

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

**PETITION NO: FCT/ACET/19/2019
ON THE 16TH DAY OF JANUARY, 2019**

BETWEEN:

- | | | |
|-----------------------------------|---|----------------|
| 1. SULE ALI | } | --PETITIONER'S |
| 2. PEOPLES DEMOCRATIC PARTY (PDP) | | |

AND

- | | | |
|--|---|-----------------|
| 1. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC) | } | ---RESPONDENT'S |
| 2. ALL PROGRESSIVES CONGRESS (APC) | | |
| 3. MUSA SALEH | | |

JUDGMENT

(Delivered 16th January, 2020)

This is a petition challenging the election declaration and return of the 1st respondent as the councillor of kilankwa ward of Kwali Area council FCT held on 9th and 23rd March. 2019. At the end of the election the 3rd respondent, Independent National Election Commission (INEC) declared that the 1st respondent, Musa Saleh who contested under the platform of the 2nd respondent All Progressive Congress (APC) scored 1638 votes while the 1st petitioner Sule Ali under the 2nd petitioner (PDP) scored 160 votes, dissatisfied with the above result and return, the petitioner presented the present petition before the tribunal on 12th April, 2019.

There are two grounds upon which this petition is predicated upon, thus.

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

The petitioners pleaded facts to support the alleged non compliance with the electoral Act and that the 1st respondent did not score the majority of lawful votes cast at the election. Paragraph 26 to 61 of the petition contained those pleaded facts.

The reliefs being sought of the petitioner from this tribunal is contained in paragraph 62 and the petition as follows:

- 1. That it may be determined that the return of the 1st respondent as councilor of Kilankwa ward in the election held on 9th and 23rd March, 2019 is void for corrupt practices and substrings non compliance with the provision of the election Act 2010***
- 2. That it may be determined that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the councillorship election of Kilankwa ward of Kwali Area council Abuja.***
- 3. An order nullifying the declaration and return of the 1st and 2nd respondents as winners of the Kwali Area council councillorship election of Kilankwa ward held on 9th and 23rd March, 2019***
- 4. A declaration that the 1st petitioner is the winners of the councillorship election of Kilankwa ward in Kwali Area Council held on 9th and 23rd March, 2019 and is therefore entitled to be returned accordingly***
- 5. An order mandating the 3rd respondent to issue certificate of return to the 1st petitioner as the winner of the Kilankwa ward councillorship election held on 9th and 23rd March, 2019***

ALTERNATIVELY

- 6. An order for supplementary election to be conducted by the 3rd respondent for the office of the councillorship of Kilankwa ward in the two (2) voting points of Sheda Galadima 1 Primary School Code 004 and Sheda Galadima Code 004***

The petition was duly served on all the three (3) respondents in line with the provision of the law. All the three (3) respondents filed their respective replies to the petition wherein the petitioner further filed their petitioners reply to the respondents reply. Even though, the 1st and 2nd respondent filed separate replies their reply to the petition for all intent as purpose have similar input as seek to achieve one and same purpose.

We have painstakingly studied the facts pleaded in the petition Viz a viz the respondents' replies to the petitioners' reply. We shall consider those pleaded facts in line with evidence adduced in support thereof and the enabling laws.

It is important however to note that the 1st respondent's reply is accompanied with a notice of preliminary objection on the competence of the petition to the effect that the petition was filed in contravention with the electoral Act and it was not signed by either the petitioners or their counsel and no accompanying documents attached thereto. Another ground of the objection is non compliance with the mandatory provisions of section 27 and 31 of National Identity Management Commission Act.

Let me quickly deal with the objection before making further step. The law is trite that any process of court which is unsigned as required by the law or rules of court is incompetent and liable to be struck out ***WILLIAMS VS ADOLD/STAMM (2017) LPECR 41559 SC.***

The contention of the 1st respondent is that the present petition was not signed by either the petitioners or their legal practitioner cannot be true. Our careful perusal of the petition revealed clearly that same has been duly signed by Kenechukwu Azie Esq counsel to the petitioners. In fact he did not only sign the petition he affixed his NBA stamp as required by the rules of professional Conduct.

It is therefore our holding that the petition has complied with the provision of paragraph 54 of the 1st schedule to the electoral Act 2010 and the objection on this is hereby overruled.

Also on the issue of non compliance with the provision of section 27 and 31 of the National identity management commission Act, which requires the person filing any court processes to provide his or her national identity number (NIN). The apex court has put this issue to rest when it held that the provision of section 27 NIMC Act cannot apply to court processes as same not being part of the rules of court. APC VS MARAFA and Ors SC 377/2019

Consequently, the preliminary objection incorporated in the 1st respondent's reply lacks merit and is accordingly dismissed.

The petitioners, in their efforts to prove the petition called 3 witnesses and tendered numerous documents, which were admitted as Exhibits. The 1st

witness for the petitioners who testified as pw1 is Abdullahi Kaura whose witness statement on oath appears on pages 26-28 of the petition. He adopted his written statement on oath. This witness served as a polling unit agent of the 2nd petitioner at Sheda Galadima polling unit 004

He testified further that after election held on 9th March, 2019 and upon receiving the result of his polling unit in Form EC8A of Sheda Galadima Code 004 he observed that the total number of votes recorded for parties that participated in the election is 178 votes while the rejected votes is 4 and total accredited voters is 181 thereby resulting to over voting by one vote. That he complained to the presiding officers about the over voting but refused to take any action.

Dw1 testified during cross examination of the respondent that he did not sign Exhibits SA3 and SA14 but his colleague signed in his presence.

Mr. Haggai Barde was the 2nd person called by the petitioners as witness No: 2. His statement on oath was attached to the petitioners' reply to the 1st respondent's reply to the petition. However Mr Barde was already in the witness box and has been sworn in when an objection was raised. After listening to the arguments of all the counsel, the tribunal ruled that Mr. Haggai Barde cannot be allowed to testify since the petitioners have not complied with the provision of paragraph 10 of the 1st schedule to the electoral Act 2010 and accordingly since he was not listed as a witness, he was ordered out of the witness box.

The 1st petitioner Hon. Sule Ali is the 3rd and the last witness called by the petitioners. He testified as pw3 having adopted his witness statement on oath attached to the petition at pages 19-25 and 5-7 of the petitioners' reply.

In his evidence in chief, pw3 testified that he was a candidate of the 2nd petitioner in the election into the office of councilor Kilankwa ward Kwali Area council, Abuja held on 9th March 2019 and 23rd March, 2019. That election of 9th March, 2019 was conducted and concluded in a free and fair manner in all the 10 wards of Kwali Area council including the four (4) voting point of Sheda Sarki 1 primary school Code 005 and result were announced at the polling units at 6:20pm but the presiding officer refused to enter the excuse that it was already late and needed to go to the ward collation centre to fill the Form.

That at the ward collation centre, the results were not recorded in the appropriate Form and party agents and supporters demanding for the record and in the processes quarrel ensued. He further testified that the electoral officer announced that one of the card readers used in the election at Sheda Sarki 1 primary school code 005 got missing and the result of that polling unit has been cancelled.

It was the evidence of pw3 that the 3rd respondent fixed 23/03/2019 for supplementary election in Sheda Sarki 1 primary school and 30 minutes into the supplementary election some thugs numbering about 50 believe to be members of the 2nd respondent disrupted the election and smashed all the card readers. That the 3rd respondent, following the disruption of the supplementary election of 23/3/2019, proceeded to announce and declare the 1st respondent winner without having recourse to the result of Sheda Sarki 1 Primary School Code 005 on the 9/3/2019.

This witness was extensively cross examined by all the 3 respondents and non of the respondent called witness. They all decided to rest their cases on that of the petitioners. At the end of the hearing the tribunal ordered parties to file and exchange final written addresses.

The petitioner being the only party who called witness filed the written addresses first. It is dated and filed 17/10/2019 wherein three issues were identified for determination:

- 1. Whether the petitioners have placed sufficient and legally admissible materials before the tribunal to be entitled to all or any of the reliefs being sought in the petition.**
- 2. Whether the election for the office of the councillorship in Kilankwa ward Kwali Area council which held on 9th and 23rd March 2019 was conducted in compliance with the provision of the electoral Act 2010 as amended**
- 3. Whether the petitioners have lead sufficient evidence to lead to the cancellation of election in Sheda Galadima Code 004 VP and Sheda Galadima primary school VP code 004 in Kilankwa ward of Kwali Area council, FCT, Abuja.**

In his address the 1st respondent whose address is dated and filed 25/10/2019 identified one issue for determination:

1. Whether the petitioners have led sufficient and credible evidence in this petition to be entitled to the relief sought.

Also the address of the 2nd respondent dated and filed 25/10/2019 submitted one issue for determination:

1. Whether from the pleading and totality of the evidence led in this petition the petitioners have proved their case to be entitled to the relief sought.

While the 3rd respondents' final written address dated and filed 24/10/2019 identified 3 issues for determination:

1. Whether the petitioners have placed sufficient and legally admissible material before this tribunal to be entitled to all or any of the reliefs being sought in the petition.

2. Whether the election for the councillorship in kilankwa ward Kwali Area council which held on 9th and 23rd March, 2019 was conducted in compliance with the provision of the electoral Act 2010 as amended.

3. Whether the petitioners have led sufficient evidence to lead to the cancellation of election in Sheda Galadima code 004 in Kilankwa ward Kwali Area council, Abuja.

Well from the totality of the evidence adduced and the submission of all the counsel of the parties it is apparent that the 3rd respondent merely adopted the 3 issues formulated by the petitioners while the lone issue identified by both the 1st and 2nd respondent are so similar and identical to the 1st issue formulated by the petitioners. In other words, all the issues identified by all the parties can conveniently be dealt with by treating the issues identified by the petitioners.

It is our understanding that the petitioners have issues with regards to the result of Sheda Galadima Code 004 and Sheda Sarki 1 primary school code 005. The petitioners in paragraph 8-19 of the petition pleaded facts alleging unlawful cancellation of election result of Sheda Sarki primary school Code 005 while paragraph 27 to 35 are facts relating to over-voting in Sheda Galadima and Sheda Galadima primary school Code 004.

It was submitted on behalf of the petitioners that it is only polling unit officer can validly cancel the polling unit result and not other person cited

IKPEAZU VS OTTI (2016) 8 NWLR 1513 38 the petitioners further submitted that the collation officer of the 3rd respondent under whatever guise does not possess the power to cancel an election result declared by the presiding officer at a polling unit.

All the three respondents are ad idem that the result of Sheda Sarki 1 primary school code 005 was cancelled at the ward collection centre, due to the restiveness of the petitioners' supporters. see paragraph 3 of the 1st respondent reply to the petition while the 2nd respondent conceded that the election was cancelled at the ward collection centre due to the irregularities in the result. See paragraph 2 of the 2nd respondent reply. We shall in due cause come to the issue of this cancellation and its appropriateness or otherwise.

Pw1 and pw3 testified before this tribunal that after the election of 9th March, 2019 in Sheda Galadima the total number of votes recorded for all the parties in the election is 178 votes while rejected voters is four (4) and the total number of accredited voters is 181 therefore if the total valid votes cast of 178 is added to the rejected votes which is four (4) will give the total as 182 thereby showing there was over voting occurred by one vote.

To support this, the petitioners tendered the certified true copy of INEC Form EC8A (1) VP (Exhibit SA3) and the duplicate copy of the same Form with serial No: 0002701 as Exhibit SA14. Both Exhibits are statement of result of poll from voting point Code 004 and were tendered through pw1. When cross examined, pw1 confirmed that he did not sign Exhibit SA3 and SA14 since he was not an INEC accredited agent but agent sent by his party. Also Exhibit SA 15 and SA16 are CTC and duplicate copy of Form EC8A (1) VP with serial NO: 0002701 tendered by the 1st respondent through pw1 during cross examination.

The respondent attacked the competence of the pw1 to get these exhibits tendered through him or give evidence concerning same since he is not the maker of the document and was not a polling agent. Cited section 45 (1) electoral Act, ***BUHARI VS OBASAJO (2005) 13 NWLR 941 and GUNDIRI VS NYAKO (2014) 2 NWLR 139,211***

Over voting occurs in either of two situation namely as provided under section 53 (2) election Act 2010 as amended and paragraph 23 of the 2019 INEC manual and guideline for election.

Section 53 (2) reads,:

Where the votes cast in an election in any polling unit exceed the Number of registered voters in that polling unit the result of Election for that polling unit shall be declared null and void"

It is obvious from our analysis of the Exhibits before us, the total number of votes cast is less than the total number of registered voters which is 500. Therefore, the petitioners failed to prove over voting as envisaged under section 53 (2) electoral Act. As for the 2nd situation where over voting may occur under the INEC Manual and guideline for election 2019. Paragraph 23 (b) provide " where the total number of votes cast at a polling unit exceeds the number of accredited voters the outcome of the election shall be declared null and void and a report in that regard shall be made to the collation officer.

Exhibits SA3 and SA 16 are CTC of INEC Form EC8A (1) VP with serial NO: 0002701 while Exhibit SA14 and SA15are duplicate copy of the same form with the same serial numbers. According to these Exhibits, the total number of the voters on the register is 500 while no. of accredited voters is 181, rejected ballots is 4 except in Exhibit SA16 where 4 was initially canceled and replaced with 3. However, from the 4 documents marked as Exhibits SA3, SA14, SA15 and SA16 the scores of all the 4 political parties are the same without any cancellation or alteration. The scores are:

- 1. APC=99**
- 2. PDP=51**
- 3. APGA=27**
- 4. JMPP=1**

The total number of valid votes stand at 178 the only area where the petitioners raised concern is the number of rejected votes which is 4 and if 4 is added to the total number of valid votes the result will be 182 which number exceeds the total number of accredited votes (181) thereby an over voting of one vote has occurred.

The petitioners urge us to hold that there is over voting which affects the result and ought to be cancelled.

Having carefully examined the oral testimonies of the petitioners' witnesses and the documentary evidence adduced before this tribunal, we are satisfied that the petitioners have failed to establish the case of over voting at Sheda Galadima polling unit Code 004, we therefore so hold.

As for Sheda Galadima Primary school code 004 the petitioners contended that a case of over voting has occurred. The petitioners further alleged that there were obvious incidence of alteration, cancellation and variations_of figures in Form EC8A (1) VP for Sheda Galadima primary school see paragraph 28 of the pw3 witness statement on oath. Exhibit SA4 was tendered by the petitioners.

In the same vein, Exhibit SA17 which is the CTC and duplicate copy of Form EC8A (1) VP with Serial NO: 0002700 tendered by the 1st respondent during cross examination of pw3. Both Exhibit SA4 and SA17 are one and the same Form with same serial number. The total number of registered voters for Sheda Galadima primary school VP Code 004 is 500 while the accredited voters is 210 and the total valid votes is 205. In the same Exhibit SA4 and SA17 the six political parties that participated in the election had the following scores:

- 1. APC=98**
- 2. PDP=84**
- 3. APGA=20**
- 4. ADC=1**
- 5. ANRP=1**
- 6. FJP=1**

The above represents the total valid votes and the number of rejected votes is 5.

It was submitted on behalf of the petitioners that the allegation of over voting has been established if the figures that represents over voting is removed would result in victory for the petitioners. In support of this, the authority of ***YAHAYA VS DANKWAMBO (2016) A FWLE 838 942*** was cited

We believe strongly that the authority of *Yahaya Vs Dankwambo* (Supra) has set the standard for any petitioner challenging an election result on over voting. The following are conditions to be met by petitioner in order to succeed in his claim of over voting, thus:

- (a) The petitioner must tender the voters register.
- (b) He must tender in evidence the statement of result in the appropriate Forms which would show the number of registered accredited voters and ,
- (c) He must relate each of the documents to the specific area of his case.
- (d) He must show the figure representing the over voting if removed would result in victory for the petitioners.

Exhibits SA 10, SA11, SA12 and SA13 are voters register tendered by the petitioners in satisfaction to the requiring (A) above. Also the requirement of tendering the statement of result in appropriate Forms has been complied with looking at Exhibits SA3, SA4 SA14, SA15 and SA16. However, we strongly believe that the evidence of Pw1 and Pw3 fall short the standard required to establish over voting. Both witnesses have confirmed, when confronted during cross examination that there was no over voting based on the Exhibits tendered.

We must at this stage commend the industries of the learned counsel for their brevity, intellect and sagacity exhibited in their respective written addresses. All of you have done a good job. The importance of addresses of counsel cannot be over emphasized is our adjudicatory system, as important as addresses of counsel, it must be based on the evidence on record and same cannot be used as substitute for the adduced evidence. Legal battles in court are won by the strength of evidence and not by the brilliance in counsel addresses ***AGADI VS PDP (2018) LPELR 44375SC***

The tribunal is obliged to only consider the available evidence presented before it and decide the issues in dispute. Pw1 in his evidence in chief informed this tribunal that Exhibit SA3 was issued to him by 3rd respondent but during cross examination he admitted not being an agent accredited by the 3rd respondent as Exhibit SA5 has revealed. It is our opinion that pw1

could not have been issued with Exhibit SA3 by the 3rd respondent since he was not accredited to serve as a polling agent. And it is obvious he did not sign the Exhibit but his colleague signed.

Also pw3 admitted that he did not sign any of the result (Exhibit) but signed by the party agent. Pw3 further during cross examination by the 2nd respondent counsel admitted that from the result he tendered there was no over voting but only that the rejected votes is suppose to be 35 and not 5 as indicated.

It was submitted by the respondent that the petitioners' witnesses are not qualified to testify on the polling units result since they have admitted before the tribunal that they were not INEC accredited agents. This contention of the respondent is far from being the correct position of the law. The qualification or otherwise to give evidence in a law court is regulated by section 175 evidence Act and we do not think both pw1 and pw3 suffer from any deficiency to prevent them to testify before the tribunal. Evidence has so far been adduced to prove that both at one point or other were at the polling unit which they testified on. We therefore hold, they are competent witness and testify but whether their testimony will attract any probative value or not is completely different from their competence ***ADAMU VS ALELE (2018) LPELR 45374 CA***

Having said this, we have the firm belief and opinion based on the evidence adduced before this tribunal in support of over voting, the petitioners have failed woefully to establish the allegation of over voting at Sheda Galadima and Sheda Galadima primary school code 004

There is always the presumption of correctness of the result declared by INEC in any given election and the onus is on the petitioners to prove the contrary. ***UCHA VS ELECHI (2012) 13 NWLR 13, 300***

The respondents did not call witness in defence of the petition while the petitioners made it an issue that the respondents' failure to call witness amounts to abandonment_of their pleadings and admission of the claim of the petitioners. The law has since been settled that any party seeking declaratory reliefs must succeed on the strength of his case and not on the failure of the respondent to call evidence. In a situation at hand where the petition anchored their case on non compliance on over voting, it is only when the

petitioners have established the non compliance and the non compliance has affected the result then it becomes necessary for the respondents to lead evidence in rebuttal ***EMMANUEL VS UMANA (2016) LPELR 40659 SC***

We do not see why the results declared by the 3rd respondent as regards Sheda Galadima and Sheda Galadima primary school code 004 should be disturbed as evidence in Exhibit SA3, SA14, SA15, SA16, SA4 and SA17. The said result were signed and endorsed by the agents of the petitioners. The petitioners never alleged that those agents signed those results under duress or coercion therefore we assume they voluntarily signed them. In this, we heavily rely on the authority of ***ABDUMAIK VS TIJJANI (2012) LPELR 19731 CA***. the case of over voting has failed.

Somewhere in the judgment, we pledged to return to the issue of cancellation of results of Sheda Sarki 1 primary school code 005. Now we shall address the issue. We did say all the respondents are in agreement with the petitioners that the result of Sheda Sarki 1 primary school code 005 was cancelled and the 3rd respondent did not make recourse to it and slated a supplementary election on 23/3/2019 wherein the supplementary election was aborted.

The petitioners in paragraph 13 of the petition aver that while at the ward collation centre of Kilankwa ward of Kwali Area council the collation officer announced the cancelation of the result of Sheda Sarki 1 primary school code 005 and new date for supplementary election will be commutated. Paragraph 14 and 15 of the petition are averments to the effect that supplementary election was fixed for 23/3/2019 but was aborted 30 minutes into the election. The 1st respondent conceded in his paragraph 7 of the reply to the petition that the petitioners having realized they lost the election of Sheda Sarki 1 primary school became restive and mobilized thugs to disrupt the process of recording the result into the appropriate Forms, carted away some electoral maternal thereby resulting in the 3rd respondent to cancel the result of Sheda Sarki 1 primary school.

Also 2nd respondent made similar averment in paragraph 6 of its reply to the petition adding that the returning officer cancelled the result of Sheda the petition states that the inability of the presiding officer of Sheda Sarki

primary school to reconcile the figures entered in Form EC8A make it to cancel the result at collation centre.

It is obvious that both the petitioners and the 3rd respondent are unanimous that the election of Sheda Sarki 1 primary school was cancelled. It was also agreed that the said cancellation was done at the ward collation centre except the 1st respondent who did not mention collation centre.

Exhibit SA9 is the INEC declaration of result of election Form EC8E (1) SN 00000010. This is the documents the 3rd respondent used and declared the winner of the election of Kilankwa ward councillorship election wherein the two leading candidates (1st petitioner scored 1604 votes while the 1st respondent got 1638 votes) it was dated and signed on 23/3/2019 the date of supplementary election.

What is so very clear and not in dispute is the fact that the result of the election in Sheda Sarki primary school 1 code 005 held on the 9th March, 2019 was not included in Exhibit SA9 which is the first result for Kilankwa councillorship election in Kwali Area council. The central issue now is the appropriateness or otherwise of the cancellation of the result of Sheda Sarki 1 primary school.

The petitioners submitted that the collation officer had no such power under the law to cancel election of a polling unit cited *IKPEAZU VS OTTI (Supra)* the respondent though argued that the cancellation was proper and same still stand.

The issue of cancellation of election result has been a matter of law. Paragraph 2 of the INEC Guidelines in conduct of election 2019 provides:

“ For a polling unit where election is not held or is cancelled or poll is declared null and void in accordance with these regulation the presiding officer shall report same in writing to R/A ward collation officer explaining the nature of the problem and the collation officer shall fill Form EC406 if applicable.

From the above provision, it presupposes that election result of a polling unit is only cancelled at the polling unit by the presiding officer who shall only make a report to the collation officer explaining the problem that resulted in the cancellation of the result. We have diligently read the authority of *IKPEAZU VS OTTI (Supra)* and cited by the petitioners and some other

judicial authorities on the subject which include the most recent one of ***UJONG VS ANOR VS WILLIAMS AND ANOR (2019) LPELR 48718 CA*** and what we find there is the fact that the law only recognizes a presiding officer of a polling unit to have the power to cancel election result of the polling unit and no other officer of the 3rd respondent.

By virtue of section 75 of the evidence Act 2011 facts admitted needs no further proof since the respondent have all admitted that the cancellation of the result of Sheda Sarki 1 primary school of 9th March, 2019 was done at the collation centre. It is absolutely unnecessary to require any further evidence to prove that ***UBA VS JARGABA (2017) LPELLR CA***

Where a law directs an act to be performed in a particular manner if such act is performed in a manner other than the manner prescribed by law it is ***null*** and ***void*** and of no effect. ***JOHNSON VS MOBIL PRODUCING UNIT (2009) LPER 8280 SARDKI VS FRN (2018) 16 NWLR 16X6 423***

Having considered all these facts and the enabling laws, we strongly hold that the cancellation of the result of Sheda Sarki 1 primary school code 005 of Kilankwa ward Kwali Area council held on the 9th March, 2019 was not in compliance with the law and therefore unlawful. The said cancellation is accordingly set aside.

Evidence has shown there are four voting points in Sheda Sarki 1 primary school code 005 However, the result of these voting points have not been tendered before this tribunal. However Exhibit SA7 and SA 8 tendered by the petitioners are Form EC8B (1) (Summary of result Form polling units) serial NO: 0000001 and Form EC8B (1) serial NO: 000004. In both Exhibits the total number of registered voters in Sheda Sarki 1 primary school is 1794

A critical analysis of Exhibit SA7 will show that there are 12 polling units which make up Kilankwa ward of Kwali Area council. Also important on Exhibit 7 is that all the 12 polling units have been stated indicating the total registered voters and the votes each political party scored. However, for Sheda Sarki 1 primary school it was only number of registered voters 1794 that was written while no scores for individual political parties. Thereby confirming that the result of Sheda Sarki 1 primary school code 005 was not included.

Having set aside the cancellation of result of Sheda Sarki 1 primary school upon which the declaration and return of the 1st respondent was predicated and having placed before us the number of registered voters in the said polling unit as 1794 which is far in excess of the difference between the two candidates with the highest votes at the election. It is on record APC scored 1638 votes while PDP has 1604 votes.

In a situation like this, paragraph 33 (c) of the INEC guideline 2019 comes handy to resolve the situation. It provides:

“Where the margin of lead between the 2 leading candidates in an election is not in excess of the total number of the voters registered in polling units where elections are held or voided in line with sections 26 and 53 of the electoral Act, the returning officer shall decline to make a return until polls have taken place in the affected polling units and the result collated into the relevant Forms for declaration and return. This is the margin of lead principle and shall apply wherever necessary in making return of all elections to which these regulations and guidelines apply”

It is not in dispute that the margin between the votes scored by Musa Saleh of APC and Sule Ali of PDP was 34 votes which was far less than the 1794 number of registered voters of the 4 voting point of the Sheda Sarki 1 primary school polling unit where the election was unlawfully cancelled.

It is our firm and strong opinion that based on the clear provision of paragraph 33 of the INEC guidelines for election the declaration and return of the 1st respondent was wrongful. Based on this, we hold that the election of councillorship into Kilankwa ward of Kwali Area council is and remain inconclusive. To have a clear winner of the said election, a re-run election must be held in the polling unit code 005.

Consequently having set aside the unlawful cancellation of the result of code 005 polling unit also having declared that the election of councillorship Kilankwa ward Kwari area council is inconclusive an order is hereby given to the 3rd respondent to organize and conduct a supplementary election at the 4 voting points of Sheda Sarki 1 primary school code 005 in Kwari Area council within 90 days from today.

Therefore issue one (1) is answered in the affirmative while issues two (2) and three (3) are answered in the negative. This is the judgment of the tribunal and we make no order as to cost.

HON. MOHAMMAD ZUBAIRU
MEMBER
16th January, 2020

PETITION NO: FCT/ACET/EP/03/2019

I concur with the lead Judgment

CHIEF MAGISTRATE SAMUEL E. IDHIARHI
CHAIRMAN
16TH January 2020

PETITION NO: FCT/ACET/EP/03/2019

I concur with the lead Judgment

HON. A. A. MUHAMMAD

MEMBER

16TH January, 2020

Appearances:

- Okechukwu Edeze Esq., with Ikenechukwu Azie Esq., Aliyu D. Hussain Esq., Adegoke Kayode Esq., Chioma Okereke Esq., Mustapha Suleiman Esq, and Sandra Ozoemena Esq. for the petitioners

- T.R. Abbanyi Esq., with P.A. Joseph Esq., H.A. Matubji Esq., Morria Chijioke Duru Esq., and Firdausi A. Ahman Esq. for the 1st respondent

- A.D. Zubairu Esq. with S. Mohammed and E.E. Ben-Ebong for the 2nd respondent

- Emeka G. OwabieEsq., with Abdulaziz Sani Esq., Franca Osagiede Esq. and Kodobe Zainab Esq. for the 3rd respondent.