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

HON. JUSTICE SULEIMAN BELGORE	**CHAIRMAN**
HON. JUSTICE YUSUF HALILU	**MEMBER I**
HON. JUSTICE JUDE O. ONWUEGBUZIE	**MEMBER II**

PETITION NO: FCT/ACET/EP/03/2022
APPEAL NO: FCT/ACEAT/AP/10/2022

BETWEEN:

1. MURTALA USMAN
2. ALL PROGRESSIVES CONGRESS (APC) } **CROSS APPELLANTS**

AND

1. CHRISTOPHER ZAKKA
2. PEOPLES DEMOCRATIC PARTY (PDP)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) } **CROSS RESPONDENTS**

JUDGMENT

In this appeal number FCT/ACEAT/AP/10/2022, the cross-appellant to wit: Murtala Usman and All Progressive Congress APC, were the winners at the Lower Tribunal in their petition number FCT/ACET/EP/03/2022.

Despite their victory at the Lower Tribunal on 5-8-2022, they are still not satisfied. They believe certain decisions or aspects of the Judgment of the Lower Tribunal was not right and should have been otherwise. Hence, they filed the extant cross-appeal with the following as Cross-Respondents:

(1) Christopher Zakka
(2) People Democratic Party (PDP)
(3) Independent National Electoral Commission (INEC).

The Notice of the Cross-Appeal dated 22nd August 2022 and filed same day contained three grounds of appeal with particular enumerated therein. They are:

GROUND ONE

The trial Tribunal erred in law when it discountenance the objection of the Cross-Appellants to the admissibility of Exhibits D1 to D11, D12 to D16, D18 and D19 to D47.

PARTICULARS OF ERROR:

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

ii. By the Provision of **Paragraph 41(8) of Electoral Act**, no document, plan, photograph or model shall be received in evidence at the hearing of a Petition unless it has been

listed or filed along with the petition in the case of the Petitioner or filed along with the Reply in the case of the Respondent.

iii. The documents not front loaded by the Respondent are not admissible in evidence.

GROUND TWO

The Trial Tribunal erred in law when it declined jurisdiction to hear and determine the issue of qualification of the 1st Respondent on the ground that same is statute barred.

PARTICULARS OF ERROR:

i. Issue of qualification is both pre-election and post-election matter.

ii. By Section 138(1)(a) of the Electoral Act non-qualification is a ground on which election may be questioned.

GROUND THREE

The Trial Tribunal erred in law when it held at pages 88 to 91 that there is no cogent and compelling evidence that the 1st Respondent presented forged certificate and made false declaration to the 3rd Respondent in aid of his qualification for the Chairman of Abuja Municipal Area Council Election of 12-02-2022.

PARTICULARS OF ERROR:

i. The evidence of PW1 and PW7 and PW13 proved that the 1st Respondent presented forged certificate and made false declaration to the 3rd Respondent in aid of his qualification for the Chairman of Abuja Municipal Area Council Election of 12-02-2022.

ii. The 1st Respondent could not have attended LEA Festival Road Primary School from 1983 to 1989 when uncontroverted evidence before the trial Tribunal showed that the School was established in on the 13th April,1987.

iii. The evidence of PW1 was not controverted at the Trial Tribunal.

iv. The evidence of PW7 was not controverted at the Trial Tribunal.

And the reliefs the Cross-Appellant prayed for are as follows:

i. An Order of this Honourable Appeal Tribunal setting aside the decision of the trial Tribunal discountenancing the objection of the Cross-Appellants to the admissibility of Exhibits D1 to D11, D12 to D16, D18 and D19 to D47 and an order of this Honourable Appeal Tribunal marking the said Exhibits as tendered and rejected.

ii. An Order of this Honourable Appeal Tribunal setting aside the decision of the trial tribunal that it had no jurisdiction to hear and determine issue of qualification of 1st Respondent.

iii. An Order of this Honourable Appeal Tribunal setting aside the decision of the trial tribunal upholding the objection of the 1st and 2nd Respondents on ground 1 of the Petition.

iv. An order of this Honourable Appeal Tribunal holding that the 1st Cross-Respondent (1st Respondent at the trial tribunal) is not qualified to contest the election into the office of Chairman of Abuja Municipal Area Council held on the 12th day of February, 2022.

Following exchange of Briefs of Arguments by Counsel, the Cross-Appeal was argued on 19th September 2022. Mr. Sarafa Yusuf of counsel to the Cross-Appellant fired the first salvos. He referred to their Cross-Appellant Brief of Argument dated 8th September 2022 and filed on 9th September 2022. He also referred to their Cross-Appellant Reply Brief dated and filed 13th September 2022. This Reply Brief was necessitated by the 2nd Cross-Respondent Brief of Argument served upon them. Learned Counsel informed the Court that the 1st Cross-Respondent Brief of Argument was served on them on the morning of that 19th September 2022 just before the commencement of the hearing of the main appeal and the Cross-Appeal. Hence, he (Sarafa Yusuf Esq.) decided to adopt

their Reply to the 2nd Respondent Brief of Argument as their Reply to the 1st Cross-Respondent's Brief of Argument. Learned Counsel then adopted all the processes they filed as their arguments in grounding the Cross-Appeal.

By way of oral adumbration, Mr. Sarafa Yusuf emphasised the following two key points:

(1) The Cross-Appeal raised issue relating to paragraph 41(8) of the 1st Schedule to the Electoral Act 2010 (as amended). This same issue was raised in their final address at the lower tribunal. So, according to him, it is not correct as argued by 1st cross-respondent that they are raising it for the first time at this stage of Appeal.

(2) Item 23 of Part 1 to the 2nd Schedule to the 1999 Constitution makes issues relating to evidence within the Exclusive competence of the Federal Government of Nigeria. And by Section 4 of the same Constitution, it is only the National Assembly that can legislate on it. So, according to Mr. Sarafa Yusuf, it is not correct as argued by the Cross-Respondents that National Assembly cannot legislate on matters of evidence.

Finally, Learned Counsel for the cross-appellant urged us to allow the cross-appeal.

On his part, Chief Karina Tunyan SAN, who appear for the 1st Cross-Respondent (Mr. Christopher Zakka) also referred to

the Brief of Argument filed on 16th September, 2022. It is dated same day. The learned Silk adopted same as his submission and urged us to dismiss the cross-appeal.

In a short oral adumbration in Court, the learned SAN maintained that two issues in this cross-appeal cannot be glossed over. They are:

(1) Issue of alleged submission of False information by 1st Respondent to Independent National Electoral Commission (INEC) which is a PRE-ELECTION MATTER. Mr. Tunyan SAN said such pre-election matter cannot be entertained at the Election Tribunal. He cited AKINLADE VS. INEC.

(2) Issue of not attaching document to the petition. According to the learned SAN, this is not a MANDATORY requirement because documents not front loaded can still be admissible in Court.

He finally urged us to dismiss this cross-appeal.

Mr. Kehinde Ogunwumiju SAN, appeared for the 2nd Cross-Respondent. He had earlier filed a Brief of Argument dated and filed on 12th September, 2022. While adopting the written arguments as his full submission, he also adopted the oral arguments of Chief Karina Tunyan SAN especially as it concerned the case of **AKINLADE VS. INEC**. Mr. Ogunwumiju

SAN then urged us to follow the decision in **AKINLADE VS. INEC** and dismiss the CROSS - APPEAL.

The 3rd Cross-Respondent (INEC) filed no Brief of Argument and left everything for this Appeal Tribunal to decide.

In this cross-appeal, the learned Counsel to the Cross-Appellant and 1st and 2nd Cross-Respondents all agreed that 3 issues call for determination. In essence, as far as Mr. Sarafa Yusuf Esq, Chief Karina Tunya SAN and Chief Kehinde Ogunwumiju SAN are concerned, three basic issues are for determination. The issues are:

(1) ***Whether the trial Tribunal was right when it admitted Exhibits D1 - D16, D18 - D47 tendered by the Cross-Respondents even though they were not front loaded.***

(2) ***Whether the trial Tribunal was right when it held that the issue of the 1st Cross - Respondent's Qualification was statute barred and declined jurisdiction to hear and determine same.***

(3) ***Whether the trial Tribunal was right when it held that there was no cogent and compelling evidence to prove that the 1st Cross-Respondent presented a forged Certificate and gave false information to the 3rd Cross-Respondent.***

We agree with all Counsel that those 3 issues as distilled by them are for determination in this appeal. And arguments of Counsel are on record and are deemed to be part of this Judgment.

ISSUE 1

(1) Whether the trial Tribunal was right when it admitted Exhibits D1 - D16, D18 - D47 tendered by the Cross-Respondents even though they were not front loaded.

Argument of Counsel for Cross-Appellants are found in paragraphs 3.1 - 3.10 of the Cross-Appellant's Brief of argument. Arguments of 1st Cross-Respondent Counsel on this 1st issue can be found at paragraphs 1.14 - 1.21, pages 4 - 6 of the 1st Cross - Respondent's Brief of Argument.

Argument of 2nd Cross - Respondent's Counsel are located at paragraphs 4.01 - 4.16, pages 3 - 9 of the 2nd Cross-Respondent's Brief of Argument.

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

the Reply, front loading them becomes a suplusage. Much especially that the documents were brought forth through a supeaned witness. In **PDP VS. MOHAMMED & ORS (2015) LPELR - 40859 (CA),** it was held:

> ***"It is in consonance with this principle that this Court has held severally that an Election Tribunal cannot refuse to allow subpoenaed witnesses give evidence and tender documents before it on the simple ground that their written depositions and copies of the documents were not front-loaded along with the petition as required by the Rules of Court. This Court reasoned that it would be illogical to expect the written deposition of such a witness or documents they are to produce to be filed along with the petition as it is not until the petition is filed and the subpoena is issued that the witness becomes a viable witness. To maintain otherwise would amount to decapitating the concept of justice on the altar of legal technicalities - OLANIYAN VS. OYEWOLE (2008) 5 NWLR (Pt. 1079) 114, LASUN VS. AWOYEMI (2009) 16 NWLR (Pt. 1163) 513, OMIDIRAN VS. PATRICIA (2010) LPELR-CA/I/EPT/NA/95/08, IBRAHIM VS. OGUNLEYE (2010) LPELR-CA/I/EPT/HA/93/2008."***

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

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

The learned Silk wrote further,

> ***"The Apex Court has found in Plethora of cases against the Petitioners Objection that documents not frontloaded are admissible. See the case of ABUBAKAR VS. INEC (2020) 12 NWLR (PT. 1737) 37 at 155, Paras. B-C, Where the Supreme Court held that:***

"Documents not frontloaded are not inadmissible. In the instant case, the Documents referred to as R1-R26, P85 and P86 were rightly admitted by the Court of Appeal."

See also the cases of OGBORU VS. UDUAGHAN (2011) 17 NWLR (PT. 1277) AND MOHAMMED VS. INEC (2015) LPELR-266233."

It is clear that the argument of the Cross-Appellants that Exhibits D1 - D47 are inadmissible on the ground that they were not frontloaded is not right. The mere fact that a document is not frontloaded does not make it inadmissible. This was the holding of the Supreme Court in **ABUBAKAR VS. INEC (2020) 12 NWLR (PT. 1737) 37 @ 155 paras. C-D,** where their Lordships held that:

"Even at that, it is not the law that documents not frontloaded are inadmissible. See OGBORU VS. UDUAGHAN (2011) 17 NWLR (PT. 1277) 538; ADAMU MOHAMMED VS. INEC (2015) LPELR-266233 (SC). It can even be observed that the documents were alluded to in the pleadings, hence there is nothing wrong when the

lower Court admitted their evidence. This issue is also resolved against the Appellants."

Accordingly, as long as facts relating to the document have been pleaded, it is immaterial that the documents are not frontloaded. Therefore the submission of the Cross-Appellants in paragraphs 3.2 - 3.9 of its Brief of Argument does not reflect the position of the law as paragraph 12(3) of the First Schedule to the Electoral Act, 2010 does not make it mandatory for a Respondent to frontload documents it intends to rely on in the trial. See the decision in **ABUBAKAR SARKI DAHIRU VS. HON. DR. JOSEPH HARUNA KIGBU & ORS. (2019) LPELR-48783 @ Pg. 10 - 11 paras. E - B,** where it was held that:

"In the context of paragraph 12 (3) of the 1st Schedule, particularly as regards copies of documentary evidence, it is used in the directory sense. If by paragraph 4(5)(1) (c) of the 1st Schedule a petition need not mandatorily be accompanied by copies of documents to be relied on by the petitioner, I do not see how failure of the appellant/cross respondent to attach copies of documents to his reply will render his reply incompetent and liable to be struck

> ***out. The essence of the provision of paragraph 12 (3) of the 1st Schedule is to put the opposite side on notice of what they will meet at the hearing. To my mind, failure to attach copies of documentary evidence to a reply will not defeat that purpose so long as a list of witnesses and written statements on oath of the witnesses accompany the reply."***

Also, a cursory look at paragraph 12(3) of the First Schedule to the Electoral Act, 2010 would reveal that same does not stipulate any sanction to the Respondent's failure to front-load the documents it intends to rely on in the course of the trial. The decision in **ALL PROGRESSIVES CONGRESS VS. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS. (2019) LPELR-48909 (CA) @ Pg. 15 - 16, paras. C - A,** is apt and worth re-stating:

> ***"I have perused the entire sub-section of paragraph 12 of the 1st Schedule of the Electoral Act (Supra) and indeed, the other paragraphs relating to the filing of Replies to a Petition. Upon a careful reading, I am unable to find therein that the failure of a Respondents is sanctioned by any penalty. In the circumstances, since no***

penalty has been prescribed for non-compliance, the act to be performed under paragraph 12 (3) of the 1st Schedule to the Electoral Act is merely directory and therefore, failure to comply will not lead to the striking out of the Respondents reply to the petition. See PAN BISBILDER LTD VS. FBN (2000) FWLR (PT. 2) 177; CBN VS. ELUMA (2001) FWLR (PT. 40) 161 I therefore hold that the learned trial Tribunal members were right when they refused to strike-out the 1st Respondents Reply to the petition for failure to file along with the Reply copies of the documents the 1st Respondent intended to rely on at the trial."

Accordingly, in **MAKO VS. UMOH (2010) 8 NWLR (PT. 1195) 82, AKANBI VS. ALAO (1989) 3 NWLR (PT. 108) 118, OBA AROMOLARAN & ANOR VS. OLADELE & 2 ORS. (1990) 7 NWLR (PT. 162) 359, BANGO VS. CHADO (1998) 9 NWLR (PT. 564) 139 AND ABUBAKAR & ORS. VS. NASAMU & ORS. (2011) LPELR-1831 (SC) P. 42, paras. D - E** cited by the Cross-Appellants as they do not apply to this Appeal and I so hold.

The documents relied upon by the Cross-Respondents need not be front-loaded to be admissible. The Trial Tribunal rightly admitted Exhibits D1 - D47.

Before I close on this 1st issue, I ask the question, what detriment did the Cross-Appellant suffered with respect to the admission of Exhibits D1 - D47? None is the answer.

The Cross-Appellants have failed to demonstrate that they suffered any miscarriage of justice because the Cross-Respondents did not front-load the documents they tendered and relied on at the Trial Tribunal. The law is trite that an Appellant has a duty to demonstrate that the decision of the lower Court complained about occasioned a miscarriage of justice. In **IBORI VS. AGBI (2004) 6 NWLR (PT. 868) 78 @ 133, paras. A - C,** the Court held that:

"In the determination of this question, the party who claims that he has suffered such a miscarriage of justice by the verdict of the Court, has a duty in the circumstance, to show how he had suffered as alleged a miscarriage of justice. In respect of the instant Appeal, I have considered carefully the submissions made for the cross-appellant, and it is my humble view that the cross-appellants have not shown me how they suffered a miscarriage of justice by the decision of the Court, having regard to all the circumstances of the case. I must therefore resolve this issue against the cross-appellants."

Ogunwumiju SAN put the point beautifully and admirably at paragraph 4.15 of page 9 of their Brief when he wrote thus:

> ***"It is humbly submitted that even though the Cross-Respondents did not front-load the documents they relied upon, this omission did not occasion any miscarriage of justice to the Cross-Appellants, nor were their rights to fair hearing breached as they were put on notice as to what to expect during the hearing of the petition with the filing of the list of documents attached to the respective replies of the Cross-Respondents. See pages 98 to 100 and 139 to 141 of Vol. 1 of the record of Appeal."***

I accordingly and unhesitatingly hold that the Trial Tribunal was right when it discountenance the Cross-appellants objection to the admissibility of the documents relied upon by the Cross-Respondents and I therefore resolve this 1st issue in favour of the Cross-Respondents.

ISSUE 2

(2) Whether the trial Tribunal was right when it held that the issue of the 1st Cross - Respondent's Qualification was statute barred and declined jurisdiction to hear and determine same.

In determining this issue, one fact seems all important and must be underscored and underpined seriously. What is that fact? The fact that the cross-appellant as petitioner at the Lower Tribunal alleged that the 1st Cross-Respondent presented a forged Certificate and presented false information to the 3rd Cross-Respondent (INEC) in his form EC9 preparatory to contesting the Chairmanship of AMAC on 12/2/2022. This allegation has nothing to do with what happened on the election day in any of the Polling Units or Collation Centres. This facts clearly constitutes a PRE-ELECTION MATTER.

We dealt with a similar issue in Appeal number FCT/ACEAT/AP/04/2022 which relates to qualification vis-a-vis forgery of documents/Certificate and submission of false documents to INEC vide Form EC9. This was in the Bwari Area Council Chairmanship tussle. In our judgment, delivered on 23rd September, 2022 this is what we said:

> ***"The pleaded facts in paragraphs 14 – 19 of the petition presented to the Lower Tribunal are pre-election matters. The term "pre-election matters" connotes any matter or action that pre-dates the holding of an election. See the case of AKAMGBO-OKADIGBO VS. CHIDI (NO***

> ***1) (2015) 10 NWLR (PT. 1466) 171. Pre-election matter is any matter which occurs preparatory to the conduct of an election and which does not constitute any complaint against actual conduct of the election. Pre-election matters are issues or complaints that arose prior to the holding of an election. These include issues of disqualification, nomination, substitution and sponsorship of a candidate for an election. See also Section 285 (14) of the 1999 Constitution on meaning of pre-election matter.***

And by way of conclusion we said:

> ***"In conclusion and by way of emphasis, by the provision of Section 285 (9) and (14) of the Constitution, S. 29(5) of Electoral Act 2022 and in consonance with a long line of decided authorities such as ABUBAKAR VS. INEC (2020) 12 NWLR (PT. 1737) 37; AGBOOLA VS. INEC (2019) LPELR - 48743; etc, all pre-election disputes shall be filed in the appropriate Federal High Courts and***

> ***NOT Election Petition Tribunal; and must be so filed NOT later than 14 days from the date of occurence of the event, decision or action complained of.***

We stand by what we said above because the petition of the law has not changed.

What we need to add here by way of fortification of our decision is to cite the case of **AKINLADE VS. INEC (Supra).** It was a case wherein the decision of a member of this panel, His Lordship Yusuf Halilu as Chairman of Ogun State Governorship Election Petition Tribunal came under strong focus. The Court of Appeal affirming the decision of his Lordship as unanimously agreed to by the two other members of the Tribunal, held as follows:

> ***"So long as it was raised in an affidavit declaration form giving the particulars of candidates as required to be submitted by political party to the INEC, i.e. 3rd Respondent for verification, the information and any falsity therein which may be challenged in a Court (Federal High Court or State High Court or Federal Capital Territory High Court, Pursuant section 31(5) of the Electoral Act 2010 is a pre-election matter which can only be***

raised in an action in the appropriate High Court to be instituted not later than 14 days from the submission of the Affidavit. See section 285(14) (b) and Section 285(9) of the 4th Alteration to the Constitution, 1999.

The Tribunal was right in holding that it was a pre-election challenge. It was also right in holding that it was statute barred as it related to the relevant Affidavit or declaration of information of personal particulars Exhibit, P331 respecting the challenged election on Appeal. Even if the reference to Exhibit P331 (A) relating to the information contained therein was relevant and false, it is still my view that the said Form or Affidavit was unrelated to the election in contest in 2019, the subject of the Appeal."

The matter went to Supreme Court. And it was held per **Ejembi Eko JSC** before retiring;

"Section 285 (14) of the Constitution as amended by the Fourth Alteration Act, 2017 makes the contention of the appellants that by the false depositions in the 2nd Respondent's Form CF001, the 2nd

Respondent was disqualified from contesting the election he was a candidate of the 3rd Respondent, pre-eminently a pre-election issue. The resort of the semantic distinction between a candidate as used in section 138(1) (e) of the Electoral Act and aspirant as used in section 285 (14) of the Constitution is unavailing. The words, aspirant and candidate, mean the same thing. The aspirant means or is a candidate; and the candidate means or is an aspirant according to the Lexicon Webster Dictionary, Encyclopedic Edition. Both words are mutually synonymous. Before the enactment of Section 285 (9) and (14) of the Constitution, as altered by the 2017 Fourth Alteration Act, No. 21 this Court had held in 2012 - DANGANA & ANOR VS. USMAN & OR. (2012) ALL FWLR (PT. 627) 612 at 64-B; (2013) 6 NWLR (PT. 1349) 50, while interpreting the then extant section 133(1) (a) of the Electoral Act, that "an issue of qualification of a candidate to contest an election under the Electoral Act, 2010 (as amended) is both a pre-election and (a post-election) matter which both the High Courts and the relevant Election Tribunals have jurisdiction to hear and determine": See also PDP VS. DANIEL

SARROR & ORS-SC. 357/2011 of 28th November, 2011. That was when the law changed and or altered by the subsequent enactment of section 285(9) and (14) of the Constitution, as altered by the Fourth Alteration Act No. 21 of 2017. On this point I hereby remain firm in the opinion I expressed in ATIKU ABUBAKAR & ANOR VS. INEC & ORS. - SC.1211/2019 of the 15th November, 2019; (2020) 12 NWLR (PT. 1737) 37 that the -

Disqualification of a candidate on grounds of false information in his Form CF001 is a pre-election matter by dint of section 285(14) of the Constitution. The procedure for ventilating any grievance on this is statutorily provided in section 31 of the Electoral Act, as amended.

And that the right of petitioner to enforce his right to the cause of action would be extinguished by the operation of section 285(9) of the Constitution unless the action was "filed not later than 14 days from the date of the occurence of the event, decision or action complained of in the action". A cause of action extinguished and statute barred by operation of section

285(9) of the Constitution remains extinguished and cannot be revived subsequently in an election petition as a ground for questioning an election."

In conclusion and based on the foregone authorities, the allegation that the 1st Cross-Respondent submitted false information to INEC in Form EC9 and forged Certificates was a pre-election matters as rightly held by the Lower Tribunal and they were right when they decline jurisdiction. This 2nd issue is therefore resolved in favour of the 1st and 2nd Cross-Respondent.

With the resolution of the above two issues in favour of the Cross-Respondents, it manifest beyond all reasonable doubt that treating the 3rd issue would be an academic exercise. Whether forgery was proved or not at the Lower Tribunal becomes a non-issue since whatever done and however perfectly or imperfectly done, is no longer of the moment.

In conclusion therefore, this Cross-appeal fails in it's entirety. It is therefore dismissed.