

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/25/2022
PETITION NO: FCT/ACET/EP/28/2022

BETWEEN:

1. MIKAILU MUSA ALHASSAN
2. ALL PROGRESSIVE CONGRESS (APC) } APPELLANTS/
APPLICANTS

AND

1. MUHAMMAD BABA
2. PEOPLE'S DEMOCRATIC PARTY (PDP) } RESPONDENTS
3. INDEPENDENT NATIONAL ELECTORAL
ELECTORAL COMMISSION (INEC)

JUDGMENT

The 3rd Respondent Independent National Electoral Commission (INEC) in the exercise of its Constitutional and Statutory Powers conducted Election on the 12th February, 2022 for the Office of the Councilor of Gwargwada Ward, Kuje Area Council, Federal Capital Territory.

The 1st Respondent (Muhammad Baba) sponsored by the 2nd Respondent (People's Democratic Party (PDP) was declared winner by the 3rd Respondent Independent National Electoral Commission (INEC) and was duly returned as the elected Councilor of Gwargwada Ward, Kuje Area Council, Federal Capital Territory at the Election held on the 12th February, 2022.

By the result of the Councillorship Election for Gwargwada Ward declared by the 3rd Respondent, the following scores were allegedly scored at the Election:-

1. MIKAILU MUSA ALHASSAN APC 330

2. MUHAMMED BABA PDP491

By ordinary mathematical calculation, the difference between votes scored by the Appellants and that of the 1st and 2nd Respondents according to declaration made by the 3rd Respondent is 161.

It is on the basis of the said result that the 3rd Respondent returned the 1st Respondent as the Winner of the Election.

The Appellants not satisfied with the declaration of the 1st Respondent as the Winner of the said Election

filed a Petition before the Trial Tribunal on the following grounds. The said Petition is at pages 1 to 34 of the Records of Appeal.

The Trial Tribunal on the 23rd day of August, 2022, delivered its Judgment at pages 284 to 351 of the Records of Appeal. In the said Judgment, the Trial Tribunal dismissed the Petition of the Appellants.

The Appellants not satisfied with the dismissal of their Petition, filed Notice of Appeal against the Judgment of the Trial Tribunal. The said Notice of Appeal which contained grounds is at pages 352 to 358 of the Records of Appeal.

The Appellants called a total of 7 witnesses, PW1 to PW7 through whom Form EC8 series and Voters Registers were tendered and admitted in evidence for Gwargwada Ward. This can be found at pages

232, 233, 236, 242, 247, 251, 255 and 260 of the Records of Appeal.

Appellants' counsel filed brief of argument dated the 5th October, 2022 on the same date.

In the said brief of argument, five issues were formulated for determination, to wit:-

- 1. Whether the Trial Tribunal was right when it admitted and placed reliance on Exhibits “D1”, “D2”, “D3” and “D4” which were not front loaded and tendered without leave of the Trial Tribunal. (Distilled from grounds 1 and 2).*
- 2. Whether the Trial Tribunal was right when it held that the Appellants did not prove their case in Tusha Primary School Polling Unit. (Distilled from (Distilled from grounds 5 and 6).*

3. *Whether the Trial Tribunal was right when it held that the evidence of the Appellants is not strong enough to prove the allegation in Gombe Polling Unit. (Distilled from ground 9).*
4. *Whether the Trial Tribunal was right when it refused to accept the case of the Appellant in Gwargwada/Gangiyei Polling Unit when none of the Respondents call witness in respect of the Polling Unit. (Distilled from ground 8).*
5. *Whether the Trial Tribunal was right when it refused to nullify the Election of the 1st Respondent as Councilor of Gwargwada Ward of Kuje Area Council. (Distilled from grounds 3, 4, 7 and 10).*

On the part of 1st and 2nd Respondents, 1st and 2nd Respondents' reply brief was filed on the

14th October, 2022 in response to the argument of Petitioner.

1st and 2nd Respondent adopted the issues formulated for determination by Petitioners as theirs.

The arguments of counsel on the formulated issues are contained at pages 142 to 176 of the Records of Appeal.

Needless to say that I would avoid repeating the said argument word for word in this judgment save that I shall be making reference to same in the course of this judgment.

We would however adopt issue No. 5 formulated by both parties as that of court in resolving the instant appeal in view of the fact that it is all encompassing.

The issue is;

“Whether the Trial Tribunal was right when it refused to nullify the election of the 1st Respondent as councilor of Gwargwada Ward of Kuje Area Council.”

It ought to be borne in mind the fact that any declaration of results made by Independent National Electoral Commission enjoys presumption of regularity until proven otherwise.

Eventhough the Petitioners’ is a rebuttable one, the Petitioners are under a duty to rebut same.

See ***INEC & ORS VS. ANTHONY & ANOR (2010) LPELR – 12183 (CA)***.

From the available evidence before the Trial Tribunal, Appellants are of the view that election did not take place in some Polling Units at all and in other Polling Units where accreditation started,

elections were disrupted by thugs hence no votes were counted not to talk of declaration of a winner at the Polling Unit.

PW3, PW4 and PW5 gave evidence for Petitioners as registered voters from Gwargwada Ward in dispute. They both tendered their voters card and were cross – examined in that respect.

On the part of 1st and 2nd Respondents, DW1 who is an agent of the Respondents stated in his evidence that election held and proceeded to tender Exhibit “D3” i.e Form EC8A(1) code 003 Gombe Primary School.

DW2 who was a subpoenaed witness from Independent National Electoral Commission (INEC) produced certificate True Copy of Form EC8A(1) for Tusha Primary School Code 004

Gwargwadaward of Kuje Area Council, tendered and was marked Exhibit “D4”.

DW2 similarly brought the booklet and Independent National Electoral Commission (INEC) directory of Polling Units 2022 which was admitted as Exhibit “D5”. It is further the evidence of DW2 that there is no unit called GwargwaraGangyei code 002 but GwargwadaGangiyei 002.

Appellants’ counsel contended in their issues for determination which I shall take together that the Trial Tribunal relied on the case of ***CHIME VS. ONIYA (2009)2 NWLR (Pt. 1124) 1 at 46 – 51 and APC VS. INEC & ORS (2019) LPELR – 48909 (CA) Pages 13 – 14*** to hold that mere use of the word shall in paragraph 12(3) without any specific consequential sanction does not import compulsion

or sanction. It was on this basis that the Trial Tribunal discountenanced the objection of the Appellants to the said documents and admitted same in evidence i.e Exhibits “D1” – “D4”.

Learned counsel further contend, that by the Provision of Paragraph 41(8) of the First Schedule to Electoral Act, 2010 (as amended), while the Petitioners can either file along with his Petition list of documents to be relied upon or attach copies of such documents, a Respondent is to file copies of documents to be relied upon by him along with his Reply. The consequence of violation of this provision is clear, document, plan, photograph or model not admissible in evidence except with the leave of court.

Learned counsel further contended, that the provision of Section 2 of Evidence Act, 2011, it is not correct that the admissibility or inadmissibility of a document is solely determined by the Evidence Act. Any legislation validly made by the National Assembly, which has the exclusive power to legislate on evidence, such as Paragraph 41(8) of First Schedule to Electoral Act, can validly make a document inadmissible.

It is the submission of learned counsel, that the Exhibits in issue are inadmissible by the provision of Paragraph 41(8) of First Schedule to the Electoral Act. This Honourable Appeal Tribunal is urged to hold that Exhibits “D1” to “D4” are inadmissible.

It is further the argument of learned counsel that contrary to the findings of the Trial Tribunal, the

testimonies of these witnesses were not shaken during cross-examination.

Learned counsel for the Appellant argued that Exhibit “D4” having not being frontloaded and leave of the Trial Tribunal having not been sought and obtained before tendering same is inadmissible.

Learned counsel contend, that a party seeking to rely on the document tendered before a Court of law must adduce cogent and credible oral evidence through the maker of the said document or a person who participated in the making of the document to link and or demonstrate the document to specific aspect of his or her case. Anything short of this amount to a party dumping the document on the Court.

ABDULRAZAQ VS. SARAHI (2016) ALL FWLR (Pt. 864) 1913 at Pages 1958 – 1959 was cited.

Learned counsel submits, that effect of the failure of the 1st and 2nd Respondents to tender the Election result and to link same to their Petition through witnesses who were physically present at the disputed Polling Unit when the votes were being counted, collated and recorded or who participated in any stage of the making of the said Election result, is that the said Election result was essentially dumped on the Trial Tribunal.

Counsel further submits, that the testimonies of PW1, PW6 and PW7 were not discredited during cross-examination of the witnesses.

Learned counsel argued, that the Trial Tribunal did not disbelieve the evidence of PW1. The content of

the evidence given by PW1 was not disbelieved by the Trial Tribunal. On the strength of the observation of the Trial Tribunal on Exhibit “P1”, it threw away the entire testimony of PW1.

It is the submission of learned counsel, that the Trial Tribunal was wrong when it refused to ascribe value to the testimony of PW1.

Learned counsel contended, that with respect to Tusha Primary School Unit, there is no evidence from the Respondents as none of the Respondents called witnesses in respect of the Polling Unit. DW2 called by the 1st and 2nd Respondents was not an eye witness to what transpired at the Polling Units. Exhibit “D4” tendered as the result from the Polling Unit, by the admission of DW2 was not signed by the Presiding Officer. Exhibit “D4” by the admission

of DW2 has no stamp of Independent National Electoral Commission.

Learned counsel argued, that the position of the law on standard of proof in an Election Petition is proof on the balance of probabilities or on the preponderance of evidence. The case of ***BUHARI VS. OBASANJO (2005) 2 NWLR (Pt. 910) 241 at 518*** was cited.

It is the submission of learned counsel, that the Appellants are entitled, in the circumstances of this case, to an Order of the Trial Tribunal invalidating the Election and return of the 1st Respondent as Councilor of Gwargwada Ward of Kuje Area Council of Federal Capital Territory and supplementary Election be ordered in the 3 affected Polling Units.

Learned counsel contends, that the burden of first proof lies against whom judgment would be given if no evidence is adduced on either side regard being had to the presumption that arise in the pleadings that there was an election and the winner declared. See sections 131 (1) & (2), 132 and 133 of the Evidence Act, 2011.

Learned counsel further argued, that among the documents tendered are Certified True Copies of Voters Registers for the 3 Polling Units, Certified True Copies of Forms EC 8E(1) and Form EC 8B(1). The Petitioners also tendered Voter's Cards and Agents tags among other documents. Each witness presented before this Honourable Tribunal played a role in the election. They were all eye witnesses who gave eye witness account of the fact that transpired in their polling units being that the

election was marred by irregularities and non – compliance with the provisions of the Electoral Act.

Counsel argued, that the position of the law on standard of proof in an election petition is proof on the balance of probabilities or on the preponderance of evidence. ***BUHARI VS. OBASANJO (2005) 2 NWLR (Pt. 910) 241 at 518;***

OMOBORIOWO VS AJASIN (1984) 1 SCNLR 108;

INECVS. OSHIOMOLE (2009) 4 NWLR (Pt. 1132) 607 were cited. It is humbly submitted that the Appellants have been able to prove all the above – mentioned allegations through their oral and documentary evidence on balance of probability, this is more so, when the 3rd Respondent led no contrary

evidence to debunk the evidence of the Petitioners' witnesses.

Learned counsel further argued, that the allegations of irregularities and non – compliance with mandatory provisions and principles of the Electoral Act is a complaint made against the 3rd Respondent and to which only the 3rd Respondent can effectively answer.

It is the submission of learned counsel, that where the question is that of non – compliance with the INEC Manual and Guidelines, it is a complaint against Independent National Electoral Commission (INEC) that conducted the election. ***FANNAMI VS. BUKAR (2004) ALL FWLR (Pt. 198) 1210, 1238, 1239;***

***CPC VS. INEC (2011) 18 NWLR (Pt. 1279)
493,545 were cited.***

Learned counsel contend, that none of the Respondents called any witness in support of their Reply in respect of the GwargwadaGangiyei Polling Unit. The Respondents are deemed to have abandoned their pleadings in respect of the said Polling Unit having failed to call evidence in support of their averments.

Learned counsel further contend, that it is trite law that averments in pleadings is not evidence. They mainly highlight the evidence that a party is likely to present so that the other side would not be caught unaware or unprepared or to eliminate surprise. The position of the law is that pleadings are the body and soul of any case in a skeleton form and are built and

solidified by evidence in support thereof. They are never regarded as evidence by themselves and if not supported by evidence they are deemed abandoned.

CHIME VS. CHIME (2001) 3 NWLR (Pt. 701) 527;

GARBA VS. LOBI BANK (2003) FWLR (Pt. 173) 106;

EZEANALI VS. ATTA 2004) 7 NWLR (Pt. 873) 468 were cited.

Petitioners' counsel on the whole urged the court to hold that they have proved their case and proceed to grant all their reliefs.

On the part of the 1st and 2nd Respondents, it is their argument based on the issues formulated that Petitioners who are under an obligation to establish

their case, failed to so do and cannot be entitled to the reliefs sought.

It is the contention of learned counsel for the Respondents, that the evidence of PW1 who was called as witness has fallen short of the provisions of section 45 of the Electoral Act 2010 same having not shown proof of accreditation hence his evidence goes to no issue.

Learned counsel urged the court to hold that 1st and 2nd Respondent have been able to show that election held at the disputed polling units in issue.

Tribunal would like to state for the umpteenth time, what a Petitioner claiming election did not hold or that voters did not vote, must do.

The burden of proof is on a Petitioner who alleges that election did not hold.

See *ADIGHIJE VS. NWAOGU & ORS. (2010) LPELR – 4941 (CA)* and Sections 134, 135 and 137 of the Evidence Act.

Similarly, evidence of non – voting in a particular polling unit booth is provable by production of voters register, production of voters cards and the oral evidence of registered voters who were available and tuned up to vote at their respective polling booths on the day of the election but could not vote for variety of reasons.

See *APGA VS INEC & ORS (2012) LPELR – 19952 (CA)*.

Petitioners only called 3 alleged registered voters from the said units in issue who did not demonstrate the fact that they were either accredited or not accredited from the voters register.

The responsibility of a Petitioner is akin to climbing mountain Kilimanjaro. A Petitioner must ensure that all the ingredient necessary to adjudge the fact that Election did not hold are present.

This area of Electoral jurisprudence is no longer nobel... Courts have put to rest what a Petitioner must do. Petitioners have not done well in this regard, at all. It was no wonder that the Trial Tribunal dismissed the said Petition.

We have therefore no difficulty without much ado, agreeing with the Trial Tribunal which dismissed the Petition of the Appellants and affirmed the declaration and return of the 1st and 2nd Respondents as duly elected councilor for Gwargwada Ward.

We so affirm the dismissal of Petition No. FCT/ACET/EP/18/2022, affirm the declaration of

Mohammed Baba and PDP as winner of the election into the office of Councilor of Gwargwada Ward of Kuje Area Council held on the 12th February, 2022.

We so hold.

HON. JUSTICE S.B. BELGORE
(CHAIRMAN)
13TH OCTOBER, 2022

HON. JUSTICE Y. HALILU
(MEMBER I)
13TH OCTOBER, 2022

HON. JUSTICE J.O. ONWUEGBUZIE
(MEMBER II)
13TH OCTOBER, 2022

APPEARANCES

KwaiduInuaSaleh, Esq. with AbdulhakamAdamu, Esq. – for the Appellants.

C.I Okoye, Esq. with Gabriel Okputa Esq., Oscar Nnadi, Esq., W.S Bako Esq., and A.J Adagamu, Esq. – for the 1st and 2nd Respondents.

Esther Agbase, Esq. – for the 3rd Respondent.