

**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/29/2022
APPEAL NO: FCT/ACEAT/AP/35/2022
DATE: 27/10/2022**

BETWEEN:

**1. IBRAHIM DANLAMI SHEKWONA
2. PEOPLES DEMOCRATIC PARTY (PDP)** } **APPELLANTS**

AND

**1. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)
2. ALL PROGRESSIVES CONGRESS (APC)
3. ISAH ABUBAKAR BAUSHE** } **RESPONDENTS**

JUDGMENT

The Gwarinpa Councillorship election of Abuja Municipal Area Council FCT, was conducted by the 1st Respondent on the 12th day of February, 2022 whereof, the 2nd and 3rd Respondents were declared to have scored the majority of

the lawful votes, and the 3rd Respondent returned as the winner, by the 1st Respondent. It is against that declaration and return that the Appellants filed the instant appeal.

It is the case of the Appellants that the Councillorship election for polling unit Katampe Estate Code 196 of Gwarinpa Ward was marred with gross irregularities, violence and should be cancelled.

The Appellants filed the Brief of Argument dated 30/9/22 on 4/10/22. They also filed a Reply Brief to the Respondents Brief of Argument on 14/10/22 which joined issues with the 2nd Respondent's Preliminary Objection. Learned Counsel to the Appellants Mr. C. I. Okoye adopted the two processes, urged us to discountenance with the Preliminary Objection and also allow the appeal.

1st Respondents also filed their Brief of Argument on 13/10/22. Mrs. Esther Agbaje of Counsel to the 1st Respondent (INEC) adopted it as their arguments and urged us to dismiss the appeal and affirm the judgment of the Lower Tribunal.

Mr. T. D. Pius of Counsel to the 2nd Respondent similarly adopted their Brief of Argument filed on 13/10/22, referred to the Preliminary Objection incorporated therein and urged us to strike out the appeal or in the alternative dismiss the appeal.

Mr. Abdulhakam A. who held the brief of Barr. Baba Isa for the 3rd Respondents referred to their Brief of Argument filed on 13/10/22. The Brief has a Preliminary Objection incorporated in it. Learned Counsel urged us to strike out the appeal or dismiss the appeal.

The full argument of Counsel are hereby incorporated as part of this judgment. We shall refer to them as at when desirable and purposeful.

Appellants Counsel, Mr. C. I. Okoye framed the following issues for determination:

(1) Whether the 3rd Respondent abandoned the Notice of Preliminary Objection filed along 3rd Respondent's Reply. (Ground One of the Notice of Appeal).

(2) Whether there was a valid ground in support of PETITION NO: FCT/ACET/EP/29/2022. (Grounds Two and Three of the Notice of Appeal).

(3) Whether trial Tribunal erred in law when it failed to ascribe any form of credibility on the Petitioners witnesses, held that the Petitioners witnesses did not discredit exhibit P2. (Ground four of the Notice of Appeal.)

(4) Whether the trial Tribunal erred in law when it held that the Petitioners did not establish their claim, dismissed the Petition, affirm the declaration and return of the 2nd and 3rd

Respondents as the winner of the election to the office of Councilor Gwarinpa Ward Abuja Municipal Area Council, Federal Capital Territory. (Grounds Five and Six of the Notice of Appeal.)

(5) Whether the decision of the trial Tribunal in PETITION NO: FCT/ACET/EP/29/2022, is against the weight of evidence adduced at the trial. (Ground Seven of the Notice of Appeal).

1st Respondent's Counsel, Mrs. Agbaje distilled the following issues for determination:

"Whether the Trial Tribunal correctly held that the Petition lacked merit based on the facts that the Petitioners failed to establish their claim?

2nd Respondent's Counsel, Mr. Pius asked us to consider the following issues for determination:

"(1) Whether the Tribunal was right in holding that the petition is incompetent and it has no jurisdiction to entertain the same. (Grounds 1, 2, and 3 of the notice of appeal).

(2) Whether the Tribunal was right that the Appellants did not prove their case as pleaded and not entitled to judgment. (Grounds 4, 5, 6 and 7 of the Notice of appeal).

And 3rd Respondent's Counsel issue for determination is as done by the 2nd Respondent.

In our view, the following four (4) issues are apt for determination and are bound to deal with the Preliminary Objection and the main appeal in that serial order:

(1) Whether the 3rd Respondent abandoned the Notice of Preliminary Objection filed along 3rd Respondent's Reply. (Ground One of the Notice of Appeal).

(2) Whether trial Tribunal erred in law when it failed to ascribe any form of credibility on the Petitioners witnesses, held that the Petitioners witnesses did not discredit exhibit P2. (Ground four of the Notice of Appeal.)

(3) Whether the trial Tribunal erred in law when it held that the Petitioners did not establish their claim, dismissed the Petition, affirm the declaration and return of the 2nd and 3rd Respondents as the winner of the election to the office of Councilor Gwarinpa Ward Abuja Municipal Area Council, Federal Capital Territory. (Grounds Five and Six of the Notice of Appeal.)

(4) Whether the decision of the trial Tribunal in PETITION NO: FCT/ACET/EP/29/2022, is against the weight of evidence adduced at the trial. (Ground Seven of the Notice of Appeal).

ISSUE ONE

(1) Whether the 3rd Respondent abandoned the Notice of Preliminary Objection filed along 3rd Respondent's Reply. (Ground One of the Notice of Appeal).

We refer to 3rd Respondent's Reply to the PETITION NO: FCT/ACET/EP/29/2022, is at pages 63 - 102 of the Record of Appeal, where at pages 63 - 68 of the (Reply) Record of Appeal 3rd Respondent raised "**PRELIMINARY OBJECTION**".

The Preliminary Objection reads *inter alia* at page 63 of the Record of Appeal thus:

"PRELIMINARY OBJECTION

1. TAKE NOTICE that at the hearing of this Petition, to wit: at the pre-hearing session or any other time the HOnourable Tribunal so direct, the 3rd Respondent shall raise Preliminary Objection to the competence of this Petition and the Jurisdiction of this Honourable Tribunal to hear and determine same as presently constituted on grounds set out hereunder and as may arise:"

3rd Respondent applied for leave to argue their objection already incorporated in their Reply at the stage of adoption of Final address and it was granted. This was at the Tribunal below.

Did the 3rd Respondent argue the Preliminary Objection eventually at address stage? This is the big question. Our answer is No.

The particulars of the grounds of the objection referred to by the trial Tribunal is as set down by the 3rd Respondent at paragraph 1, b of Reply at pages 65 - 67 of the Record of Appeal, thus:

"b. This Tribunal lack the Jurisdiction to entertain this petition as the sole ground contained in the petition are inconsistent with the extant Electoral Act.

PARTICULARS

i. The sole ground of the petition as contained in paragraph 9 of the petition are not grounds under the extant Electoral Act for presenting a petition when read along with the facts in support and the reliefs sought in the petition.

ii. The Petitioners intended to rely on Section 134 (1) (b) of the Electoral Act, 2022 (as amended) as the sole ground of their petition.

iii. The said above Section 134 (1) (b) of the Electoral Act, 2022 (as amended) provides thus: the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act.

iv. The Act simply expect that the questioning should be on the general election process and not just the election of the Respondents as the Petitioners have made it to become.

v. The ground as couched by the Petitioners only mentioned non-compliance without mention of corrupt practices.

vi. Non-Compliance and Corrupt practices are intertwined."

Above was the ground of the Preliminary Objection, which the trial Tribunal at page 316 of the Record of Appeal, admitted that the Preliminary Objection was abandoned, but expressed sadness that the issues were not addressed and that the 3rd Respondent did not withdraw the "Notice of Preliminary Objection". In the words of the trial Tribunal at pages 316 of the Record of Appeal:

"It is sad that the Petitioners and the 1st and 2nd Respondents refused to address the Honourable Tribunal on the issue of jurisdiction raised by the 3rd Respondent. The 3rd Respondent did not also withdraw the Notice of Preliminary Objection raised alongside their reply to the petition, though the petitioners joined issues on the said objection in paragraph 3 of their reply to the petition which they averred thus:

Contrary to averments in paragraph 1 b of the 3rd Respondent's Reply that the Petition the Honourable Tribunal lack jurisdiction to entertain this Petition, purported that the

sole ground of the Petition is inconsistent with the Electoral Act, Petitioners states, that:

iv. *The entire averments in paragraph i - iv of the 3rd Respondent's Reply are incompetent, speculative and arguments.*

v. *Section 138 of the Electoral Act 2010 (as amended) provides that one of the grounds for presentation of Petition is that the election was invalid by reason of non-compliance with the provisions of the Electoral Act 2010 (as amended).*

vi. *Non-compliance and corrupt practices are not intertwined."*

In law, must the 3rd Respondent state categorically that the Preliminary Objection was abandoned for the lower Tribunal to comprehend and agree to its abandonment? We answer in the negative.

In the case of **HON. SUNDAY NKUME VS. INNOCENT OKONKWO & ANOR (2020) LPELR-49942 (CA)**, it was held that:

"It is settled law that where an Appellant takes any step that is inconsistent with a desire to prosecute his Notice of Appeal, he is deemed to have abandoned it notwithstanding that he may have not formally withdrawn it or announced in open

Court its abandonment. See the case of IWENJIWE & ORS. VS. NWABUOKEI & ANOR (1978) LPELR-1564 (SC)."

On the facts and circumstances of this case, 3rd Respondent took steps inconsistent with the Order for leave granted at the pre-hearing session by deliberately refusing to argue the his Preliminary Objection.

The lower Tribunal misconceived the state of the Preliminary Objection when it held that ***"The 3rd Respondent did not also withdrew the Notice of Preliminary Objection raised alongside their reply to the petition,"*** thus they proceeded to determine the Preliminary Objection already abandoned by the 3rd Respondent.

The 3rd Respondent had no intention of prosecuting the Preliminary Objections raised in their Reply that is why they never argued same, nor urged the lower Tribunal to consider same. 3rd Respondent was deeply silent, merely filed Preliminary Objection but abandoned the same Preliminary Objection. None of the Respondents witnesses activated the Preliminary Objection by speaking to it, nor legal argument canvassed by the 3rd Respondent's Counsel thereto.

It is noted that at pages 291 - 292 of the Record of Appeal, parties adopted their respective final addresses. A critical examination of the proceedings of 22nd day of August, 2022 is evident that the 3rd Respondent's Counsel did not mention to the lower Tribunal that 3rd Respondent had Preliminary

Objection or that it was argued in the 3rd Respondent's final address, though the final address was discountenanced.

Record reads:

"3rd Respondent Counsel

David: For the 3rd Respondent, we seek leave of Court to extend time and deem the 3rd Respondent final address as properly filed and served. Upon the grant of the said application, we adopt our final address as our submission. The address is dated 16/08/2022 and filed 22/08/2022."

We agree with the learned Counsel to the Appellant that the 3rd Respondent should have first moved the lower Tribunal on the Preliminary Objection. Having not done that, it is deemed abandoned. The Preliminary Objection was thus incompetent. The lower Tribunal would have struck it out. The Preliminary Objection was not moved by the 3rd Respondent.

3rd Respondent merely filed Preliminary objection but failed to move the lower Tribunal on it and proffer no argument in support of same.

In the case of **AMINU VS. ALASADE & ORS. (2010) LPELR-3766 (CA)**, it was held that ***"...the Notice of Preliminary Objection of the 1st Respondent since not moved, again in accordance with the Rules of this Court, is deemed to have been abandoned. Once the 1st Respondent's Notice of Preliminary Objection is***

deemed abandoned, as is the case in the instant appeal, the reply of the Appellant in respect of said abandoned Notice of Preliminary Objection becomes superfluous and goes with the abandoned Notice of Preliminary Objection." See also the cases of ABUNUHU NIG. LTD & ANOR VS. FAREAST MERCANTILE CO. LTD (2009) LPELR-3580 (CA); NSIRIM VS. NSIRIM (1990) 3 N.W.L.R (PT. 138) 285 at 296 - 297; OFORKIE VS. MADUIKE (2003) 5 NWLR (PT. 812) 165, UPS VS. UFOT (2006) 2 NWLR (PT. 963) 1 and ARIORI VS. ELEMO (1983) 1 S.C.N.L.R. 13, AJIBADE VS. PEDRO (1992) 5 N.W.L.R (PT. 241) 257."

In the instant appeal, the 3rd Respondent disobeyed the Order of the lower Tribunal to argue his Preliminary Objection at the final address. On this point, we are at one with Mr. C. I. Okoye of learned Counsel to the Appellant. And we therefore have not the slightest hesitation in resolving this first issue in favour of the Appellant.

ISSUE TWO

(2) Whether trial Tribunal erred in law when it failed to ascribe any form of credibility on the Petitioners witnesses, held that the Petitioners witnesses did not discredit exhibit P2, (Ground four of the Notice of Appeal.)

The lower Tribunal, at page 322 of the Record of Appeal held that:

"But the Petitioners who presented five witnesses and the evidence of the witnesses are majorly statements from third party as it relates the occurrence of events from the said polling unit. PW3 and PW5 which are INEC staff could not help the case of the petitioners that much because the two witnesses; i.e. PW3 and PW5 could not give accounts of what transpired at the polling unit, while PW1 was a supervisory collation officer for polling unit 196 which is one of the polling units in contention and when being cross-examined by the Petitioners Counsel, Haruna Esq this happened....."

In the instant case the trial Tribunal discredited the Appellants witnesses on the basis that ***"the evidence of the witnesses are majorly statements from third party as it relates the occurrence of events from the said polling unit."***

Petitioners five witnesses testimonies are as found at pages 241 - 277 of the Record of Appeal. Petitioners witnesses gave oral evidence and tendered documents in support of their testimonies.

i. PW2 Ishaya Markus was the Petitioners polling unit agent at Katampe Estate Polling Unit Code 196. PW2 tendered exhibit P1 his INEC accreditation agent tag, identified and acknowledged FORM EC8A(1) result of Katampe Polling unit code 196 result. See pages 246 - 250 of the Record of Appeal.

ii. PW3 Hasiya Abdul Kareem Iyimoga, is a staff of INEC - 1st Respondent testified at pages 252 - 262 of the Record of Ap[peal, on subpoena dated the 13th day of July, 2022 at pages 146 - 149 of the Record of Appeal. PW3 tendered exhibit P6 the incident report on Katampe polling unit 196 dated 12/02/2022 and Manual for Election officials 2022 exhibit P7.

Her evidence in chief at on record, is that: "I participated as SPO-Supervisory Presiding Officer in the election. I have seen exhibit P2(1) to P2(123) they are the result of Gwarinpa ward, in exhibit P2(1) the score of APC is 277, exhibit P5 is the register of voters for Katampe Estate Polling unit code 196, exhibit P5 are ticked which shows number of people who voted. I don't have anything to say of exhibit P2(1), has 307 as number of accredited voters. I was not there as the polling unit. The presiding officer and APO 1, 2 and 3 (APO - Assistant Presiding Officer) came with a report with led to mine though wi was at the polling unit around 10:00am to 11:00am and only 7 people was accredited by BVAS in the morning so i left to other polling units to supervise. In exhibit P2(1) the number of voters accredited is more than 7 persons accredited according to what i was told. I have seen the BVAS accreditation report and only 7 people were accredited that was 7 in the morning. The number of persons ticked to have voted on exhibit P5 is 266.

iii. PW5 Engr. Zaharden Usman is a staff of INEC - 1st Respondent testified at pages 270 - 274 of the Record of Appeal, on subpoena duces tecum add testificadum at pages 155 - 156 of

the record and issued to the National Chairman INEC dated the 13th day of July, 2022. PW5 testified in chief as follows:

"My names is Engr. Zaharden Usman, I live at Katampe Abuja. I work with INEC headquarter, a subpoena dated 13/07/2022 was served on National Chairman INEC to testify and tender CTC of BVAS for Katampe Estate polling unit 196. That's why I am here. I have the document i was subpoenaed to produce it's a CTC."

The Certified True Copy of the BVAS for Katampe Estate polling unit 196 was admitted as exhibit P9. PW5 continued as follows:

"In exhibit P9, the total number of voters accredited is 7 for polling unit 196 Katampe Estate, Registration Area is Gwarinpa and Local Government is AMAC. The report exhibit P9 was generated from what was transmitted from BVAS on Election Day. The report is usually generated by our superiors. There are levels of privileges which I am not part of and I don't have access to the server or where it was generated. I have never produced INEC receipt and I may not be able to recognize an INEC receipt. I know Nnenna A. Essien, the document exhibit P9 is signed by an Assistant Director Legal Omale of 1st Respondent. Now shown to me is a receipt and document signed by Nnenna A. Essien."

The two documents further tendered through PW5 are "The document certification by INEC ICT Department in compliance with section 84 of the Evidence Act 2011 on computer generated document dated 15/06/2022 (Exhibit

P10) and INEC official receipt No: 103222 dated 08/06/2022 (Exhibit P11) are both admitted as Exhibits P10 and P11 respectively."

PW5 concluded his examination in chief, thus: "Exhibit P9, P11 are Certified True Copies of BVAS report showing 7 persons were accredited at polling unit 196."

Petitioner's witnesses relied majorly on documentary evidence in proving the case of the Petitioners. In the case of **MRS. LOISE CHITURU UKEJE & ANOR VS. MRS. GLADYS ADA UKEJE (2014) LPELR-22724 (SC)**, it was held that ***"The position of the law is that once documentary evidence supports oral evidence, such oral evidence becomes more credible. The reasoning is premised on the fact and the law that documentary evidence serves as a hanger from which to assess oral testimony. See Kimdey & Ors. Vs. Military Governor of Gongola State & Ors. 1988 Vol. 19 (Pt. 1) NSCC P. 827, Omoregbe Vs. Lawani 1980 5-4 SC P.117."***

It is pertinent to state that exhibits P1, P2(1) Form EC8A(1) Katampe Polling unit code 196 result, P6 - The incident report on Katampe Polling unit 196 dated 12/02/2022 and Manual for Election officials 2022 exhibit P7, exhibit P2(1) to P2 (123) - result of Gwarinpa ward, exhibit P5 - the register of voters for Katampe Estate polling unit code 196 which shows number of people who voted, exhibit P9, exhibit P10 and P11 respectfully to speak on what transpired at Katampe Estate polling unit Code 196. These exhibits were made by INEC - the 1st

Respondent concerning the Councillorship election at Katampe Polling unit code 196 of Gwarinpa ward Abuja Municipal Area Council.

Suffice to say, that the testimonies of PW3 and PW5 who are subpoenaed witnesses from INEC (1st Respondent) are fundamentally the evidence of INEC. By virtue of section 318(1) of the 1999 Constitution, the staff of the Independent Electoral Commission are public officers, who are competent to testify in any Court or Tribunal.

It is therefore not correct, for the lower Tribunal to hold that "PW3 and PW5 who are INEC staff could not give accounts of what transpired at the polling unit." This is because PW3 categorically states that she was at Katampe Estate polling unit code 196, in her words: "I participated as SPO - Supervisory Presiding Officer in the election.; I was at the polling unit around 10:00am to 11:00am and only 7 people was accredited by BVAS in the morning so left to other polling units to supervise". She authored and signed exhibit P6.

The whole evidence of PW5 is that "Exhibit P9, P10, P11 are Certified True Copies of BVAS report showing 7 persons were accredited at polling unit 196.

We see nothing wrong with PW3 and PW5 testimonies at the lower Tribunal.

It is our view that the interpretation of written documents is a question of law. See the case of **OJO VS. ABT ASSOCIATES INCORPORATED LTD (2017) 9 NWLR (PT. 1570) 167 at 200, paras. A - B (CA)**. Exhibits tendered by the PW1, PW2, PW3 and PW5 are written documents in support of the Petitioners case and must not be ignored as did the lower Tribunal.

It is trite law that the best evidence of the contents of a document is the document itself produced for the inspection of the Court. See **FAGBERO VS. AROBADI (2006) 7 NWLR (PT. 978) 172**. See also **UDO VS. OKEKE (2016) LPELR 40721 (SC)**. The documents or exhibits tendered by the Petitioners witnesses have direct effect on the happenings at Katampe Estate Polling unit code 196.

It is our view that the Petitioners witnesses especially PW2, a Polling Unit agent are credible witnesses. They adduced credible evidence of what transpired at Katampe Estate polling unit code 196, and discredited exhibit P2. In the case of **EMEKA VS. CHUBA-IKPEAZU & ORS. (2017) LPELR-41920 (SC)** "On the credible nature of the 1st respondent's evidence, reference can be made to the case of **AGBI VS. OGBEH (2006) 11 NWRL (PT. 990) 65 at 116 per Mudapher, JSC (as he then was) wherein his lordship gave a sound description of what amounts to credible evidence which must be:- "Worthy of belief,must be credible in itself in the sense that it should be natural, reasonable and probable in view of the entire circumstances."** See also the case of **AGI VS. ACCESS BANK PLC (2013) LPELR-22827 (CA)**, where it was

held that "A credible evidence means: evidence that is worthy of belief and oozing out from a reliable source, see **AGBI VS. OGBEH (2006) 11 NWLR (PT. 990) 1; DIM VS. ENEMUO (2009) 10 NWLR (PT. 1149) 353.**

PW2 was the Petitioners Polling unit agent at Katampe Estate polling unit Code 196. He gave credible evidence on what transpired at Katampe Estate polling unit code 196. He was present at the polling unit. The lower Tribunal, however, deliberately ignored the credible testimonies of PW2, which evidence discredits exhibit P2 in all material particular.

In the case of **GUNDIRI VS. NYAKO (2014) 2 NWLR (PT. 1391) 211 at 245**, it was held thus:

"The significance of the polling units' agents cannot therefore be under estimated in the case at hand if the appellants must have the facts to prove their case. The best evidence the appellants could have had was that of the agents at the polling units who were physically on ground and in true position to testify as to what transpired at the election. The consequence of shutting them out for whatever reason is very detrimental to the appellant's case. See the case of HASHIDU VS. GOJE (2003) 15 NWLR (PT. 843) 352 and BUHARI VS. OBASANJO (2005) ALL FWLR (PT. 273) 1 at 164 165; OKE VS. MIMIKO (No. 2) (2014) 1 NWLR (PT. 1388) 332 at 376; and ADEWALE VS. OLAIFA (2012) 17 NWLR (PT. 1330) 478."

PW2 gave evidence of what transpired at the Katampe Estate polling unit code 196 of Gwarinpa Ward Abuja Municipal Area Council FCT Councillorship election. PW2 evidence was not discredited during cross-examination.

The lower Tribunal failed to "ascribe any form credibility to the evidence of PW2 to the extent of being able to discredit exhibit P2.; they also failed to ascribe credibility to any of the Petitioners witnesses, thus, it erroneously held that:

"It is this bases we hold that the Petitioners witnesses could not discredit the content of exhibit P2. We believe the evidence led before us and we ascribe value to same.

This erroneous conclusion was arrived at by the lower Tribunal because it failed to evaluate the evidence and testimonies of the Petitioners witnesses.

Exhibit P2 is the same with exhibit P2(1). The case of the Petitioners is specifically against the result declared for Katampe polling unit code 196 evident in exhibits P2 and P2(1).

The pertinent question to ask, was exhibit P2 and P2(1) discredited by the Petitioners witnesses? The evidence on record are evident that exhibit P2 was discredited.

One may ask again, how was the exhibit discredited?

Exhibit P2 (1) of polling unit result of Katampe Estate code 196 has the total number of voters for Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT was 300, on one breath. In another breath exhibit P5 - voters register for Katampe Estate Code 196 Gwarinpa Ward AMAC FCT is evident that the number of voters ticked to have voted was 277 voters.

Pertinent to note that the number of registered voters ticked to have cast their votes 277 at Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT during the Councillorship election is less than the result and total number of votes 1st Respondent declared in exhibit P2 and P2(1) in the figure of 300 votes.

The 277 votes evident from exhibit P5 was accredited to the 2nd and 3rd Respondents on the face of exhibits P2 and P2(1).

Where 300 votes on exhibits P2 and P2(1) is deducted from 277 votes in exhibit P5, it means that 23 votes are not accommodated by exhibit P5 - voters register, how then is the 23 excess votes part of exhibit P2, P2(1).

The conflict is worsened with exhibits P9, P10 and P11 which are evident that only 7 (seven) registered voters were verified or accredited to cast their votes.

PW5 succinctly put it thus "Exhibit P9, P10, P11 are Certified True Copies of BVAS report showing 7 persons were accredited at polling unit 196."

Exhibits P2, P2(1), P5, P9, P10 and P11 are fundamentally in conflict with each other in respect to the figures of votes cast, figures of voters that voted and on number of voters verified or authenticated by BVAS to vote at Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT during the Councillorship election.

PW3 was apt in his testimony *inter alia* thus:

"I observed that during the accreditation at Katampe Estate Polling Unit Code 196 of Gwarinpa Ward Federal Capital Territory and before the invasion of the Polling Unit the officials of the 1st Respondent at Katampe Estate Polling Unit Code 196 of Gwarinpa Ward Federal Capital Territory accredited 7 (seven) voters through the use of BVAS which is Bi-Modal Voter Accreditation System (BVAS)." See paragraph 5 of PW2 witness statement on oath, at page 18 of the Record of Appeal. See also exhibits P9, P10, P11 are Certified True Copies of BVAS report showing 7 persons were accredited at polling unit 196, as well as the testimonies of PW3, PW5 and PW3 tendered exhibit P6 - the incident report on Katampe polling unit 196 dated 12/02/2022. This piece of evidence was not controverted by the Respondents.

It was the further testimony of PW2, that:

"In the course of my services at the Katampe Estate Polling Unit Code 196 of Gwarinpa Ward Federal Capital Territory during the election of 12th February 2022 there were violence,

intimidation and coercion of 1st Respondent's officials and the voters by some unknown persons who invaded Katampe Estate Polling Unit Code 196 of Gwarinpa Ward and forcefully took all the ballots papers from the 1st Respondent's officers and thumb-printed on 277 Ballot Papers in favour of the 2nd and 3rd Respondents and only thump-printed on 1 (one) Ballot Paper in favour of the Petitioners; thereby violating the clear provision of the Electoral Act, 2010 (as amended) and INEC Guidelines and Regulations. See paragraph 6 of PW2 witness statement on oath at page 18 of the Record of Appeal, PW2 further testified as follows:

"My life was threatened by those persons who invaded the Katampe Estate Polling Unit No. 196 on the 12th February, 2022 while I protested against their unruly and violent confiscation of the ballot papers thumb-printed in favour of the 2nd and 3rd Respondents.

The Gwarinpa Ward Election Day Incident Report on Katampe Estate Polling Unit No. 196 dated 12th February, 2022 confirmed that the 1st Respondent officials were coerced by members of the 2nd Respondent who forcefully thumb-printed on Ballot Papers issued to the Centre. I rely on a copy of the said Report dated 12th February, 2022.

The 1st Respondent's officials recorded in Form EC8A1 in Katampe Estate Polling Unit only one (1) vote in favour of the Petitioners and 277 votes were recorded in favour of the 2nd and 3rd Respondents after the violent unknown persons

forcefully took Ballot Papers from 1st Respondent officials and unlawful thumb printed on the Ballot Papers to favour the 2nd and 3rd Respondents."

The evidence or testimonies of PW2 was not controverted by the Respondents.

PW1 testimonies on violence and 7 voters accredited to vote at the Katampe Estate Polling Unit Code 196 of Gwarinpa Ward was not controverted. See also the testimonies of PW3, 4 and 5 respectively.

DW1 admitted during cross-examination that only 7 voters was accredited and voted.

"Question: Confirm that only 7 people got accredited and voted before BVAS stopped working.

Answer: Yes."

See page 262 of the Record of Appeal.

He also agreed that the figure of voters in exhibits P2(1) and P5 do not tally.

It is therefore clear as pointed out by the learned Counsel to the Appellant that exhibit P2, P2(1) were fundamentally discredited by the Petitioners witnesses. The lower Tribunal failed to evaluate the evidence before it and therefore

occasioned miscarriage of justice. Petitioner's witnesses on record gave both eye witnesses and documentary evidence in support of the Petition. This issue is also resolved in favour of the Petitioner.

ISSUES THREE AND FOUR

i. Whether the trial Tribunal erred in law when it held that the Petitioners did not establish their claim, dismissed the Petition, affirm the declaration and return of the 2nd and 3rd Respondents as the winner of the election to the office of Councilor Gwarinpa Ward Abuja Municipal Area Council, Federal Capital Territory. (Grounds Five and Six of the Notice of Appeal).

ii. Whether the decision of the trial Tribunal in PETITION NO: FCT/ACET/EP/29/2022, is against the weight of evidence adduced at the trial. (Ground Seven of the Notice of Appeal).

At page 323 of the Record of Appeal, the lower Tribunal held, inter alia, "It is our view, that the Petitioners did not establish their claim and it would amount to waste of time to review the evidence of the Respondents because the Petitioners ought to succeed on the merit of their case and not on the weakness of the defence. The evidential burden is with the Petitioners which they have failed to establish.

It is on this bases and on the merit of this case, we humbly dismiss this petition and affirm the return and declaration of

the 2nd and 3rd Respondents as the winner of the election to the office of Councilor representing Gwarinpa Ward of Abuja Municipal Area Council, Federal Capital Territory held on the 12th day of February, 2022."

The cases of the Petitioners on record of the appeal are that:

- i. Inflation of result at Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT Councillorship election.
- ii. Non-accreditation or and improper accreditation of voters at the Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT Councillorship election.
- iii. At Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT Councillorship election, the votes accredited to the 2nd and 3rd Respondents, do not represent the votes cast.
- iv. Persons not accredited voted or forcefully took over ballot papers and boxes thumb printed ballot papers.
- v. The number of votes recorded and accredited, as well as the number of voters who actually voted are in conflicts vide exhibits P2 and P2(1) of polling unit result of Katampe Estate Code 196, exhibit P5 Register of voters for Katampe Estate polling unit 196, exhibit P5 Register of voters for Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT and exhibits P9, P10, P11 respectively.

These allegations are provable by both oral and documentary evidence. See **BUHARI VS. OBASANJO (2005) 13 NWLR (PT. 941) 1** and **ANDREW VS. INEC (2018) 9 NWLR (PT. 1625) 507 SC.**

And what do we find?

PW1, PW2, PW3, and PW5 all testified orally in Court. Further to their testimonies, documentary evidence were adduced, particularly:

- i. Exhibits P2, P2(1) polling unit result of Katampe Estate polling unit Code 196 which shows total number of votes cast as 300 votes.
- ii. Exhibit P5 - Register of voters for Gwarinpa Ward Councillorship election which shows that 277 persons were ticked to have voted.
- iii. Exhibit P6 report of PW3 on incidents of violence and coercion of INEC officials at the Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT.
- iv. Exhibits P9, P10 and P11 - BVAS report on Gwarinpa Ward Councillorship election which shows that 7 voters were accredited to vote and voted.

PW2 was an eye witness on what transpired at the Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT. He gave direct and uncontroverted evidence of intimidation, the invasion of the polling unit and forcefully taken over of the ballot boxes, ballot papers without accreditation and thumb printed votes to the favour of the 2nd and 3rd Respondent and threats to life.

Section 45 of the Electoral Act, 2010 (as amended) acknowledged the importance of a polling unit agent and the relevance of polling unit agent evidence in respect to what transpired in the polling unit. See **OKE VS. MIMIKO (No. 2) (2014) 1 NWLR (PT. 1388) 332** and **ACN VS. LAMIDO (2012) 8 NWLR (PT. 1303) 560**.

PW1 and PW3 also on records testified that they were all at the Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT.

From the oral and documentary evidences adduced by the Petitioners witnesses, the election at the Katampe Estate polling unit 196 Gwarinpa Ward AMAC FCT which generated exhibit P2, P2(1) was not conducted in substantial compliance with the Electoral Act, 2010 (as amended). The non-compliance substantially affected the result of the election. Why do we say so?

We have to do a little bit of calculation here. If the result of Katampe Polling Unit 196 is cancelled because of violence and

other malpractices, then the total votes of 277 ascribed to 2nd and 3rd Respondents must also be cancelled. Ditto 1 vote recorded for Appellant. And we therefore do. Having done that, what is left of the scores for candidates?

APC - 2,322 minus 277 = 2,045
PDP - 2,318 minus 1 = 2,317

The lower Tribunal, was therefore wrong to "affirm the return and declaration of the 2nd and 3rd Respondents as the winner of the election to the office of Council, Federal Capital Territory Abuja held on the 12th day of February, 2022.", where the valid votes 2nd and 3rd Respondents scored was 2,045 votes only, while the Petitioners/Appellants scored the majority of lawful 2,317 votes cast at the Gwarinpa Ward Councillorship election of Abuja Municipal Area Council, Federal Capital Territory Abuja held on the 12th day of February, 2022.

In view of all the foregone, it manifest to all and sundry that the Appellants scored a majority of lawful votes compared to the 2nd and 3rd Respondents.

In conclusion, we find merit in this appeal and it is therefore allowed. The judgment of the lower Tribunal is therefore set aside. The Appellants won the election in focus and the 1st Respondent is therefore ordered to issue the Certificate of Return accordingly to 1st Appellant and with immediate effect.

**HON. JUSTICE SULEIMAN BELGORE
CHAIRMAN**

**HON. JUSTICE YUSUF HALILU
MEMBER**

**HON. JUSTICE JUDE O. ONWUEGBUZIE
MEMBER**