

IN THE AREA COUNCIL ELECTION TRIBUNAL OF THE FCT
HOLDEN AT ABUJA

NO FCT/ACET/EP/02/2019

DATED 11th DECEMBER, 2019

IN THE MATTER OF ELECTION OF COUNCILOR OF DUTSE WARD BWARI AREA COUNCIL HELD
ON THE 9TH MARCH 2019

BEFORE

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

BETWEEN

HON JOSHUA M. ISHAKU & ANOR- PETITIONERS

AND

JULIUS ADAMU & 2 ORS - RESPONDENTS

JUDGMENT

After the election into the office of Councillorship of Dutse ward, Bwari Area Council Abuja conducted by the 3rd respondent held on the 9th March, 2019 and the subsequent return of the 1st respondent as the winner of the election. The petitioners who contested the election dissatisfied with the outcome of the election now filed the present petition challenging the

declaration and return of the 1st respondent.

There is only one ground upon which this petition was predicated as shown in the body of the petition, paragraph 8 thereof. The ground reads thus;

"The ground upon which the election

is questioned is that the election of the 1st respondent JULIUS ADAMU, the person whose election is questioned was invalid by reason of non compliance with the provisions of the electoral Act 2010 and the Constitution of the Federal Republic of Nigeria 1999."

According to the petition, the facts supporting the ground of the petition is as follows;

"That the notorious facts leading to the presentation of this petition are captured in a letter of complaint written by counsel to the petitioners dated 10th March, 2019 addressed to the Electoral Officers of Bwari Area Council, on the conduct of the election which amongst others revealed that the said election was marred by multiple voting, over voting, Ballot stuffing, allocation of votes, thuggery, molestation of INEC Officials and thumb printed the Ballot papers without compliance with card reader and non declaration of results at the ward collation centre (the said complaint letter is hereby pleaded and shall be relied upon at trial."

The petitioners aver in Paragraphs 6 and 7 of the petition that the figures allocated to the candidates by the 3rd respondent at the end of the election was not in compliance with the law. The 1st petitioner scored 2,051 votes while the first respondent got 2,751 votes. The other 4 candidates that participated in the said election cumulatively scored a total of 142 votes.

The petitioners also aver in paragraph 8 (a) -(e) of the petition that there were cases of over voting in 5 polling units of Dawaki primary school polling unit code 004 with 7 voting points; Mpape primary school polling unit code 007 with 8 voting points; Mpape primary school polling unit code 006 with 7 voting points; Katampe Village square code 008 with 3 voting points and Sokale Dutse code 001(B) with 2 voting points. Also in paragraphs 9-12, the petitioners alleged corrupt practices against the respondents and that the 1st respondent was not elected by a majority of lawful votes.

The reliefs being sought by the petitioners are as follows;

1. An order of the Tribunal for the production of votes cast in the entire polling units of Dutse

ward, Bwari Area Council Abuja for RECOUNTING of all the valid votes and creding /validating the votes which were unlawfully and wrongfully rejected to be counted for the benefit of the first petitioner and also nullifying/ invalidating the votes of the unlawfully and wrongfully credited to the 2nd respondent for the benefit of the 1st and 2nd respondents and declaring therefore, the petitioners as having scored the majority of lawful votes and return him accordingly as councilor under the platform of the 2nd petitioner.

2. A DECLARATION that the 1st respondent did not have the majority of lawful votes and therefore ought not to be returned as the winner of the 9th March,2019 election in Dutse ward of Bwari Area Council, Abuja.

3. A DECLARATION thst the 1st petitioner is the winner of the election into office of Councilor Dutse ward Bwari Area Council, Abuja

4. AN ORDER directing the 1st respondent to refund to the 1st petitioner all salaries/allowances received throughout the period of occupation of the office of councilor Dutse ward Bwari Area Council Abuja up to the time of the determination of this petition.

In compliance with the provisions of the Electoral Act 2010 all the three respondents filed their replies to the petition wherein they traversed all materiel allegations as contained in the petition. The petitioners did not file any petitioners' reply to any of the respondents' reply.

Before proceeding to call witnesses, precisely during the conduct of the pre hearing session, the petitioners tendered numerous documents from the Bar which were conditionally marked as Exhibits JM1- JM48. All the respondents raised objection to the admissibility of the documents and reserved their arguments till final address stage. Exhibits JM49 and JM50 were tendered by the 1st respondent through PW1 during cross examination. In the same vein, the petitioners' counsel objected to the admissibility of Exhibits JM49 and JM50 and reserved his argument till final address.

In their efforts to prove the petition, the petitioners called two witnesses. The fisrt witness for the petitioners was a subpoenaed witness. He is Mr AUDU DORZHI whose statement on oath dated 24th July,2019 was adopted by him. He is an Assistant Electoral Officer in the office of the 3rd respondent. He testified further that he participated in the election of 9th aMarch, 2019 into the office of Councilor Dutse ward where the 1st respondent was declared winner by the 3rd respondent.

That he was subpoenaed by this Tribunal at the instant of the petitioners. He stated in paragraphs 7,8,9,10 and 11 of his witness statement on oath the procedure of election and functions of smart card reader (SCR) while in paragraph 12 PW1 testified that the petitioners made allegations concerning (a) Dawaki Primary School Polling unit code 004,(b) Mpape

Primary School Polling unit 007, (c) Mpape Primary school polling unit 006, (d) Katampe Village, (e) Sokale Dutse Bwari extension 001(B),(f) Dutse T Junction polling unit 002A and (g) Customary Court Sagwari layout 003C. This is the evidence in Chief of the PW1.

This witness was cross examined by all the respondents' Counsel.

During Cross examination of PW1 by the 1st respondent's Counsel, PW1 testified that he doesn't know if Form EC8E1 (Declaration of election results) was tendered before this Tribunal. He also confirmed that there was election into the office of Concilor Dutse Ward on 9th March,2019 and the 1st respondent was declared winner of the election. That he was not at the Dutse collation center when the result was declared and that he only visited Dutse primary school polling unit.

The 2nd respondent's counsel asked PW1 if he was at any of the polling units on the day of the election and if he noticed any form of non compliance with the Electoral Act, PW1 responded that he was at Dutse primary school but he didn't see anything contrary to proper conduct of election during his visit.

PW1 further testified while being cross examined by the 3rd respondent's counsel that he participated in the election only as an overseer and he has no reason to know if there is over voting or not. He finally testified that he does not know if there was over voting in the 7 polling units he mentioned in paragraph 12 of his witness statement on oath.

The 2nd witness for the petitioners was YAKUBU KHALID who served as a returning agent of the Petitioners. He adopted his statement on oath dated 29th March, 2019 attached to the Petition. He deposed in paragraphs 6 and 7 that the presiding officer of the 3rd respondent did not declare a winner at the ward collation centre and did not issue FORM EC8B(1)(summary of results) but he only got the CTC from 3rd respondent after the election. Paragraphs 13, 15, 16 and 17 are depositions of PW2 where he avarred cases of over voting, malpractices and irregularities charactrised the election in Sokale Dutse, Dutse primary school and Shishipe Village Square polling units. He identified Exhibits JM 42,JM 45,JM 46 and JM 47 as documents he referred in paragraphs 9, 10, 11, 12, 15, 16 and 17 of his statement on oath.

PW2 tesfied during cross examination by all the 3 respondents' counsel that he was not the polling agent of any of the polling units. That his duties as returning agent was to collect results and brief from the polling agents and compile them to ensure they correspond with exhibit EC8B. And this information from agents forms the basis of his evidence before the Tribunal.

At the end of the petitioners' case, all the respondents elected not to adduce evidence thereby rested their cases on that of the petitioners. Parties were then ordered to file and exchange their final written address. Since it was only the petitioners that called witnesses and in line with the provisions of paragraph 46 of the first schedule to the Electoral Act 2010 the petitioners filed their address first. It is dated 17th October, 2019 wherein the petitioners identified 3 issues for determination by this tribunal, thus;

1. Whether having regard to the discrepancy between the figures in Exhibits JM45, JM16, JM36 (CTCs from the 3rd respondent's office and carbonated copies attached thereto) and reconciling same, the 1st respondent scored the majority of lawful votes cast in the councillorship election of 9th March, 2019 for Dutse Ward of Bwari Area Council, Abuja.
2. Whether the petitioners ought to be declared the winner of 9th March, 2019 councillorship election into Dutse ward of Bwari Area Council, Abuja having scored the majority of lawful votes cast in the election.
3. Whether the councillorship election conducted by the 3rd respondent on the 9th March, 2019 was invalid by reason of non compliance with the Electoral Act 2010 and Election Guidelines and Manuals for the conduct of elections.

In his submission, Counsel to the petitioners argued on issue one that the 1st respondent did not score majority of the lawful votes cast to warrant the 3rd respondent to declare him the winner of the election of 9th March, 2019. He further submitted that the 1st and 2nd respondents connived with the 3rd respondent and reduced the figures scored by the petitioners and also increased that of the 1st and 2nd respondents. Referred to Exhibits JM 16, JM 36 and JM 45 together with the attached carbonated copies where over voting and allocation of votes to 1st and 2nd respondents was established.

It was argued on behalf of the petitioners that since the petitioners tendered documents to prove deductions and allocation of votes as pleaded in paragraphs 9, 10, 11 and 12 of the petition while the respondents having failed to call any witness or tender any document to counter the evidence of the petitioners, the tribunal is therefore bound to accept as true the evidence of the petitioners since the implication is that the respondents have admitted the allegations of the petitioners Cited and relied on DODO VS SOLANKE (2007) AFWLR PT 346 596. The failure of the respondents to call evidence in support of their pleadings amounts to abandonment of their pleadings and same is prone to be struck out. Learned Counsel cited MAGNUSSON VS KOIKI & ORS (1984) 9 NWLR 319 @287. ATIKU ABUBAKAR & ANOR VS INEC & 2 ORS IN CA/PEPC/002/19 and urge the Tribunal to nullify the election of the 1st respondent.

Arguing issue 2, learned petitioners' counsel submitted that the 1st petitioner scored the

majority of lawful votes cast in the election of 9th March, 2019 into the office of councilor Dutse ward Bwari Area Council Abuja and is therefore entitled to be declared the winner of the said election. He stated further that though, the results declared by the 3rd respondent is presumed correct until proven otherwise. That the petitioners have the initial burden to lead evidence to show that the return of the 1st respondent was wrong. BUHARI VS OBASANJO (2005) 13 NWLR 941 122. It was contended by the petitioners that Exhibits JM 13, JM 16, JM 36 and JM 45 have established that the election of the 1st respondent did not comply with the provisions of the Electoral Act 2010, Manuals and Guidelines for conduct of election 2019. Learned counsel submitted on the importance of INEC Guidelines and Manuals. ANDREW VS INEC (2018) 1625 507 563. He finally urged the Court to hold that the failure of the respondents to adduce evidence amounts to admission of the petitioners' case. Cited AKANNI VS MAKANJU (1978) 13 @32.

On the 3rd issue identified for determination by the petitioners, it was submitted on behalf of the petitioners that the election of 9th March, 2019 was invalid due to non compliance with the Electoral Act, Electoral Guidelines and Manuals. That there were cases of multiple voting, over voting, Ballot stuffing, allocation of votes, thuggery, molestation of INEC officials thump printing of ballot papers without compliance with the card reader and non declaration of results at the ward collation centre. That the petitioners when noticed the non compliance promptly wrote a letter to the 3rd respondent on the 10th March, 2019 and following this Exhibit JM 48 was made but despite this no supplementary election conducted thereby disenfranchising 982 voters of Gidan Bawa Village Code 005 which number is more than the margin between the 2 leading candidates.

It was finally submitted that the action of the 3rd respondent violated the Electoral Act and INEC Guidelines and Manuals for election and urge the Court to so hold.

On their part, the 1st and 2nd respondents though filed separate final written addresses but each identified two issues for determination. The two issues for all intent and purposes are the same. The issues are:

1. Whether Exhibits JM1, JM2, JM3, JM4, JM5, JM6 JM7, JM8, JM9, JM10, JM11, JM12, JM13, JM14, JM15, JM16, JM17, JM18, JM19, JM20, JM21, JM22, JM23, JM24, JM25, JM26, JM27, JM28, JM29, JM30, JM31, JM32, JM33, JM34, JM35, JM36, JM37, JM38, JM39, JM40, JM41, JM42, JM45, JM46, JM47 and JM48 satisfied the requirements of the law and the provisions of section 102(1), (2) and (3) of the Evidence Act and same should be countenanced.
2. Whether the petitioners have adduced credible evidence for the Hon. Tribunal to hold that the election of the 1st respondent is invalid by reason of non compliance with the Electoral Act and CFRN 1999(as amended).

While the 3rd respondent formulated lone issue which is the same as the 2nd issue formulated by both the 1st and 2nd respondents.

It was argued on behalf of the 1st and 2nd respondents that Exhibits JM1-JM48 (excluding JM43 and JM44) were documents purportedly used for the conduct of the 9th March, 2019. Dutse councillorship election in Bwari Area Council Abuja and same were tendered by the petitioners from the Bar as proof of their original and the original being public documents are in the custody of the 3rd respondent in line with the provisions of sections 102 and 103 of the Evidence Act 2011. That Exhibits JM1-JM48 were admitted in error and the Honorable Tribunal has the powers to expunge them at the stage of giving judgment even if objections were not raised on the admissibility of the said Exhibits. Cited KUBOR & ANOR VS DICKSON (2013) 4 NWLR 1345 @ 534. NIGERIA BANK FOR COMMERCE AND INDUSTRY VS OGBEMI & ANOR (1998) 8 NWLR 613 @119.

1st and 2nd respondents further argued that since Exhibits JM1- JM48 (excluding JM43 and JM4) seek to prove the original content of the documents which are in the custody of the 3rd respondent the law requires proper certification in compliance with section 104 (1),(2) and(3) of the Evidence Act. That a critical examination of the Exhibits will reveal that the Exhibits failed to meet the standard and requirements of certification as provided under section 102 of the Evidence Act 2011.

Learned counsel for the 1st and 2nd respondents submitted that there are 5 mandatory requirements for certification of public documents as provided in section 104 Evidence Act 2011, thus;

1. Payment of legal fee prescribed in that respect.
2. Certificate written on the foot of such copy that it is a true copy of such document or part of the document.
3. The Certificate must be dated.
4. The Certificate must be subscribed to by the officer with the officer's name and official title or designation.
5. The document must be sealed where the officer uses seal.

The above 5 requirements of certification are mandatory, any document purported to be certified True Copy of a public document but does not meet the above requirements can not be admitted as

Exhibits to support a case in law court. Cited S. G.(Nig) LTD VS GALMAS INT'L LTD (2010) 1

NWLR 1184 217. And unreported case of EPT/FCT/HR/02/2019 Between BARRISTER (MRS) AMANDA PAM & ANOR VS HON. MICAH YOHANNA JIBA & 3 ORS delivered on 11th September, 2019 and urge the Tribunal to expunge them from its records. It was further submitted that assuming without conceding, Exhibits JM1-JM48 (excluding JM43 and JM44) satisfied the requirements as certified true Copies still the documents can not attract any weight to support the present petition since the maker of those documents was not called as a witness notwithstanding the documents are certified true copies. Referred to BALGORE VS AHMED (2013) NWLR 1355 60 @100 and that both PW1 and PW2 did not link the said Exhibits to the petitioners' case therefore the Exhibits were merely dumped on the Tribunal while PW1 did not refer those documents in his evidence in chief. Finally urged the Tribunal to expunge Exhibits JM1-JM48 (excluding JM43 and JM44) and or not to ascribe any probative value to them. Cited AREGBESOLA VS ONYILOLA(2009) 14 NWLR 1162 429 YAHAYA VS DANKWAMBO(2016)7 NWLR 1511 284 336.

On Whether the petitioners have adduced evidence to prove the alleged non compliance, it was submitted that reliefs 2 and 3 of the petitioners are declaratory and the law is settled where a party seeks declaratory relief the burden is on him to succeed on the strength of his case not on the weakness of the of the defence and it cannot be granted even the adverse party has admitted. NYEMSON VS PETERSIDE(2016)7 NWLR 1512 452. That the petitioners' complaints in paragraphs 8, 9, 10,11 and 12 of the petition borders on polling units results and no polling unit agent was called as witness to give account of the non compliance that occurred in the polling units complained of. The law provides that a petitioner who alleges non compliance with the provisions of the Electoral Act must produce evidence from eye witnesses at the various polling units cited ANDREW VS INEC(SUPRA). It was further contended that the petitioners never called eye witness as required by the law. Both 1st and 2nd respondents specifically attacked Exhibit JM 48 on the ground that same document was not pleaded by the petitioners in either the petition itself or the witness statements on oath of PW1 and PW2. That the law is settled that any evidence led on fact not pleaded goes to no issue and can not attract any weight. C. N. OKPALA & SONS LTD VS NB PLC (2018) PT 1623 16. NIGERIA PEOPLES PARTY VS USNAN(2008)12 NWLR 1100 @91. Also there was no facts pleaded in respect of Gidan Bawa Village Unit code 005 in the petition therefore any evidence purported to have been given to sustain any complaint on that shouldn't be countenanced.

The respondents urged the Tribunal to treat the evidence of PW2 with regard to all the polling units concerned as hearsay evidence since he had admitted not being in any of the polling unit except code 001 and got his information from his party agents. All the respondents prayed the Tribunal to dismiss the petition for lacking in merit with substantial cost.

The petitioners filed a composite reply on points of law to the final written addresses of the 1st and 2nd respondents. It is dated and filed on 29th October,2019. Learned counsel submitted on behalf of the petitioners that Exhibits JM1-JM48 have satisfied the requirements of certification and 1st and 2nd respondents didn't not raise the objection timely when the documents were being tendered. So having been admitted without objection the documents were properly

received in evidence. VALENTINE A. ABUII VS BENUE STATE UNIVERSITY (2003)16 NWLR 843.

Having carefully and diligently examined the present petition, the addresses of all counsel, we strongly believe that the issues identified by all the parties are apt and germane in determining the present petition. However, we believe that the 3 issues formulated by the petitioners, the 2 issues identified by both the 1st and 2nd respondents and the lone issue raised by the 3rd respondent can be narrowed down to 2 broader issues thus:

1. Whether or not Exhibits JM1-JM48(excluding JM43 &JM44) have satisfied the requirements of sections 102 and 104 of the Evidence Act 2011 and same shall be countenanced.
2. Whether the petitioners have adduced credible evidence before this Tribunal to entitle them to have judgment of this Tribunal in their favor.

We shall now endeavor to determine these issues inline with the available evidence adduced and the enabling laws. As stated somewhere in this judgment, the respondents challenged the admissibility of Exhibits JM1-JM48 (excluding JM43 & JM44) during the pre hearing and reserved the grounds of objection until final address stage though, the documents were conditionally admitted as Exhibits. The crux of the objection is that (1) Exhibits JM1 - JM48 (excluding JM43 & JM44) were not duly certified as required by the Evidence Act 2011 and (2) that those Exhibits were not pleaded. For better appreciation of the case at hand, it is imperative to state that the documents (Exhibits JM1-JM48) are Electoral documents used for the conduct of the election of the 9th March, 2019 into the office of councilor Dutse ward, Bwari Area Council Abuja. Undoubtedly, these documents are public documents within the meaning of the law. See section 102 Evidence Act 2011 which explains what a public document is.

Also, all the parties before this Tribunal are in agreement that Exhibits JM1-JM48 are public documents. It is a well established principle of law that proof of content of documents may be done either by primary or secondary evidence. Section 85 Evidence Act. The primary evidence of the document is the document itself produced for the inspection of the Court. The law is that documents may be proved by primary evidence except in the cases mentioned in the Evidence Act, 2011, particularly in Sections 89 and 90 thereof. Primary evidence means either that (i) the document itself is produced before the court, (ii) any one of the documents which was executed in several parts, (iii) its counterparts where each has been executed by one or some of the parties and copies produced via one uniform process such as printing, computer or other electronic or mechanical process, etc." Per SANKEY, J.C.A (P. 40, paras. A-C)

The issue of proper or improper certification of public documents is entirely an issue of law. The Exhibits under consideration purport to be certified true copies of public documents under the

custody of the 3rd respondent. Being public documents, the tendering of the original may not be practicable therefore the law permits the presentation of the secondary evidence under section 89(e) Evidence Act 2011. Certified true copy of public document is the only acceptable secondary evidence of public document and non other. See section 90(c) Evidence Act 2011. EMEKA v. CHUBA-IKPEAZU & ORS

(2017) LPELR-41920(SC).

Let us examine what the law says concerning certification of public document. The relevant section of the Evidence Act is section 104 thereof. The superior courts have had cause to deal with this issue in a number of cases and scrutinized section 104 Evidence Act. The authority that readily comes to our mind which we believe has addressed the present concern is the Supreme court's decision on the same subject in the case of EMMANUEL Vs UMANA (2016) LPELR where the supreme court unanimously held PER NWEZE JSC thus;

"My Lords, in all honesty, I had always believed that, since this Court had interpreted the provisions on the certification of public documents in several decisions, all Courts should be properly guided on their import. As if, in anticipation of the sort of arguments in this appeal, the drafts person of Section 104 of the Evidence Act, 2011, split its provisions into three subsections unlike the erstwhile Section 111 of the repealed Evidence Act which had just one long-winded provision. This is what the Act has made of the certification provision:"104 (1) Every public officer having custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of legal fees prescribed in that respect, together with a certificate written at the foot of such copy that it is a true copy of such document or part of it as the case may be. (2) The certificate mentioned in Subsection (1) of this section shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.(3) An officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section." From the phraseology of the italicised clauses of Subsection (2) (supra), a document can only be called a certified copy of a public document if, in addition to the "payment of legal fees prescribed in that respect, together with a certificate written at the foot of such copy that it is a true copy, it is dated and subscribed by such officer with his name and his official title..." In effect, any document that falls below the above mandatory threshold is inadmissible as a certified copy of a public document." See also OMISORE VS AREGBESOLA (2015) 15 NWLR 1482 227.

We have painstakingly examined the Exhibits being challenged which are Exhibits JM1-JM48 (excluding JM43 & 44) the look of all the Exhibits it is apparently clear that they are certified true copies of the Original documents which is in the custody of the 3rd respondent. The question now is whether the certification on the faces of the Exhibits are in line with the provisions of the law. It is obvious from the decision of the supreme court in EMMANUEL VS UMANA(supra) and OMISORE VS AREGBESOLA (supra) that the 5 conditions enumerated under section 104

Evidence Act are mandatory. All the Exhibits challenged have been duly dated, signed and Certificate at the foot thereon in line with section 104 Evidence Act. However, our careful examination of those Exhibits shows the name of the officer who certified them and his official title or designation are conspicuously absent.

It is our firm opinion that this Tribunal is duty bound to follow any principles of law established by the supreme Court in line with the doctrine of stare decisis. See

PDP VS ORANEZI & ORS(2017) LPELR 43471 SC where the supreme Court held, thus;

"This Court has stated as follows: "It is a cardinal principle of law under the doctrine of stare decisis that an inferior Court is bound by a decision of a superior Court, however sure it may be that it has been wrongly decided." See also Usman V. Umaru (1992) 7 SCNJ 388." Per MUHAMMAD, J.S.C. (Pp. 9-10.

By the above authorities, we hold and very strongly that Exhibits JM1-JM47 do not satisfied the requirements of the law as being certified true copies of public documents. The law is settled that a court or tribunal can only act upon evidence that is legally admissible. It cannot and it has no discretion to admit and act upon evidence which is legally inadmissible, even with the consent of the parties. OMEGA BANK NIGERIA PLC VS O.B.C. Ltd. (2005) 1 SC 150. Now having held that Exhibits JM1-JM47 were not legally admissible for failure to comply with the extant laws on certification what then is the consequence of these Exhibits? The respondents' counsel urged us to expunge from the record of the Tribunal these Exhibits. In the case of FATAI OLAYINKA V. STATE(2007) LPELR-2580(SC) the supreme Court held on the consequences of any inadmissible evidence that was admitted in court, thus;

"When evidence has been wrongly admitted, it is not a legal evidence and the court has a duty to expunge it from the record. Such evidence should be regarded as if it had not been tendered and admitted. The court cannot rely on it in reaching its ultimate decision. And any finding or decision based on such inadmissible evidence would be perverse and an appellate court faced with a situation has a duty to intervene. AGBAJE VS ADIGUN (1993) 1 SCNJ 1.

Relying on the above, it is our decision that Exhibits JM1-JM47 (excluding JM43 & JM44) are hereby accordingly expunged from the record as same can not be countenanced. However, Exhibit JM48 though public document but it is in its original form therefore doesn't require any certification.

Consequently, issue no 1 is answered in the negative and same resolved against the petitioners.

Now, the next issue is Whether or not there's credible evidence adduced by the petitioners to be entitled to judgment of the Tribunal in their favor. To determine this question, the Tribunal shall consider the evidence available before it both oral and documentary. Having expunged Exhibits JM1-JM48 (excluding JM43 & JM44), the available evidence before us are the oral testimonies

of Petitioners' witnesses and Exhibits JM43, JM44, JM49 & JM50. PW1 a subpoenaed witness through whom Exhibits JM43 and JM44 were tendered told the Tribunal that he didn't not visit all the polling units in Dutse ward but only went to code 001 polling unit but didn't see anything contrary to the proper conduct of election going on. He did not allege any wrong doing or non compliance in his evidence in chief. PW1 only deposed in paragraphs 7,8,9,10 and 11 of his statement on oath and explained the procedure and steps for both manual and smart card reader accreditation. He also mentioned the 7 polling units the petitioners made complaint about. However, when asked during cross examination, he testified further that he didn't visit any of the 7 polling units he mentioned therefore he cannot confirm if there was over voting or not.

It is our opinion that this witness has not presented any evidence that supported the petitioners' case. The only important thing this witness succeeded in doing was to get Exhibits JM43 and JM44 admitted through him. We therefore hold that PW1 did not add any value to the petitioners' case. The law is settled that evidence worth of consideration is that which supports the party's pleadings. See *NWOKOROBIA V NWOGU & ORS(2009) LPELR-2127(SC)*

The complaint of the petitioners bothers on over voting, thuggery inflation of figures for the 1st respondent and reduction of scores of the petitioners, multiple ballot, ballot stuffing, molestation of INEC staff. These are Electoral malpractices alleged by the petitioners who have the burden to prove. No where in the testimony of the PW2 did he adduce evidence to establish all or any of the aforementioned acts of non compliance with the Electoral Act. The petitioners have the legal burden to prove the following as provided in Section 139(1) of the Electoral Act 2010 (1) non compliance with the provisions of the Electoral Act 2010 as amended. (2) The non compliance must be substantial. (3)The substantial non compliance must have affected the result of the election. Also important is the requirements of evidence of eye witness who witnessed what transpired at the polling unit and anything short of this will definitely affect the success of any petition grounded on non compliance. The standard of prove in this context is prove beyond reasonable doubt since the malpractices are in the real of crime. See *GUNDIRI VS NYAKO(2012) 11-12 SC 63*.

PW2 who was not a polling unit agent at the election stated that he got his information from polling agents of the petitioners. Those polling agents were never called to testify before this Tribunal; their names and identities were never mentioned and disclosed. Section 126 Evidence Act 2011 provides that oral evidence must at all times be direct, meaning to say if the evidence is on a fact which could be seen, then the evidence of the person who saw it, or on fact which could be heard, the evidence of the person who heard it, on fact which could be perceived evidence of the person who perceived it. Oral evidence which is not in line with Section 126 of the Evidence Act, is adjudged hearsay evidence and inadmissible in law. By this rule, Courts are under duty not to admit the testimony of a witness who did not see, hear or perceive the facts given in his testimony at a trial; This rule is sacrosanct. "Hearsay evidence, oral or documentary, is inadmissible and lacks probative value. See Section 37 of the Evidence Act, 2011 particularly Sub-Section (b). See *OKEREKE v. UMAHI & ORS*

BUHARI V OBASANJO (2005) 13 NWLR (Pt.941) 1 @ 317; DOMA V INEC (2012) All FWLR (Pt. 628) 813 @ 829". Per KEKERE-EKUN, J.S.C. (P. 55, Paras. B-C)

The law has long been settled that to be in a proper position to give direct evidence on allegations of over voting, ballot stuffing, non counting of votes, double registration, multiple voting, inflation of figures, non-holding of election, etc, a person requires to show that he was in fact present at the polling unit. See OKE & ANOR V. MIMIKO & ORS.(2013) LPELR-21368(SC)

Exhibit JM48 is a letter dated 22nd March, 2019. It's obviously a reply from the 3rd respondent to the petitioners' complaints raised over the election of 9th March,2019. Document speaks for itself. The petitioners' letter of complaint was not tendered before this Tribunal. However, from the content of Exhibit JM48 it could be gathered that the complaint bothers on Dtse Ward and Gidan Bawa Village Square. The 3rd respondent confirmed that it has no power to address that concern since results have been declared pursuant to section 68 Electoral Act 2010 while for Dutse ward and Gidan Gidan Bawa a supplementary election was scheduled to address those concerns.

Through out the petitioners' pleadings and evidence adduced, the petitioners never made a supplementary election an issue before us. Therefore any evidence adduced which is outside the party's pleadings goes to no issue and this rules applies to Exhibit JM48. NWOKOROBIA V NWOGU & ORS(supra.)

The result declared by the 3rd respondent shows the 1st respondent who contested under the platform of the 2nd respondent scored 2751 votes while the 1st petitioner under the 2nd petitioner got 2051 votes. This is what the petitioners challenged. The law on declaration of election of results has since been settled that the results declared by electoral body is presumed correct untill proven otherwise and the petitioners who challenged the correctness of the results have the burden to rebut this legal presumption. Exhibit49 is a certified true copy of INEC form EC8E1. It was tendered by the 1st respondent through PW2 during cross examination. This is declaration of results wherein the 3rd respondent declared the 1st respondent as winner of 9th March, 2019 election. We painstakingly examined this Exhibit and found that same has complied with all the necessary requirements for its certification and we so rely on it as the authentic and correct result declared by the 3rd respondent.

Having said all these it is our firm conviction that issue no 2 is answered in the negative and same is accordingly resolved against the petitioners. Consequently, having resolved those issues in the manner we just did, it means the petition lacks merit and same is accordingly dismissed. We make no order as to cost. The election and return of the 1st respondent as Councilor Dutse ward, Bwari Area Council is hereby affirmed.

We make no order as to cost.

Mohammed Zubairu

Member

Samuel E. Idhiarhi

Chairman

A. A. Muhammad Esq

Member