

**IN THE FCT AREA COUNCIL APPEAL TRIBUNAL
HOLDEN AT ABUJA
BEFORE THEIR LORDSHIPS**

**HON. JUSTICE SULEIMAN BELGORE
HON. JUSTICE YUSUF HALILU
HON. JUSTICE JUDE O. ONWUEGBUZIE**

**CHAIRMAN
MEMBER I
MEMBER II**

**PETITION NO: FCT/ACET/EP/18/2022
APPEAL NO: FCT/ACEAT/AP/29/2022**

DATED: 20th Day of OCTOBER, 2022

BETWEEN:

**1. DANIEL JOSEPH
2. ALL PROGRESSIVE CONGRESS (APC)**

APPELLANTS

AND

**1. BIKO GEDE HANANIA DANLADI
2. PEOPLES DEMOCRATIC PARTY (PDP)
3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)**

RESPONDENTS

JUDGMENT

This appeal concerns the judgment of the FCT Area Council Election Petition Tribunal, Coram, Chief Magistrate Muinat Folashade Oyekan, Chief Magistrate Ahmed Mohammed Ndajiwo and Kimi Livingstone Appah, Esq. delivered on the 25th day of August, 2022 in petition No: PET/ACET/EP/18/2022 Between: DANIEL JOSEPH & Anor Vs. BIKO

GEDE HANANIA DANLADI&2Ors. (see pages 566 – 678 of the Record of Appeal).

Facts leading to the appeal can be summarised as: on the 12th day of February, 2022, the 3rd Respondent, Independent National Electoral conducted Counsellorship Election for Yenche Ward of Kuje Area Council of the FCT. At the Election, the 1st Appellant was the candidate of the 2nd Appellant. The 1st Respondent was candidate of the 2nd Respondent. At the end of the Election, the 3rd Respondent declared the 1st Respondent, candidate of the 2nd Respondent winner of the said Election.

The Appellant dissatisfied with the result of the Election, filed a Petition dated the 4th day of March, 2022 before the Honourable Trial Tribunal. See pages 1 – 31 of the record of Appeal. The Grounds of the Petition were:

1. The 1st Respondent was not duly elected by majority of lawful votes
2. The election was invalid by reason of corrupt practices.
3. The election was invalid by reason of non-compliance with the Electoral Act.

The Petitioners then prayed the Trial Tribunal for the following reliefs:

1. That the return of the 1st Respondent as councilor of Yenche Ward Kuje Area Council be nullified.

2. That the Supplementary Councillorship election in Yenche Ward. Kuje Area Council be conducted in Chief Palace Yenche Space and Yenche Primary School Polling Units. See pages 3-5 of the records of appeal.

1st and 2nd Respondents filed a joint Reply dated and filed 4th day of April, 2022. See pages 32 -46 of the Record of Appeal. The 3rd Respondent filed a Reply dated and filed 12th day of April, 2022. See pages 47-56 of the Record of Appeal.

The Trial Tribunal on the 25th day of August, 2022 delivered its judgment and dismissed the Petition of the Appellant see pages 212 – 225 of the records of appeal.

Dissatisfied with the judgment of the Trial Tribunal as it contained at pages 212 -226, the Appellant now filed this instant appeal with Appeal No. FCT/ACEAT/AP/29/2022, dated and filed on the 14th day of September, 2022. See pages 227-232 of the records.

The Notice of Appeal is predicated on six (6) Grounds to wit:

GROUND ONE

The Trial Tribunal erred in law when it discountenanced the objection of Appellants to the admissibility of Exhibits D1, D2, D3, and D4.

PARTICULARS

- i. By the provision of paragraph 12(3) of the First Schedule to the Electoral Act, it is mandatory for the Respondents to front load documents they intend to rely on their reply to the Petition.

- ii. By the provision of paragraph 141(8) of the Electoral Act, no document, plan, photograph or model shall be received in evidence at the hearing of a petition unless it has been listed or filed along with the petition in the case of the Petitioner or filed along with the reply in the case of the Respondent.
- iii. The document not front loaded by the Respondent are not admissible in evidence.

GROUND TWO

The Trial Tribunal erred in law when it refused to strike out the Replies of the 1st, 2nd, and 3rd Respondents for failing to accompany copies of the documentary evidence, list of witness and witness statement on oath.

PARTICULARS

- i. By the provision of paragraph 12(3) of the First Schedule to the Electoral Act, it is mandatory for the Respondents to front load documents they intend to rely on their reply to the Petition.
- ii. By the provision of paragraph 141(8) of the Electoral Act, no document, plan, photograph or model shall be received in evidence at the hearing of a petition unless it has been listed or filed along with the petition in the case of the Petitioner or filed along with the reply in the case of the Respondent.

GROUND THREE

The Trial Tribunal erred in law when it held that the testimony of PW3 and PW4 that INEC official told them that BVAS Machine was not working amounted to hearsay.

PARTICULARS

- i. INEC officials operated BVAS Machine on the day of the election.
- ii. PW3 and PW4 stated that they are unable to vote as a result of failure of the BVAS.

GROUND FOUR

The Trial Tribunal erred in law when it held at page 11 of its judgment that the evidence of PW1 and PW2 supported the case of the Respondents.

PARTICULARS

The evidence of PW1 and PW2 support the case of the Appellant and not that of the Respondents.

GROUND FIVE

The Trial Tribunal erred in law when it dismissed the Appellants' Petition.

PARTICULARS

The Appellants proved their case.

GROUND SIX

The judgment of the Federal Capital Territory Area Council Election Tribunal is against the weight of evidence adduced at the trial.

Where in the Appellants sought the following reliefs:

1. An Order of this Appeal Tribunal setting aside the decision of the Trial Tribunal discountenancing the objection of the Appellants to the admissibility of the Exhibit D1, D2, D3, and D4.
2. An Order of this Appeal Tribunal setting aside the decision of the Trial Tribunal refusing to strike out the Replies of the 1st, 2nd, and 3rd Respondents for failing to accompany copies of documentary evidence, list of witness and witness statement on oath.
3. An Order of this Appeal Tribunal setting aside the decision of the Trial Tribunal dismissing the Petition.
4. An Order of this Appeal Tribunal granting the reliefs sought in the petition. See pages 227-232 of the records of appeal.

The Appellants on the 14th day of October, 2022 filed their Appellants' Brief of Argument. On the 18th day of October, 2022 the 1st and 2nd Respondents filed their Joint Respondents' Brief.

On the 19th day of October, 2022 when this Appeal was slated for hearing the learned Appellants' Counsel Mr. Sarafa Yusuf Esq., moved motion no. M/13/2022, praying the Appeal Tribunal to depart from the provisions of Order 22 of the Federal High Court (Civil Procedure) Rules, 2019, applicable Rules of Court, providing for time within which

parties would file their respective Written Briefs of Argument in this Appeal. And a deeming Order. The motion also prayed for the abridgement of time within which the Respondents in this appeal will file their respective Briefs of Argument. In the absence of objection from all the Respondents in this appeal, the said motion was granted and the Appeal was immediately set down for hearing.

The Learned Counsel to the Appellant Mr. Sarafa Yusuf Esq., adopted his Appellants' Brief placed reliance on the said Brief and urged the Appeal Tribunal to allow the Appeal and set aside the judgment of the Trial Tribunal. When asked to adumbrate by this Tribunal, he opted to reserve it during reply on points of law.

Mr. Okoye Esq. learned Counsel for the 1st and 2nd Respondents equally adopted their Joint Respondents' Brief and urged the Appeal Tribunal to dismiss the Appeal and affirm the declaration of the 1st and 2nd Respondents.

By way of adumbration, Mr. Okoye Esq. submitted that this appeal centered essentially on the two polling units; Chief Palace Yenche Space and Yenche Primary School Polling Units. That the Appellants' complain was that there was no election in these two Polling Units. That BVAS machine stopped working midway thereby preventing potential voters on the queue from voting. But during Cross-Examination contradicted themselves through their witnesses. That they were not the ones that operated the BVAS it was INEC officials. That they did not

know how the BVAS works. The Exhibit P6 tendered by the Petitioners could not lead to credible evidence to prove the petition. He then urged the Appeal Tribunal to dismiss this appeal and affirm the declaration of the 1st and 2nd Respondents as declared by the 3rd Respondent.

The Appellants' Counsel Mr. Sarafa Yusuf Esq., by way of reply on points of law due to the service of the Respondents' Brief on him this morning being the 19th day of October, 2022, the day fixed for the hearing of this appeal, submitted that yes he agrees that the Petitioner must succeed on the strength of his case not on the weakness of the Respondents case, that which they have done at the Trial Tribunal. But they do not agree with the Trial Tribunal that only the trained INEC staff can operate, know the functionality of the BVAS and be able to testify in that regard. Secondly, they do not agree with the Trail Tribunal that they did not prove their case. That the PW4 said at page 190 of the records of Appeal that election stopped half way due to the malfunction of the BVAS and many voters including himself could not vote, yet the Trial Tribunal said the Evidence was hearsay. That paragraph 43(i) of the Respondents' Brief of Argument at page 11 supported their case. He then urged the Appeal Tribunal to allow the appeal.

The 3rd Respondent INEC did not file any Brief and then left it at the discretion of the Appeal Tribunal.

The appeal was then adjourned to the 20th day of October, 2022, which is today for judgment.

Having gone through both written and oral submissions of both counsels, there will be no need to reproduce verbatim the written submissions of both counsels in this appeal but references would be made where necessary.

The Appellants in their Brief formulated two issues for the determination of the Appeal Tribunal. The Respondents adopted the two issues formulated by the Appellants' Counsel.

This Tribunal finds it proper also to adopt the two issues formulated by both parties to this appeal as the two issues center on the crux of the issues to be resolved in this appeal.

The issues are thus:

1. Whether the Trial Tribunal was right when it admitted and placed reliance on Exhibit D1, D2, D3, and D4 which were not front loaded and tendered without leave of the Trial Tribunal. (Distilled from Grounds 1 and 2 of the Notice of Appeal).
2. Whether the Trial Tribunal was right when it held that the Appellants failed to prove their petition and when it proceeded to dismiss the Petition. (Distilled from Grounds 3, 4, 5, and 6).

On issue one above the Appellants argued that the Respondents breached the provisions of paragraph 12(3) of the First Schedule in the Electoral Act 2010 (as amended) and paragraph 41(8) of the First Schedule of the Electoral Act 2010 (as amended) having failed to front load the above documents. That Exhibits D1, D2, D3, and D4 ought not

have been admitted because the said documents were not front loaded and the Respondents did not seek the leave of the court before tendering them. While the Respondents contend that the Appellants misconceived the law, that at paragraph 12 of the 1st Respondents Reply to the petition at page 33 of the records of appeal, the 1st and 2nd Respondents pleaded all the Forms EC8A (1) and every other document used in the conduct of the election at Yenche Ward of Kuje Area Council Councillorship Elections held on the 12th day of February, 2022.

Without dissipating much energy on this issue, this Appeal Tribunal has settled this same issue in Appeal No.: **FCT/ACEAT/AP/10/2022** in **PDP & 1OR v. APC & 2ORS unreported**. This Panel extensively dealt with the issue in the above cited case. Let us still refresh your mind if you have forgotten or you were not privileged to be present on the day this Honourable Appeal Tribunal delivered the above judgment. We re-emphasis thus:

We have considered all the submissions. It is our firm view that Exhibits D1 - D47 were rightly admitted in evidence by the Lower Tribunal despite not being front loaded as it were in the Reply to the petition. Why did we say so? The documents are all relevant documents. Relevancy, we all know governs admissibility. The documents were well pleaded even though not attached to the Reply to the petition. Since facts relating to

them were well captured in the Reply, front loading them becomes a suplusage.

This Appeal Tribunal held further that:

We agree with Chief Karina Tunyan SAN, that front loading is not a requirement for admissibility of documents. The learned SAN put it admirably thus at paragraph 1.20, page 6 of their Brief of Argument:

"It is our submission that the Evidence Act did not make any provision to the effect that if a document is not frontloaded, same will not be admitted in evidence. The law is that rejecting a document in evidence solely on the ground that same was not frontloaded will occasion a substantial miscarriage of Justice. See the case of CHIME VS. EZE (2008) 2 LRECN 673 at 744-745. See also the case of MINISTER OF WORKS, HOUSING & URBAN DEVELOPMENT & ORS. VS. OGUNGBE (2018) LPELR - 45977 (CA) Pages 35-36"

We need not say further or elaborate more on this Issue One. It is not fair on the side of the Respondents Counsel to have received this judgment and still went ahead to drag this Appeal panel this long on this same issue that we have settled in an appeal he prosecuted. But we believe by now that it is clear as day daylight to Mr. Sarafa Yusuf that the mere fact that a document is not frontloaded if pleaded does not

make it inadmissible. This was the holding of the Supreme Court in ABUBAKAR VS. INEC (2020) 12 NWLR (PT. 1737) 37 @ 155 paras. C-D. Therefore, the argument that Exhibits D1, D2, D3, and D4 are inadmissible on the ground that they were not frontloaded if pleaded is no longer the law. In the circumstance we resolve issue one against the Appellants in favour of the 1st and 2nd Respondents.

On issue Two, Whether the Trial Tribunal was right when it held that the Appellants failed to prove their petition and when it proceeded to dismiss the Petition. (Distilled from Grounds 3, 4, 5, and 6).

It was the argument of the Appellants that as evidence before the Tribunal amply demonstrate that the election and return of the 1st and 2nd Respondents was not in substantial compliance with the provisions of the Electoral Act and was, in fact in gross violation of the Electoral Act. The Appellant further complained that the 1st Respondent was not duly elected by majority of lawful votes cast at the election and that there was non-compliance with the Electoral Act,2010 (as amended). the case of the Appellant are as follows:

- i. That at Chief Palace Yench Open Space Polling Unit: the number of Registered Voters in the Polling Unit is 115. That the BVAS Machine did not work. Some Voters insisted that manual accreditation be done and this resulted in serious fight at the Polling Unit. That there was no election at this Polling Unit.

- ii. That in Yenche Primary School Polling Unit: That this is a strong hold of the APC. At this Polling Unit, after accreditation of some voters, the BVAS machine stopped working. Many registered voters on the queue could not cast their votes as a result of this. That the problem was not rectified till the end of the voting period. The number of the registered voters at this unit is 1,225. INEC Officials counted the numbers of the votes already casted and declared the following result: APC=175, PDP=162 and ADC=1.

The Appellants Counsel further contended that where BVAS machine stopped working midway thereby preventing potential voters on voting queue from voting or where election was not concluded, supplementary election should be ordered particularly where the number of registered voters in such polling unit is more than the margin of lead between the two leading candidates at the election. That the Appellant called 4 witnesses in support of their claim who gave credible, factual testimonies that stood firm under the weight of rigorous cross-examination. That there is strong weight of the documentary evidence adduced by the Appellant. That among the document tendered are: Certified true Copies of Form EC8B(I) and EC8E(I) admitted as Exhibit P6 and P7 respectively. The Appellants also tendered Certified True Copy of Manual for Election Official, 2022 and same was admitted as Exhibit P8. Voters Register for Yenche Primary School was tendered by the Appellant through DW2 and same was admitted as Exhibit D5 see

pages 193 and 203 of the records of appeal. The Appellants cited the following cases BUHARI V. OBASANJO (2015) 2 NWLR (pt. 910) 241 at 518, OMOBORIOWO V. AJASIN (1984) 1 SCNLR 108 and INEC V. OSHIOMOLE (2009) 4 NWLR (pt. 1132) 607 at 670-671 paras. G-B. More argument on this issue can be found at pages 9 – 15 of the Appellants' Brief of Argument.

The 1st and 2nd Respondents on their own part contended on issue two that the election of the 1st and 2nd Respondents was in full substantial compliance with the provisions of the Electoral Act. That a critical examination of the evidence laid on record by the Appellant is evident that not an iota of evidence was led by the Appellant to the effect that the 1st and 2nd Respondents and the 3rd Respondent were in any way connected to or involved in corrupt practices in the election to the Office of Councillorship for Yenche Ward, Kuje Area Council FCT Area Council Election held on the 12th February, 2022. That the evidence of the entire witness called by the Appellant PW1 –PW4 as contained at pages 176 – 191 of the records of Appeal was discredited during the trial. The 1st and 2nd Respondents' Counsel further submitted that the testimonies of the Appellants' witnesses are not credible, but was discredited during cross-examination. That the evidence adduced by the PW1 – PW4 did not support the case of the petitioner same having been so discredited, and in the legal realm of hearsay evidence, since mostly, their stand that BVAS did not work was majorly founded on the

information given by a third party. It was the case of the 1st and 2nd Respondents that he who asserts must prove his assertion they cited the case of BUHARI & ANOR. V. ADEPOJU & ORS (2015) LPELR-41704 (CA) pages 27-28 parag. C-B. That also, it is trite principle of law that the Appellants succeed on the strength of their own case, not on the weakness of the 1st and 2nd Respondents' case. That it is also settled that where a party seeks a declaratory relief, the burden of proof is on him to succeed on the strength of his own case and not on the weakness of the defence. That declaratory relief will not be granted, even on admission made by the adverse party. They cited that cases of **HADYER TRADING MANUFACTURING LIMITED & ANOR. V. TROPICAL COMMERCIAL BANK (2013) LPELR-20294 (CA). FRN V. USMAN (2012) 8 NWLR (pt. 1303) 141 at 159 and NYESOM V. PETERSIDE (2016) 7 NWLR (pt. 1512) 452 at 535 para. F-H.**

A careful analysis of the examination in chief and cross-examination of the witnesses called by the Appellant at trial i.e PW1-PW4, starting with the PW1, the witness stated that he did not count the number of voters on queue to vote, he does know how many that are with voters cards and are registered voters but all are on the queue, that he does not know how to operate BVAS, that he was informed that BVAS stopped working. On the part of PW2 he also stated that he did not count the voters on the queue, that he was not sure all were registered voters at that polling

unit, he does not operate or know when BVAS problems are rectified or know how to repair it, that election held peacefully in Yenche Primary School Polling Unit. On the side of the PW3 he accepted that all said about the BVAS was what he was told by someone. While PW4 also agreed he does not know how to operate BVAS, that it was only INEC Officials that operated the BVAS on the election day, only the INEC Officials know when BVAS stops working, that he did not count the people on the queue and he was not part of the people that repaired the BVAS, that election did not hold that election day. See pages 177-194 of the records of appeal.

Now the question that keeps agitating in our minds is that if the witnesses do not know the number of registered voters, the actual number of accredited voters, that were purportedly disenfranchised, how did the Appellants come to the conclusion that the election was not in substantial compliance with the provisions of the Electoral Act, 2010 as amended. With this, and many other unanswered questions in our minds begging for answers. How would the witnesses know that all the voters on that queue are all registered in that same polling unit and all would vote, anyway the testimonies of PW1 –PW4 hangs on a balance to sustain proof for the case of the Appellant. The PW2 at page 182 of the records confirmed that election did not only hold on that day, but held peacefully, free and fair, no police arrest and no fight.

This Appeal Tribunal agrees with the 1st and 2nd Respondents' Counsel that the evidence of PW1-PW4 during cross-examination as contained at pages 176-191 of the record of appeal, having admitted that they were told that BVAS stopped working is a hearsay evidence, hence should be discountenanced. The Trial Tribunal was right when it held at page 222 of the records of appeal that "PW3 and PW4 on their part said that they were told BVAS machine was not working. It is without doubt this piece of evidence is completely hear say evidence which is inadmissible."

We hold that the Appellant failed to prove their Petition, hence issue two is resolved in favor of the 1st and 2nd Respondents.

It is settled that a party seeking declaratory relief, the burden of proof is on him to succeed on the strength of his own case and not on the weakness of the defence. The law is settled further that declaratory reliefs will not be granted, even on admission made by the adverse party. See the case of **ADAMU V. NIGERIAN AIRFORCE & ANOR(2022) LPELR-56587(SC)** where the apex Court held thus:

"It is my humble view that the burden of proof on the Appellant in establishing declaratory reliefs are not granted even on the admission by the defendants (Respondents herein). In this instant appeal, the Appellant failed to discharge this burden on him in the lower Court and it is not difficult to so hold.

It needs to be brought to the fore that declaratory reliefs are not granted based on the lack of credible evidence by the defence but on the convincing, satisfactory and credible evidence by the claimant. Assuming that the Respondents' evidence were not satisfactory enough, that is not a pointer that the declarative reliefs should be granted." Per PETER-ODILI ,J.S.C (Pp. 13-14 paras. E)

In the final summation, the Trial Tribunal was right when it proceeded to dismiss the Petition.

To this end this appeal is lacking in merit and hereby consequently dismissed. The Judgment of the lower Tribunal in favour of the 1st and 2nd Respondents is hereby affirmed.

**HON. JUSTICE S.B. BELGORE
(CHAIRMAN)**

**HON. JUSTICE Y. HALILUHON. JUSTICE J.O. ONWUEGBUZIE
(MEMBER I) (MEMBER II)**