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

PETITION NO: FCT/ACET/EP/17/2019

IN THE MATTER OF ELECTION TO THE OFFICE OF THE CHAIRMAN OF THE BWARI AREA COUNCIL HELD ON THE 9TH MARCH 2019 AND 23rd MARCH 2019.

CORAM:

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

BETWEEN:

1. MUSA DIKKO ..... 1ST PETITIONER
2. ALL PROGRESSIVE CONGRESS (APC) ..... 2ND PETITIONER

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) ..... 1ST RESPONDENT
2. DR. JOHN GABAYA SHEKWOGAZA ..... 2ND RESPONDENT
3. PEOPLES DEMOCRATIC PARTY (PDP) ..... 3RD RESPONDENT

JUDGMENT

(Lead Judgment delivered by Samuel E. Idhiarhi Esq. on the 16th/December/2019)

The 1st petitioner (Musa Dikko) was the candidate of the 2nd petitioner (the All Progressives Congress (the APC)) in the election for the Chairmanship office of the Bwari Area Council in the Federal Capital Territory held on the 9th March, 2019 and the supplementary election of 23rd March, 2019 as part of the General Elections for this year. Following the declaration of the 2nd respondent (Dr. John Gabaya Shekwoagaza), sponsored by the 3rd respondent (the Peoples Democratic Party (the PDP)) by the 1st respondent (the Independent National Electoral Commission (INEC)) as the

winner of the Chairmanship Seat of the Bwari Area Council, the 1st and 2nd petitioners filed this petition. The petitioners have sought for eight (8) reliefs from this Tribunal, the last two as alternative to the first six reliefs. The reliefs claimed are as follows:

1. A declaration that the 2nd respondent was not qualified as at the time of the election to seek or contest for the election of the 9th and 23rd of March, 2019 into the office of Chairman Bwari Area Council, Abuja.
2. A declaration that the 2nd respondent did not score the majority of lawful votes and therefore, ought not to be returned as the winner of the 9th and 23rd March, 2019 election in Bwari Area Council, Abuja.
3. A declaration that the 2nd respondent did not have the majority of lawful votes and therefore ought not to be returned as the winner of the Bwari Area Council Chairmanship election of 9th and 23rd March, 2019.
4. An order of the Honourable tribunal directing the 2nd respondent to vacate the seat of Chairman of Bwari Area Council having failed to obtain minimum qualification standard for the said election of 9th and 23rd March, 2019.
5. An order nullifying the result of polling units that were affected by substantial non-compliance with electoral law (as amended).
6. An order of this tribunal directing the 1st respondent (the INEC) to withdraw the certificate of return issued to the 2nd respondent and/or, to declare the 1st petitioner as the winner of the election and to direct the 1st respondent to issue a fresh certificate of return to the 1st petitioner.

<u>OR IN THE ALTERNATIVE</u>

7. An order nullifying the entire election of the chairmanship position of the Bwari Area Council, Abuja for non-compliance with the provisions of the Electoral Act, 2010 (as amended).
8. An order that fresh bye-election be conducted in Bwari Area Council in the wards/polling units where non-compliance is established.

In paragraph 7 of the petition, it was averred that the declaration and return of the 2nd respondent by the 1st respondent is undue and invalid, further averring in paragraph 8 that the 2nd respondent is not duly qualified to be presented by the 3rd respondent (Peoples Democratic Party (PDP)) as a candidate for the election into the chairmanship office of Bwari Area Council held on the 9th and 23rd of March, 2019 respectively and that his return by the 1st respondent was null and void *ab initio*. It was averred in paragraph 9 that the petitioners shall lead evidence to show that the forms filled by the 2nd respondent for the position of election as Chairmanship candidate of the Peoples Democratic Party (PDP) are fraught with inconsistences, forgery and manipulations that should have made his nomination null and void. In paragraph 10 it was averred that the petitioners shall lead evidence at the trial that the re-run of 23rd of March 2019 held at the various polling units of Dutse-Alhaji and Igu Wards were marred by irregularities such as multiple thumb-printing, inflation of result figures, incidents of over-voting and deliberate non-use of card readers, thereby making the election held not to be in substantial compliance with the Electoral Act, 2010 (as amended). It was averred in paragraph 11 that the 1st petitioner scored the highest number of valid votes cast at the aforementioned election contrary to the result declared by the 1st respondent which declared the 2nd respondent as the winner of the chairmanship election into Bwari Area Council of the FCT. In paragraph 15 the petitioners listed the documents they will rely on in the trial comprising all the result sheets, forms and documents used, the Form CF001 filed or the affidavit deposed to by the 2nd respondent before the 1st respondent for the election and all documents used for the election proper. It was averred in paragraphs 16 and 17 that though the 1st respondent declared the 2nd respondent winner with 31,114 votes as against the 1st petitioner's 24,137 votes, the majority of the votes allotted to the 2nd respondent, particularly from the re-run election of 23rd March 2019 in the questioned Wards, were void by reason of corrupt practices, over-voting, multiple voting and non-compliance with the Electoral Law.

In paragraph 19 of the petition, the petitioners set out the grounds upon which the election is challenged. In sub-paragraph (A) it was alleged that the 2nd respondent was not qualified to stand for the election, in that he does not possess the minimum requirement for qualification for the election, and the affidavit of the 2nd respondent submitted to the 1st respondent contained false information of a fundamental nature in aid of his qualification for the election. It was again averred that the 2nd respondent was not duly elected by a majority of lawful votes cast at both the main and rerun election and that the return of the 2nd respondent was invalid for reasons of corrupt practices or non-compliance with provisions of the Electoral Act, 2010 (as amended), the Guidelines and Manuals for electoral officials 2019 and the directory of the revised polling units.

In sub-paragraph (B) the petitioners' averred facts in support of the grounds. Those facts can be compartmentalized into two, i.e. those establishing non-qualification of the 2nd respondent and those establishing non-compliance with the Electoral Act and guidelines. On the want of qualification of the 2nd respondent, the petitioners averred that from the Form CF001 submitted by the 2nd respondent to the 1st respondent, the name of the 2nd respondent as captured in the WAEC Certificate and the Primary School Testimonial are inconsistent, manipulated and makes the identity of the 2nd respondent to be nebulous, leaving a mysterious circumstance as to the actual personality of the 2nd respondent and hence makes him unqualified to seek the elective position of the Chairman of Bwari Area Council. It was averred that the minimum requirement for election as Chairman is a Primary School Certificate but the 2nd respondent does not possess the said certificate and that the one he submitted to 1st respondent in an attempt to fulfill the required qualifications does not belong to him but is rather a forged document that is tainted with manipulation. The petitioners also averred that the date of birth of the 2nd respondent on documents filled or submitted by him are clearly misleading, inconsistent and a fraud, a point apparent from the double dates found on the declaration of age and the 2nd respondent's voter's card, thereby underscoring the inconsistences that dent

the qualification of the 2nd respondent to seek for election as a Chairman of Bwari Area Council.

On non-compliance, the petitioners specifically alleged malpractices in Igu, Dutse, Bwari Central, Kuduru and Kawu Wards. In Igu Ward it was alleged that there was over-voting in Igu, Tokulo, Kaima, Paunuke and Igu Oro polling units and that in those polling units, agents of the 2nd and 3rd respondents were seen inducing voters to vote for them while multiple voting went on and the use of biometric accreditation was abandoned by officials of the 1st respondent thereby leading to over-voting in the indicated polling units. The same allegation was made regarding Dutse Ward concerning polling units with code numbers 001, 001A,001B, 001C, 001D, 002, 002A, 003, 003A, 003B, 003C, 004, 004A, 004B, 004C, 004D, 004E, 004F, 004G, 005, 006, 007, 007A, 007B, 007C, 007D, 008, 008A, 008B, 008C and 009. Similar allegation was made regarding polling units with code numbers 001A, 002, 003, 004, 004A, 004B, 004C, 004D, 005, 005A, 006 and 007 of Bwari Central Ward as well as polling units 001, 002, 003, 004, 005, 005A, 005B, 005C, 005D, 005E, 006 and 007 of Kuduru Ward. For Kawu Ward, it was alleged that in polling units 001, 001A, 002, 003, 004, 005, 006, 007, 008, 008A, 008B and 009, thugs were used to perpetrate electoral malpractices that ensued at the polling units and that the results of votes declared were above the number of voters accredited during the election. With specific reference to the re-run election of 23rd March, 2019, it was averred that the number of registered voters for the concerned polling unit was 12,406 but the total number of votes allegedly cast was 17, 401, the difference being 5,091 which was the result of multiple voting and over-voting in favour of the 2nd and 3rd respondents, thereby invalidating the outcome of the election conducted on the 23rd March, 2019.

In the 1st respondent's reply dated 10th May, 2019, they made a general traverse of the allegations made by the petitioners and specifically set down and made rebuttal averments in respect of paragraphs 2, 7, 8, 10, 11, 16, 18, 19, 21, 22, 23, 24 and 25 of the petition and put the petitioners to the strictest proof of those allegations and finally urged the tribunal to refuse the prayers

of the petitioners made in the alternative but rather dismiss the petition for lacking in merit. The 1st respondent specifically took on each of the petitioners grounds for the petition and the facts in support of those grounds and contended against them.

On behalf of the 2nd respondent, a reply dated 2nd May, 2019 was filed on the 3rd May, 2019. After making a general traverse, the 2nd respondent admitted paragraphs 2, 3, 4, 5, 6, 12, 13, 14, 17 and 20 of the petition while specifically denying paragraphs 1, 2, 7, 8, 9, 10, 11, 15, 16, 18, 19, 21, 22, 23, 24 and 25 of the petition. In paragraph 6 of the reply, in specific response to paragraphs 8 and 9 of the petition, it was averred that the 2nd respondent was duly qualified and presented by the 3rd respondent as a candidate for the election and that the 1st petitioner, not being a member of the 3rd respondent has no *locus standi* to challenge the 3rd respondent's sponsorship of the 2nd respondent for the election, further averring that there was never an impediment to the 2nd respondent's qualification and that his form for the election were consistent and devoid of fraud or manipulations.

In paragraphs 7 and 8 of the reply, in specific reference to paragraph 19(i), (ii), (iii), (iv) and (v) of the petition, facts were averred to show that the 2nd respondent was qualified to contest as a candidate of the 3rd respondent as its Chairmanship candidate as he was a Nigerian, he is a registered voter with voters card details (FCT/Bwari, Igu; date of issue January 23-2011; Vin 90Fs AE DC 94295789302), he is more than 30 years at the date of election having been born on the 14th April, 1978 (for which reference was made to a declaration of age dated 21-9-97), he was educated up to secondary school level (for which reference was made to Senior School Certificate No. NGSS 0752717 of June 1998 issued by the West African Examinations Council), and he is a member of the Peoples Democratic Party. In paragraph 8 of the reply, it was averred that the name of the 2nd respondent is John (surname), Gabaya (first name) and Shekwogaza (middle-name), explaining that in the name 'Gabaya S. John' as shown in his Primary School testimonial dated 4th July, 1990, the 'S' between Gabaya and John is abbreviation of 'Shekwogaza' but that when he registered for the Senior School Certificate Examination in

1998 he registered with the name 'John Shekwogaza' i.e. his surname and first name, leaving out his middle name, 'Gabaya'. Regarding alleged disparities in his dates of birth, it was averred that the 2nd respondent submitted only one declaration of age to the 1st respondent which shows his date of birth as 14th April, 1978, averring that the voters card is not for determination of age but to show he is a registered voter and that even at that, by the age in the voters card, the 2nd respondent was qualified to contest for election as Chairman of the Bwari Area Council.

In specific reply to paragraph 10 of the petition, it was averred that the re-run election of 23rd March 2019 was held in substantial compliance with the Electoral Act and no report were ever made to the collation officers in any of the polling units of Dutse-Alhaji and Igu Wards or elsewhere of irregularities, multiple thumb-printing, inflation of result figures, over-voting and non-use of card readers. In further reply to paragraph 19A(ii) and 19B(a) to (f) of the petition, it was averred that allegations contained in the said sub-paragraphs were pre-election matters outside the jurisdiction of this tribunal, the petitioners having claimed in paragraph 19(a) and (b) of the petition that the 2nd respondent submitted false information in his affidavit to the 1st respondent. It was averred that over-voting can occur only at polling units and not Wards and occurs only where the votes cast at a polling unit exceeds the number of registered voters in that polling unit, averring that the allegations of over-voting in paragraphs 19B(i)(a)-(b), (ii), (iii), (iv) and (v) are vague, nebulous without particulars to enable the respondents respond and therefore the 2nd respondent demanded to be supplied further particulars of the over-voting polling unit by polling unit, the number of non-accredited voters that voted, names and addresses of agents that induced voters, with what voters were induced, multiple voting, and details of the manipulation alleged.

It was averred that the results of the elections of the 9th and 23rd of March 2019 were merged and a single result declared after the election of 23rd March 2019 and not separately and that even if the results of the election of the 23rd March 2019 were cancelled, which was not conceded, the 2nd

respondent will still win the election with a majority vote of 22,711 (for PDP) as against 16,714 (for APC) with a vote margin of 5,997 votes. The 2nd respondent concluded by stating that the petitioners are not entitled to the reliefs sought numbered 1, 2, 3, 4, 5, 6, 7 and 8 of paragraph 25 of the petition and urged that the petition be dismissed with substantial cost.

On behalf of the 3rd respondent, in reply to the petition, a reply of 18 (eighteen) paragraphs dated the 6th May, 2019 and filed same date was filed. It is really an abridged version of the 2nd respondent's reply dated 2nd May, 2019 which was filed on the 3rd May, 2019. Hence we will take the earlier reply as inuring for the latter.

In response to the 2nd respondent's demand for particulars of the alleged over-voting, the petitioner filed further particulars to the petition dated 25th June, 2019, giving particulars of alleged over-voting in forty-four polling units covering Dutse Ward (17 polling units), Kawu Ward (7 polling units), Igu Ward (3 polling units), Kuduru Ward (11 polling units) and Bwari Central Ward (6 polling units). In each of the above polling units, the petitioners gave figures showing either that there was zero accreditation figures or accreditation figures less than the figure of total votes cast eventually generated by the 1st respondent. Of course, in response, the 2nd respondent filed a reply to the petitioners' further particulars where they stated their own records of total numbers of accredited voters for each of the polling units and the figures of the eventual total valid votes, and in each case the total valid votes was less than the total of accredited voters. However, the 2nd respondent had at first averred that the petitioners' figures were based on incomplete voters register, that the facts contained in paragraphs 4 and 5, and paragraphs 7 and 8 respectively under Dutse Ward and paragraphs 36 and 37 under Kuduru Ward were duplicated and so the 2nd respondent is in no position to respond to them, and finally, that no further particulars were in fact requested in respect of polling unit 001 of Kuduru Ward and polling unit 001 of Bwari Central Ward pleaded in paragraphs 30 and 39.

Before proceeding to call witnesses, the counsel to the petitioners proceeded to tender in evidence several documents. Form CF001 and its accompanying documents were tendered in evidence and admitted as MD1. For Voters' registers, voters' register for six polling units of Bwari Central Ward were tendered and admitted as Exhibit MD2 while voters' registers for nine polling units of Kuduru Ward were admitted in evidence as Exhibit MD3. Similarly, voters' registers for three polling units of Igu Ward were tendered and admitted as Exhibit MD4 while voters' registers for seven polling units of Kawu Ward were admitted in evidence as Exhibit MD5. Finally, the voters' register for eighteen polling units of Dutse Ward were admitted in evidence and marked Exhibit MD6. Coming to Forms, counsel tendered Form EC8E (Declaration of results) (admitted as Exhibit MD7), Form EC8C (Summary of result collated) (admitted as Exhibit MD8), Form EC8B (Summary of results for Bwari Central Ward) (admitted as Exhibit MD9), Form EC8B (Summary of results for Kuduru Ward) (admitted as Exhibit MD10), Forms EC8B (Summary of results for Igu Ward for both main and supplementary elections) (admitted as ExhibitsMD11 and MD12),Form EC8B (Summary of results for Kawu Ward) (admitted as Exhibit MD13), Forms EC8B (Summary of results for Dutse Ward for both 9th March and 23rd March elections) (admitted as Exhibits MD14 and MD15) and then tendered the Declaration of Results Sheet with code number 2 (admitted as Exhibit MD16). Next counsel tendered Forms EC8A for five polling units of Bwari Central Ward (admitted collectively as Exhibit MD17), Forms EC8A for ten polling units of Kuduru Ward (admitted collectively as Exhibit MD18), Forms EC8A for three polling units of Igu Ward (admitted collectively as Exhibit MD19), Forms EC8A for seven polling units of Kawu Ward (admitted collectively as Exhibit MD20) and Forms EC8A for nineteen polling units of Dutse Ward (admitted collectively as Exhibit MD21). Finally, the counsel to petitioners tendered the Manual for Election Officials and the Regulations and Guidelines for the Conduct of Election, admitted as Exhibits MD22 and MD23 respectively. For the record, counsels to 2nd and 3rd respondents registered their objections to Exhibits MD12, MD15 and MD16 but deferred the argument of their objection to when final addresses are made.

The first witness called for the petitioners (testifying as the PW1) was Gede Dogo Habila, a subpoenaed witness. The PW1 said he is a staff of the Local Education Authority Bwari as Head of Administration and adopted as his statement the statement on oath filed on 6th August, 2019 and acknowledged that Exhibit MD1 is the testimonial he referred to in his statement. In paragraph 2 of the statement PW1 had deposed that he was the headmaster of Tokulo Primary School from 1990 to 1992. While in paragraph 5 the PW1 deposed that, as a headmaster, part of his responsibility was issuing, signing and stamping of school certificates and testimonials of graduating pupils, in paragraph 6 he had deposed that the signature appended on the testimonial submitted by the 2nd respondent was not his. He, however, deposed in paragraph 7 that the 2nd respondent was admitted on 22nd September, 1983 into Tokulo Primary School as shown in the Register of Admission, Progress and Withdrawals. Then through the PW1, a register of admission, progress and withdrawals referred to in paragraph 7 of the statement was tendered and admitted as Exhibit MD24 of which page 17 at Number 177 is the name Gabaya John. For the record, the counsel to the 2nd respondent has objected to the admissibility of Exhibit MD24 but decided to defer the argument to address stage.

The PW1 was cross-examined on behalf of each of the respondents. On behalf of the 1st respondent, the PW1 was asked if election held in Bwari Area Council on the 9th and 23rd March, 2019 and he answered in the affirmative. Then the counsel to the 2nd respondent took up the gauntlet of cross-examining the PW1. Asked to confirm if the date on the 'testimonial' in Exhibit MD1 was 4th July, 1990 and if he was the headmaster then, the PW1 answered in the affirmative. He, however, conceded that he does not know all the names of Gabaya, saying he only knew Gabaya as his name and does not know other names he has. Asked if he has any proof that he was the Headmaster on the date mentioned the PW1 said he does not have. While the PW1 agreed that an Assistant Headmaster can sign a testimonial but that will only be with the permission of the Headmaster, admitting, however, that from the record Gabaya John attended and graduated from the school.

The PW1 said that he could not remember who the Assistant Headmaster of the school was then. Asked if the 4th July, 1990 date fell on vacation period, the PW1 said he could not remember unless he goes through the calendar. The PW1 also said he could not remember when he resumed as Headmaster in 1990. Finally, the counsel to the 3rd respondent cross-examined the PW1, the witness further confirming that he could not remember when he resumed as the Headmaster but that the records show that the 2nd respondent was admitted into the school and passed through the school.

The PW2, Audu Dorhzi, was a subpoenaed witness and staff of the 1st respondent (INEC), and adopted his statement on oath filed on the 24th July, 2019. The witness referred to Exhibit MD16 and was led to give evidence of the total number of votes cast (60,835), the total number of registered voters for the supplementary election (12,406) and the total number of votes cast at the end of the supplementary election (43,428), concluding that if 43,428 is deducted from 60,835 it will give a figure of 17,408 which is not the same as the total number of registered voters for the election. In conclusion, the PW2 was led to identify Exhibits MD2 and MD17.

On being cross-examined by 1st respondent's counsel, the PW2 confirmed that election held on the 9th and 23rd March 2019 in Bwari Area Council, during which he was in the field at Kubwa Super RAC (covering Byazhin, Usuma, Dutse-Alhaji and Kubwa Wards) as Assistant Electoral Officer (Operations) for Bwari Area Council. Referred to the documents he was earlier asked to identify, he said he was not the maker of them and that he was not the presiding officer, collation officer or returning officer during the election.

On being cross-examined by counsel to the 2nd respondent, the PW2 was shown Exhibits MD2, MD4, MD6, MD8, MD16, and MD17 and he confirmed that, apart from the stamp, the names and designations of the certifying officers were not on them while Exhibits MD1 and MD24 does. He said that during the election he was at Kubwa though he visited Dutse but not Bwari Central Ward. He conceded that to determine the total accredited

voters, both the voters register and the card reader report were necessary, adding that for the two elections (main and supplementary) held in Igu and Dutse Wards, voters registers were used. Shown Exhibits MD4 and MD6, the PW2 confirmed that there is nothing on them to show whether they were used for the 9th or 23rd March elections. The PW2 asserted that as far as INEC was concerned both the main and supplementary elections were free and fair and proper accreditation was done in both elections since they received no report that there was none, adding that no incidence of over-voting or over-balloting was brought to the knowledge of INEC. The witness testified that the final result declared was the merger of results from both the main and supplementary elections and that, to the best of his knowledge, the total number of votes in both elections did not exceed the total number of registered voters in the Area Council. Finally, the PW2 admitted that he was not aware of any excess 5,000 votes and that he never in his deposition on oath referred to any voters register or any INEC Form.

On behalf of the 3rd respondent, the PW2 was cross-examined and he confirmed that that he was only at L.A. Primary School polling unit in Dutse-Alhaji in Dutse Ward but he could not remember how many polling units were in Dutse-Alhaji, conceding that because he was in only one polling unit he did not know what happened in another polling unit. He said he was not in any polling unit at Bwari Central Ward. Shown Exhibit MD5, the witness said he could not see the date for accreditation indicated on it, confirming that in the two elections held in Dutse Ward accreditation was properly done and that he made no reference to any document in his witness statement on oath. In re-examination, to the question on who was the maker of the several documents tendered, the PW2 responded that it was INEC.

The PW3 was Abubakar Abdullahi who adopted the statements on oath in the petition signed with initials 'AA' dated 12th April, 2019, and the additional statement filed on the 12th July, 2019. He was led to identify Exhibits MD3, MD5, MD18, and MD20 and he said they were documents he had referred to in his statements on oath and were used in his analysis of irregularities. In paragraphs 3, 4, 5 and 6 of the statement dated 12th April,

2019, the PW3 had said he was assigned by the 2nd petitioner as collation agent for Bwari Area Council on the 9th and 23rd March, 2019 elections and was at the collation centre at the conclusion of the elections awaiting the inflow of results from various polling units and Wards with reports from agents and that the computation took a drastic turn as some of the votes did not tally with the votes from the polling units but all the efforts to draw the attention of the electoral officers to the anomaly was rebuffed. In paragraph 7, the PW3 claimed that the supplementary election was affected by vote manipulation such that caused the total votes cast to be more than number of registered voters by more than 5000 voters in favour of the 2nd and 3rd respondents.

The statement on oath filed by the PW3 on the 12th July, 2019 purports to essentially capture and render in evidence what he said was the result of the petitioners' team which he led to conduct inspection of electoral matters after the tribunal made an order giving them leave to conduct the inspection. In paragraph 5 he gave the scores of the respective parties after the 9th March 2019 election along with the total number of registered voters, total number of accredited voters, total number of valid votes, total number of rejected votes and total number of votes cast with the result that the margin of lead between the PDP and the APC was only 5,997 votes while the total number of registered voters for the cancelled polling units for which re-run election was to hold was 12,406. In paragraph 6 he stated figures he claimed to have obtained from Form EC8C after the election of 23rd March 2019 comprising number of registered voters, number of accredited voters, the votes received by the participant parties, total valid votes, rejected votes and total votes cast and deposed that whereas the available registered voters for the re-run election of 23rd March, 2019 was only 12,406, the total votes cast ascribed to all the parties from the re-run election of 23rd March, 2019 was 17,407, meaning thereby that there was over-voting during the re-run by 5,001 votes by unregistered and unaccredited persons. In paragraphs 7 to 11, the PW3 laid out the procedure prescribed in the guidelines for accreditation and voting, claiming in paragraph 12 that he checked the voters' registers and

the names that were ticked as accredited and voted and compared with the figures in Form EC8A/EC8B of respective polling units and Wards and he observed that in some polling units he identified in the statement, there was no accreditation of voters and the number of total votes cast was more than those whose names were verified by the Smart Card Reader and ticked in the appropriate boxes of the voters registers as accredited and voted, the PW3 claiming that the presiding officers of the affected polling units merely filled the columns for accredited voters on Form EC8A series without reference to the SCR or voters registers, in the process reducing the actual votes of the petitioners entered in the Form EC8A. In paragraph 15 the PW3 claimed that, in arriving at his analysis after the inspection, he inspected all Forms EC8A (where provided),voters accreditation data, Card reader reports, the voters registers provided by the INEC as well as all other forms. In paragraphs 17 to 21, the PW3 then set out the polling units in Dutse Ward (19),Kawu Ward (7), Igu Ward (3), Kuduru Ward (10), Bwari Central (6) where he identified the respective invalid votes ascribed to the PDP and the APC by the presiding officers who merely allocated figures as number of accredited voters on Form EC8A/EC8B whereas the actual number of accredited voters verified from the voters register for each polling unit was far less. In paragraph 22 of the deposition of the PW3, he claimed that based on the inspection conducted it was discovered that, in Igu and Dutse Wards, the votes credited to APC and PDP in forms EC8B were inflated in Form EC8C by 692 and 855 respectively (for Igu Ward) and 2145 and 3025 respectively (for Dutse Ward). It was further deposed that the invalid votes accredited to the PDP from non-accredited voters or votes in excess of accredited voters (11,383) and from inflated voters (3,880) making a total of 15,263 while the invalid votes accredited to the APC from non-accredited voters or votes in excess of accredited voters (5,096) and from inflated voters (2,837) making a total of 7,933. The PW3 deposed in paragraphs 22i and 22j that if the total invalid votes of 15,263 are deducted from the votes (31,114) recorded for the PDP in Form EC8E, the valid votes for PDP will be 15,851 while if the total invalid votes of 7,933 are deducted from the votes (24,137) recorded for the APC in Form EC8E, the valid votes for APC will be 16,204, meaning therefore

that APC has the majority of the lawful votes cast with a margin of 353 votes and ought to have been declared winner of the Chairmanship election of 23rd March, 2019.

The PW3 was cross-examined by counsel for all three respondents. Starting with counsel to the 1st respondent, the PW3 confirmed that he was the collation agent for the whole Bwari Area Council but when asked if INEC accredited him, the PW3 answered that INEC did not accredit him but rather it was his party that assigned him and he has the party tag with him in court. Asked if he knew the votes scored by his party in each of the polling units, he answered in the affirmative but said he needed to see his additional statement on oath to be able to tell the names of the polling units. He said he was present at the collation centre for both the main and supplementary elections. He admitted there were rejected votes but said he cannot remember the number. When the PW3 was asked what the total valid vote at the conclusion was, he said he can only say if sees the statement but he said the total number on the voters register was 224,737.

The PW3 was next cross-examined by the counsel to the 2nd respondent. Referred to paragraph 15 of the additional statement on oath and asked if he stands by the deposition, the witness answered 'yes', adding that he also examined the card reader report. When it was suggested to the PW3 that his purported report was based on what he discovered from the voters register, INEC Forms and card reader report, he responded that it was based on his analysis of voters register and Form EC8A, and it was put to him if it then means he did not make use of the card reader report, he answered that he did not make use of the card reader report, though insisting that his statement in paragraph 15 was correct. Asked if he has the card reader report in court, he answered in the negative, though admitting that card reader accreditation was important to the electoral process. Asked if he took part in accreditation of voters in any polling unit, the PW3 claimed that he was a witness to accreditation process in all the units being challenged, despite admitting that there were nineteen polling units in Dutse Ward alone that were being challenged, explaining that despite the

restriction of movement, his party gave him card to enable him move round. It was put to the PW3 that the figures of total number of accredited voters, total number of valid votes and total number of excess votes as claimed in paragraphs 17(a) to 17(b) up to 20(h) are in variance to the figures given in the petition, the PW3 merely replied he gave his figures based on his analysis based on his report, merely repeating same response when he was asked if he did not make use of petitioners' further and better particulars when he made the computation. Asked about the voters registers used for the election in Dutse and Igu Wards for the main and supplementary elections, the PW3 said only one ticking will be found except where accreditation and ticking was done before the polls were cancelled. When the PW3's attention was drawn to paragraphs 22(a) to 22(c) to the effect that the figures of inflated figures was not in the petition itself, he insisted they are but when asked to give the figures inflated for each polling unit in the Wards, he said he cannot remember but they are contained in his statement on oath. Finally, when asked if as the overall polling agent he signed Form EC8E, he said he did for the election of 9th March 2019 and conceded that APC agents signed some of the forms during the final report.

Finally, counsel to the 3rd respondent cross-examined the PW3. It was put to him that he was not the polling agent in the areas he was challenging, he agreed but said he went through all them and observed the accreditation process in all of them for both 9th and 23rd elections. When asked when accreditation stopped, he said it stopped with the last person on the queue and could be six o'clock depending on the number. Asked what were the accreditation figures or the score of his party in each polling unit, he said he cannot remember. The witness's attention was drawn to paragraph 3 of the statement he filed with the petition and asked if he still insists that he was in all the polling units during the election and he answered in the affirmative.

Finally, the petitioners called Josiah Haruna as the PW4. He adopted his statement on oath signed with initials HJH filed along with the petition. His attention was drawn to Exhibit MD4, MD6 and MD21 and he identified them respectively as the results for Dutse Ward which he had referred to in

paragraph 5 in his statement, as the voters register for 19 polling units and the voters register for Igu Ward. In paragraph 2 he has said that he was assigned as collation agent during the elections while in paragraph 5 he deposed that the results declared at the Ward collation Centre did not add up particularly with respect to Igu and Dutse Wards after the supplementary election, alleging in paragraph 6 that this was the result of manipulation of voting results, multiple voting and over-voting during the supplementary election. In paragraph 7, it was deposed that the total number of voters on the voters register list for the supplementary election was 12,406 but after the election total votes cast for all the parties was 17,401, making a difference of 5,091 votes.

When asked under cross-examination by the counsel to 1st respondent if he was accredited to act as agent, he answered in the affirmative and held up for the tribunal to see the proof of his accreditation, in fact asserting that he signed Form EC8C. The PW4 asserted that collation agent and returning agent are one and the same, though agreeing that the duty of the collation agent is limited to a collation Centre, further asserting that the collation agent is the same person that signs Form EC8D.When it was put to him that as a collation agent he has no business with polling units, the PW4 agreed and said he did not visit polling units. Asked to give particulars of the over-voting alleged, the PW4 said he will need to see Forms EC8B for Igu and Dutse Wards and Form EC8C, claiming the reference to results in paragraphs 4 and 5 of his statement on oath was to those forms explaining that as at when he made the statement the petitioners have not received the CTCs of the forms. The PW4 admitted that he signed Form EC8C but claimed that before he did, he observed that the figures do not tally with the results from Form EC8B and brought it to the attention of INEC official who nevertheless insisted on going ahead to declare the results and he signed so that he can collect the result.

Under cross-examination by counsel to the 2nd respondent, the PW4 said there are thirty polling units in Dutse Ward but it was only in one polling unit that supplementary election held in each of both Dutse and Igu

Wards, giving the names of the polling units as Code 005 Gidan Bawa and Code 001 Igu Primary School. The PW4 was referred to paragraph 7 of his statement on oath and asked if the figure was from only the two polling units where the supplementary election held, he answered that it is from four polling units, comprising two in Kubwa and one each from Dutse and Igu Wards and all the polling units in Kawu Ward (9 or 10, he says he was not sure) but he cannot tell the number of registered voters in Kawu Ward or of the two polling units in Kubwa Ward or of each of the one polling units in Dutse and Igu Wards. When the PW4 was then asked how he arrived at the figure of 12,406 as number in the voters register for the supplementary election, the PW4 said it was provided by INEC, not by his own calculation. Asked if his party tendered in evidence voters registers for Kawu and Kubwa Wards, he said they did for Kawu Ward. The PW4 was asked and he agreed that it was the results of the elections of the 9th and 23rd March that was merged to lead up to the final result declared.

Finally, the PW4 was cross-examined by counsel to the 3rd respondent. Asked how many polling units were there in Igu Ward, he said between seven and eight and when asked if he was complaining about all of them, he replied he was complaining about the inflated votes. Asked who inflated the votes, the PW4 claimed that it was the Collation officer of the Bwari Area Council but the witness could not tell the votes of the APC in each polling unit of Igu or Dutse Wards or the figures of inflated votes in each polling unit, saying he can only do so if he sees the forms, specifically mentioning Forms EC8B and EC8C.

The 1st respondent (the INEC) chose not to call any witness. For the defence of the 2nd respondent, the 2nd respondent testified for himself as DW1. He referred to and adopted the 32 paragraphs witness statement on oath filed along with the 2nd respondent's reply to the petition. The said statement is at page 8 of the reply. He had stated the requirements for qualification to contest as a Chairman of an Area Council and stated facts to the effect that he is qualified on all grounds, emphasizing that he has a Secondary School Certificate which is the least educational qualification

required while he was born 14th April, 1978. He explained that his name is John Gabaya Shekwogaza, John being his surname, Gabaya being his first name and Shekwogaza being his middle name. He claimed that the re-run election held on the 23rd of March, 2019 was held in substantial compliance with the electoral laws and there were no reports received by the collation officers in any of the polling units in Igu and Dutse-Alhaji Wards or elsewhere of irregularities such as multiple thumb-printing, inflation of results figures, overovoting and non-use of card readers.

The petitioners' counsel was first to cross-examine the DW1. Asked what his name and highest qualification were, the DW1 said 'John Gabaya Shekwogaza' with a HND, educational qualification he had attached to Form CF001 as part of Exhibit MD1. Referred to his Primary School Testimonial and Secondary School Testimonial, both attached to Exhibit MD1, the DW1 confirmed that his name in the Primary School Testimonial is 'Gabaya S. John' while his name in the Secondary School Testimonial is 'John Shekwogaza'. Again referred to his declaration of age attached to Exhibit MD1, the DW1 confirmed that his name on the declaration of age is Shekwogaza John, a declaration made by the DW1's father John Makama. When put to him that the name on the Primary School Testimonial and the Secondary School Certificate are not the same, the witness said they are, only that Shekwogaza was shortened as 'S', agreeing, however, that the Secondary School Certificate has no 'Gabaya'. When it was put to him that it suggests he got an additional name when he graduated to Secondary School, the DW1 answered he did not, countering the imputation that he has no affidavit to reflect that 'S' is 'Shekwogaza' by saying there is a publication to that effect but he did not have the affidavit consequent to which the publication was made. Referred to Exhibit MD24, the DW1 confirmed that his name is in the admission register at Number 177 as 'Gabaya John' without 'S' as an initial but in Exhibit MD1 the admission number was 179 while the name in Number 179 in Exhibit MD24 is 'Sanasa Dayabi'. However, the DW1 said he was in no position to explain the disparity since he did not himself issue the Primary School Testimonial to himself.

Cross-examined by counsel to the 1st respondent, the DW1 confirmed that Exhibit MD1 has the stamp of the INEC (i.e. the 1st respondent) as evidence that it was submitted, the 2nd respondent's name was shortlisted by INEC, and the name was published subsequent to its submission. The DW1 was called upon and he confirmed that elections into Bwari Area Council held on the 9th and 23rd March, 2019 where the PDP and John Gabaya Shekwogaza were declared winners. Finally, counsel to the 3rd respondent cross-examined the DW1 during which he confirmed that he knew the PW1 as at one time a teacher in Tokulo Primary School during which time he stayed in his father's house but affirmed that he was not his Headmaster as at 1990. The DW1 gave the names of his father as John Makama Shekwogaza while he is John Gabaya Shekwogaza though he does not write his name always like that in every document, but rather may write 'John S. Gabaya' or 'John G. Shekwogaza'. He confirmed that he attended Tokulo Primary School, starting at Primary 1 and finishing at Primary 6 after which he was issued a testimonial. Asked if he was the maker of Exhibit MD24 or he has ever seen it before, the DW1 replied that he was not its maker and has never seen it before.

The parties filed their final addresses. Apart from the petitioners, only the 2nd respondent called evidence; consequently the 2nd respondent first filed their address, followed by the petitioners to whom the 1st, 2nd and 3rd respondents responded. Counsel to the 2nd respondent formulated three issues for determination, namely:

1. Whether Exhibits MD1, MD2, MD3, MD4, MD5, MD6, MD7, MD8, MD9, MD10, MD11, MD12, MD13, MD14, MD15, MD16, MD17, MD18, MD19, MD20, MD21 and MD24 satisfied the requirements of the law and the provisions of section 102 of the Evidence Act, 2011, or they offends the provisions of section 104(1), (2) and (3) of the Evidence Act, 2011, and should be discountenanced.
2. Whether the 2nd respondent was qualified to contest the Bwari Area Council Chairmanship election held on the 9th and 23rd of March, 2019.

3. Whether there exists credible evidence adduced by the petitioners for the Honourable tribunal to hold that the election of the 2nd respondent is invalid by reason of the violations or non-compliance with the provisions of the Electoral Act.

Arguing issue one, the counsel identified all the documents received as exhibits and consecutively marked Exhibits MD1 to MD21 and Exhibit MD24 purporting to be copies of the originals used for the election being disputed which are in the custody of the 1st respondent. It was put on record that the 2nd respondent's counsel had reserved his objection to the admissibility of the above documents to the address stage, a procedure that is supported by the principle that the admission of documents without objection does not foreclose the court from expunging them as evidence from its record or discountenance same in its judgment, a matter on which the court has no discretion, counsel citing the cases of *NBCI v Ogbemi & Anr. (1998) 8 NWLR (Pt. 613) 119* and *Eghobamien v FMBN (2002) 17 NWLR (Pt. 797) 488*. It was submitted that to prove that the above documents are same as the original contents of the documents, they must be mandatorily certified by the 1st respondent in compliance with the provisions of s104(1), (2) and (3) of the Evidence Act, 2011 but that in the case at hand the certification at hand failed to comply with the said provisions. Counsel set out the five requirements for valid certification, namely, proof of payment of legal fees prescribed in that respect, certificate/affirmation written at the foot of such copy that it was a true copy of such document or part of the document, the certificate must be dated, the certificate must be subscribed to by the officer with the officer's name and official title or designation, and, the certificate must be sealed where the officer uses a seal. It was submitted that the above documents in question did not comply with the above essential elements, citing the case of *SG (Nigeria) Ltd v Galmas Int'l Ltd (2010) 1 NWLR (Pt. 1184) 217* which held to the effect where the officer from whose custody a document was certified as true copy did so meeting every other requirement but did not subscribe the document with his name or official designation or title, it does not pass the test of a certified document as required by s111(1) of the Evidence Act. It was,

thus, submitted that the documents are not certified true copy and should be expunged, more so as the PW2 have admitted that they are not certified true copies. Counsel additionally attacked the above documents on the following grounds. Even if it were to be conceded that the documents were properly certified, the makers were not called to testify, thereby depriving them of any probative value, citing the case of *Belgore v Ahmed (2010) 1 NWLR (Pt. 1355) 60*. It was also submitted that none of the petitioners' witnesses linked the exhibits to the petitioners' case, further submitting that where documents are deliberately dumped on the tribunal by the petitioner who tendered them from the bar, no weight should be attached to such documents. The said documents were described as not forming part of the statement on oath of the PW2 and he could therefore not provide any nexus between him and the documents, which disentitles the PW2 from giving any evidence in chief on them as was done in this case, for which reason, counsel submitted, the evidence so elicited from him in examination in chief goes to no issue, counsel citing the case of *Andrew v INEC (2018) 9 NWLR (Pt. 1625) 507*. It was stressed that in fact the PW2 did not in his statement link the above documents to the 1st respondent. Finally, it was submitted that Exhibits MD2 (the voters register for the challenged six polling units of Bwari Central Ward) and MD24 (the Register for Admissions, Progress and Withdrawal) were not pleaded by the petitioners who, with reference to paragraph 25(ii) of the petition, rather pleaded only voters register for the challenged polling units of Igu and Dutse Alhaji Wards. Counsel submitted that in such cases of the document not been pleaded, the evidence thereon goes to no issue, counsel citing the cases of *Yahaya v Dankwambo (2016) 7 NWLR (Pt. 1511) 284 at 336* and *Hashidu v Goje (2003) 15 NWLR (Pt. 843) 352 at 382* to underscore that when documents are material (such as Forms in a election suit), they must be explicitly, clearly and specifically pleaded as against immaterial documents where it will be enough to plead the facts.

On the second issue, counsel to the 2nd respondents referred to paragraph 19A(i)-(v) of the petition and submitted that the reliefs claimed by the petitioners are declaratory reliefs for which to succeed the petitioners

must succeed on the strength of their case and not on the weakness of the respondents' case. It was submitted that paragraphs 8, 9 and 19 (a), (b), (c), (d), (e) and (f) of the petition have alleged the making affidavit containing false information of a fundamental nature (to wit false claim regarding qualification), forgery and dishonesty against the 2nd respondent which are in the nature of criminal allegations that require proof beyond reasonable doubts. On the claim of the alleged non-qualification of the 2nd respondent to contest for the office of Chairmanship, for which Exhibit MD24 was tendered through the PW1, it was submitted by counsel that during the cross-examination of the PW1 he made the following concessions, suggesting that he does not know all the names of the 2nd respondent, admitting that he has no document to prove that he was headmaster of Tokulo Primary School as at 4th July, 1990 and that he cannot remember the date and year he resumed as the headmaster of Tokulo Primary School, agreeing that the 2nd respondent was admitted and graduated from Tokulo Primary School, and, agreeing that his assistant headmaster can sign testimonial in his absence but he could however not give the name of the then assistant headmaster. Counsel referred to the declaration of age attached to Exhibit MD1 deposed to by the father of the 2nd respondent where he had stated the 2nd respondent's name as 'Shekwogaza Gabaya John', the Senior School Certificate where the name read 'John Shekwogaza', and the explanation offered by the 2nd respondent as DW1 under cross-examination when he said the 'S' in the Primary School Testimonial represents 'Shekwogaza' apart from his evidence in chief where he had given facts showing he met all the criteria for qualification as to age, citizenship, registration as a voter, educational qualification and sponsorship by a political party, depositions that the petitioners failed to controvert. It was argued that the petitioners failed to call any witness having the same name or identification with the 2nd respondent just as they failed to set out the particulars of the allegation of forgery, counsel citing the cases of *AD v Fayose (2005) 10 NWLR (Pt. 932) 151 at 223* and *AC v Sule Lamido (2012) 8 NWLR (Pt. 1303) 56 at 59*. Citing the case of Andrew v INEC (Supra), it was submitted that oral examination in chief outside the statement on oath adopted is not allowed and hence is

inadmissible, and urging the tribunal to declare that every such evidence goes to no issue and should be expunged.

On the third issue, counsel to the 2nd respondent reproduced Grounds 19(A)(iii) and (iv) of the petition and declaratory reliefs 2 and 3 founded on them and submitted that by ss147, 148, 167 and 168(1) of the Evidence Act, 2011, there is a presumption that the results declared by INEC are correct and authentic until proved to the contrary, a duty cast on the petitioners, counsel citing the case of *Ndu v Nnudike Properties Ltd (2008) 10 NWLR (Pt. 1094) 24 at 29* to the effect that a party who seeks declaratory reliefs must adduce credible evidence to establish his entitlement to declaration and should not rely on the admissions in the pleadings of the respondent. Taking the further depositions of the PW3 made on the 12th July, 2019 against the averments in the further particulars, counsel identified what was described as material conflicts between the two concerning the number of accredited voters and the number of votes in excess and covered polling units not part of the further particulars, counsel submitting that those material contradictions vitiate the evidence of the PW3, nay the entire case of the petitioners and should be discountenanced, counsel citing the case of *Alhassan v Ishaku (2016) 1-3 SC 21*. Counsel again referred to the petitioners' averments in paragraph 19(B)(iii) on alleged over-voting and multiple voting in Bwari Central Ward consisting twelve polling units and submitted, citing the case of *Oke v Agunbiade (2011) LPELR-3897CA*, that to prove over-voting, the petitioner must prove that the total votes cast exceeded the number of registered voters; the petitioner must prove not only the votes collated by the Assistant Returning Officer but he must also prove the votes counted by the presiding officer and the scores of each candidate at the polling booths which were the basis of the collation; the petitioner must also plead and tender the voters register for a particular polling unit wherever over-voting is alleged. It was submitted that Exhibit MD2 is supposed to be the voters register for Bwari Central Ward but the petitioners failed to plead it, thereby the evidence led on it going to no issue, citing the case of *ANPP v Usman (2008) 12 NWLR (Pt. 1100) 1 at 91*. Counsel further dwelt on the evidence of

the PW3. Reference was made to paragraph 7 of the statement on oath made on 12th April, 2019 and paragraph 15 of the statement on oath made on 12th July, 2019 and the responses of the PW3 to questions put to him during cross-examination leading to the PW3 making the following concessions: that he did not make use of card readers but rather made use of voters register, that he did not have card reader reports though it is an integral part of the accreditation process, that he could not tell the tribunal the alleged number of inflated figures in each polling unit of Dutse Ward, that he could not tell the tribunal the alleged number of inflated figures in each polling unit of Kubwa Ward, and, finally, while the PW3 claimed he witnessed the accreditation in all the polling units challenged, he contradicted himself having said in paragraph 4 of the statement made on the 12th April, 2019 that during the election and after its conclusion, he was at the collation centre awaiting the inflow of results. In fact it was alleged that the petitioners deliberately failed to tender the card reader reports as if produced it would be prejudicial to their case. As regards the PW4, it was argued that after claiming that manipulation of voting results, multiple voting and over-voting during the supplementary election for 12,406 votes produced a return in excess by 5,091 votes, the PW4 failed to give the particulars of the over-voting and the polling units affected, but he rather, under cross-examination, admitted that he voluntarily signed Form EC8E, conceding that the figures tallied. It was further submitted that PW4 claimed that the figure of 12,406 in paragraph 7 of his statement is in respect of four polling units, i.e. two in Kubwa, one Dutse Alhaji and one in Igu Ward but he admitted that he does not know the number of registered voters in the said polling units, a situation worsened for the petitioners as they did not tender the voters register for Kubwa Ward and the other polling units, considering that they made allegations of over-voting and manipulation and inflation of votes. It was submitted that the evidence of the PW2 was unequivocal that the 2nd respondent was declared the winner of the election, having scored the highest number of votes cast, an evidence not controverted during cross-examination. Counsel cited the case of *Andrew v INEC (Supra)* again and submitted that all of PW1, PW2, PW3 and PW4 having being orally

examination in chief outside matters in the statements on oath they adopted, including on documents not mentioned in the statements (PW1 on Exhibits MD2, MD16 and MD17, PW2 on Exhibits MD2, MD8, MD16 and MD17, PW3 on Exhibits MD3, MD5, MD18 and MD20 and PW4 on Exhibits MD4, MD6 and MD21), such evidence is inadmissible, and counsel urged the tribunal to declare that every such evidence goes to no issue and should be expunged.

In the reply by the petitioners to the 2nd respondent's address, they formulated four issues for determination. Issue one was whether, at the time of the election, the 2nd respondent was not qualified to contest the election for Chairmanship of Bwari Area Council held on the 9th and 23rd March, 2019, having regards to the 2nd respondent's educational qualification and school certificate presented to the 1st respondent. The second issue was whether the 2nd respondent submitted to the 1st respondent affidavit containing false information of a fundamental nature in aid of his qualification for the said election. While issue three is whether, from the pleadings and evidence led, it was established that the 2nd respondent was duly elected by the majority of lawful votes cast at the election, issue four was whether the Chairmanship election of Bwari Area Council conducted by the 1st respondent on the 9th and 23rd March, 2019 was invalid by reason of non-compliance with the Electoral Act, 2010 (as amended) and the Electoral Guidelines 2019 and the manuals issued for the conduct of the elections.

Counsel argued issues one and two together. With references made to the petitioners' pleading and Exhibit MD1, it was submitted that the case of the petitioners' is that the 2nd respondent does not possess the qualifications he claimed in Form CF001 since none of the several educational certificates attached to the Form bear the same name as evident from the Primary School testimonial and the Senior School Certificate, thereby, breeding inconsistency, manipulation and makes the identity of the 2nd respondent nebulous, mysterious as to his actual personality and ultimately unqualified to seek for elective office. Counsel cited the provisions of s318 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the

four pathways for educational qualification under it and submitted that the 2nd respondent, having chosen the pathway of qualification by primary school certificate or its equivalent, he must produce all his certificates, which was done, but he failed to state which of the certificates he was relying on when he swore to and submitted Form CF001, thereby failing to comply with s31(2) of the Electoral Act, consequently affording a ground for challenging the election under s138(1)(a), counsel citing in support the case of *Dingyadi & Anr. v INEC & Ors. (2010) 7-12 SC 105*. Counsel submitted that a case of forgery of the Primary School testimonial was shown by its conflict with respect to the name in the Senior School Certificate and the subpoenaed witness (the PW1) who denied that he signed the said testimonial, a claim not controverted by the 2nd respondent. Counsel referred back to the evidence of the PW1 where he had said he was the headmaster of the school from 1990 to 1992 during which period the testimonial was purportedly signed, counsel reproducing a question put to the PW1 under cross-examination (You were not the Headmaster on 4th July 1990) to which the PW1 responded (I was the Headmaster from the beginning of 1990 to 1992).

It was further argued that the falsity of the testimonial was further shown when taken against Exhibit MD24 which showed that the name of the 2nd respondent therein was 'Gabaya John' with admission number 177 whereas the testimonial has admission number 179. It was submitted that the documents bear different names and that the newspaper publication and affidavit sworn to by the 2nd respondent did not reconcile these differences but only added the appellation of 'Dr' to his name. Counsel also pointed out the disparity in the date of birth indicated on the 2nd respondent's voter's card (12th April, 1978) and the declaration of age (14th April, 1978). Counsel to the petitioners then submitted that they have proved that the Primary School testimonial submitted by the 2nd respondent to the 1st respondent was forged, a burden they discharged beyond reasonable doubts, strengthened by the admission of the 2nd respondent that all the documents were his. On the evidence obtained from the PW1 and PW2, it was submitted that they were both witnesses subpoenaed by the tribunal 'to produce and to testify'

and Exhibit MD1 was one of the documents the PW1 was ordered to produce. It was submitted that the cumulative effect of the evidence led by the petitioners was that Exhibit MD1 contained false information of a fundamental nature and thereby vitiated the nomination of the 2nd respondent, with the consequence that the 3rd respondent should be held not to have nominated any candidate for the election, counsel citing in support the case of *Abdulrauf Abdulkadir Modibbo v Mustapha Usman & Ors. Suit No. SC790/2019* (judgment delivered on 30th July, 2019) (per Eko Ejembi JSC).

Issues three and four were also argued together. Counsel cited and reproduced s131(1) and (2) of the Evidence Act and conceded that where results of election have been declared, there is a presumption of their correctness which the petitioner has a duty of rebutting. It was submitted, however, that where the petitioner succeeds in adducing evidence the burden is shifted to the adversary. Counsel urged the tribunal to find that from the state of pleadings and evidence adduced, the 2nd respondent was not elected by the majority of lawful votes cast at the election. Counsel acknowledged that the petitioner has the onus of linking the alleged non-compliance and irregularities to the documents tendered through his witnesses. It was also acknowledged that where the ground for the petition is on non-compliance, malpractices or irregularities, the petitioner is required to tender evidence as to form, votes and voters' register, and witnesses must be called to testify as to the misapplication of votes, the over-voting and the irregularity showing the links with the exhibits, a duty the petitioners in this petition has discharged by tendering Exhibits MD1 to MD24 and calling four witnesses. Counsel paraphrased the evidence of each of the four witnesses. For the evidence of the PW3, counsel submitted that he has stated that from the inspection team he led of electoral materials, after leave was given by the tribunal, he observed that the number of accredited voters was far less than the number of votes cast at the election and that the votes of the petitioners were reduced in Forms EC8A against the actual votes scored in some polling unit to the disadvantage of the petitioners. For the PW4 it was submitted

that he identified Exhibits MD4 (Voters register for polling units in Igu Ward), MD6 (Voters register for polling units in Dutse Ward) and MD21 (Form EC8A). Counsel submitted that where the final figures collated by the tribunal from admissible documentary evidence is different from the one used to declare the results, so long as it would not lead to miscarriage of justice, the tribunal is duty bound to make a finding on the correct figures, and, where the outcome of the election is challenged on the ground that the winner did not have the majority of lawful votes, the task of the tribunal is to determine the actual results and add them up. It was submitted that if invalid votes (which in law is as good as never cast) credited to the 2nd respondent are subtracted, the petitioners would be found to be the winners by the majority of lawful votes cast. Counsel referred to the averments in paragraph 16 of the petition and to the evidence led, including Exhibit MD16 which shows that the total number of registered voters for the supplementary election was 12,406 but a result was declared with total votes cast of 17,401. Counsel cited the case of *Shinkafi & Anr. v Yari & Ors. (2016) LPELR-26050* where it was held that to establish over-voting the petitioner must tender the voters register, the statement of results in appropriate forms which would show the number of registered accredited voters and number of actual votes cast, relate each of the documents to the specific area of his case in respect of which the documents were tendered, and, show that the figure representing over-voting, if removed, would result in victory for the petitioner. It was submitted that in this case the petitioners have satisfied the above requirements.

On the objection to admissibility to the documents tendered argued by the counsel to the 2nd respondent, it was submitted that objection was taken (though grounds for objection deferred to address stage) only to the admissibility of Exhibits MD11, MD12, MD14, MD15 and MD16, and not to the other documents. Counsel distinguished between documents not admissible in any event and those not admissible for failure to meet certain conditions; in the former case, if mistakenly admitted, the evidence must be expunged while in the latter case, unless objection was taken to their admission at the

point they were tendered, their admission would be valid. Counsel submitted that properly certified legal documents are documents that the court should act on where no objection was taken to their admissibility when tendered, counsel citing the case of *APC v BSIEC (2015) All FWLR (Pt. 770) 1367 at 1392*. It was argued that, contrary to the arguments of the counsel to the 2nd respondent, all the documents in question were properly certified in accordance with s104(1), (2) and (3) of the Evidence Act and in any event, during pre-trial the counsel had stated that once the document was listed as from INEC and legible, no objection would be taken to same. On the documents having not been tendered through the makers, counsel submitted that public documents or CTC of public documents can be tendered from the bar and such CTCs can also be tendered through the person to whom it was given, counsel citing the cases of *Alaribe v Okwuonu (2016) 1 NWLR (Pt. 1492) 41 at 65* and *Orlu v Gogo-Abite (2010) All FWLR (Pt. 5241) 1 at 21*. It was argued that tendering the documents from the bar does not mean they were dumped. It was argued that as the respondents did not contest the fact that the statements of result, the Forms EC8A and other forms were used for the polling units in question, the petitioners need not call agents to establish the fact. The question for determination was whether there was over-voting in the particular polling units challenged, and it is a matter that can be resolved by reference to entries in the forms, the principle being that documents speaks for themselves. As regards the argument that Exhibits MD2 and MD24 were not pleaded, counsel argued that no objection was taken to them on that account but in any case documents need not be pleaded expressly provided they are relevant and evidence was led on that document, citing the cases of *Haruna v Att.-Gen. (Fed.) (2012) LPELR-7821SC and Ifeadi v Ateze (1998) 13 NWLR (Pt. 581) 205 at 226*. Counsel concluded by urging the tribunal to find that the petitioners have proved the petition and recommending to the tribunal the cases of *Yakubu Musa Dirmishi & Anr. v Umar Musa Bororo & Ors. EPT/AD/SHA/08/2019* and *Suleimam Yahaya & Anr. v Shuaibu Musa & Ors. EPT/AD/SHA/09/2019*.

The 1st respondent in their own address adopted the issues formulated by the petitioners. On the claim of forgery against the 2nd respondent, the 1st respondent's counsel referred to the case *Atiku Abubakar & Anr. v INEC & Ors. Petition Number CA/PEPC/002/2019* which held to the effect that variation in the names of a candidate is no basis for disqualification of such a candidate in an election. It was submitted that the allegations of the petitioners being criminal in nature must be proved beyond reasonable doubts but the petitioners failed to discharge the burden cast on them. On the 1st respondent's decision not to call witnesses, counsel submitted that declaratory reliefs are the backbone in all electoral petitions such as the instant one and in all such cases the petitioner must succeed on the strength of his own case and not on the weakness of the respondent's case. In the case at hand in view of clear statutory and judicial authorities rendering the basis of the claim that the 2nd respondent was not qualified not rooted in law, there was no need for the 1st respondent to call any witness. On issues two and three, counsel submitted that the PW2, a subpoenaed witness had stated under cross-examination that he was not the maker of the document he identified as emanating from the custody of the 1st respondent, thereby making him incompetent to give evidence on them, counsel citing the case of *Ikpeazu v Oti (2016) 8 NWLR (Pt. 1513) 38 at 93* where the Supreme Court held that a person who did not make a document is not competent to testify on it, but rather the maker must be called to testify to its credibility and veracity. Counsel dismissed the evidence of the PW3 based on his inspection of materials as hearsay evidence since it was formed long after the election, citing in support the case of *Omisore v Aregbesola (2015) 15 NWLR (Pt. 1482) 227*. Counsel dismissed the PW4 as a weightless witness having admitted that he was a collation agent and knew of nothing that transpired at the polling unit and nor did he give particulars of over-voting, and very importantly, he agreed that he signed the result voluntarily, a fact thereby acting as estoppel against him denying the contents of what he signed, citing the case of *Gundiri v Nyako*. On the issue of over-voting, the Counsel set out the four requirements in proving over-voting and submitted that the petitioners have not complied with the above requirements, either through

the exhibits tendered or by calling witnesses for every polling unit, the evidence of the witnesses remaining in the realm of hearsay evidence for being reliant on agents who themselves were not called as witnesses, counsel citing the case of *Omisore v Aregbesola (Supra)*. On the allegation of non-compliance, counsel submitted that non-compliance, let alone one that affected the outcome of the overall result of the election was not proved, counsel citing the case of *Waziri v Geidam (2016) 11 NWLR (Pt. 1523) 241* where it was held that to prove non-compliance the petitioner must plead the head of non-compliance, give cogent and credible evidence of such non-compliance and also demonstrate the effect thereof on the election. The tribunal was therefore urged to find that the petition lacks merit and dismiss same.

Counsel for the 3rd respondent also filed on behalf of the 3rd respondent a final address of thirty-six (36) pages where the issues formulated and the arguments canvassed are basically the same as those of the 2nd respondent and would be unnecessary to repeat. On the part of the counsel to 2nd respondent, counsel filed a reply of seven (7) pages, essentially reiterating the points made in their final address, particularly on the point that inadmissible evidence remains inadmissible and could be expunged by the court even at the point of writing final judgment though objection may not have been taken to its admissibility when it was tendered.

Finally, the petitioners filed a composite reply on point of law of seven (7) pages to the addresses of the 1st and 3rd respondents, also essentially reiterating the arguments earlier canvassed in the final address. However, counsel went further to argue that the decision of the Presidential Elections Tribunal in *Atiku Abubakar & Anr. v INEC & Ors. (Supra)*, is on variation of names whereas the case made by the petitioner in this case was about inconsistencies in name and manipulations which makes the identity of the 2nd respondent nebulous.

From the eight reliefs asked for by the petitioners, the grounds given for the petition and the pleadings and evidence subsequently led through

their witnesses, it is obvious that the petitioners' case is rooted on the ground of the 2nd respondent not being qualified to contest for the election for the Chairmanship of Bwari Area Council at the time of the election (s138(1)(a) of the Electoral Act, 2010 (as amended)), on the ground of the election of the 2nd respondent being invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (s138(1)(b) of the Electoral Act, 2010 (as amended)), and, on the ground that the 2nd respondent was not duly elected by majority of lawful votes cast at the election into the office of Chairman of Bwari Area Council. This petition will be appraised based on those three spectrums of grounds.

However, before doing so, the 2nd and 3rd respondents, particularly the 2nd respondent has argued against the admissibility of almost all the documents tendered and received in evidence and had urged the tribunal to expunge them. It was argued that Exhibits MD1 to MD21 (Twenty-one documents) and Exhibit MD24 (one document) failed to satisfy one of the five mandatory requirements for a copy of a public document to be admitted as a certified true copy, that is that the name and description of the officer certifying the document as a true copy of the original document. The response of the petitioners was that the 3rd respondent objected only to Exhibits MD11, MD12, MD14, MD15 and MD16, and not to the other documents and he distinguished between documents not admissible in any event and those admissible if objection was not taken to their admissibility, the document in question being of a class admissible if objection was not taken to their admissibility, besides the fact that at pre-trial the respondents have said they will not object to public documents from INEC and are legible.

Truly, at the pre-trial the counsels to the 2nd and 3rd respondents had stated that they will take no objection to documents which are legible, are original and are certified true copy. During the course of trial, counsel to the 2nd and 3rd respondents had also indicated that they object to the admissibility of Exhibits MD11, MD12, MD14, MD15, MD16 and MD24 but had stated that they will reserve the arguments on the admissibility till address

stage. However, it is now being argued by counsel that, irrespective that the other documents were not objected to earlier, the court is still bound to expunge them as they were *ab initio* inadmissible.

Exhibits MD1 to MD21 purports to be certified true copies of documents obtained from the custody of the 1st respondent in this case i.e. the INEC, therefore qualifying as public documents as defined in s102 of the Evidence Act, 2011. Exhibit MD24 also purports to be copy of a 'Register of Admissions, Progress and Withdrawal' for Tokulo Primary School, therefore also satisfying the definition of a public document under s102 of the Evidence Act. We agree with the petitioner's counsel that unless a document is of a class which is in no case admissible whether or not objection was taken to its admissibility, if objection was not taken to it being admitted when tendered, it would be belated to challenge its admissibility subsequently. Thus, we have to explore the law if public documents are of a class that is in no circumstance admissible unless specified conditions are met.

The relevant provisions are to be found in the Evidence Act. By s89(e) and s89(f), secondary evidence may be given of the existence, condition or contents of a document when the original is a public document within the meaning of s102 or when the original is a document of which a certified copy is permitted by the Evidence Act or by any other law in force in Nigeria, to be given. However, going by s90(c) of the Evidence Act, only a certified copy of the document, and no other type of secondary evidence, is admissible to prove the contents of a public document. Section 104(1) and (2) of the Evidence Act stated the essentials to constitute a copy of a public document as certified, namely (a) the prescribed legal fees were paid, (b) a certificate was 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, (c) the certificate shall be dated, (d) the certificate shall be subscribed by the officer issuing it with his name and his official title, and (e) the copy shall be sealed, whenever such officer is authorized by law to make use of a seal (see: *Tabik Investment Ltd. v. G.T.B. Plc (2011) 17 NWLR (Pt. 1276) 240 at 262*).

From at least two decisions of the Supreme Court within our reach, it has been emphasised that the above provisions, particularly the dating of the copy and the subscription of the name and official title are mandatory to constitute a document as properly certified as true copy of a public document for such a document to be admissible. In *Omisore v Aregbesola & Ors. (2015) 15 NWLR (Pt. 1482) 205 at 292* Nweze JSC held as follows:

> The first documents, as shown above, are public documents [exhibits 1-181]. I entirely agree with the submissions of the cross-appellant with regard to their admissibility. Pursuant to section 104 of the Evidence Act, 2011, the said documents which, merely, had CTC stamps bearing engraved signatures on them without the subscription of the name and official title of the official who certified them, were not properly certified in conformity with the mandatory requirements of section 104 (supra). *Tabik Investment Tabik Investment Ltd. v G.T.B. Plc. (2011) All FWLR (Pt. 602) 1592*; *Nwabuoku v. Onwordi (2006) All FWLR (Pt. 331) 1236*... I resolve these issues in favour of the cross-appellant.

Similarly, Nweze JSC emphasized thus in *Emeka v Ikpeazu & Ors (2017) 15 NWLR (Pt. 1589) 345*:

> ... From the phraseology of the italicized 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 (the certificate) is dated and subscribed by such officer with his name and official title. In effect, any document that falls below the above mandatory threshold is inadmissible as a certified copy of a public document.

Indeed, in *Tabik Investment Ltd. v GTB Plc. (Supra)*, it was emphasized that the deliberate and repeated use of the word 'shall' in s104 of the

Evidence Act, 2011 underscores the mandatoriness of the requirements for proper certification of a copy of a public document.

Of course during the pre-trial the 2nd respondent's counsel had said they will not object to certified true copies of documents and, obviously, during the trial, objection was initially taken only to the admissibility of Exhibits MD11, MD12, MD14, MD15 and MD16, and not to the other documents. Be that as it may, the authorities considered above having shown that proper certification was a precondition to the admissibility of a certified true copy, this tribunal is obliged to consider the question of the admissibility of the documents earlier admitted by it. As held in *Menakaya v Menakaya (2001) 16 NWLR (Pt. 738) 203 at 236*, a mandatory statutory provision directing a procedure to be followed in the performance of any duty is not a party's personal right to be waived and, therefore, one cannot resort to estoppel to compromise a statutory provision of a public nature, for otherwise, any decision made by a court contrary to a mandatory statutory provision is a nullity. Of course, counsel to the petitioners has cited the case of *APC & Ors. v BSIEC & Ors. (Supra)* to contend that having not objected to the admissibility of the documents earlier, the 2nd respondent was estopped from doing so. We have looked at the said case, a decision of the Court of Appeal and what it held was that an objection not raised at the trial court would not be allowed to be raised at the appellate court.

The documents challenged are Exhibits MD1, MD2, MD3, MD4, MD5, MD6, MD7, MD8, MD9, MD10, MD11, MD12, MD13, MD14, MD15, MD16, MD17, MD18, MD19, MD20, MD21 and MD24. This tribunal scrupulously scrutinized each of the said documents. Some of them are in bundles of hundreds of pages (i.e. Exhibits MD2, MD3, MD4, MD5 and MD6, being the voters registers for Bwari Central Ward, Kuduru Ward, Igu Ward, Kawu Ward and Dutse Ward) and hence we can only look at the top five copies of each bundle. With respect to the specific question whether the said documents were subscribed with the name and official designation of the issuing officer, we find that Exhibit MD1 (Form CF001 and its accompanying documents) and Exhibit MD16 (Declaration of Results Sheet with code

number 2) shows that the name of the subscribing officer is 'Nick Dazang' while his official title is 'Admin. Sec.' Similarly, with Exhibit MD24, the name of the subscribing officer is 'Agboka Omale' while his official title is 'H/ Legal'. On the other hand, for each of Exhibits MD2, MD3, MD4, MD5, MD6, MD7, MD8, MD9, MD10, MD11, MD12, MD13, MD14, MD15, MD17, MD18, MD19, MD20 and MD21, they were stamped 'Certified True Copy', dated and obviously signed, but there was neither name nor the official title of the subscribing officer on them. Of course the 1st respondent had no objection to the admissibility of the said documents which they acknowledged as originating from them (except Exhibit MD24 which did not originate from them), hence satisfying one of the rational basis for requiring certification of copies of public documents as true copies i.e. authenticity (*Araka v Egbue (2003) 17 NWLR (Pt. 848) 1* per Tobi, JSC), more so as the document is one tendered against the interest of an adverse party who at the same time had the duty of properly certifying such document. Be that as it may, the case of *Omisore v Aregbesola & Ors. (Supra)* was a decision arising from litigation over an election result in which INEC was a party and the Supreme Court was emphatic and gave no exception of circumstances in which an adverse party was the one in position to properly certify the document in question. Consequently, we are bound and hereby find that Exhibits MD2, MD3, MD4, MD5, MD6, MD7, MD8, MD9, MD10, MD11, MD12, MD13, MD14, MD15, MD17, MD18, MD19, MD20 and MD21 failed to meet all the essential requirements prescribed in s104 of the Evidence Act, 2011 for valid certification as true copies of public documents. They are, therefore, inadmissible and are hereby expunged from the records of the tribunal. Thus, they are deemed not part of the evidence before the tribunal for further consideration in resolving the petition pending before us.

The next issue for this tribunal to determine is whether the 2nd respondent was qualified to stand for election as Chairman of the Bwari Area Council or he is disqualified from contesting as Chairman of the Bwari Area Council for the elections that held on the 9th and 23rd March, 2019. Two of the grounds for contesting the result of an election is that the person whose

election is questioned was, at the time of the election, not qualified to contest the election (s138(1)(a) of the Electoral Act, 2010 (as amended)) or that that the person whose election is questioned had submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the election (s138(1)(e) of the Electoral Act, 2010 (as amended)).

The distinction between qualifying to stand as a candidate for an election and being disqualified to stand as a candidate for an election is that in the latter case, a candidate otherwise qualified to contest an election was barred from contesting for the election due to some specified causes (see *AD v Fayose & Ors. (2005) 10 NWLR (Pt. 932) 151 at 187* per Nsofor, JCA). In other words, in addition to been qualified, the candidate must be free of any circumstance that may disqualify him. To be qualified for election as Chairman of an Area Council in the Federal Capital Territory, such a person must meet the conditions in s106 of the Electoral Act, 2010 (as amended) while, for a candidate not to be disqualified, he must not be found wanting with respect to any of the circumstances in s107 of the Electoral Act, 2010 (as amended). To be qualified under s106, a candidate must (a) be a citizen of Nigeria, (b) be registered as a voter, (c) have attained the age of 30 years, (d) be educated, at least up to the School Certificate level or its equivalent, and (e) be a member of a political party and is sponsored by that party. On the other hand, a person would lose his qualification if he voluntarily acquires the citizenship of another country, or he is adjudged to be a lunatic or otherwise declared to be of unsound mind under any law in force in any part of Nigeria, or he is serving a death sentence, or, for a period not far past than ten years, he was convicted for an offence involving dishonesty or a contravention of the Code of Conduct, or he is an undischarged bankrupt, or he remained employed in any level of government less than thirty days before the date for the election in issue, or he is a member of any secret society, or he has, within the preceding period of 10 years presented a forged certificate to the Commission, or he was dismissed from public service of the

Federation, State, Local Government or Area council, or he has been twice previously elected as Chairman of the Area council.

The petitioners appears to have built a case on both want of qualification and disqualification against the 2nd respondent as can be found in paragraphs 8, 9 and 19 of the petition. In paragraph 8 it was averred that the 2nd respondent is not duly qualified to be presented by the 3rd respondent, the Peoples Democratic Party, as a candidate for the election into the chairmanship office of Bwari Area Council held on the 9th and 23rd of March, 2019. In paragraph 9 it was averred that the petitioners shall lead evidence to show that the forms filled by the 2nd respondent for the position of election as Chairmanship candidate of the Peoples Democratic Party are fraught with inconsistences, forgery and manipulations that should have made his nomination null and void. In paragraph 19(A) it was alleged that the 2nd respondent was not qualified to stand for the election, in that he does not possess the minimum requirement for the election, and the affidavit of the 2nd respondent submitted to the 1st respondent contained false information of a fundamental nature in aid of his qualification for the election. Particulars of the ground were given in paragraph 19B, namely, firstly, that from the Form CF001 submitted by the 2nd respondent to the 1st respondent, the name of the 2nd respondent as captured in the WAEC Certificate and the Primary School Testimonial are inconsistent, manipulated and makes the identity of the 2nd respondent to be nebulous, leaving a mysterious circumstance as to the actual personality of the 2nd respondent and hence making him unqualified to seek the elective position of the Chairman of Bwari Area Council. Secondly, it was asserted by the petitioners that the minimum requirement for election as Chairman is a Primary School Certificate but the 2nd respondent does not possess the said certificate and that the one he submitted to the 1st respondent in an attempt to fulfill the required qualifications does not belong to him but is rather a forged document that is tainted with manipulation. Finally, it was asserted that the date of birth of the 2nd respondents on documents filled or submitted by him are clearly misleading, inconsistent and a fraud, a point

apparent from the double dates found on the declaration of age and the voters card thereby underscoring the inconsistences that dent the qualification of the 2nd respondent to seek for election as a Chairman of Bwari Area Council.

The anchor of the petitioners' case is Exhibits MD1 and MD24 and the evidence of the PW1. MD1 and MD24 are the only documents which escaped the hammer of rejection pursuant to s104 of the Evidence Act. Exhibit MD1 which is INEC Form CF001 is affidavit in support of particulars of persons seeking election into various offices, including that of Chairman of an Area Council, relevant to this case. The 2nd respondent was shown to have stated his surname as 'John' and his other names as 'Gabaya Shekwogaza', with no former name, born on the 14th April 1978, stated that he attended LEA Tokulo Primary School between 1984 and 1990, the Government Secondary School, Iddah between 1995 and 1998, and that he has a National Diploma from Federal Polytechnic, Kaduna obtained between 2010 and 2011. There is a declaration and affirmation at page 6 of Exhibit MD1 signed by the 2nd respondent that the information he has given in INEC Form CF001 was true. The accompaniments to Exhibit MD1 are transcript of examination results from Kaduna Polytechnic, a WAEC issued Senior School Certificate, testimonials from Government Secondary School, Iddah and FCT Primary Education Board, a Statutory Declaration of Age, and copies of his voter's card and membership card of the Peoples Democratic Party.

Eo ipso, from the above, the 2nd respondent appears to have satisfied the conditions for qualification under s106 of the Electoral Act, 2010 (as amended). The requirement under s106(d) of the Electoral Act, 2010 (as amended) is that the 2nd respondent should be educated, at least up to the School Certificate level or its equivalent, but he has presented uncontested evidence that he obtained a Secondary School Certificate and a Polytechnic Diploma. In *Imam Ors. v Sheriff & Ors. (2005) 4 NWLR (Pt. 914) 80 at 157CA*, it was held that proof of attendance of a post-secondary institution is *prima facie* proof of having obtained a qualification equivalent to education up to School Certificate or its equivalent.

However, the petitioners have alleged that the testimonial allegedly issued from Tokulo Primary School was a forgery, a situation that will call into question the qualification of the 2nd respondent under s107(h) of the Electoral Act and also put his subsequent election into question under s138(1)(e) of the Electoral Act. Forgery is an offence defined in s363 of the Penal Code Act as the making of a false document with intent to cause damage or injury to the public or to a person or to support a claim or title or to cause any person to part with property or to enter into an express or implied contract or with intent to commit fraud or that fraud may be committed, and a false document made wholly or in part by forgery is called a forged document (See: *Yohanna Dalyop v The State (2013) LPELR-CA/J/234C/07*). A document is a false document when it is made, executed or signed by someone else but passed off as made, executed or signed by the person lawfully authorized to make, execute or sign it. Forgery being a criminal offence, by s135(1) and (2) of the Evidence Act, 2011, criminal allegations albeit in a civil matter must be proved beyond reasonable doubts. In *Mahija v Gaidam & Ors. (2018) 4 NWLR (Pt. 1610) 454 at 487-488*, it was held that to succeed on an allegation of forgery and false-declaration, the complainant must prove (a) the existence of a document in writing, (b) that the document or writing was forged, (c) that the forgery was by the person being accused, (d) that the party who made it knew that the document or writing was false, and (e) that the party accused intended the forged document to be acted upon as genuine.

Truly, the PW1 claimed that he was the headmaster of Tokulo Primary School from 1990 to 1992 and deposed that, as a headmaster, part of his responsibility was issuing, signing and stamping of school certificates and testimonials of graduating pupil. He had deposed that he has looked at the testimonial purportedly issued to the 2nd respondent dated 4th July, 1990 and disclaimed the purported signature of the Headmaster as his. While the PW1 stated that he was the headmaster of Tokulo Primary School from 1990 to 1992 he gave no specification as to the very month his tenure as headmaster commenced or ended and indeed under cross-examination when PW1 was

asked 'You said you can't remember when you started work in 1990', the PW1 responded 'As at now, I can't remember'. The PW1 confirmed however that, from records available from Exhibit MD24 (the Register of Admission, Progress and Withdrawals) the 2nd respondent was admitted into Tokulo Primary School on 22nd September, 1983, stating that page 17 at Number 177 of Exhibit MD24 contains the name Gabaya John.

However, under cross-examination, the PW1 at first stated that he was the Headmaster of the School as at 4th July, 1990 but later admitted that he has no proof that he was and he could not remember when he resumed office as Headmaster in 1990. The PW1 also agreed that an Assistant Headmaster can sign a testimonial but that will only be with the permission of the Headmaster and in this case he could not recall who his Assistant Headmaster was in 1990 and that he could not tell if the 4th July, 1990 was during the school vacation period. The witness was, however, affirmative that the 2nd respondent was admitted into and passed out from Tokulo Primary School.

In our opinion, to prove that someone other than the authorized person signed or issued the testimonial in question, evidence ought to have been led that from record of testimonials issued in 1990 by the school, the one being paraded by the 2nd defendant was not one of those issued by the school or other testimonials issued to 2nd defendant's co-graduating pupils bore a different signature. Remarkably, the PW1 did not foreclose the possibility that his Assistant Headmaster could have issued the testimonial or it could have been issued before he resumed as Headmaster. If the 2nd respondent was admitted into the school and passed out from the school, as attested to by the PW1, barring any cause for which he could be denied the issue of the testimonial (and none has been shown), the 2nd respondent should logically be issued one. Thus, if the 2nd respondent passed out of the school and parades a testimonial that should usually be given to someone who passed out successfully (reference Exhibit MD24), he cannot be said to have falsely made the said testimonial to 'support a claim or title' to which he is not entitled, for indeed he is entitled to be issued a testimonial.

To underscore the narrative that the testimonial could have been forged, counsel to the petitioners has made two other arguments. Firstly, in the course of cross-examining the 2nd respondent (as DW1) it was established that, whereas the testimonial stated the admission number of 2nd respondent as 179, the admission number against the name Gabaya John in Exhibit MD24 was 177 while one Sanasa Dayabi is the name in number 179 in Exhibit MD24. This point is also of no moment provided there is no overwhelming evidence before the tribunal that the testimonial in Exhibit MD1 did not emanate from the issuing school. In any event, evidence has not been adduced that someone else by the name of 'John Gabaya' was admitted into the school in 1983 and passed out in 1990 and the 2nd respondent is an impostor of such person.

Secondly, counsel has led evidence to suggest that the Primary School Testimonial was forged because it bore 'Gabaya S. John' whereas the Secondary School Certificate and the Testimonial bore 'John Shekwogaza'. However, the 2nd respondent has explained in his response to the petition and indeed in his deposition on oath adopted as DW1 that John is his surname while Gabaya and Shekwogaza are his other names and at times he bear them interchangeably, explaining that indeed the 'S' in the Primary School testimonial stands for 'Shekwogaza'. We think this is a plausible explanation and looking at the information and accompaniments to Form CF001 (Exhibit MD1), the 2nd respondent was consistent in bearing 'John Gabaya Shekwogaza' in all the documents he appears to have control over in their making after the Senior School Certificate of 1998. In any event 'John' featured as one of the names in all the documents before the tribunal and it is only Exhibit MD24 and the Primary School Testimonial that Gabaya alone accompanied John as a name. Disparities such as these were recently the subject-matter for consideration by the Court of Appeal sitting as Presidential Election Petitions Tribunal in the case of *Atiku Abubakar & Anr. v INEC & Ors. (Petition No: CA/PEPC/002/2019)* and it was held that disparities in documents showing 'Mohammed' or 'Muhammed' or 'Muhammadu' as name(s) is of no consequence and refer to one and the

same person in respect of who the documents were issued particularly since the second name 'Buhari' on the documents indisputably refers and belongs to the 2nd respondent and no other person.

Finally, counsel to the petitioners has, may be less forcefully, referred to the disparities in the date of birth in the statutory declaration attached to Exhibit MD1 and the voter's card also attached to Exhibit MD1. In the statutory declaration of age made on the 21st September, 1997 by John Makama (father to the 2nd respondent), he had given the date of birth of the 2nd respondent as Wednesday 14th April, 1978. In filling Form CF001, the 2nd respondent has adopted the same date. However, in the voter's card issued to the 2nd respondent, to which reference was made when the 2nd respondent was being cross-examined, the date of birth is stated as 12th April, 1978. Given that age is a factor for qualification for election, any information regarding it is fundamental and in aid of qualification and so, if shown to be false, is sufficient reason to disqualify a candidate under s138(1)(e) of the Electoral Act, 2010 (as amended). Obviously, in the information provided by the 2nd respondent personally (in completing Form CF001 and in the declaration of age) the accuracy of which he should be responsible, the date of birth is consistent. On the other hand, we are of the opinion that the voter's card is a document for whose accuracy the 2nd respondent cannot be entirely responsible.

In any event, both in the declaration of age, the voter's card and indeed in Exhibit MD24 made way before 2019 and over which the 2nd respondent has no control thereby dispelling any suggestion the date was stated with the intent by the 2nd respondent to circumvent the age requirement, the year of birth was stated to be 1978, meaning that as at March 2019 the 2nd defendant was aged at least forty years. To qualify to be elected as Chairman the 2nd need only be thirty years old. Thus, it was immaterial to the qualification of the 2nd respondent whether his date of birth was the 12th or the 14th April, 1978 as, in either case, he would qualify to contest for the election. In comparable circumstances in the case of *Mahija v Gaidam & Ors. (Supra) 454 at 499*, Kekere-Ekun JSC stated thus:

> As regards the age of the 1st respondent, the onus was on the appellant to prove that as at the time he contested the election, the 1st respondent had not attained the age of 35 years as required by s177(c) of the Constitution. If there is any discrepancy in the age of a candidate, it must have a bearing on the constitutional requirement before it can have the effect of disqualifying him... It was also held in this case that there must be evidence of an intention by the candidate to circumvent the provision of the Constitution. There was none established in this case.

We verily adopt the above reasoning as ours.

Of course the petitioners' counsel recommended to us two cases decided by the same panel of the National and State Houses of Assembly Election Petition Tribunal in *Hon. Yakubu Musa Dirbishi & Anr. v Umar Musa Bororo Ors. Petition No. EPT/AD/SHA/08/2019* and *Suleiman Yahaya & Anr. v Shuaibu Musa & Ors. Petition No. EPT/AD/SHA/09/2019*. We have read and considered both cases but are in no position to decide whether those decisions were right or wrong; however, vis-à-vis the Supreme Court decisions earlier cited, we think we are fortified in the conclusions we have reached. Be that as it may, we still find distinguishing features. In the first case, while the respondent was said to have variously bore 'Musa Umar Bororo', 'Musa Umar', 'Umar Musa' and 'Musa Umaru' in different documents, it was also found that the NECO testimonial and NABTEB result (from two different examination bodies) has the same examination number and the respondent's witness under cross-examination admitted that he wrote NECO on the NABTEB result. With respect to the second case, there were two sets of documents, all traced to the 1st respondent, but which were fundamentally contradictory in every material particular. Counsel also referred to the case of *Abdulrauf Abdulkadir Modibbo v Mustapha Usman & Ors. Suit No. SC790/2019* (judgment delivered on 30th July, 2019) (per Eko Ejembi JSC) which is also distinguishable as the respondent there was shown to have two divergent certificates, one showing he left school in 1995, the other that he did in 2005.

All said, therefore, we find the ground for challenging the election of the 2nd respondent on account of not been qualified or for being disqualified as lacking in merit and same is hereby dismissed.

Next is the claim that the 2nd respondent was not elected by the majority of valid and lawful votes cast at the election. The petitioners had averred in paragraphs 16 and 17 that though the 1st respondent declared the 2nd respondent winner with 31,114 votes as against the 1st petitioner's 24,137 votes, the majority of the votes allotted to the 2nd respondent, particularly from the re-run election of 23rd March 2019 in the questioned Wards were void by reason of corrupt practices, over-voting, multiple-voting and non-compliance with the Electoral Law. In some parts of the petition, the petition has also alleged inducement of voters and inflation of election result figures. While allegation of deliberate non-use of biometric accreditation was made, it is intertwined with the allegations of over-voting and multiple-voting and will be considered along with them. Of course if these several allegations are proved, it stands to reason that non-compliance with the Electoral Act is thereby proved.

The allegations of vote-buying and inducement of voters (s124 and 130), inflation of election result figures and multiple thumb-printing appear to us to be manifestations of corrupt practices. Being in the nature of criminal allegations, they must be proved beyond reasonable doubts.

The starting point is that, albeit a rebuttable presumption, there is a presumption in favour of the correctness of any result declared by the electoral management body by virtue of s168(1) of the Evidence Act, 2011 on the presumption of regularity. See: *Buhari & Anr. v INEC & Ors. (2008) 19 NWLR (Pt. 1120) 246 at 354*. Being a rebuttable presumption, the burden of rebutting that presumption is on the person who denies its correctness: see *CPC & Anr. v INEC & Ors. (2011) 18 NWLR (Pt. 1279) 493 at 544*.

In *Malumfashi v Yaba & Ors. (1999) 4 NWLR (Pt. 598) 230 at 237*, it was held that the only way one can question the lawfulness or otherwise of some of the votes is to tender in evidence all the forms used and call witnesses to

testify as to the misapplication of the votes scored by individuals. In such claims, the petitioner ought to plead and prove the votes cast at the various polling stations, the votes illegally credited to the winner, the votes which ought to have been credited to him and also the votes which should be deducted from that of the supposed winner in order to see if it will affect the result of the election (*Nadabo v Dabai (2011) 7 NWLR (Pt. 1245) 155 at 177*).

Over-voting is defined in both the Electoral Act, 2010 (as amended) and the Regulations and Guidelines for the Conduct of the 2019 Elections made pursuant to s153 of the Electoral Act. Under s53(2) of the Electoral Act, 2010, there is a situation of over-voting 'where the votes cast at an election in any polling unit exceed the number of registered voters in that polling unit'. In like manner, under paragraphs 23(a) and (b) of the Regulations there is over-voting 'Where the total number of votes cast at a Polling Unit exceeds the number of registered voters in the Polling Unit' and 'where the total number of votes cast at a Polling Unit exceeds the total number of accredited voters'. In *Ikpeazu v Otti & Ors (2016) LPELR-40055(SC)*, it was held that in order to prove over-voting the petitioner must tender the voters register, the statement of results in appropriate forms and must relate each of the documents to the specific area of his case. He must also show that the figure representing the over voting, if removed would result in victory for the petitioner.

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

Where a petitioner alleges inflation of election result figures, the fact of inflation must first be unequivocally proved and the petitioner must give the particulars of the inflated figures and also show that if the inflated figures were taken from the votes credited to his opponent in the case the result would change in his favour (*Agbaje v Fashola (2008) 6 NWLR (Pt. 1082) 90 at 148*). Of course, if inflation of figures is proved, the tribunal has a right and indeed a duty to compute or collate result where such results have been inflated and/or wrongly computed (*Agbaje v Fashola (Supra)*). Inflation of figures is another way of saying there was falsification of results and the law is that to prove falsification of result in an election petition, it is basic that there should be in existence at least two results, of which one is genuine while the other is considered to be falsified, a burden imposed on the petitioner to discharge (*Bello v Aruwa (1999) 8 NWLR (Pt. 615) 454*).

Looking at the complaints of the petitioners, vis-à-vis the law, it is clear none of the complaints can be proved without reference being made to the ballot papers, voters' registers, reports of biometric accreditation or the election results sheets and other INEC Forms used for the election. While ballot papers and reports of biometric accreditation were in fact not tendered, the voters' registers and election result forms and other INEC Forms tendered by the petitioners, save Exhibit MD16, were expunged as inadmissible for being in breach of s104 of the Evidence Act, 2011. Thus, as it were the claims of the petitioners are bereft of any supporting scaffold.

Be that as it may, the PW3 and PW4 were called by the petitioners and it behoves this tribunal to look at the evidence led through these witnesses to see if there is something therein upon which the case of the petitioners can be sustained. The PW3 said he was assigned by the 2nd petitioner as collation agent for Bwari Area Council on the 9th and 23rd March, 2019 elections and was at the collation centre at the conclusion of the elections awaiting the inflow of results from various polling units and Wards with reports from agents and that the computation took a drastic turn as some of the votes did not tally with the votes from the polling units but all the efforts to draw the attention of the electoral officers to the anomaly was rebuffed.

He did not say of which polling units the votes did not tally and to say they did not tally suggests the petitioners have the votes from the polling units (likely from their copies of Forms EC8A) showing disparity with the ones presented at the collation centre but no such evidence was adduced; curiously the PW4 still signed the results. The PW3 claimed in paragraph 7 that the supplementary election was affected by vote manipulation such that it caused total votes cast to be more than the number of registered voters by more than 5000 voters in favour of the 2nd and 3rd respondents but the evidence was silent on precisely how the vote was manipulated. The PW3 claimed he led the team that conducted inspection of electoral materials after the tribunal made an order giving leave to conduct the inspection and in paragraph 6 he stated figures he claimed to have obtained from Form EC8C after the election of 23rd March 2019 alleging that, whereas the available registered voters for the re-run election of 23rd March, 2019 was only 12,406, the total votes cast ascribed to all the parties from the re-run election of 23rd March, 2019 was 17,407, meaning thereby that there was over-voting during the re-run by 5,001 votes by unregistered and unaccredited persons. Form EC8C is the form for 'Summary of results collated' and, though in this case it was rejected, even if it were to be admitted, it did not support the claim of the PW3 as it did not make entries separately for the 9th and 23rd March elections. In paragraph 12 the PW3 claimed that he checked the voters' registers and the names that were ticked as accredited and voted and compared with the figures in Form EC8A/EC8B of respective polling units and Wards and he observed that in some polling units he identified in the statement, there was no accreditation of voters and the number of total votes cast was more than those whose names were verified by the Smart Card Reader and ticked in the appropriate boxes of the voters registers as accredited and voted. However, the PW3 did not tender any SCR report and made no specific reference to such particular voters' registers (from the pile of registers, though rejected as inadmissible) that were ticked, meaning they were just dumped on the tribunal. In paragraph 15, the PW3 claimed that in arriving at his analysis after the inspection, he inspected all Forms EC8A (where provided), voters accreditation data, Card reader reports, the voters'

registers provided by the INEC as well as all other forms; if only some Form EC8A were provided to the PW3, he has not shown the allowance made in his conclusions for those Form EC8As that he was not provided with, besides the fact that he later admitted under cross-examination the he did not make use of the SCR report in his analysis. In paragraphs 17 to 21 the PW3 demonstrated how he determined the invalid votes i.e. the actual number of accredited voters verified from the voters register for each polling unit was far less than the number of accredited voters on Forms EC8A/EC8B. Of course the voters' registers and Forms EC8A/EC8B tendered were expunged as inadmissible but even if they were admissible, evidence was not given to link each register to each Form EC8As/EC8Bs to illustrate the disparity in the number of accredited voters between them, a failure that suggests they were merely dumped on the tribunal. In the case of *Okereke v Umahi & Ors. (2016) 11 NWLR (Pt. 1524) 438 at 489* Kekere-Ekun JSC stated thus:

> Documentary evidence relied upon by a party must be specifically linked to the aspect of his case to which it relates. A party cannot dump a bundle of documentary evidence on a court or tribunal and expect a court to conduct an independent enquiry to provide the link in the recess of its chambers. This would no doubt amount to a breach of the principle of fair hearing.

Under cross-examination, the PW3 was referred to paragraph 15 of the additional statement on oath and asked if he stands by the deposition, and the witness answered 'yes', adding that he also examined the card reader report along with voters registers and INEC Forms but he was to later say what he discovered was based on his analysis of voters registers and Form EC8A, and that he did not make use of the card reader report. This admission makes any allegation of non-compliance based non-use of biometric accreditation a non-issue and breeds inconsistency in PW3's testimony. Asked if he took part in accreditation of voters in any polling unit, the PW3 claimed that he was a witness to accreditation process in all the units being challenged. We consider this incredulous, considering that

the PW3 admitted that there were nineteen polling units in Dutse Ward alone that were being challenged, and in fact inconsistent with paragraph 3 in the statement attached to the petition whereby he had stated he was at the collation centre. When it was put to the PW3 that the figures of total number of accredited voters, total number of valid votes and total number of excess votes as claimed in paragraphs 17(a) to 17(b) up to 20(h) of the petition are in variance to the figures given in the petition, a form of inconsistent claims, the PW3 merely replied he gave his figures based on his analysis. Now, was the PW3 giving evidence as an expert? As held by the Presidential Election Petitions Tribunal in *Atiku Abubakar & Anr. v INEC & Ors. (Supra)*, analysis and observations made by a witness based on Forms EC8A from polling units showing various acts of malpractices or non-compliance without calling eye-witnesses at the polling units lacks probative value.

The PW4 in paragraph 2 has stated that he was assigned as collation agent during the elections while in paragraph 5 he deposed that the results declared at the Ward collation Centre did not add up, particularly with respect to Igu and Dutse Wards after the supplementary election, alleging in paragraph 6 that this was the result of manipulation of voting results, multiple voting and over-voting during the supplementary election. In paragraph 7, the PW4 had deposed that the total number of voters on the voters register list for the supplementary election was 12,406 but after the election total votes cast for all the parties was 17,401, making a difference of 5,091 votes. Like the PW3, the above conclusion was made without reference to any known source. Under cross-examination, the PW4 said there are thirty polling units in Dutse Ward but it was only in one polling unit that supplementary election held in each of both Dutse and Igu Wards, giving the names of the polling units as Code 005 Gidan Bawa and Code 001 Igu Primary School. The PW4 was referred to paragraph 7 of his statement on oath and asked if the figure was from only the two polling units where the supplementary election held, he answered that it is from four polling units, comprising two in Kubwa and one each from Dutse and Igu Wards and all

the polling units in Kawu Ward (9 or 10, he says he was not sure); this of course is contrary to the PW4's earlier claim that it was only in two units that supplementary election held. He also said he cannot tell the number of registered voters in Kawu Ward or of the two polling units in Kubwa Ward or of each of the one polling units in Dutse and Igu Wards, thereby causing us to wonder how he then determined that there was over-voting. Of course, the PW4 was asked and he agreed that it was the results of the elections of the 9th and 23rd March that was merged to lead up to the final result declared as was indeed reflected in Form EC8C.

Our conclusion, therefore, is that neither the PW3 nor the PW4 has adduced evidence sufficient to bolster the petitioners' claims of corrupt practices, over-voting, multiple-voting, inducement of voters, inflation of election result figures, deliberate non-use of biometric accreditation and non-compliance with the Electoral Law.

Consequently, we find and hereby hold that the petition with Petition Number: FCT/ACET/EP/17/2019 filed by the petitioners lacks merit and it fails. It is accordingly hereby dismissed.

SAMUEL E. IDHIARHI ESQ.
CHAIRMAN
16th DECEMBER, 2019

I concur.

MOHAMMED ZUBAIRU ESQ.
MEMBER
16th DECEMBER, 2019

I concur

A.A. MOHAMMED ESQ
MEMBER
16th DECEMBER, 2019

REPRESENTATION:

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2ND RESPONDENT:	Chief Karina Tunyan (SAN)., with Alexander Moro Esq., Charles Ugwu Esq., Olufemi Isaac Esq., D.D. Tunyan Esq., and C.O. Nnadi Esq.
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