

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/38/2022
PETITION NO: FCT/ACET/EP/07/2022

BETWEEN:

1. NYAWOSA MAI KEFFI
2. PEOPLES DEMOCRATIC PARTY (PDP) } **APPELLANTS**

AND

1. MR. POYI BUHARI EDWIN
2. ALL PROGRESSIVE CONGRESS (APC) RESPONDENTS
3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)
4. THE ELECTORAL AREA/WARD COLATION
OFFICER OROZO WARD
5. THE RETURNING OFFICER OROZO WARD

JUDGMENT

The 1st and 2nd Respondents were Petitioners before the Lower Court which determined the petition in favour of the 1st and 2nd Respondents in this Appeal. The case of the 1st and 2nd Respondents borders on the conduct of the Polls into the office of Councilor Orozo Ward of Abuja Municipal Area Council (AMAC) which the Respondents alleged was fraught with irregularities and shabby conduct by the 3rd – 5th Respondents the Electoral Umpire of the Polls.

The results of the polls, which the 3rd – 5th Respondents did not countenance out of its volition has opened the phymicvictore of the Appellants at the Polls, who dissatisfied with the Judgment of the

Lower Tribunal, filed this appeal. The Notice of Appeal is at pages 296 – 306 of the records.

The Appellants in this Appeal contested for Election into the Office for Councillorship for Orozo Ward of Abuja Municipal Area Council (AMAC) in FCT, Abuja alongside the Respondent i.e 1st and 2nd Respondents on the platform of their respective Political Parties i.e Peoples Democratic Party (PDP) and All Progressives Congress (APC).

The Respondents in their Petition No. FCT/ACET/EP/07/2022 against the Appellants and the 3rd – 5th Respondents sought for the following reliefs:-

a. That it may be determined that the 1st Respondent was not duly elected by majority of the valid or lawful votes cast at the

Councillorship Election of Orozo Ward of Abuja Municipal Area Council (AMAC) FCT, Abuja, held on the 12th February, 2022, and therefore the 1st Respondent was not lawfully, duly or validly returned as the winner of the said Election.

b. That it may be determined that the Election and returned of the 1st Respondent is invalid by reason of non-compliance with the provisions of the Electoral Act, (2019) now 2022 (as amended) and Independent National Electoral Commission Regulations and Guidelines for the conduct of Election Guidelines, 2019, for the Councillorship Election of Orozo Ward of Abuja Municipal Area Council, held on the 12th February, 2022.

c. That it may be determined that the result declared by the 3rd Respondent for the MunateKwai Resettlement Village (Code 014) and UnguwarHausawa (Code 040) Polling Units of Orozo Ward of Abuja Municipal Area Council (AMAC) FCT, Abuja, on the 12th February, 2022, were marred with irregularities and non-compliance with the Electoral Act, (2019) now 2022 (as amended) and Independent National Electoral Commission Regulations and Guidelines for the conduct of Election Guidelines, 2019.

d. That it may be determine that the Election conducted at the Orozo/Orozo Primary School (Code 001) Polling Unit Orozo Ward of Abuja Municipal Area Council (AMAC) FCT, Abuja, on February, 2022, were marred with

irregularities and non-compliance with Electoral Act, (2019) now 2022 (as amended) and Independent National Electoral Commission Regulations and Guidelines for the conduct of Election Guidelines, 2019, as the Electoral process was disrupted by violence protest.

- e. That it may be determined that the Election in MunateKwai Resettlement Village (Code 041), UnguwarHausawa (Code 040) and of Abuja Municipal Area Council (AMAC) FCT, Abuja, on the 12th February, 2022, were not properly conducted in accordance with the Electoral Act, (2019) now 2022 (as amended) and Independent National Electoral Commission Regulations and Guidelines for the conduct of Election Guidelines, 2019.*

- f. An Order nullifying the return and declaration of the 1st Respondent as the winner of the Councillorship Election of Orozo Ward of Abuja Municipal Area Council (AMAC) FCT, Abuja, held on the 12th February, 2022.*
- g. An Order nullifying/cancelling the Election conducts in MunateKwai Resettlement Village (Code 014), UnguwarHausawa (Code 040) and Orozo/Orozo Primary School (Code 001) Polling Units of Orozo Ward of Abuja Municipal Area Council (AMAC) FCT, Abuja, held on the 12th February, 2022, as same were not properly conducted in accordance with the Electoral Act, (2019) now 2022 (as amended) and Independent National Electoral Commission Regulations and Guidelines for the conduct of Election Guidelines, 2019.*

h. An Order directing the 3rd Respondent to conduct a Re-run Election in MunateKwai Resettlement Village (Code 041) Polling Units of Orozo Ward of Abuja Municipal Area Council (AMAC), FCT, Abuja.

The petition was anchored on the following grounds:-

1. That the 1st Respondent was not duly elected by the majority of valid or lawful votes cast at the Councillorship Election for Orozo Ward of Abuja Municipal Area Council (AMAC), FCT, Abuja, held on the 12th February, 2022.
2. That the Election of the 1st Respondent is invalid by reason of non-compliance with the provision of the Electoral Act (2019) now 2022 (as amended) and the Independent National

Electoral Commission (INEC) Regulations and Guidelines for the conduct of Election Guidelines, 2019.

The facts in support of the Petitioners' grounds are contained at pages 7 – 19 of the Records of Appeal.

The case of the Respondents/Petitioners is that the results of MunateKwai Resettlement Village Polling Unit with Code 041, UnguwarHausawa Polling Unit with Code 040 all of Orozo Ward were manifestly unreliable and that same be cancelled in that theBimodal Voter Accreditation System (BVAS) used for accreditation of Voters malfunctioned midway and Voters were not accredited to vote and that failure of Independent National Electoral Commission (INEC) to record/collate the alleged results in the summary of result from Polling Unit

(EC8B(1)), denied Petitioners the privilege of securing valid votes from the Polling Units in question under Orozo Ward, Abuja Municipal Area Council (AMAC), FCT, Abuja thereby undermining the chances of Petitioners in securing valid votes during the Election, hence the reliefs sought against the Respondents/Appellants which has been reproduced in the preceding part of this Judgment.

The complaint of the Petitioners/Respondents was in respect of Polling Units Codes 040 and 041 of Orozo Ward.

This can be glanced from the pleadings as contained at pages 1 – 56 of the Records of Appeal.

Respondents/Petitioners called PW1, PW2 and PW3 who were Polling Unit Agents and Independent National Electoral Commission (INEC) subpoenaed

Staff as witnesses in their attempt to prove their case.

The 1st and 2nd Respondents/Petitioners tendered Exhibits “P1”, “P2”, “P3”, “P4”, “P5” and “P6” respectively.

The aforementioned Exhibits for ease of reference were as follows:-

1. Polling Agent Tag No. 37/06/09/040
2. Duplicate Copy of Form EC8A(1) for UnguwarHausawa Code 040.
3. Polling Agent Tag No. 37/06/09/041
4. Duplicate copy of Form EC8A(1) for MunateKwai Resettlement Village Polling Unit 041.

5. Certified true copy of Form EC8B(1), Summary of Results from Orozo Ward.
6. Certified true copy of Form EC8E(1), Declaration of results of Councillorship Election for Orozo Ward.

On their part, Appellants/Respondent tendered Exhibits “D1”, “D2”, “D3”, “D4”, “D5”, “D6”, “D7”, “D8”, “D9”, “D10”, “D11”, “D12”, “D13”, “D14”, “D15”, “D16”, “D17”, “D18”, “D19”, “D20”, “D21”, “D22”, “D23”, “D24”, “D25” and “D26” respectively.

In summary, the aforementioned documents were Agents Tags, Polling Units Results, Declaration of Results Form, Summary of Result for UnguwarHausawa and Munape Polling Units of Orozo Ward.

After close of trial and adoption of final written addresses, the Lower Tribunal on the 29th August, 2022 delivered Judgment against the Respondents/Appellants nullifying the return and declaration of the 1st Respondent as the winner of the Councillorship Election for Orozo Ward held on the 12th February, 2022, an Order nullifying/cancelling the Elections conducted in MunateKwai Resettlement Village (Code 041) with an Order for re-run Election in the said Polling Unit with Code (041).

This can be glanced from page 287 of the Records of Appeal which is the conclusion of the Judgment in question.

The decision in question is the reason, Respondents/Appellants filed the Instant Appeal vide Notice of

Appeal dated the 16th September, 2022 and filed on the same date.

Appellants and Respondents filed their briefs of arguments in line with procedure governing Appeals.

C.I Okoye, Esq. counsel for the Appellants (Nyawosa Mai Keffi and Peoples Democratic Party) in their brief of argument formulated four (4) issues for determination to-wit;

1. Whether the Trial Tribunal was right in holding that the 3rd – 5th Respondents at the Trial Tribunal abandoned their Defence called no witness in Petition No: FCT/ACET/EP/07/2022. (Ground 1).

2. *Whether the Trial Tribunal was right striking out 1st and 2nd Respondents application on jurisdiction. (Grounds 2 and 9).*
3. *Whether the Trial Tribunal was right in holding that the 1st and 2nd Respondents never scored the majority of lawful votes at the Election; failed to consider the live issues of valid votes scored by the 1st and 2nd Respondents; as well collate and accredit the 1st and 2nd Respondents valid and lawful majority votes of the 1st and 2nd Respondents. (Ground 3, 4, 5 and 7).*
4. *Whether the Trial Tribunal erred in law when its nullified Orozo Ward Councillorship Election, ordered supplementary Election. (Grounds 6 and 8).*

On their part, 1st and 2nd Respondents distilled the following issues for determination:-

- 1. Whether the Trial Tribunal was right to declare the 1st and 2nd Respondents the leading Candidates of the Polls into Orozo Ward Councillorship Election held on the 12th February, 2022 and Order a Supplementary Election as a result of the outstanding ballots.*
- 2. Whether the Declaration of the Appellants by the 3rd – 5th Respondents as the winners of the Election wherein appealed meets the requirements of the Electoral Act, 2010 (as amended).*

Both counsel argued the said issues in urging the Court to give them Judgments.

The arguments are all contained on the records and need no further recapturing in this Judgment.

Upon consideration of the issues distilled for determination by the parties, we find issue No. 2 formulated by the 1st and 2nd Respondents for determination most apt and therefore adopts same as ours, for determination.

The issue is;

Whether the Declaration of the Appellants by the 3rd – 5th Respondents as the winners of the Election wherein appealed meets the requirements of the Electoral Act, 2010 (as amended).

Before delving into the consideration of the issue raised, we would like to state the law as it is on elicited evidence.

A party to an action can rely on evidence elicited under cross-examination without necessarily calling any witness... such evidence elicited can be used to the advantage of such a party's case. The pleadings of a party cannot be adjudged to have been abandoned simply because no witness has been called by such a party..this is against the law of pleading. Facts and not evidence, are pleaded.

Evidence could come from anywhere to confirm the pleaded facts.

See *FATOYINBO & ORS VS. SULEIMAN & ORS (2015) LPELR 24557 (CA)*;

TRADE BANK PLC. VS. YISI (NIG) LTD. (2005) LPELR – 7560 (CA) on pleading facts and not evidence.

Similarly, the case of ***HASSAN & ANOR VS. INEC & ORS (2019) LPELR – 49207 (CA)*** is apt on elicited evidence.

On this score alone, the Trial Tribunal was wrong to have held that 3rd – 5th Respondents abandoned their defence because no witness was called.

We now proceed to the issue for determination of the main appeal.

The law is settled on what a party who asserts non-compliance with Electoral Act shall do if he must succeed.

This is akin to onus or burden of proof. In an Election Petition like the ordinary civil Matters, the onus is on the Petitioners though not static.

See ***BOLAJI & ANOR VS. INEC & ORS (2019) LPELR – 49447 (CA).***

It is the law, that any declaration so made by Independent National Electoral Commission (INEC) Official is deemed regular until the contrary is established.

See ***EMMANUEL VS. UMANA & ORS (2016) LPELR – 40037 (SC);***

C.P.C VS. INEC & ORS (2011) LPELR – 8257 (SC).

In reply to the petition, 1st and 2nd Respondents at Page 267 of the Records stated the scores of the

parties as declared by 3rd Respondent Independent National Electoral Commission (INEC) on the 12th December, 2022 for Orozo Ward Councillorship Election vide Form EC8E(1).

Wherein Peoples Democratic Party (PDP) Polled 547 Votes while All Progressives Congress (APC) polled 438 Votes which saw the declaration of Peoples Democratic Party (PDP) and her Candidate as witnesses of the Election.

We note the fact that Petitioners/Respondents have stated that Election held in all the Polling Units that make up Orozo Ward during the Councillorship Election.

We however further note the fact that Petitioners/Respondents complaint is majorly on ***MunateKwai Resettlement Village with Polling***

Unit Code 041 and UnguwarHausawa Polling Unit 040.

The Tribunal at page 286 of the Records of Appeal agreed with the Petitioners on the fact that the result for Munate and UnguwarHausawa were not included in the summary of results for Orozo Ward Councillorship Election held on the 12th February, 2022.

The Lower Tribunal agreed with the Petitioners on UnguwarHausawa that the Polling Unit result was not captured in the summary of result and that from the Form EC8A(1) tendered (Exhibit “P2”) for Polling Unit Code 040, ***All Progressives Congress (APC) Polled 387 Votes while Peoples Democratic Party (PDP) Polled 12 Votes.***

For Polling Unit 041 i.eMunateKwai Polling Unit, The Lower Tribunal is of the view that agreed there was Election in the Polling Unit but that the results are not visible enough hence could not agree with the Petitioners on the figure brandished for the Code 041.

The Tribunal however on the score of the result for Code 040 held that should the result be properly tabulated, All Progressives Congress (APC) would have had 825 and Peoples Democratic Party (PDP) 559 thereby showing that 1st and 2nd Respondents never scored the majority of lawful votes at the Election.

The Lower Tribunal proceeded to declare the Petitioners as having scored the highest number of

votes cast at the Election conducted on the 12th February, 2022 for Orozo Councillorship Ward.

Petitioners were not however declared as winners in view of the absence of the results for MunateKwai Resettlement Village Polling Unit Code 041 which has a total number of 340 registered Voters which is more than the margin of lead between the Petitioners and Respondents, hence Supplementary Elections in Code 041 i.e. Munate Polling Unit.

We have seen that 1st and 2nd Respondents/Appellants similarly tendered Polling Unit result, summary of results and declaration of results Form. Same were admitted in evidence and accordingly marked.

The Lower Tribunal in the entirety of its Judgment, kept mute on the said results of the respective Polling Units.

It is trite law that once a piece of document is admitted in evidence, it becomes very necessary to evaluate same and give reason for giving same value or not. This has not been done in this case. Why would the Lower Tribunal admit Election results, summary of the results and declaration of results and refuse to mention them in their Judgment!... why, if we may ask?

See Exhibits “D1” – “D25”.

See ***EKENGWU VS. EKENGWU (2018) LPELR – 45070 (CA)***;

DANJUMA VS. F.R.N (2018) LPELR – 45194 (CA).

This is an issue that has to do with non-collation of results duly cast by Voters.

The same reason the Lower Tribunal gave in adding the Code 040 Polling Unit result should have applied in collating the other Polling Unit results tendered by 1st and 2nd Respondents.

This is moreso that the Tribunal did not give any reason why they have not done the Collation.

This is most disturbing in view of the fact that Petitioners themselves admitted Election held in all the 61 Polling Units of Orozo Ward.

See Pages 7, 8 and 9 of the Records of Appeal.

Why would the Lower Tribunal collate to the advantage of the Petitioners the result of the same Polling Unit Petitioners in their pleadings said the

result was unreliable and be cancelled and fail to collate the other results tendered by the Respondents!

Having failed to so compute and record the tendered results for the Polling Units so mentioned at pages 64 – 67 of the Records, we have taken time to so compute the said results in the absence of any reason stopping us. From the totality of the excluded votes computed which stood at 479 valid votes, once added to the declared 547 valid votes, the 1st and 2nd Respondents would have scored in all 1,026 (One Thousand and Twenty Six Valid Votes) for the Orozo Ward Councillorship Election held on the 12th February, 2022.

On the part of the Petitioners, if the 159 valid votes are added to the 438, they would have had a total of

597 valid votes for the Orozo Ward Councillorship Election held on the 12th February, 2022.

We have added the numbers. By the computation, the 1st and 2nd Respondents/Appellants polled a total of 1,026 (One Thousand and Twenty Six Votes) as against the Petitioners/Respondents with 597 votes.

We rely on the case of ***UZODINMA & ANOR VS. IHEDIOHA & ORS (2020) LPELR – 50260 (SC)***.

On the whole, therefore the principle of margin of lead would not help the Petitioners in this case in view of the fact that even if the entire votes of Munate Polling Unit is added to Petitioners scores, they would still not win.

Supplementary Election in this situation would not be necessary. We so hold.

We hereby hold and declare that the 1st and 2nd Respondents/Appellants were duly elected by majority of lawful votes cast at the Councillorship Election for Orozo Ward held on the 12th February, 2022, and was therefore validly returned elected by the 3rd Respondent as winner of the Election.

It is not enough for a Petitioner as in this case, to allege the fact that so very many voters who would have voted for him were not allowed to vote for the fact that the Bimodal Voter Accreditation System (BVAS) malfunctioned. Such a Petitioner ought to call the said alleged voters as witnesses, which the Petitioners failed to do in this case.

See ***EDEMA & ORS VS. MALACHI & ORS (2015) LPELR – 40532 (CA);***

ADEWALE VS. OLIAFA (2012) 17 NWLR (Pt. 1330) 478 at 515;

PDP VS. INEC & ORS (2011) LPELR – 8831 (CA).

Clearly, Petitioners have not helped themselves by not proving their assertion on non-compliance with the Electoral Act and Independent National Electoral Commission (INEC) Guidelines. This petition has to fail.

The Judgment of the Lower Tribunal and all orders therein made, are hereby set aside for the above reason.

The earlier return and declaration of the 1st and 2nd Respondents made by 3rd Respondent as winner of the said election is hereby re-affirmed.

HON. JUSTICE S.B. BELGORE
(CHAIRMAN)
27TH OCTOBER, 2022

HON. JUSTICE Y. HALILU
(MEMBER I)
27TH OCTOBER, 2022

HON. JUSTICE J.O ONWUEGBUZIE
(MEMBER II)
27TH OCTOBER, 2022

APPEARANCES

C.I Okoye, Esq. with Simon D., Esq., Oscar N., Esq., W.S. Bako, Esq. and A.J Adagami, Esq. – for the Appellants.

S. Tijjani, Esq. with H.A Ibrahim, Esq., Y.Y Aliyu, Esq. – for 1st and 2nd Respondent.

E.M. Akafa, Esq. – for the 3rd, 4th and 5th Respondents.