judicial interpretation to this expression 'pre-election matter' in the case of *Ibrahim v Umar (2013) LPELR-22805 (CA)* when it defined the term to mean 'action, conduct or any event taking place or occurring before the election'.

Consequently, the motion number FCT/ACET/M/18/2019 filed by the 1st respondent is lacking in merit in its entirety and same is hereby dismissed.

CONSIDERATION OF THE SUBSTANTIVE PETITION

We now come to a consideration of the petition filed by the 1st and the 2nd petitioners. The two grounds for the petition are non-compliance with the provisions of the Electoral Act, 2010 (as amended) and that the 1st respondent was not duly elected by majority of lawful votes cast.

As was earlier indicated, the complaints of the petitioner is with regards to four polling units, namely, Sheda Sarki 1 Primary School code 005 in Kilankwa Ward, Ijah Tampe polling unit with Code 006 in Yangoji Ward, Sheda Galadima polling unit with code 004 in Kilankwa Ward and Health Centre polling unit VP1 with code 001 in Kwali Central Ward. We shall take each of these polling units, in reverse order, by setting out the pleadings regarding each, appraise the evidence adduced and the arguments of counsel in respect of each, set out the law applicable in the circumstances of each, and based on the foregoing, decide on each case.

However, before we proceed, it is necessary to recognise that the 1st and 2nd respondents have also made complaints of their own regarding over-voting in Ijah Dabuta polling unit (Code 005) of Yangoji Ward and Sadu Village polling unit (code 009) of Wako Ward. (See paragraphs 33, 34, 35 and 36 of 1st respondent's reply to the petition and paragraphs 36, 37, 38, 39, 40,

41, 42, 43 and 44 of the 2nd respondent's amended reply to the petition). In paragraph 37 the 1st respondent prayed the tribunal to cancel the results of the election in the said Ijah Dabuta polling unit (Code 005) of Yangoji Ward and Sadu Village polling unit (code 009) of Wako Ward for over-voting. The only witness called by the respondents was called by the 1st respondent. The DW1 was Sunday Ibrahim who adopted his witness statement on oath (in pages 24 to 25 of 1st respondent's reply to the petition) in which he has given evidence to buttress the fact of over-voting in the said Ijah Dabuta polling unit (Code 005) of Yangoji Ward on both the 9th and 23rd March, 2019 when election held in the said polling unit. As it were, there is no evidence of the allegation of over-voting in Sadu Village polling unit (code 009) of Wako Ward. Apart from calling the DW1 as witness, the 1st and 2nd respondents, through the petitioners' witnesses in the course of cross-examination and through the DW1, tendered documents admitted as Exhibits DD26, DD27, DD31, DD32 and DD33.

However, the 1st and 2nd respondents are defendants to the petition and not petitioners. Over voting is a corrupt practice and a specie of non-compliance with the Electoral Act and indeed is a ground for which an election may be nullified or voided under s53(2) of the Electoral Act, 2010 (as amended). In other words, over-voting is a sword, not a shield in an election petition, i.e. it can only be a cause of action, not a defence, unless by way of a cross-petition. In similar circumstances in the case of *Idris v ANPP (2008) 8 NWLR (Pt. 1088) 1 at 97-98(CA)* where a respondent raised the question of the petitioner's qualification, Sanusi JCA stated as follows:

> By virtue of section 145(1)(a) of the Electoral Act, 2006, the qualification of a candidate to contest an election is a ground on which a petition can be presented. Consequently, that ground cannot be raised as a defence to a petition. And any respondent to an election petition who intends to rely on that ground must file a cross-petition. In the instant case, the appellants who sought to challenge the 2nd petitioner's qualification ought to have filed a cross petition.

Thus, no cross-petition having been filed by either the 1st or the 2nd respondent, their allegations of over-voting goes to no issue and they are accordingly dismissed as this tribunal lacks the jurisdiction to consider them. The counsel to the 3rd respondent was clearly in agreement with this tribunal when he submitted in his final address that the evidence of the DW1 goes to no issue as there was nothing in the petition itself on Ijah Dabuta.

As general comments, the petitioners had asked for determination that the election was void for corrupt practices but in fact the precise corrupt practice was not specified and we cannot see proof of same in the evidence of the five witnesses the petitioners called. On the part of the respondents several arguments were canvased in the addresses that we think we can dismiss some perfunctorily. We do not agree that the any of the two grounds for the petition were abandoned as we think there was sufficient evidence supporting them worthy of consideration. We also do not agree that the petitioners' witnesses were incompetent to tender INEC documents or give evidence concerning them since they were not the makers. In *Salami v Ajadi (2007) LPELR-8622CA* it was held 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.

HEALTH CENTRE POLLING UNIT VP1 WITH CODE 001 IN KWALI CENTRAL WARD

In paragraph 38 of the petition, the petitioners commenced alternative pleadings with respect to Health Centre VP1 in polling unit code 001 in Kwali Central Ward, Sheda Galadima polling unit code 004 in Kilankwa Ward and Ijah Tampe polling unit code 006 in Yangoji Ward.

With respect to Health Centre VP1 in polling unit code 001, it was stated in paragraph 41 of the petition that Form EC8A shows that the total number of valid votes was 167, while rejected ballots was 3, summing up to 170 which however exceeded the number of accredited voters of 168 by 2 votes. Paragraph 41 also contained a table which is unexplained but which we understand to be showing that the total invalid votes for VP1 for APC is 82 (which if deducted from the figure of 381 for APC in Form EC8A will bring the total from all VPs to 299) while the total invalid votes for VP1 for PDP is 40 (which if deducted from the figure of 256 for APC in Form EC8A will bring the total from all VPs to 216), the invalidity being due to over-voting. Of the three respondents, apart from all of them generally denying paragraph 41, the 3rd respondents averred in paragraph 32 of their reply in answer to paragraph 41 of the petition that there was no over-voting in Health Centre VP1 in polling unit code 001 in Kwali Central Ward.

The only witness called by the petitioners to prove their case with respect to Health Centre VP1 in polling unit code 001 was Abraham Adamu Yakubu (who testified as the PW4) whose deposition is at pages 54 to 56 of the petition. He had stated that he is a registered voter and card carrying member of the 2nd petitioner and was one of its agents during the election of 9th March, 2019 at Health Centre polling unit VP1. The drift of his evidence is in paragraphs 9, 10, 11, 12, 13, 14 and 15. He claimed the election was concluded, votes sorted and counted and at about 6:20pm the presiding officer announced the scores for each party and proceeded to enter same in INEC Form EC8A which the PW4 was expected to sign. However, when he came to sign Form EC8A the PW4 said he discovered that the total number of valid votes was 167 while rejected ballot was 3, summing up to 170 whereas the total number of accredited voters was 168, thereby showing over-voting by 2 votes. The tables in paragraph 41 of the petition were reproduced and in paragraph 14 it was stated that the tables shows the total valid votes, the total rejected votes and the votes polled by the parties after the votes recorded in Health Centre Unit VP1 are discountenanced from the Health Centre Unit due to over-voting. Through the PW4, the voters' register for

Health Centre Polling Unit was tendered in evidence and admitted as Exhibit DD19 in which he identified his name at page 8 number 78. The PW4 was shown Exhibits DD5 and DD7 as the results he referred to in paragraphs 10 to 18 of the deposition of the PW4.

The PW4 was cross-examined by all three respondents. Cross-examined by the counsel to the 1st respondent, the PW4 said that the polling unit has five (5) voting points (VPs) but the PDP had only two agents for the five VPs, stating that one Idris Husseini is the name of the other agent. Asked if he was INEC accredited as an agent, the PW4 said that it was Idris Husseini that has INEC accreditation while he (the PW4) was appointed by the party, claiming that he in fact signed Exhibit DD5 (though, perhaps due to quality of re-production no signature is legible for any of the parties). The PW4 said he cannot remember the score of PDP from each of the VPs but said the number of rejected ballots was 3, all from VP1 though he said he does not know if the two votes constituting over-voting were for the PDP, APGA or for APC. The PW4 claimed he signed Exhibit DD7 and signed a sample signature which was tendered in evidence as Exhibit DD20, claiming he signed Exhibit DD7 after complaining about the irregularities because the officer promised to take action about it. The PW4 said the number of accredited voters for the VP1 was 168, with PDP and APGA scoring 40 and 42 votes each. Cross-examined by counsel to the 2nd respondent, the PW4 disagreed that if 2 votes are deducted from the votes of APC of 56, APC would still be leading with 54 votes. Cross-examined by counsel to the 3rd respondent, the PW4 said he did not undergo any training by INEC but attended one by his party which included training on some of the laws on the election. He confirmed that INEC accredited only one agent (Idris Husseini) though his party submitted two names to it and so the party appointed the second agent, explaining the party has to do so because one person was not enough for the five VPs.

In the final address of counsel to the 1st respondent, it was submitted that the PW4 has admitted that he was not an INEC accredited agent and as there was nothing before the tribunal to show he was an agent, the PW4 was

incompetent to give evidence on Exhibits DD5, DD7 and DD19, counsel pointing out that a comparison of the signatures on Exhibits DD7 and DD5 will show that the PW4 did not sign Exhibit DD7 contrary to his claims. It was submitted that the witness admitted he did not know if the over-voting by 2 votes were for any particular party. Building on the argument that the PW4 was incompetent to give evidence for not been an accredited agent and that his evidence should be ignored, counsel cited the cases of *Buhari v Obasanjo (2005) 7 SC (Pt. 1) 1* and *Wike v Peterside & Ors. (2016) 1-2 SC (Pt. 1) 37*. It was emphasized particularly that the PW4 failed to show that the figure representing the alleged over-voting were credited to the 1st respondent and should have tendered the ballot papers in issue but having not done so, they have failed to prove their allegation of over-voting in VP1 of Health Centre polling unit.

In the reply of the petitioners to the 1st respondent's final address, it was argued that the evidence of the PW4 having not been impeached that he was at the polling unit and voted there, whether or not as an agent, he is competent to testify. Counsel restated what constituted over-voting as defined in s53(2) of the Electoral Act, 2010 (as amended) and paragraph 23(b) of the INEC Guidelines for 2019 Elections and what by law a petitioner need to do to prove over-voting, namely, tender the voter's register, the statement of result in appropriate form, relate each document to specific area of the case as necessary and show that the figure representing the over-voting, if removed, would result in victory for the petitioner. It was submitted that all above requirements have been satisfied, the petitioners having called a witness (PW4) who was eye witness, having tendered the voter's register (Exhibit DD19) in which the PW4 identified his name, having tendered the result of the election at the VP in question (tendered as Exhibit DD5) and finally, the PW4 having given evidence on oath where he related paragraphs 10, 11, 12 and 13 to Exhibit DD5.

The arguments advanced by the counsel to the 2nd respondent were substantially same as those of the 1st respondent but some additional points were made. It was conceded that on the face of Exhibit DD7 there was over-

voting but it was submitted that it was only by 2 votes and it has not been shown that they were in favour of the 1st respondent and even if so, if the 2 votes are deducted from the 82 votes of the 1st respondent vis-à-vis the 42 votes of the 1st petitioner, the 1st respondent would still lead by 80 votes, thereby not satisfying the last of the requirements in proving over-voting that if the figure representing the over-voting is removed it would result in victory for the petitioner, a consequence that will ensue even if the election was nullified. On the part of the counsel to the 3rd respondent, just like the 1st respondent, the emphasis was on the lack of credibility of the PW4 as a witness having admitted that he was not an INEC accredited agent but rather that it was one Idris Husseini that was the agent to 2nd petitioner at the Health Centre polling unit and, in any event, having signed the election results he has given a seal of authenticity to it and is estopped from complaining, citing the case of *Gundiri v Nyako (2014) 2 NWLR (Pt. 1319) 221*.

Now, the case concerning the Health Centre VP1 in polling unit code 001 in Kwali Central Ward was over-voting. However, before we explore the question of whether over-voting has been proved and, if so, what shall be consequence of such over-voting, several arguments has been canvassed against the PW4, the sole witness called by the petitioners. Truly, the PW4 admitted that he was not accredited by the 3rd respondent as an agent of the 2nd petitioner but rather it was one Idris Husseini that was the agent accredited by INEC while his party sent him to act as agent. Now competence of a witness is a matter of law under the Evidence Act and by s75(1) 'All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind'. Thus, it is not true that because the PW4 was not accredited as an agent by INEC, he is thereby disqualified to testify. At the very best it can only affect the weight and value of his testimony that the petitioners called him as a witness rather than Idris Hussein. From the evidence before the tribunal the facts tilt towards the likelihood that the PW4 was truly at the

polling unit. It is an agreed fact that the polling unit had five VPs, logically making more than one agent necessary, and the fact that the PW4 identified his name in the voter's register (Exhibit DD19) for the polling unit and his claim that he signed Exhibit DD7 on behalf the 2nd petitioner (a fact not rebutted even after getting him to sign his sample signatures in Exhibit DD20) all support the fact that the PW4 was at the polling station on the 9th March, 2019.

Under the general heading of over-voting, s53 of the Electoral Act, 2010 (as amended) stated that no voter shall record more than one vote in favour of any candidate at any one election. The Act further provided that where the votes cast at an election in any polling unit exceed the number of registered voters in that polling unit, the result of the election for that polling unit shall be declared null and void and another election may be conducted at a date to be fixed by the INEC, but only where the result at that polling unit may affect the overall result in the Constituency and where it will not so affect, INEC may, despite the cancellation of the result, proceed to make a return if it is satisfied that the result of the election will not be substantially affected by voting in the area where the election is cancelled. The provisions of the Act were reinforced in paragraphs 23 and 33 of INEC Regulations and Guidelines for the Conduct of Elections.

Over-voting is a matter usually proved by documentary evidence. In this case the relevant documents have been tendered as Exhibits DD5 (Form EC8A) and DD7 (Form EC8A VP). Looking at the INEC Regulations and Guidelines, it is our understanding that Form EC8A is to contain the results of polling at a polling unit while Form EC8A VP is to contain the results of polling from voting points created under a polling unit and the result of as many voting points are incorporated into Form EC8A to give a final result of polling at the particular polling unit. In such circumstances the Form EC8A (VP) are to be attached to Form EC8A to constitute Form EC8A. In the case before us we are told there were five VPs but it is only the result of one VP that was tendered before us and no explanation as to existence or

whereabouts of the Form EC8A VPs for the remaining four VPs, a lacuna in the petitioners' case.

Be that as it may, was there over-voting apparent on either Exhibit DD5 or DD7? Exhibit DD5 has the following entries. For number of voters on the register, 2,309; for number of accredited voters, 839; for number of spoilt ballot papers, 0; number of rejected ballots, 9; number of total valid votes (being sum of valid votes cast for all parties), 830, and total number of used ballot papers (sum of #5, #6 and #7), 839. As between number of voters on the register and the number of accredited voters, the latter is far less than the former and hence there is no case of over-voting as contemplated in s53(2) of the Electoral Act, 2010 (as amended). Similarly, as between number of accredited voters and total valid votes, the former is higher by 9 votes, and hence there was no over-voting as contemplated under paragraph 23(b) INEC Regulations and Guidelines for the Conduct of Elections. In fact, total number of accredited voters sums up to same figure as the addition of number of spoilt ballot papers, number of rejected ballots, number of total valid votes and total number of used ballot papers, therefore unequivocally showing that there was no incidence of over-voting.

Coming to Exhibit DD7, the entries show for number of voters on the register, 500; for number of accredited voters, 168; for number of spoilt ballot papers, 0; number of rejected ballots, 3; number of total valid votes (being sum of valid votes cast for all parties), 167, and total number of used ballot papers (sum of #5, #6 and #7), 170. Obviously, as between number of voters on the register and the number of accredited voters, the latter is far less than the former and hence there is no case of over-voting as contemplated in s53(2) of the Electoral Act, 2010 (as amended). However, while, as between number of accredited voters and total valid votes, the former is higher by 1 vote, suggesting there was over-voting as contemplated under paragraph 23(b) INEC Regulations and Guidelines for the Conduct of Elections. By paragraph 24 where the sum of spoiled ballot papers, rejected ballots and valid votes is not equal to the total number of used ballots as in this case, an anomaly exists, indicating that more ballots were used than the number

accredited, suggesting there was over-voting. In this state of affairs, the result of Exhibit DD7 is liable to be cancelled and we so order.

However, we have a challenge here because we do not have the results of the other VPs to know if the result in Exhibit DD7 was incorporated into that in DD5. If that were so, the anomaly in Exhibit DD7 ought to have impacted the entries in Exhibit DD5. Since results from the other VPs are not before the tribunal, we cannot speculate on them. The reality is that there is no over-voting as regards the results for the polling unit as reflected in Exhibit DD5 which is the only circumstance for which for which there is provision for cancellation.

To resolve the conundrum we have to make recourse to the INEC Regulations and Guidelines for the Conduct of Elections which provides in paragraph 47(i) that where there are issues with results of a Voting Point (VP) such as over-voting, the votes from the affected VP shall be treated as rejected votes and the polling officer will proceed with the valid votes from other VPs of the Polling Unit. In the absence of evidence to the contrary, we have to presume under s168(1) of the Evidence Act, 2011 that paragraph 47(i) was complied with which was why Exhibit DD5 was free of taint of anomaly.

The consequence is that, though we find it proved that there was over-voting with respect to VP1 of Health Centre polling unit code 001 in Kwali Central Ward as evident in Exhibit DD7 (Form EC8A VP), it has not been proved that there was non-compliance with the Electoral Act, 2010 (as amended) or with the provisions of INEC Regulations and Guidelines for the Conduct of Elections since Exhibit DD5 (Form EC8A) did not show over-voting.

SHEDA GALADIMA POLLING UNIT WITH CODE 004 IN KILANKWA WARD

The facts concerning Sheda Galadima Polling Unit with Code 004 in Kilankwa Ward are pleaded in paragraphs 40 and 41 of the petition. It was averred that the total number of votes recorded in Form EC8A for all the

parties was 177 whereas the total number of valid votes recorded for all the parties in Form EC8A was 176. It was further averred that the total number of rejected votes in Form EC8A was five (5) votes, which if added to the total number of votes recorded in Form EC8A for all the parties (177) would sum up to 182, one (1) more than the total number of accredited voters of 181, thereby showing there was over-voting by one vote. In paragraph 41 the petitioners had produced a table which we cannot understand except it shows that the total votes for each of APC and PDP, after deduction of invalid votes, will be 236 and 246 respectively. In paragraphs 22 of the 1st respondent's reply to the petition and 2nd respondent's amended reply to the petition, they both denied these allegations and in paragraphs 23 put the petitioners to the strictest proof of those averments. In paragraph 31 of the 3rd respondent's reply to the petition, it was averred that there was no over-voting in Sheda Galadima polling unit with code 004 and the petitioners were challenged to the strictest proof of the allegations.

The witness called by the petitioners in proof of its case was Abdullahi Kaura who testified as the PW5 adopted his witness statement on oath as contained in pages 57 to 59 of the petition. While the PW5 was in the witness box, counsel to the petitioners tendered from the bar several documents, among them Exhibits DD22, DD23 and DD24 (all of them Forms EC8A VPs for Sheda Galadima Code 004) and Exhibit DD28 (Voter's register for polling unit 004 Sheda Galadima Primary School). The PW5 identified a certain Form EC8A as the result he referred to in paragraphs 9, 10 and 11 of his statement on oath and it was tendered and admitted as Exhibit DD29. The witness identified his name in Exhibit DD28 while he referred to Exhibits DD4, DD6, DD10, DD22, DD23, DD24, DD25 and DD29 as the forms he referred to in paragraphs 10, 11, 12 and 13 of his witness statement on oath. He claimed that Exhibit DD29 is the table referred to in paragraph 13. In the statement on oath itself the PW5 stated that voting process ended at about 3:15pm on the 9th March, 2019 and it was followed by the sorting and counting of votes after which the collation officer announced the votes scored by the respective parties. The PW5 claimed that after the sorting and

counting, the total number of votes recorded for all the parties was 177 and the scores were entered into the INEC Form EC8A which he was expected to sign as party agent but when he came to sign he discovered that the total valid votes on Form EC8A is 176 along with rejected ballots of 5 votes. In paragraph 13 the PW5 stated that the summation of the total votes recorded for the parties (177) and the total number of rejected ballots of 5 will sum up to 182, above the total number of accredited voters of 181.

The PW5 was cross-examined by all three respondents. Under cross-examination by the 1st respondent's counsel, the PW5 said the Sheda Galadima polling unit code 004 was in the same premises as the Sheda Sarki Primary School polling unit code 005 but said he was an agent only for the polling unit code 004 and so could not tell if Exhibit DD12 he was confronted with is the voters' register for code 005. He said there were 4 voting points for Sheda Galadima polling unit code 004 of which he was agent at voting point 1 but said he cannot remember the scores of his party from each VP nor can he remember the score of APC in VP1. Asked if he was accredited by INEC, the PW5 said he was sent by his party and has PDP agent card which he did not have in court. Asked to confirm if his signature or that of any other agent is on Exhibit DD29, the PW5 said the signatures are not clear and nor can he see any stamp on it. Shown Exhibits DD22, DD23 and DD24, the PW5 said that they were signed by his co-agents because he complained of over-voting and did not sign but when confronted with Exhibit DD6, the PW5 conceded it was for VP1 and it was signed by one Garuba Ibrahim and has the stamp of INEC. Attention drawn to Exhibit DD6, the PW5 confirmed that the total number of valid votes is 177, total number of accredited voters was 181, and total number of rejected ballot was 5 though he was to later say it was 4 printed without a countersignature, insisting the correct figure of rejected votes was 4. Asked if he knew to whom the one vote difference was given to, the PW5 said he does not know.

The PW5 was then cross-examined by the counsel to 2nd respondent. The witness confirmed over-voting was by one vote, that the score for the PDP was 65 votes but he cannot remember the votes of APC though, when

confronted with Exhibit DD6, he confirmed APC scored 72 votes. He confirmed that procedurally the results of the various VPs will be entered in Forms EC8A VP and it is the totality of Forms EC8A VP that will make up Form EC8A, a copy of which was tendered in evidence as Exhibit DD30 which he confirmed is dated 9th March, 2019 and has INEC stamp at the bottom. The PW5 confirmed that the total number of accredited voters in Exhibit DD30 was 817, the number of valid votes cast was 787 and the number of rejected votes was 30 but the PW5 insisted that it should have been 32. Cross-examined by counsel to the 3rd respondent, he said it was his colleague that was accredited by INEC but he was sent by his party, insisting that he was at the collation centre because as a polling unit agent his duty was to ensure what is obtained at polling unit gets to the collation centre. The PW5 insisted that he knows the process of computation of results and agrees that INEC forms have checks and balances but it must be done in the presence of agents. Shown Exhibit DD29 and referred to paragraphs 12 and 13 of the witness statement on oath, the witness was asked to show where those figures are on Exhibit DD29 and he responded that they cannot be on Exhibit DD29 because it is a polling point result, though he is to say later that Exhibit DD29 was the document he referred to in paragraph 13.

In the address of counsel to the 1st respondent, counsel argued that the PW5 was not the accredited agent of the 2nd petitioner for Sheda Galadima polling unit having admitted that the PDP agent who signed Exhibit DD6 was Ibrahim Garba but he was not called as a witness by the petitioners, the evidence of the PW5 should not attract probative value. It was pointed out that the PW5 could not link which of the five sets of voters' register was for VP1 as to determine the accredited voters for the point, meaning the petitioners has failed to link voters' register to the voting point required to prove over-voting. It was submitted that the duplicate copy of Exhibit DD6 tendered through the PW5 has no probative value since the PW5 was not the maker. The petitioners' response was that whether or not the PW5 was the accredited agent, he was a person present throughout the process, identified his name in the voters' register and who also voted. It was submitted that the

voters' register tendered was Exhibit DD28 and the witness in fact identified his name and picture on it and the burden of proving over-voting was amply discharged by the PW5 relating the various documents to parts of petitioners' case. On the part of counsel to the 2nd respondent, counsel reproduced the entries in Exhibit DD6 which it was submitted do not show any over-voting and he described Exhibit DD6 as containing all the hallmarks of a valid result, showing the name of the Presiding Officer (Egena Johnson), the stamp of INEC, it is dated (9th March, 2019) and it is signed by the agents of all the parties i.e. APC, APGA, PDP and SDP. He therefore urged that the tribunal should find that the claim of over-voting was unfounded. The 3rd respondent's counsel in his address majorly attacked the credibility of the PW5 for not been able to distinguish between the INEC officer in charge of a polling unit and the one in charge of a collation centre and the fact that he was not an INEC accredited agent but in any event having admitted he did not sign Exhibit DD29, he ought not to be accorded any weight.

In our opinion, the arguments and issues are basically as were earlier canvassed and considered under Health Centre Polling unit, whether as to the competence of the PW5 to testify, or what constitutes over-voting under the law or the guidelines and whether over-voting has been proved in this case. Consequently, rather than revisit those base issues, we adopt our conclusions on the legal situation on those issues in Health Centre Polling Unit.

Like the earlier polling unit considered, to resolve the question of whether there was over-voting in Sheda Galadima Polling unit, our resources shall be basically the documents before us. The relevant documents for consideration were tendered as Exhibits DD4, DD6, DD22, DD23, DD24, DD25, DD28, DD29 and DD30. Exhibits DD6 and DD29 are obviously one and the same document; Exhibit DD6 is a certified true copy while DD29 is a carbon copy both of them carrying serial number 0002700. Both documents are Form EC8A VP. However, there are important differences between the two which we shall revisit presently.

Exhibits DD22, DD23 and DD24 are also Forms EC8A VPs, bearing different serial numbers. Exhibit DD4 is Form EC8A for Sheda Galadima Polling Unit Code 004. The evidence before the tribunal is that there are 4 voting points in Sheda Galadima Polling Unit Code 004. Thus, going by paragraph 21(a)(v) and (b) of the INEC Guidelines, there must be coherence between the results originated from the VPs and the final entry in Form EC8A for the polling unit.

Exhibits DD4 and DD30 are also both CTCs of the same document and so it will be sufficient if we rely on Exhibit DD4. The relevant entries in Exhibit DD4 are as follows: number of voters on the register, 2045; for number of accredited voters, 817; for number of spoilt ballot papers, 0; number of rejected ballots, 30; number of total valid votes (being sum of valid votes cast for all parties), 787, and total number of used ballot papers (sum of #5, #6 and #7), 817. The same entries are correctly reflected in Exhibit DD10 (Form EC8B) being the results for the Ward derived from the results for various polling units. Thus, going by the definition of over-voting, whether in the Electoral Act, 2010 (amended) or paragraph 23 of the INEC Guidelines, over-voting is not apparent on Exhibit DD4.

Our challenge is with Exhibit DD6 and DD29. As earlier observed they are copies of the same form EC8A VP, with the same serial Number 0002700. Both clearly have the same entries for votes for the APC (72), APGA (39), PDP (65) and SDP (1), correctly summed up at the bottom to be 177. The two, however, differ when it comes to the summaries at the top with respect to number of unused ballot (319 for Exhibit DD6, 315 for Exhibit DD29), number of rejected ballots (4 for Exhibit DD6, 5 for Exhibit DD29), number of total valid votes (177 for Exhibit DD6, 176 for Exhibit DD29) and total number of used ballot papers (181 for Exhibit DD6, 324 for Exhibit DD29). We must observe that the entries in Exhibit DD29 are without alteration but are incorrect regarding the total valid votes (176) vis-à-vis the sum of the individual votes of the political parties in the body of Exhibit DD29 which is 177, besides incoherence betwixt the other summaries regarding number of

unused ballot papers, rejected ballots, total valid votes and total number of used ballot papers.

On the other hand, obviously, the figures initially entered in Exhibit DD6 for number of unused ballot papers, rejected ballots, total valid votes and total number of used ballot papers were altered, but the various entries are coherent with one another. Of course there is a signature at the side of the last alteration, same as the signature of the presiding officer at the bottom, suggesting the alteration was made by him. Now, alterations such as these go to the weight of documents. By s160 (1) of the Evidence Act, 2011, no person producing any document which upon its face appears to have been altered in a material part can claim under it the enforcement of any right created by it, unless the alteration was made before the completion of the document or with the consent of the party to be charged under it or his representative in interest. Exhibit DD6 is a CTC, was tendered from the bar by the petitioners, and in deprecating and contesting it the PW5 has stated that the true figure of rejected voters was 4, not 5, and that the votes for all the parties was 177, not 176, thereby in fact affirming its correctness. It is noteworthy that Exhibit DD29 was tendered by the petitioners through the PW5 but without offering explanation on the inconsistency between it and Exhibit DD6 that they had earlier tendered. Irrespective of the alteration, we are satisfied that Exhibit DD6 rather than Exhibit DD29 reflects the true result of voting at Sheda Galadima polling unit VP1 as it is coherent with the summation of the scores of individual parties at the voting point. It also did not help the case of the petitioners that Garba Ibrahim who the PW5 conceded signed Exhibit DD6 as agent was not called to testify in this case.

It appears to us that the petitioners built their case at first with duplicate copies of the result given to them at the close of voting which they tendered as Exhibit DD29 but they subsequently obtained Exhibit DD6, which is rather against the claim of the petitioners that there was over-voting. To strengthen our conclusion, the PW5 had said that after the result was announced, it was entered in Form EC8A in his presence. He led no evidence to show that he ever left the polling both thereafter or there was

ever a time the polling officer did anything out of the sight of the PW5 after making the entry. In any event, the INEC guidelines indeed provided in paragraphs 24 and 25 that where the sum of spoiled ballot papers, rejected ballots and total valid votes is not equal to the total number of used ballots (as evident in Exhibit DD29), an anomaly exists, and the Presiding Officer shall submit a written report to the RA/Ward Collation Officer who shall examine the report and reconcile the figures. Given this provision, we are bound to presume that the apparent errors in Exhibit DD29 were reconciled in Exhibit DD6. Our conclusion, therefore, is that the claim of over-voting in the Sheda Galadima Ward 004 Kilankwa Ward was not proved by the petitioners.

IJAH TAMPE POLLING UNIT WITH CODE 006 IN YANGOJI WARD

The pleading, with respect to Ijah Tampe Polling Unit with Code 006 in Yangoji Ward, is in paragraph 39 of the petition. The exact wordings are:

> In Ijah Tampe 006 in Yangoji Ward, Form EC8A shows that 311 voters were accredited while the total number of valid votes is 316, thereby leading to over-voting by 5 votes. Also, the entries on the Form EC8B of Yangoji Ward, is not a reflection of results realized at the polling unit and contained in the Form EC8A.

The 1st respondent, in paragraphs 22 and 23 of the reply to the petition denied the averment and puts the petitioners to the proof of the allegations. In the amended reply to the petition, the 2nd respondent in paragraphs 22 and 23 of the reply to the petition also denied the averment and puts the petitioners to the proof of the allegations. The 3rd respondent, in answer to paragraph 39 of the petition, in paragraph 30 of the reply averred that there was no over-voting in Ijah Tampe code 006 and put the petitioners to the strictest proof of the allegation.

The petitioners called one Joshua Napthali to testify as the PW3 in proof of the claims of over-voting in Ijah Tampe polling unit code 006. He adopted his statement on oath as contained in pages 51 to 53 of the petition. He

identified Exhibit DD18 as the voters' register and confirmed that his name appear at page 24 as number 237. He also identified Exhibit DD3 as the result of the polling unit he referred to in paragraph 12 of his statement on oath.

Cross-examined by the counsel to 1st respondent, the PW3 confirmed that there was over-voting by 5 votes, claiming the 5 votes went to the APC. Asked how he came by that conclusion, he replied he cannot remember but claimed he was involved in the counting of ballot papers and saw those 5 ballot papers were for the APC. The PW3 was led to agree that the scores of APC, APGA and PDP in Exhibit DD3 were 174, 8 and 129 respectively but when it was put to him repeatedly that they will sum up to 311, he claimed not to understand. When referred to item 5 for spoilt ballot papers and also rejected ballots for him to explain, the PW3 said that spoilt ballot papers are those papers voters thumb-printed wrongly while rejected ballots are those wrongly torn, of which number he said he cannot remember but denied that the number of rejected ballot in Exhibit DD3 was zero. The PW3 admitted that he signed Exhibit DD3 but claimed he complained to the presiding officer even as he did. Cross-examined by the counsel to the 2nd respondent, the PW3 said that he was the INEC accredited agent for the polling unit though he has nothing in court to show that he was the said agent. When it was suggested to the PW3 that the addition of 174, 8 and 129 will give 311 and not 316, he responded that it is 316 that was written. He claimed he was duly accredited and he voted at the election, confirming that his name appear at page 24 as number 237 in Exhibit DD18 (the voters' register). Asked to see if it is gubernatorial or Area Council election that was ticked in Exhibit DD18, after going through, the PW3 said it was gubernatorial and not Area Council that was ticked. Finally, the PW3 was cross-examined by the counsel to the 3rd respondent. Once again the PW3 was made to confirm the scores of the parties and he confirmed signing Exhibit DD3 but admitted he made no other sign on Exhibit DD3 though he complained orally to the presiding officer. He claimed he accompanied the result to the collation centre where he complained again to the collation officer who promised to do something about his complaint.

In the final address of the counsel to the 1st respondent, it was urged that the witness has failed to prove that he was an agent for the PDP at the polling unit and hence his testimony should attract no credibility, an argument we will dismiss as we did previously, given that he has shown that he was a registered voter in the polling unit and there is no rebuttal evidence showing that he did not vote at the unit. The more compelling argument made by the counsel was that in determining over-voting, spoilt ballot papers are not reckoned with and not included in the total votes cast. It was submitted that since the total votes cast and the number of accredited voters for the Ijah Tampe polling unit are the same i.e. 311, it was a demonstration that there was no over-voting. Unfortunately, the petitioners offered no counterargument to the above arguments of the 1st respondent. The 2nd respondent towed the same line of argument as the 1st respondent, in fact explaining spoilt ballots were never used unlike rejected ballots which were used but rejected for being used improperly and the vote is deemed wasted.

As a witness, we consider the PW3 less than fully frank. Asked how he came by the conclusion that there was over-voting by 5 votes, he had replied he cannot remember. We also find incredulous his claim that he was involved in the counting of ballot papers and saw those 5 ballot papers constituting over-voting from the pile of papers were for the APC. Besides, the witness was needlessly evasive when he claimed not to understand when the summation of the scores of the individual parties was put to him.

Truly, looking at Exhibit DD3, in the column for votes scored by the parties, A scored 0 votes, ADC scored 0 votes, APC scored 174, APGA scored 8 votes, CAP scored 0 votes, FJP scored 0 votes, GPN scored 0 votes, JMPP scored 0 votes, PDP scored 129 votes and SDP scored 0 votes, all of which are summed up to 316, when the correct figure should have been 311. Upon a close scrutiny it is seen that APC's figure was altered from 176 downwards to 174, APGA's figure upwards from 7 to 8 and PDP's figure downwards from 132 to 130 and then to 129, while the total was previously summed as 321 but it was altered to 316. At the top of the summaries the number of registered voters was 475, number of accredited voters was 311, number of ballot papers

issued to the polling unit was 400, number of unused ballot papers was 89, number of spoilt ballot papers was 5, number of rejected ballots was nil, number of total valid votes was 316 while total number of used ballot papers was 316. Again, there were obvious alterations in the number of unused ballot papers from 84 to 89, number of total valid votes from 388 to 316 and total number of used ballot papers from 326 to 316.

It is not lost on us that Exhibit DD3 was tendered by the petitioners even with the alterations and it was not alleged nor suggested to us that the said alterations were subsequent to the PW3 appending his signature to the document. Looking at the nature of the scores of the parties, both APC and PDP had their initial scores reduced, only APGA being given scores more than previously given. In our opinion, the presiding officer for the polling unit was grossly incompetent but it seems that there was no case of over-voting at the polling unit. Whereas there are quite a number of alterations in Exhibit DD3, it is notable that there was no alteration in the number of accredited voters which was stated as 311 which is also the exact sum if the scores of the parties are summed up. The fact that the scores before the alterations was summed up to 321 rather 315 underscores the incompetence of the presiding officer. The corrected figures of the scores of APC (174), APGA (8) and PDP (129) were neatly entered in the column for Ijah Tampe polling in Exhibit DD21, being the summary of results from polling units collated at Ward Level for Yangoji Ward.

We think that the confusion arose from the entry for spoilt ballot i.e. 5. As explained by counsel to the 2nd respondent, spoilt ballot paper is not intended to be counted among the ballots actually used in the election though account of it must be given so that the fate of all ballot papers issued must be ascertained as a measure of integrity for the election. Section 55 of the Electoral Act, 2010 (as amended) and paragraph 18 of the INEC Guidelines amply explained what a spoilt ballot is and what fate should befall it. Both provisions conceive of a spoilt ballot paper as one which a voter accidently deals with such as by destruction or by marking it in such a manner that it may not be conveniently used for voting. It is then provided

that the spoilt ballot paper shall be marked "cancelled" by the Presiding Officer, and recorded in appropriate form in the PU booklet and the presiding officer shall issue another ballot paper to the voter in place of the spoilt ballot paper. Thus, it is erroneous, as was done in Exhibit DD3, to include spoilt ballot in the computation of total valid votes; by doing so the value 5 will be reflected twice. Obviously, if the said value of 5 spoilt ballot papers is removed from the sum of 316 entered for total valid votes, it would sum to 311, same figure for the total number of accredited voters, thereby negativing the petitioners' claim of over-voting. In consequence, we dismiss the claim of over-voting in Ijah Tampe polling unit.

SHEDA SARKI 1 PRIMARY SCHOOL POLLING UNIT WITH CODE 005 (KILANKWA WARD)

Sheda Sarki 1 Primary School polling unit code 005 is one of the polling units of Kilankwa Ward. All the parties filed pleadings and the petitioners called two witnesses (the PW1 and the PW2) who were extensively cross-examined by all three respondents. Some facts are in contention between the parties but so much more are not.

The petitioners averred in paragraphs 8, 9, 10, 11, 12 and 13 that election held at the four (4) voting points (VPs) of the polling unit on the 9th March, 2019 in a free and fair manner and at the conclusion of the process, the ballot papers were sorted out, counted and announced at the polling unit to all the parties ascribing to APC 209 votes, APGA 292 votes and PDP 361 votes but the presiding officer refused to record and enter the result in the appropriate Forms EC8A and EC8A VPs, instead saying it was already late and he would move the materials to the collation centre to fill the already announced result. It was alleged that at the collation centre passion was inflamed as they continue to delay entering the results in the appropriate forms and in the melee the electoral officers claimed that one of the card readers was missing and so the result from the Sheda Sarki 1 Primary School polling unit code 005 was cancelled. In paragraphs 14, 15, 16, 22, 23 and 24 of the petition, it was averred that the re-run election for election in the polling unit which was

scheduled for the 23rd March, 2019 was aborted as thirty minutes into the process thugs hired by the 2nd respondent disrupted the process and took and smashed some smart card readers. Consequently, the 3rd respondents declared the 1st respondent the winner of the Chairmanship election without taking into account the votes from the polling unit.

The fact that the election held on the 9th March, 2019 and subsequently was cancelled and that the re-run of 23rd March, 2019 was aborted was agreed to by all the respondents but with differences in the narrative. In paragraphs 4, 6, 15, 16, 17, 19 and 25 of the 1st respondent's reply to the petition, it was averred that indeed a result was announced whereby, from the four voting points, each party scored 53, 65, 33 and 58 totaling (209) for APC, 47, 43, 27 and 44 totaling (161) for PDP and 71, 72, 79 and 70 totaling (292) for APGA and that upon the announcement of the result, the thugs of the petitioners became unruly, insisting that the results of the unit be altered to figures concocted by them in favour of the 1st petitioner and it was this state of affairs that led to the cancellation of the election at the unit by the 3rd respondent. Facts of similar purport were pleaded by the 2nd respondent in paragraphs 4, 6, 15, 16 and 25 in their amended reply to the petition. Both 1st and 2nd respondents said nothing regarding the re-run election of 23rd March, 2019 except to deny that they colluded with unknown soldiers or policemen to disrupt the election into Chairmanship office of Kwali Area Council. In paragraphs 4, 5, 6, 7, 8 and 18 of the 3rd respondent's reply to the petition, it was averred that the results from the polling unit was rejected by the collation officer and was cancelled by the 3rd respondent because the presiding officer could not produce the card reader to reconcile the total votes cast with the total number of accredited voters. Regarding the re-run election of the 23rd March, 2019, it was averred in paragraph 15 that the election held but on take-off was disrupted leading to the destruction of all the smart card readers deployed to the polling unit causing the 3rd respondent to score zero vote for all the parties.

From the pleadings of the parties, indisputably, the re-run election fixed for the 23rd March, 2019 was aborted and was not reckoned with in the final

computation of the results with which the 1st respondent was declared the winner. Thus, it is immaterial whose efforts or conduct or action aborted the re-run election. The evidence of the PW2 (Usman Suleiman) at page 42 of the petition tersely affirmed the fact that the election was aborted. Exhibits DD11, DD16 and DD17 all show that the election was aborted. Exhibit DD11 which is Form EC8B is Summary of Results from polling units collated at Electoral Ward level completed on the 23rd March, 2019 and it has zero entry for Sheda Sarki 1 Primary School code 005 polling unit. Exhibit DD16 is Form EC40G completed on the 23rd March, 2019 and it shows that there was zero accreditation at Sheda Sarki 1 Primary School code 005 polling unit because of violence and destruction of card readers. Exhibit DD17 is a report by one Oladepo Yinka, a presiding officer, who stated that election started at 8am but at 835am some men stormed the polling unit and disrupted the process and smashed the smart card readers in the process shattering two of them, causing electoral officers to run for safety.

However, the facts evident from the parties is that election held on 9th March, 2019 but it was cancelled and even when the re-scheduled election of 23rd March, 2019 was aborted, the results of that election were not reckoned with in the final determination of the winner of the election into the office of the Chairman of Kwali Area Council.

Thus, the first issue for determination by this tribunal concerning the election that held on the 9th March, 2019 at Sheda Sarki 1 Primary School polling unit would be, whether or not the results of the election was lawfully cancelled in accordance with the Electoral Act, 2010 (as amended) and the INEC Guidelines and Regulations. The second issue would be, whether the cancellation was lawful or not, there was cause sufficient for the cancellation in accordance with the Electoral Act, 2010 (as amended) and the INEC Guidelines and Regulations. The final issue would, what should be the consequence, under the Electoral Act, 2010 (as amended) and the INEC Guidelines and Regulations, where the foregoing issues were answered either in the affirmative or in the negative.

The only witness, who testified regarding the voting of the 9th March, 2019, at Sheda Sarki 1 Primary School polling unit code 005 was Matthew Ayuba (the PW1) whose statement at pages 39 to 41 was adopted by him. He claimed that the election was concluded and the votes scored by the respective parties were announced and were written down by the agents of the parties, with APC 209 votes, APGA 292 votes and PDP 361 votes. The PW1 claimed that after announcing the results, the INEC officer refused to enter the results in the appropriate forms but rather decided that it would be done at the collation centre because it was getting dark. At the collation centre, there was further delay in entering the figures in the appropriate forms, causing the voters and agents to be agitated, a situated that escalated to a melee as consequence of which the collation officer said the card reader used for the polling unit was missing and cancelled the result from the said unit.

The PW1 was cross-examined by all the respondents. In the course of cross-examining the PW1, counsel to the 1st respondent has tendered several documents through the witness among which were Forms EC8A VPs with serial numbers 0002703, 0002704, 0002705 and 0002706 (four documents taken together) admitted as Exhibit DD13 (another set of which were tendered as Exhibit DD14). Exhibit DD13 were certified true copies from INEC while Exhibit DD14 were certified true copies of same document but from the police. The petitioners' counsel had deferred objection to Exhibit DD13 till address but no such argument was made in the petitioners' final address and so we take it that the objection to Exhibit DD13 has been abandoned. Objection was also been taken to the admissibility of Exhibit DD14 on the ground that the police do not have the requisite power to certify INEC results forms because the original cannot be in the custody of the police, counsel citing the case of *G & T Investment Ltd v Witt & Busch Ltd (2011) 8 NWLR (Pt. 1250) 500 at 536*. It was additionally argued that the certification did not contain the name of the certifying officer and his status. Counsel to 1st respondent met the objection by drawing the attention of the tribunal to the fact that the certifying officer stated his name and

designation as Kantoma ASP and referred to paragraph 22 (a)(vi) of the INEC Guidelines for the 2019 Election where duplicates of results were to be given to the police and by law such duplicates are also originals, counsel citing in support the cases of *Anyaegbu v Ozor (1999) 4 NWLR (Pt. 598) 184 at 187* and *Nnadi v Ezike (1999) 10 NWLR (Pt. 622) 228 at 238*. Having considered the arguments and authorities cited by the counsels, we agree with the 1st respondent's counsel. By s86(4) of the Evidence Act, 2011, where a number of documents have all been made by one uniform process, as in the case of printing, lithography, photography, computer or other electronic or mechanical process, each shall be primary evidence of the contents of the rest, a description that fits the making of Exhibit DD14. Unexplained custody may affect weight but in this case custody has also been abundantly explained by reference to the INEC Guidelines. We are also satisfied that there is sufficient subscription of the name and official designation of the certifying officer in Exhibit DD14 to substantially meet the requirement of s104(2) of the Evidence Act, 2011. Consequently, we hereby dismiss the objection of the petitioners to the admissibility of Exhibit DD14.

Truly, the figures of votes of 209 votes for APC, 292 votes for APGA and 361 votes for PDP given by the PW1 is so reflected in Form EC8A (tendered as Exhibit DD2). Exhibit DD2 was tendered from the bar by petitioners' counsel and the PW1 identified it when testifying as containing the figures announced at the conclusion of voting at Sheda Sarki 1 Primary School polling unit 005. It is thus inconsistent with the petitioners' claim that the results were not entered in the relevant form EC8A.

However, the results the PW1 claimed he heard announced is greatly divergent from the aggregate of the scores of the parties from the four voting points as shown in Exhibit DD13 (same set of documents tendered as Exhibit DD14), with respect to the votes attributed to PDP, which sums up that APC has 209, APGA has 292 while PDP has 161 as against 361 in Exhibit DD2.

Similarly the aggregate of the number of accredited voters from the four voting points deduced from Exhibits DD13 and DD14 is 690 as against the

figure of 890 in Exhibit DD2. While the aggregate of rejected ballots from the four voting points was 30, same as in Exhibit DD2, the aggregate of total valid votes from the four voting points was 663 as against the 863 in Exhibit DD2, a difference of 200 just as in the votes of the PDP in Exhibit DD2 and the aggregate deduced from the voting points in Exhibits DD13 and DD14. Obviously, there was a misalignment in the computation of total number of used ballot in Form EC8A VP with serial number 0002705 in Exhibits DD13 and DD14 which gave the figure as 140 same as 140 for total valid votes when it should have been 135 to account for the 5 rejected ballots.

Thus, apart from the above, there is a synchronicity between the total number of accredited voters, the total number of rejected votes and the total number of valid votes from all the four voting points of Sheda Sarki 1 Primary School polling unit code 005 (as deduced from Exhibits DD13 and DD14), the combination of which should cohere and form the contents of Exhibit DD2 (Form EC8A) (as prescribed in paragraph 22(a)(v) and (b) of the INEC Guidelines and Regulations). Oddly, in Exhibit DD2, both total number of accredited voters and total valid votes has been inflated by 200 beyond the consolidated figure from the four VPs. We observe also that, looking at Exhibits DD13 and DD14 jointly, as a measure of authenticity, in Form EC8A VP with serial number 0002703, APC's column was signed by one Paul Mercy, APGA's column was signed by one Innocent T. Ishaya while PDP's column was signed by one Dauda Aliyu. Also in Form EC8A VP with serial number 0002704 APC's column was signed by one Musa Ayuba Habila, APGA's column was signed by one Ajeh Aladi while PDP's column was signed by Matthew Ayuba (probably the PW1) just as in Form EC8A VP with serial number 0002705 APC's column was signed by one Abdullahi Iliyasu, APGA's column was signed by one Ferdinand Oshoke Iyanvor while PDP's column was signed by one Hassan. The signatures for all of the parties in Form EC8A VP with serial number 0002706 are not clear in both Exhibit DD13 and DD14. Nevertheless, we are of the opinion that the preponderance of evidence is in favour of the Form EC8A VPs having been signed by the agents of the various parties. While the PW1 claimed under cross-

examination that none of the agents signed Form EC8A VPs, we find it difficult to agree with the PW1 given the fact of those signatures that have not been disclaimed as fictitious, more so considering that Exhibit DD13 and DD14 came from two different sources. It is also noteworthy that it was actually APGA, not the APC or the PDP that obtained the highest number of votes from the results as contained in each of the four Form EC8A VPs as to obliterate any suggestion of manipulation by the 1st or 2nd respondents.

The factual circumstances before this tribunal was that the results of the election held on the 9th March, 2019 was not included in the final computation of results for the Chairmanship election for Kwali Area Council. This fact is apparent enough from Exhibits DD10, DD15 and DD25 (which in fact is another copy of Exhibit DD10). The evidence before the tribunal is that the cancellation was not done at the polling unit but at the collation centre, suggesting therefore that the cancellation was not done by the presiding officer but by the collation officer. The 3rd respondent has engaged in a futile semantics that the collation officer only rejected the results but that it was the Commission itself that cancelled the results. This is an evasive pleading since both the collation officer and the presiding officer are officers of the Commission which must act through an officer. The argument that has been strongly made by the petitioners is that the cancellation was unlawful because it is only the presiding officer that has the power to cancel an election result in a polling unit, citing the case of *Ikpeazu v Otti (2016) 8 NWLR (Pt. 1513) 38SC*, besides the fact that there is no report in writing made by the presiding officer of Sheda Sarki 1 Primary School Polling Unit. The 2nd respondent's response to this was that paragraph 26 of the INEC Guidelines which requires a report in writing explaining the nature of the problem that necessitated cancellation was compiled with by the making of Exhibits DD15, 16 and 17. The counsel to the 3rd respondent failed to meet the argument of petitioners' counsel on the cancellation other than saying that even in the absence of cancellation the election was still void for over-voting as reflected in Exhibit DD2. When the 1st respondent had the opportunity to reply to the

petitioners on point of law, they still failed to answer the question of the lawfulness of the cancellation purportedly by the collation officer.

The prescription that it is only the presiding officer that can cancel the results from a polling unit appears well established. Apart from *Ikpeazu v Otti (Supra)* cited by the petitioners' counsel, a surfeit of other authorities exist on the point. In reiteration of the point, in the case of *Ujong & Anor v Williams & Ors. (2019) LPELR-48718(CA)* Ogbuinya JCA stated thus recently:

> It is settled, in the realm of electoral firmament, that a Returning Officer is derobed of the vires to cancel election results emanating from polling units. The power to cancel such results is bestowed on a presiding officer. See *Doma v. INEC (2012) 13 NWLR (Pt. 1317) at 328*; *Ikpeazu v. Otti (2016) 8 NWLR (Pt. 1513) 38*.

To fortify the process of cancellation, the INEC Guidelines and Regulations also provided in paragraph 26 that for a Polling Unit where election is not held or is cancelled, or poll is declared null and void in accordance with the regulations, the Presiding Officer shall report same in writing to the RA/Ward Collation Officer explaining the nature of the problem and the Collation Officer shall fill form EC40G as applicable. Counsel to the 2nd respondent has referred us to Exhibits DD15, 16 and 17 as fulfilling this requirement. However, Exhibits 16 and 17 relate to the election of 23rd March, 2019 and therefore are irrelevant to questions about cancellation of the election of 9th March, 2019. On the other hand, Exhibit DD15 is INEC Form EC40G completed by one Dr. Prince James as collation officer and dated 10th March, 2019. As a matter of fact, no report from a presiding officer was tendered as was done for the 23rd March 2019 election with Exhibit DD17.

Having considered all the above facts, circumstances and the law, we are satisfied that the cancellation of the results of Sheda Sarki 1 Primary School polling unit on 9th March, 2019 was carried out by the collation officer, not the presiding officer and there was no report as required under

paragraph 26 of the INEC Guidelines and Regulations before that was done. In consequence, the cancellation is hereby set aside.

Having decided as above, what is to be done is to revisit the result of the election on the 9th March 2019 at the Sheda Sarki 1 Primary School polling unit code 005 for the Chairmanship of Kwali Area Council. In other words, we must take a second look at Exhibits DD2, DD13 and DD14. This is particularly imperative because from Exhibits DD2 (Form EC8A), DD15 (Form EC40G), DD12 and DD4 the total numbers of registered voters for the polling unit is 1,794 whereas the difference between the two candidates with the highest scores (APC 14,245 and PDP 14,189) without the result from this polling unit as can be seen from Exhibit DD8 (Form EC8E) is 56 votes, a margin of lead far less than the quantum of registered voters in the polling unit excluded.

The fact established is that there are four voting points (VPs) for the Sheda Sarki 1 Primary School polling unit code 005, the aggregate of which should constitute the final result for the polling unit. Exhibits DD13 and DD14 are results from the four voting points. We had earlier made an exhaustive scrutiny of the said results from the four VPs vis-à-vis the computation of the final result for the polling unit as contained in Exhibit DD2 and it was determined that there was an inflation of the figures for total number of accredited voters and total number of valid votes by 200. It was held in the case of *Uduma v Arunsi & Ors. (2010) LPELR-9133(CA)* that it is the duty of an Election Petition Tribunal to collate election results where there is proof of wrong computation. Ogunwumiju JCA stated thus:

> In my view, the Tribunal in possession of the results of the election had a duty to collate the results where there is proof of wrong computation. See *Ngige v. Obi (2006) 14 NWLR Pt. 999 Pg. 1*; *Sam v. Ekpelu (2000) 1 NWLR Pt. 642 Pg. 582 at 596*; *ADUN v. OSUNDE (2003) 16 NWLR Pt. 847 Pg. 643 at Pg. 666-667*. In this case, the relevant results were produced in evidence, freely referred to by the parties in their addresses and the Tribunal was

duty bound to consider them in determining the issue in contention.

Counsel to the 1st respondent has argued that the petitioners withheld Exhibits DD13 and DD14 because if they had produced them they will not be in favour of the petitioner, citing s167(d) of the Evidence Act, 2011 and urging the tribunal to invoke the presumption against the petitioners. The response of the petitioners was that Exhibits DD13 and DD14 were merely dumped on the tribunal since they called no witness to demonstrate or link the contents of Exhibits DD13 and DD14 to this case. We consider the response of the petitioners insufficient. In our opinion, we think that since the grounds for the petition are non-compliance with the Electoral Act and INEC Guidelines and that the 1st and 2nd respondents did not score the majority of lawful votes cast, it was incumbent on the petitioners to dilute the force of Exhibits DD13 and DD14 which tend to suggest to the contrary, especially as they had the opportunity to re-examine the PW1 on them. Besides, the petitioners are seeking for declarations and so they cannot built their case on the weakness of the respondents' case but on the strength of the petitioners' case. Since it is agreed that results from the four voting points will be the anchor for the results for the polling unit, do the petitioners have results for the four voting points other than Exhibits DD13 and DD14? They have tendered none, and no explanation was offered why none was tendered, thereby giving fillip to the argument of 1st respondent that they may have been withheld due to their adverse consequence to the case of the petitioners.

We are satisfied that we have a mandate to re-compute the results from the VPs (Exhibits DD13 and DD14) to enable us arrive at the correct result from the election that held on the 9th March, 2019. The total valid votes deduced from the Form EC8A VPs from the four voting points will be as follows:

PARTY	EC8A VP 0002703	EC8A VP 0002704	EC8A VP 0002705	EC8A VP 0002706	EC8A TOTAL
APC	65	58	33	53	209

APGA	72	70	79	71	292
CAP	0	0	1	0	1
PDP	43	44	27	47	161
TOTAL	180	172	140	171	663

On the other hand the total number of accredited voters deduced from Form EC8A VPs from the four voting points will be as follows:

EC8A VP 0002703	EC8A VP 0002704	EC8A VP 0002705	EC8A VP 0002706	EC8A TOTAL
183	188	140	179	690

Obvious from the foregoing, whereas the total number of accredited voters is 690, the total votes cast was 663. Thus, it is clear that there was no over-voting in the polling unit as to necessitate a cancellation of the result in the first place.

Return was made in this case by the returning officer without taking into account the result of Sheda Sarki 1 Primary School polling unit code 005. The said return is as contained in Exhibit DD8 which is Form EC8E (declaration of results of election to the office of the Chairman). Exhibit DD8 is dated 23rd March, 2019 and, besides other candidates, Danladi Chiya of APC was said to have scored 14,245 votes, Usman Jiya of APGA was said to have scored 5,518 votes, Faniran Tundun of CAP was said to have scored 12 votes and Daniel Ibrahim of PDP was said to have scored 14189 votes. The above four candidates alone got votes during the election held on the 9th March, 2019. By s68(c) of the Electoral Act, 2010 (as amended) the decision of the Returning Officer on any question arising from or relating to declaration of scores of candidates and the return of a candidate, shall be final. However, any such declaration is subject to review by a tribunal or Court in election petition proceedings under Electoral Act, 2010 (as amended). Pursuant to powers thereby vested on this tribunal, we hereby set aside the return made on the 23rd March, 2019 and incorporate into same the votes garnered by APC, APGA, CAP and PDP on the 9th March, 2019 at Sheda

Sarki 1 Primary School polling unit code 005 as earlier computed by this tribunal. In consequence, the overall votes of APC shall be 14,245 plus 209, totaling 14,454, the overall votes of APGA shall be 5,518 plus 292, totaling 5,810, the overall votes of CAP shall be 12 plus 1, totaling 13 and the overall votes of PDP shall be 14,189 plus 161, totaling 14,350. The highest scoring candidates were Danladi Chiya of the APC with 14,454 and Daniel Ibrahim of PDP with 14,350, with the former leading with 104 votes. Danladi Chiya was the same candidate that was earlier declared as the winner in the return made on the 23rd March, 2019.

CONCLUSION

To conclude therefore, we find and hold that the petitioners have failed to establish that the 1st 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 1st respondent did not score the highest number of lawful/valid votes cast at the election of 9th and 23rd March, 2019 into the office of Chairmanship of the Kwali 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 Kwali 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/18/2019 filed by the petitioners lacks merit and it fails. It is consequently hereby dismissed and we affirm the declaration of Danladi Chiya as the winner of the election into office of Chairman of Kwali Area Council of the FCT.

SAMUEL E. IDHIARHI ESQ.
CHAIRMAN
16th JANUARY, 2020

I concur.

MOHAMMED ZUBAIRU ESQ.
MEMBER
16th JANUARY, 2020

I concur

A.A. MOHAMMED ESQ
MEMBER
16th JANUARY, 2020

REPRESENTATION:

PETITIONERS:	Danjuma G. Ayeye Esq., with A.D. Hussein Esq., Chioma Okereke Esq. and Sandra Ozoemena Esq.
1St RESPONDENT:	T.R. Agbanyi Esq., with P.A. Joseph Esq., and Morris Chijioke Duru Esq.
2ND RESPONDENT:	A.D. Zubairu Esq., with Marygrace Idakochu Esq.
3RD RESPONDENT:	Owabie Emeka Esq., with Grace Ogbona Esq., Franca Osagiede Esq. and Ruth Adeyemi Esq.