IN THE AREA COUNCIL ELECTION APPEAL TRIBUNAL OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

HON. JUSTICE S.B. BELGORE - CHAIRMAN
HON. JUSTICE Y. HALILU - MEMBER I
HON. JUSTICE J.O. ONWUEGBUZIE - MEMBER II

APPEAL NO: FCT/ACEAT/AP/08/2022
PETITION NO: FCT/ACET/EP/26/2022

BETWEEN:

1. JOHN GABAYA SHEKWOGAZA
2. MUSA AMINU } **APPELLANTS**

AND

1. ALL PROGRESSIVE CONGRESS (APC)
2. AUDI HARUNA SHEKWOLO
3. PEOPLES DEMOCRATIC PARTY (PDP)
4. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) } **RESPONDENTS**

JUDGMENT

This appeal concerns the judgment of the FCT Area Council Election Petition Tribunal, Coram, Chief magistrate MuinatFolashadeOyekan, Chief Magistrate Ahmed Mohammed Ndajiwo and Kimi Livingstone Appah, Esq. delivered on the 30th day of August, 2022 in Petition No: **PET/ACET/EP/08/2022 Between**: **All Progressive Congress (APC) &Anor VS. Independent National Electoral Commission (INEC) & 3 Ors. (See pages 566 – 678 of the Record of Appeal).**

Facts leading to the Appeal can be summarized as: on the 12th day of February, 2022, the 4th Respondent, Independent National Electoral Commission (INEC) conducted the Area Council Election, in this Federal Capital Territory. They,

INEC, declared and returned the 1st and 2nd Appellants as the winners of the election for Bwari Area Council as Chairman and Vice – Chairman respectively.

The 1st and 2nd Respondent as Petitioners filed a petition in the FCT Area Council Election Petition Tribunal against the declaration and return of the Appellants the 3rd and 4th Respondents in the 12th day of the February, 2022 Bwari Area Council Chairmanship election on the following Grounds:

1. The 3rd and 4th Respondents were at the time of the election, not qualified to contest the election.
2. The 3rd and 4th Respondents were not duly elected by majority of lawful votes cast at the election.

3. The election of the 3rd and 4th Respondents is invalid by reason of non – compliance with the provisions of the Electoral Act.

Facts on which the grounds of the Petition are based contained in pages 5 – 15 of the records. Whereof the Petitioners claim against the Respondents now the Appellants jointly and severally as follows:

a. That it may be determined that the 3rd and 4th Respondents were severally and jointly not qualified to contest the election to the office of the Chairman and Vice Chairman Bwari Area Council held on the 12th February, 2022.

ALTERNATIVELY

b. That it may be determined and declared that the 3rd Respondent was not duly elected or returned by majority of lawful votes cast at the

election to the office of the Chairman Bwari Area Council held on the 12th day February, 2022 and the Petitioners be declared elected.

c. That it may be determined that the results of the election in the affected polling units complained of in this petition be nullified for substantial non – compliance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) Electoral Act and its place, make and Order for fresh election to be conducted in the affected polling units where election was not conducted and polling units where the results of the election was cancelled. See pages 1-74 of the records.

When the Petition was set down for hearing on the 1st day of June, 2022, the Petitioners/1st and

2nd Respondents herein opened their case, called twelve witnesses who testified as PW1 – PW12, five were subpoenaed witnesses. They tendered several documents more were CTCs.

The Petitioners thereafter closed their case on the 11th day of June, 2022 and the Tribunal adjourned to the 14th day of June, 2022 for defence.

On the 14th day of June, 2022, the 1st Respondent called no witness, hence closed it's case. The 2nd Respondent called two witnesses and closed it's case, while the 3rd and 4th Respondents did not also call any witness and relied on the evidence during cross – examination and exhibits tendered in the matter and thereafter closed their case. Parties filed their respective final written addresses and adopted same on the 20th day of June, 2022. Judgment was

delivered on the 30th day of August, 2022. See pages 502 – 565 of the records of Appeal.

The honourable Trial Tribunal in its judgment at pages 566 – 678 of the record held that:

i. The 3rd Respondent was not duly elected or returned by majority of lawful votes cast at the election to the office of the Chairman Bwari Area Council held on the 12th day of February, 2022.

ii. The Petitioners are hereby declared as the winners of the office of the Chairman Bwari Area Council held on the 12th day of February, 2022.

Consequently, the Trial Tribunal ordered that the certificate of return issues in favour of the 2nd, 3rdand

4th Respondents be retrieved and same be issued to the Petitioners/1st and 2nd Respondents herein.

The 3rd and 4th Respondents were dissatisfied with the judgment. They consequently approached this Appeal Tribunal by filing two Notices of Appeal the first is dated and filed on the 31st day of August, 2022 see pages 679 – 685 of the records, and the second Notice of Appeal is dated 12th September, 2022 and filed on the 13th day of September, 2022 see pages 686 – 696 of the Record of Appeal.

But the Appellant withdrew the Notice of Appeal dated and filed on the 31st day of August, 2022 and relied on the Notice of Appeal dated the 12th day of September, 2022 and filed on the 13th day of September, 2022 to prosecute this appeal. The said

Notice of Appeal contains ten (10) grounds of appeal; thus;

Grounds of Appeal

Ground 1

The FCT Area Council Election Tribunal erred in law when it held at page 104 of the judgment, that:

We have read in detail the entire petition and the submission of counsel thereon. It should be noted that the 1st, 3rd and 4th Respondents did not call any witness to speak to the front loaded documents as evidence before the Tribunal. The implication in law is that their defence or reply to the petition stands abandoned."

Particulars:

1. There is a world of different in law between non – calling of witness and not adducing evidence at a trial.

2. The Appellants and the 4th Respondent (INEC) at the Lower Tribunal cross – examined the witness called by the 1st and 2nd Respondents/Petitioners and also tendered documents through them.

3. A Respondent who cross – examined the Petitioner's witness is deemed to have given evidence through the witnesses.

Ground Two

The FCT Area Council Election Tribunal erred in law when it held at page 104 of the judgment thus:-

Now, in a case where the Defendant did not call any witness, thought he has filed his pleadings, not only is the pleading deemed abandoned, the case to be considered on merit is the case as presented by the claimant who had called evidence in support of his claim and since there is no evidence from the Defendant to be put on the one side of the imaginary scale of justice the claimant is required to prove his claim on a minimal basis."

Particulars:

a. The Lower Tribunal failed to appreciate the distinction between calling of witness and calling or adducing evidence.

b. Calling of witness is not the same with calling or adducing evidence.

c. The instant matter is an election case and cannot be proved on minimal basis.

d. The instant case where declaratory reliefs are being claimed, non-calling of witnesses y the Appellants would not relieve the 1st and 2nd Respondents/Petitioners from satisfying the Tribunal with cogent, credible and reliable evidence in support of their petition.

Ground Three

The FCT Area Council Election Tribunal erred in law and misinterpreted the ratio decidendi in the case of ***EVA ANIKE AKOMOLAFE & ANOR VS. GUARDIAN NEWSPAPERS LIMITED (Printers) & ORS. (2010) LPELR – 366 (SC);***

CBN & ORS. VS. OKOJIE (2015) LPELR – 24 740 (SC) Page 34; (2015) 14 NWLR (PT. 1479) Page

231 when it held that the decisions in the two cases are contradictory.

Particulars:

1. In***EVA ANIKE AKOMOLAFE & ORS. VS. GUARDIAN NEWSPAPERS LIMITED & ORS***. (Supra) the apex court held that, you cannot say that the party called no witness in support of his case or defence, as the evidence elicited from his opponent under cross – examination which is in support of his case or defence constitutes his evidence in the case.
2. While in ***CBN VS. OKOJIE (Supra)*** the apex court held that, pleadings without evidence to prove the facts averred is of no use in settling a dispute one way or the other.

3. The two Supreme Court cases are about non – calling of evidence, but not non – calling of witnesses as erroneously held by the Lower Tribunal.

Ground Four

The FCT Area Council Election Tribunal erred in law when it held that it was bound and will follow the case of ***CBN VS. OKOJIE (Supra)*** decided on the 5th June, 2015, when there are recent plethora of cases decided by the Supreme Court after the ***CBN & ORS. VS. OKOJIE'S*** case and the Lower Tribunal ignored and refused to follow them.

Particulars:

1. In***OMISORE VS. AREGBESOLA (2015) NWLR (Pt. 1482) 205 at 324,*** the Supreme Court decided that, it has long been settled that

evidence obtained during cross – examination on matters that are pleaded, that is, on matters on which issues were joined, is admissible.

2. Also in the case of ***OGUEBIE VS. FIRST BANK OF NIGERIA PLC. (2020) 4 NWLR (Pt. 1715) Page 531 at 550 – 551, it was held that,*** where issues are joined, answer elicited under cross – examination of the adversary may constitute the evidence of the opponent.

Ground Five

The FCT Area Council Election Tribunal erred in law and wrongly relied on a court of Appeal decision in the case of ***OLADAPO OLUFULUNLAJOOGUNUBI VS. OMOBOLANLE ADENKE OGUNUBI (2021)***

LPELR – 58497 (CA) to hold that the 1st, 3rd and 4th Respondents at the Lower Tribunal (The Appellants and the 3rd Respondent) replies to the petition are deemed abandoned and are of no effect.

Particulars:

a. The decision of ***OLADAPO OLUFULUNLAJO OGUNUBI VS. OMOBOLANLE ADENIKE OGUNUBI (Supra)*** cannot override the plethora of authorities of the Supreme Court on eliciting evidence during cross – examination from adverse party, such is the case of ***ANDREW VS. INEC (2018) 9 NWLR (Pt. 1625) Page 507*** on the issue.

b. The decision in the aforesaid case was on not leading evidence in support of the Appellants'

case but not merely on non – calling of witnesses.

c. The case of ***OLADAPO OLUFULUNLAJO OGUNUBI VS. OMOBOLANLE ADENIKE OGUNUBI (Supra)*** also supports the case of the Appellants on record.

Ground Six

The FCT Area Council Election Tribunal erred in law when it held at page 107 of the Judgment that:

"***It is noted that the entire Respondents assuming, they had called witnesses, had defence which stands in the nature of general traverse and not a defence to the allegation made. From the evidence of 2nd, 3rd and 4th Respondents, they only in a bid to deny the allegation, put the Petitioners to the strictest***

proof thereof, the law is that, putting a party to the strictest proof thereof is not a defence but an admission to the claim."

Particulars

1. The averments in paragraph 49 of the Petition are criminal allegation.

2. There is nowhere the Appellants in their reply stated that they are not in the position to admit or deny and/or put the Petitioners to the strictest proof.

3. Appellants' reply in paragraph 23 read, thus: "***Paragraphs 48 and 49 of the Petition are not true. The Petitioners are speculative on Shere Ward Polling Unit 006and Polling Unit 008 No. election held in Polling Unit 006 and Polling Unit 008 of Shere Ward.***

Petitioners are put to proof beyond reasonable doubt. The Petitioners are not entitled to any computation of results from the two Polling Units."

4. To qualify as admission against the interest of a party, there must be a clear and unambiguous acceptance of the truth of a material fact in dispute.

5. Before a court can decide whether or not there is an admission in the reply to a petition in respect to an averment in the petition, the entire pleadings of the parties as a whole must be considered.

Ground Seven:

The FCT Area Council Election Tribunal erred in law when it held at page 108 of the judgment, thus:

"***We would not over emphases the facts that failure to specifically deny the strong allegation raised by the Petitioners, means the Respondents have admitted and accepted the said fact as true."***

Particulars

1. The Appellants denied in their paragraph 23 specifically the allegation in paragraphs 48 and 49 of the petition and stated inter alia that the allegations are not true.

2. The instant case is an election petition which is seeking for declaratory reliefs at paragraph 61 of the petition and also sought for nullification of the election result.

3. The Petitioners that seeks for nullification of an election and other declarative reliefs must

succeed on the strength of their own case and not on the weakness and/or admission of the Respondents.

Grounds of Eight:

The FCT Area Council Election Tribunal erred in law and occasioned miscarriage of justice when it held as per the table at page 108 of the Judgment that, at Polling Unit 006, PDP scored 1 vote and APC scored 2,671 votes; and at Polling Unit 008 PDP scored 4 votes and APC scored 3,110 votes without evaluating the evidence elicited from the Petitioners' witnesses during cross – examination which discredited the aforesaid figures.

Particulars:

1. The PW6 and PW8 during their cross – examination testified as follows:-

a. PW6 testified amongst others that ‘there were fighting and the security men took off, that they never made any official report in writing to security men on duty.

b. PW6 and PW8 testified alike that voting was completed before fighting started and 2,301 people accredited to vote, APC Scored 2,671 and PDP scored 1 and though the number of registered voters for the polling unit is 2,301. That 2,671 APC scores is more than 2,301 numbers of registered voters in the voters register.

2. The evidence of PW6 revealed over – voting.

3. PW7 testified during cross – examination also that the number of registered voters for 006 Shere Ward is 2,301 and APC scored 2671,

which is over and above the total number of registered voters of 2,301 in the said Polling Unit.

4. The evidence of PW7 also revealed over – voting.

5. No voters register was tendered for both Polling Units' Codes 006 and 008 Shere Ward to prove total number of voters/persons registered as voters and the number of persons accredited to vote.

6. The 1st and 2nd Respondents/Petitioners must tender Form EC8AS i.e results for Polling Units Codes 006 and 008 of Shere Ward and the voters register for the said Polling Units to prove their complaint concerning the Polling Units.

7. The Tribunal countenanced the PW6 and PW8 evidence given during cross – examination that the total number of votes allegedly scored by the APC at Polling Unit 006 is 2,671 and which is above the number of accredited voters of 2,301 in Polling Unit 006. And the total number of voters in the register of voters is 2,301.

8. The lower tribunal countenanced the evidence in chief of PW10 that total number of registered voters for Polling Unit 008, Shere Ward is 1,054 and that APC scored 3,110 votes and PDP scored 4 votes.

9. The evidence in – chief of PW10 disclosed over voting.

10. There was no polling unit results i.e Form EC8AS tendered in evidence by the 1st and 2nd Respondents/Petitioners to show that APC scored 2,671 votes for polling Unit 006 and 3,110 votes for Polling Unit 008.

11. The Lower Tribunal accepted and relied on APC scores which exceeded total number of registered voters in the two Polling Units of Codes 006 and 008.

Ground Nine

The Area Council Election Tribunal erred in law when it held at page 109 of the judgment, that:

> "***Relying on the above authority, statutory provision and the evidence presented before us, we hold that the Petitioners having polled a total score of 13,478 at Bwari Area Council***

held on 12th February, 2022 scored the highest lawful votes of the election conducted by the 1st Respondent."

Particulars

1. APC score of 2,671 votes for Polling Unit 006 Shere Word and APC score of 3,110 votes for Polling Unit 008 Shere Word are illegal votes.

2. The Lower Tribunal cannot add the APC illegal votes of 2,671 and 3,110 to the score of parties in Form EC8E i.e declaration of result to declare 1st and 2nd Respondents/Petitioners as winners of Bwari Area Council Chairmanship Election held on the 12th February, 2022.

3. PDP is still the party that scored the highest number of valid votes with the score of 13,045 votes and remains the winner of the election conducted for the office of the Chairman, Bwari Area Council on the 12th day of February, 2022.

Ground Ten

The judgment of the FCT Area Council Election Tribunal delivered on the 30th day of August, 2022 in Petition No: FCT/ACEP/EP/08/2022 is against the weight of evidence adduced at the trial.

In this Appeal the 1st Respondent on the 4th day of October, filed Notice of Preliminary Objection dated same 4th day of October, 2022. On the 6th day of October, 2022 the 1st and 2nd Appellants filed a reply to the 1st Respondents' objection dated same 6th day

of October, 2022. The 1st Respondent on the 11th day of October, 2022 filed a Reply on Points of Law dated same date, to the written reply of the Appellants.

In this Appeal also the 2nd Respondent on the 7th day of October, 2022 filed a Notice of Preliminary Objection dated the 6th day of October, 2022. The Appellants on the 8th day of October, 2022 filed their joint counter – affidavit in opposition to the 2nd Respondent's objection.

The 2nd Respondent on the 15th day of October, 2022 filed its reply on point of law to the Appellants' joint written address dated the 14th day of October, 2022.

Appellants filed their Appellants' Brief of Argument on the 23rd day of September, 2022 and dated same day. The 1st Respondent on the 6th day of October,

2022 filed its Respondent Brief of Argument dated 4th day of October, 2022. While the Appellants on the 7th day of October, 2022 filed their joint reply brief on point of law of the 1st Respondent's brief of argument.

On the same 6th day of October, 2022 the 2nd Respondent filed his Respondent's brief of argument dated same date. The Appellants on the 8th day of October, 2022 filed their Appellants' reply brief on points of law to the 2nd Respondent's brief of argument.

When this appeal came up for hearing on the 18th day of October, 2022, the 1st Respondent counsel adopted its Notice of Objection and urged this Appeal Tribunal to dismiss this appeal and affirm the judgment of the Trial Tribunal.

The objection was anchored on the following grounds:-

a. That the Notice of Appeal filed on the 13th day of September, 2022 is grossly incompetent and incapable of activating the jurisdiction of this court having no relief sought at all.

b. That the Appellants' Appeal is grossly incompetent and incapable of activating the jurisdiction of this Court having not been served on the 1st Respondent/Applicant.

c. That the non – service or failure to serve the Appellant's Notice of Appeal on the 1st Respondent robs this court of the jurisdiction to hear this instant appeal.

d. Ground 1, 2, 3, 4, 5 and 6 are incompetent and incapable of activating the jurisdiction of this

Court having not arisen from the ration decidendi of the judgment being appealed against.

e. The issues formulated in the Appellants' brief of argument thereon are incompetent and liable to be struck out as they arise from incompetent grounds and are proliferated.

f. Grounds 7 and 8 are equally incompetent and liable to be struck out there being no competent issue formulated thereof.

g. The Appeal is incompetent being an appeal against non – existing decision of the non – existing Federal Capital Territory Election Tribunal.

h. The jurisdiction of this Area Council Election Appeal Tribunal has not been properly activated by the Appellants.

i. The Notice of Appeal and brief of argument are incompetent having not been signed in accordance with the law.

j. It is in the interest of justice to dismiss and strike out this instant appeal for being grossly incompetent.

The 1st respondent objector therefore prayed this Honourable Appeal Tribunal for the following reliefs:

i. An Order striking out the Notice of Appeal filed on the 13th day of September, 2022 and the entire Appeal for being incompetent and for lack of jurisdiction.

ii. An Order striking our grounds 1, 2, 3, 4, 5, 6, 7 and 8 contained in the Notice of Appeal filed on the 13th September, 2022 and the Appellants' sole issue arising there from in the Appellants' brief of argument for being incompetent.

iii. An Order striking out the Appellants' brief of argument filed on the 23rd day of September, 2022 for being incompetent and not signed in accordance with the law.

iv. An Order dismissing and/or striking out this suit for lack of jurisdiction.

As we have stated above, the 1st and 2nd Appellant filed a joint written address to this objection is urging the Appeal Tribunal to dismiss the

Preliminary Objection and the 1st Respondent consequently filed a reply on points of law.

The 2nd Respondent, who also adopted his Notice of Objection and its reply on points of law, urged this Appeal Tribunal to dismiss the Appeal on the following grounds:

1. That the Notice of Appeal filed on the 13th day of September, 2022, is grossly incompetent having no relief sought at all on the face of the Notice of Appeal.

2. That the failure to put the relief(s) being sought on Appellants' Notice of Appeal filed on the 13th day of September, 2022, robs this Honoruable Appeal Tribunal of the jurisdiction to hear and determine this appeal.

3. That the Appellant Notice of Appeal, being an Originating Process in this Appeal was not personally served on the 2nd Respondent.

4. That the non – service/failure to serve the Appellants' Notice of Appeal on the 2nd Respondent/Applicant personally robs this Appeal tribunal the jurisdiction to hear this instant appeal.

5. That the Appellant brief of argument settled thereon is equally incompetent and liable to be struck-out as they arise from incompetent and incurable defective Notice of Appeal.

6. That the jurisdiction of this Area Council Election Appeal Tribunal has not been properly activated via the Notice of Appeal filed and relied on.

7. That it is in the interest of justice to dismiss and/or strike out this instant appeal for being grossly incompetent.

The 2nd Respondent therefore prayed this Appeal Tribunal for the following reliefs:-

1. An Order striking out the Notice of Appeal filed on the 13th day of September, 2022, and the entire Appeal for being incompetent and for lack of jurisdiction.

2. An Order striking out the Appellants' Brief of argument filed on the 23rd day of September, 2022.

3. An Order striking dismissing or striking out this Appeal for lack of jurisdiction.

The Appellants relied on their counter-affidavit of six (6) paragraphs deposed to by one Isaac Mazo a litigation secretary in the office of 1st and 2nd Appellants' Counsel and adopted their written address in opposition to the Preliminary Objection of the 2nd Respondent in urging the Appeal Tribunal to dismiss the objection.

On the substantive appeal, Chief Karina Tunya, SAN adopted the Appellants' Brief of Argument and Appellants' reply brief of argument to the 1st and 2nd Respondents' briefs of argument and urged this Appeal Tribunal to allow the Appeal and set aside the judgment of the Trial Tribunal.

The 1st and 2nd Respondents' Counsel adopted their respective Respondents Brief of Argument and prayed the Honourable Appeal Tribunal to disallow

the Appeal, consequently dismiss same and uphold the decision of the Trial Tribunal.

The 3rd Respondent Peoples Democratic Party (PDP) did not file any brief and conceded to the Appeal.

The 4th Respondent Independent National Electoral Commission (INEC) did not file any brief. The Judgment was then reserved till today.

We now proceed to deal with the Preliminary Objection.

It is instructive to mention that, as we were considering the objections, we observed that grounds 2, 3 and 10 of objection of the 1st Respondent and the arguments therein are same with grounds 3, 4, 5, 6 and 7 of Objection of the 2nd Respondent which have been meticulously dealt with by this Appeal Tribunal in **Appeal No.**

FCT/ACEAT/AP/21/2022 Between ***P.D.P & 1 OR VS. APC & 2 ORS.,*** unreported: delivered on the 13th day of October, 2022. See pages 6 – 16 of the above cited judgment. Arguments in respect of this Preliminary Objection can be found in pages 5 – 20 of the 1st Respondent's Notice of Preliminary Objection. While that of the 2nd Respondent at pages 7 – 16, hence they have same grounds of Objection and similar arguments as well as reply on points of law.

On the issue of non-personal service of the Notice of Appeal effected on the 1st and 2nd Respondents, we apply the decision of this Honourable Appeal Tribunal in Appeal No. **FCT/ACEAT/AP/21/2022 Between PDP & 1 OR VS. APC & 2 ORS.,** unreported where this Tribunal held thus:

Secondly, whether service on Counsel or party personally is not of the moment. The purpose of service is to let the other party to be aware of pending suit or litigation or grievance against him or her. And since the relevant party is aware of the pendency of this Appeal and have taken steps to face it squarely, then there is no complain on service that is worth treating. All the above are in the realm of technicality which is no longer fanciful in our jurisprudence.

On the fact that Grounds 1, 2, 3, 4, 5 and 6 contained in the Notice of Appeal did not arise from the ratio decidendi of the Judgment appealed against the Grounds 7 and 8 are incompetent, we have carefully studied the Judgment appealed against. Grounds 1,

2, 3, 4, 5, 6, 7 and 8 as contained on the Notice of Appeal dated 16th day of September, 2022 and filed same date actually arose from the ratio decidendi of the Judgment appealed against. There will be no need reproducing the said Grounds 1, 2, 3, 4, 5, 6, 7 and 8 here. Assuming but not conceding Grounds 1, 2, 3, 4, 5, 6, 7 and 8 did not arise from the ratio decidendi of the Judgment complained against, the omnibus Ground 10 suffice to ground this appeal ant it covers the entire reasoning or ratio decidendi upon which the Judgment of the Lower Tribunal rested. Therefore Grounds 1, 2, 3, 4, 5, 6, 7 and 8 as contained on the Notice of Appeal filed on the 16th day of September, 2022 are competent.

On the issue of non-existence of Federal Capital Election Appeal Tribunal, the pivot of the objection is that the word 'petition' was not inserted before

Tribunal that is why the 1st and 2nd Respondents contended that the Tribunal's decision is non-existent. This is laughable. We do not intend to give attention to this. We hold that there is an existing decision of the Federal Capital Area Council Election Tribunal.

We similarly noticed that the grounds 4, 5, 6 and 7 of the 1st Respondents objection and the arguments thereto are similar and not fundamentally different from what we also faced in **Appeal No.FCT/ACEAT/AP/22/2022,** that being the case, our decision of 20th October, 2022 on all the issues are the same, therefore duly applicable to this Appeal **FCT/ACEAT/AP/26/2022** as regards the Preliminary Objection. See pages 3 – 5 of the said Judgment.

We would like to consider ground 1 of the 1st Respondent's objection and grounds 1 and 2 of that of the 2nd Respondent's objection separately because of their peculiar nature. For the sake of emphasis let us duplicate the said grounds again, they are:

1. That the Notice of Appeal filed on 13th day of September, 2022 is grossly incompetent and incapable of activating the jurisdiction of this Court having no relief sought at all.

Grounds 1 and 2 of the 2nd Respondent's objection:

1. That the Notice of Appeal filed on the 13th day of September, 2022, is grossly incompetent having no relief sought at all on the face of the Notice of Appeal.

2. That the failure to put the relief(s) being sought on the Appellant's Notice of Appeal filed on the

13th September, 2022, robs this Honourable Appeal Tribunal of the jurisdiction to hear and determine this Appeal.

The arguments in respect of the above grounds can be found at pages 5 – 11 of the 1st Respondent's Notice of Preliminary Objection and pages 7 – 11 of that of the 2nd Respondent.

We have considered respective grounds of this objection, the legal submissions of the counsels; we do not want to go the long journey dwelling on technicalities. This Appeal Tribunal has severally held that it is more interested in the merit of these Appeals before it, than dwelling on technicalities which no longer holds sway in our jurisprudence. Nevertheless, we still have to consider this objection on its merit.

On the above respective grounds of objection, the Court of Appeal held in the case ***ODUGBEMI & ANOR VS. SHANUSI & ORS. (2018) LPELR – 44868 Per TSAMMANI, J.C.A*** that:

The reliefs are generally granted in response to the issues(s) raised from a Ground or Grounds of Appeal. See BRIGGS VS. THE CHIEF LANDS OFFICER OF RIVERS STATE OF NIGERIA (2002) 12 NWLR (Pt. 938) 59.

The Grounds and issues to be canvassed and determine in the Appeal will naturally flow from the ratio decidendi of the Trial Court. Once the Grounds and issues are found to have arisen from the ratio decidendi of the Judgment, the Notice of Appeal will not necessarily be struck out because the Appellant did not state the precise or exact

nature of the relief(s) he seeks. Thus, in the case of KATTO VS. CENTRAL BANK OF NIGERIA (1991) 9 NWLR (Pt. 214) 126, Akpata, JSC said:

> *"While it is desirable that the exact relief sought be stated in the Notice of Appeal so that the Court may be guided in making the order at the conclusion of the Appeal, an appeal which is valid in other respects will not be dismissed or struck out merely because the relief sought is not inserted in the Notice of Appeal. Whether an Appeal will be dismissed or allowed or struck-out or the case remitted for retrial depends in the main on the nature of the complaints projects by the Grounds of Appeal and the merit or demerit of the complaints. In effect, the order to be made is dictated by the outcome of the Appeal, that is, whether it*

succeeds or fails. If I may confess, I hardly turn to the Notice of Appeal to verify the reliefs sought by an Appellant before making an order following the success of his appeal. The Order I make is that which appears to flow from the decision arrived at in the Appeal.

The reliefs which will be granted at the end of a successful appeal is therefore dictated by the nature of the complaints in the Appeal. It is not dictated by the reliefs sought at the Trial Court as erroneously canvassed by learned counsel for the Respondents/ Cross-Appellants.

While I find that there are obvious misconceptions by the Appellant in the drafting of the reliefs sought, that in itself should not lead to the striking out of the Notice of Appeal.

Ground one (1) of the objection is according resolved against the Respondent/Cross-Appellant." (Page 8 – 10, Paragraph B).

The 1st and 2nd Respondents held and relied tenaciously unto technicalities with little or no regard to the justice of this appeal.

We refuse to dismiss or strike out the Notice of Appeal dated 12th day of September, 2022 and filed on the 13th day of September, 2022 as doing so would amount to throwing away the baby with bathed water. The Notice of the Appeal is competent hence we hereby resolve all the issues formulated with regards to the 1st and 2nd Respondents' Preliminary Objections in favour of the Appellants.

Therefore and for the purposes of lucidity, the 1st and 2nd Respondents' Preliminary Objections are lacking in merit and thus thereby dismissed.

We now gravitate to the main Appeal proper. Issues for determination as formulated by the Appellant Counsel are six (6) and are as listed below:

1. ***Whether the Trial Tribunal was right in holding that the 1st, 3rd and 4th Respondents at the Trial Tribunal abandoned their defence, called no witness in Petition No. FCT/ACET/EP/08/2022 (Grounds 1, 2 and 5).***

ii. ***Whether the Trial Tribunal misconstrued the cases of EVA ANIKE AKOMOLAFE & ANOR VS. GUARDIAN NEWSPAPER LIMITED (Printers) & ORS (2010) LPELR – 366 (SC);***

CBN & ORS VS. OKOJIE (2015) LPELR – 24740 (SC) Pp. 34 (2015) 14 NWLR (Pt. 1479) P. 231 when it held that the two cases are contradictory, gave credence to CBN & ORS VS. OKOJIE (2015) LPELR – 24740 (SC) Pp. 34; (2015) 14 NWLR (Pt. 1479) P. 231 and refused to be bound by recent Supreme Court cases on the effect of evidence obtained during cross-examination. (Grounds 3 and 4).

iii. *Whether the Trial Tribunal was wrong when it held that 2nd, 3rd and 4th Respondents at the Trial Tribunal admitted the claim and facts adduced by the Petitioners/ 1st and 2nd Respondents (Grounds 6 and 7).*

iv. *Whether the Trial Tribunal holding in Polling Unit 006 and Unit 008 are right, admits the*

discredited evidence of the Petitioners' witnesses elicited during cross-examination. (Ground 8).

v. ***Whether the Trial Tribunal erred in law when it held that the Petitioners scored the highest lawful votes of the Election conducted by then 1st Respondent now 4th Respondent (Ground 9).***

vi. ***Whether the Judgment delivered in Petition No. FCT/ACET/EP/08/2022 is against the weight of evidence adduced at trial.***

Learned counsel to 1st Respondent framed a sole issue to wit:

1. ***Whether the Trial Tribunal was right to rely on the eyes witness evidence of PW6 and PW10 in entering judgment for the 1st and 2nd Respondents that they won the election in***

Polling Units 006 and 008 of Shere Ward and ultimately won the Bwari Area Council Chairmanship Election held on the 12th day of February, 2022. (Grounds 9 and 10).

On the part of the 2nd Respondent's counsel he formulated two (2) issue to determination they are:

1. ***Having regards to the pleadings and evidence lead at the trial, whether the 1st and 2nd Respondents have proven with credible and legal admissible evidence that they are the winners of the Bwari Area Council Chairmanship Election held on the 12th day of February, 2022.***

2. ***Whether the Trial Tribunal was right in holding that the 4th Respondent and the Appellants abandoned their defence and***

admitted to the case of the Petitioner as the Trial Tribunal.

All Counsel proffered written arguments, made adumbrations in Court in support of the issues and arguments canvassed, they equally cited numerous authorities such as: ***IFEAJUNA VS. IFEAJUNA (1997) 7 NWLR (Pt. 513) 405 at 427 Paragraph B (CA);***

GAJI VS. PAVE (2003) 8 NWLR (Pt. 823) 583 ETC See Pages 5 – 26 of the Appellants' Brief of Argument, 1st and 2nd Respondents cited:

MUSA VS. STATE (2019) LPELR – 46350 (SC);

NAGODO VS. CPC & ORS (2012) LPELR – 15521 (SC);

IMAM VS. SHERIFF (2005) 4 NWLR (Pt. 914) Page 80;

ANPP VS. PDP (2006) LPELR – 7588;

BUHARI VS. OBASANJO (2005) 2 NWLR (Pt. 910) Page 241;

PDP VS.NWANKWO & ORS (2015) LPELR – 49668 (CA).

See pages 8 – 28 and 3 – 20 of the 1st and 2nd Respondents' Briefs of Argument. All of them are on record and it will serve no purpose to repeat them in this Judgment.

We have considered the afore-raised issues for determination. They are same in Form but appeal differently in regalia.

The issues formulated however by Chief Tunyan, SAN, seemed most encompassing.

The issue is hereby adopted as that of this Appeal Tribunal for determination.

Issue No. 1 – 4 are almost same and we will consider them together as if they are one:

1. ***Whether the Trial Tribunal was right in holding that the 1st, 3rd and 4th Respondents at the Trial Tribunal abandoned their Defence, called no witness in Petition No. FCT/ACET/EP/08/22 (Grounds 1, 2 and 5).***

ii. ***Whether the Trial Tribunal misconstrued the cases of EVA ANIKE AKOMOLAFE & ANOR VS. GUARDIAN NEWSPAPERS LIMITED (Printers) & ORS (2010) LPELR – 366 (SC);***

CBN & ORS VS. OKOJIE (2015) LPELR – 24740 (SC) Pp. 34; (2015) 14 NWLR (Pt. 1479) P. 231 when it held that the two cases are contradictory, gave credence to CBN & ORS VS. OKOJIE (2015) LPELR – 24740 (SC) Pp. 34; (2015)14 NWLR (Pt. 1479) Page 231 and refused to be bound by recent Supreme Court cases on the effect of evidence obtained during cross-examination. (Grounds 3 and 4).

iii. Whether the Trial Tribunal was wrong when it held that 2nd, 3rd and 4th Respondents at the Trial Tribunal admitted the claims and facts adduced by the Petitioners/1st and 2nd Respondents. (Grounds 6 and 7).

iv. Whether the Trial Tribunal holding on Polling Unit 006 and Unit 008 are right, admits the

discredited evidence of the Petitioners' witnesses elicited during cross-examination. (Ground 8).

The law is trite that evidence elicited during cross-examination is the evidence of the Appellants and the 4th Respondent. See the case of ***ANDREW VS. INEC (2018) 9 NWLR (Pt. 1625) 507 at 584, Paragraphs D – F.***

> ***"Evidence elicited from a party or his witness under cross-examination which goes to support the case of the party cross-examination constitutes evidence in support of the case or defence of the party. If at the end of the day, the Party cross-examining decides not to call any witness, he can rely on the evidence elicited***

from cross-examination in establishing his case or defence..”

The Lower Tribunal had in error held that the Appellants and the 4th Respondent having not called witnesses, they have abandoned their defence or reply to the Petition. The Lower Tribunal further held that the case to be considered on the merit is the case presented by the 1st and 2nd Respondents/Petitioners and that since the Appellants and the 4th Respondent did not call evidence according to the Lower Tribunal, the 1st and 2nd Respondents/Petitioners is only required to prove their claim on a minimal basis or minimal proof of their unchallenged claim. The Lower Tribunal referred to the case ***EVA ANIKE AKOMOLAFE & ANOR VS. GUARDIAN PRESS LIMITED (Printers) & ORS (2010) LPELR – 366***

(SC) Pages 15 – 16, Paragraphs C - A which support the Appellants' case that evidence elicited during cross-examination can be used to establish the case of the party cross-examining or his defence.

The case of ***CBN & ORS VS. OKOJIE (2015) LPELR – 24740 (SC) at Page 34 Paragraph D.,*** as quoted by the Lower Tribunal especially the portion where the Apex Court held that: "***the Defendant must call evidence to support his averments. Where this is not done, the Defendant is deemed to have abandoned his defence."*** It is with this holding of the Apex Court that the Lower Tribunal concluded that the decision of the Apex Court in ***EVA ANIKE AKOMOLAFE & ANOR VS. GUARDIAN PRESS LIMITED (Printers) & ORS (Supra)*** is or could be said to be contradictory to the decision of the Apex

Court in ***CBN & ORS VS. OKOJIE (Supra)***.See pages 669 – 675 of the Records of Appeal.

We should go straight to the import of the two Supreme Court cases. It is our humble view that the decisions in ***EVA ANIKE AKOMOLAFE & ANOR VS. GUARDIAN PRESS LIMITED (Printers) & ORS (Supra);***

CBN & ORS VS. OKOJIE (Supra) are not contradictory at all. What is clear in the above cases is that, in the case of ***CBN & ORS VS. OKOJIE (Supra)*** the Apex Court held the Defendant must call evidence to support his defence or averment while the case of ***EVA ANIKE AKOMOLAFE & ANOR VS. GUARDIAN PRESS LIMITED (Printers) & ORS (Supra) the Apex Court held that:***

Evidence elicited from a party or his witness under cross-examination which goes to support the case of the party cross-examining constitutes evidence in support of the case or defence of the party. If at the end of the day, the party cross-examining decides not to call any witness, he can rely on the evidence elicited from cross-examination in establishing his case or defence.

See also the Apex Court decision of ***ANDREW VS. INEC. (Supra) 584, Paragraphs D – F*** delivered on Monday 24th July, 2017, wherefore the aforementioned cases of ***EVA ANIKE AKOMOLAFE & ANOR VS. GUARDIAN PRESS LIMITED (Printers) & ORS (Supra)*** was cited and followed.

The Lower Tribunal, in insisting that the Appellants and the 1st, 3rd and 4th Respondents abandoned their defence called no witness to the Petition placed heavy reliance on a Court of Appeal decision of ***OLADAPO OLUFUNLAYO OGUNNUBI VS. OMOBOLANLE ADENIKE OGUNNUBI (2021) LPELR – 53497 (CA).***

We hold that the aforementioned Court of Appeal case of ***OLADAPO OLUFUNLAYO OGUNNUBI VS. OMOBOLANLE ADENIKE OGUNNUBI (2021) LPELR – 53497 (CA)*** supports the case of the Appellants. We as well find that the Appellants and 2nd Respondents Peoples Democratic Party (PDP) now 3rd Respondent at no point admitted the claims and facts adduced by the Petitioners at the Trial. See Pages 494 – 565 of the Records of Appeal.

One issues 5 – 6 which reads thus:

5. ***Whether the Trial Tribunal erred in law when it held that the Petitioners scored the highest lawful votes of the Election conducted by then 1st Respondent now 4th Respondent. (Ground 9).***

6. ***Whether the Judgment delivered in Petition No. FCT/ACET/EP/08/2022 is against the weight of evidence adduced at trial.***

It is the argument of the 1st and 2nd Respondents that the Appellants could not point out to any evidence on record which if considered would have resulted in a different decision by the Trial Tribunal. That the Trial Tribunal properly evaluated the evidence presented before it hence their duty. See pages 7 –

10 of the 1st Respondent's Brief of Argument and 3 – 20 of the 2nd Respondent's Brief of Argument.

By the testimonies of PW6, PW10 at pages 60 – 61 and 58 – 59 of the Records of Appeal, we find that it is in evidence in their witness statement on oath that Election took place in Polling Units 006 and 008, Shere Ward and counting of ballot papers was done wherein All Progressive Congress (APC) scored 2,671 votes and Peoples Democratic Party (PDP) scored 1 vote in Polling Unit 006. While in Polling Unit 008, All Progressive Congress (APC) scored 3,110 votes and Peoples Democratic Party (PDP) scored 4 votes and after voting violence began results of votes scored could be recorded in the result sheet and ballot papers and other electronic materials were burnt down. But the PW6 stated the number of votes in Polling Unit 006 is 2,301 while

in Polling Unit 008, the PW10 maintained that the total number of votes is 1,054. In the PW8's evidence he confirmed at pages 18 – 32 of the Records of Appeal the figures of the All Progressives Congress (APC) and Peoples Democratic Party (PDP) and the number of registered voters in Polling Unit 006 and 008. But at cross-examination admitted that the 2,671 votes scored by All Progressives Congress (APC) in Polling Unit 006 was more than the total number of registered voters which is 2, 301. See 525 – 528 of the records. At cross-examination also PW8 admitted that All Progressives Congress (APC) scored 2, 671 votes in Polling Unit 006 and that the total number of in the Unit is 2, 301 at pages 532 – 537.

A careful study of the evidence before the Trial Tribunal it is obvious that the numbers of votes purportedly scored by All Progressives Congress (APC) are more than the actual registered voters at Polling Unit 006.

It is clear to us that there were actually over voting. The Trial Tribunal ought not to have countenanced with the said votes to give victory to the 1st and 2nd Respondents/Petitioners.

The Trial Tribunal actually neglected to evaluate evidence elicited by the Appellants during cross-examination of PW4, PW8 and PW10 with regards to over-voting which supports the case of the Appellants. More so the PW8 at page 640 of the records admitted that his agents communicated to him all that transpired at 006 and 008 Polling Units.

Thus, is actually hearsay evidence which ought not to be countenanced with see the case of ***GUNDIRI VS.NYAKO (2014) NWLR (Pt. 1391) at 245 Paragraphs B – D.***

Speak on the issue of the absence of the Polling Units registers of Voters for the affected voters.

On the issue of Bimodal Voter Accreditation System (BVAS) Machine, the decision of this Appeal Tribunal in the just delivered Judgment of ***ABDULLAHI SULEIMAN SABO VS. SARKI HAMIDU & 3 ORS*** In Appeal No. ***FCT/ACEAT/AP/30/22***is apt.

However, the failure of the 1st and 2nd Respondents to tender in evidence the Register of Voters for Polling Unit 008 and Independent National Electoral Commission (INEC) Form EC8A Statement Polling

Units of the two Polling Units leaves a very big gap on credibility of the fact that All Progressive Congress (APC) actually scored 3,110 which the Trial Tribunal computed and ascribed victory to the 1st and 2nd Respondents.

The Trial Tribunal relied on the evidence of figures of votes which were not supported with any documentary evidence to give judgment to the 1st and 2nd Respondents. The burden is actually resting on the 1st and 2nd Respondents to prove to the Tribunal by documentary evidence on how they got the 3, 110 votes or such votes remains within the imagination of the manufacture of the so called votes. It is our firm view that the Petitioners/1st and 2nd Respondents did not prove their case at the Trial Tribunal. We so hold.

It is the law, which is spent over time that whoever seek a declaration of a right, shall so succeed on the strength of his own case and not on the weakness of the defence. The law is also settled that declaratory reliefs will not be granted, even on admission made by the adverse party.

See the case of ***ADAMU VS. NIGERIAN AIRFORCE & ANOR (2022) LPELR – 56587 (SC);***

BUHARI & ANOR VS. ADEPOJU & ORS (2015) LPELR – 41704 (CA) Pages 27 – 28 Paragraph C – B.

In conclusion, it is our firm view that the Lower Tribunal failed to properly evaluate the evidence adduced during Trial and that the Judgment of the Lower Tribunal is against the weight of evidence

adduced at the Trial Tribunal having failed to utilize the evidence elicited by the Appellants during the cross-examination of the 1st and 2nd Respondents/ Petitioners witnesses who testified as PW6, PW8 and PW10 at pages 523 – 537 of the Records of Appeal.

The law empowers the Appellate Court to carefully weigh and consider the Judgment appealed against and the evidence adduced and overrule or set it aside if it comes to the conclusion that the Judgment was wrong. See ***PATAMA LTD. & ORS VS. UNION BANK (2015) LPELR – 24535 (CA) Pages 21 – 22, Paragraphs D – C,*** where it was held that:

On the fourth (4) aspect of the sole issue for determination whether Judgment of the Lower Court was/is against the weight of evidence. The

rule here is for the Appellate Court to examine the evidence which was before the Trial Court, we should be directed on what portion of the Judgment is against the weight of evidence. The full guide is to be found in the Supreme Court's decision in LION BUILDINGS LIMITED VS. M.M SHADIPE (1976) 12 SC 135 at Pp. 152 – 153. The Apex Court stated as follows:

> ***When a judgment is appealed from being against the weight of evidence the Appeal Court must make up its own mind on the evidence, not disregarding the Judgment appealed from but carefully weighing and considering it and not shrinking from over-ruling it, if on full consideration, it comes to the conclusion the Judgment is wrong.***

We have done exactly what the Court of Appeal has done in ***PATAMA'S CASE (Supra)***. The decision of the Lower Tribunal in this instance was reached in error considering the evidence adduced which we have already looked at. The said Judgment cannot stand.

The six (6) issues are ultimately hereby resolved in favour of the Appellants.

This Appeal on the whole succeeds.

In consequence whereof, we hereby make the following Orders:-

1. An Order allowing this Appeal, setting aside the Judgment appealed against delivered by the Federal Capital Territory Election Tribunal sitting at the Chief Magistrate Court, Wuse Zone 2, Abuja in Petition No. **FCT/ACET/EP/08/**

2022 delivered on the 30th day of August, 2022, is **hereby granted;** and

2. An Order affirming the declaration and return of the 1st and 2nd Appellants as duly elected Chairman and Vice Chairman of Bwari Area Council at the FCT Area Council Election held on the 12th day of February, 2022, is **hereby granted.**

HON. JUSTICE S.B. BELGORE
(CHAIRMAN)
28TH OCTOBER, 2022

HON. JUSTICE Y. HALILU
(MEMBER I)
28TH OCTOBER, 2022

HON. JUSTICE J.O. ONWUEGBUZIE
(MEMBER II)
28TH OCTOBER, 2022

APPEARANCE

C.I Okoye, Esq. with Gabriel Okpara, Esq., Simon Dauda, Esq., D.D Tunyan, Esq., Oscar Nnadi, Esq., W.S Bako, Esq., A.J Adagami and A.A Badmus, Esq. - for the 2nd Respondent.

D.O Onalo, Esq. – for 1st Respondent.

OdinnahaIkoroha O., Esq. with Franck O., Esq. – for the 4th Respondent.

OlamideAdekule, Esq. – for 3rd Respondent.