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/11/2022
APPEAL NO: FCT/ACEAT/AP/21/2022
DATE: 13-10-2022

BETWEEN:

1. PEOPLES DEMOCRATIC PARTY (PDP)
2. EPHRAIM ELISHA } **APPELLANTS**

AND

1. ALL PROGRESSIVES CONGRESS (APC)
2. MANASSEH BABA
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) } **RESPONDENTS**

JUDGMENT

The 3rd Respondent (INEC) in the exercise of its constitutional and statutory powers conducted election on the 12th February, 2022 for the office of the Councilor of Bwari Central Ward, Bwari Area Council of the Federal Capital Territory.

The 2nd Appellant sponsored by the 1st Appellant (PDP) was declared winner by the 3rd Respondent (INEC) and was duly returned as the elected Councilor of Bwari Central Ward, Bwari Area Council in the FCT Area Council Election held on the 12th February, 2022.

The Appellants at the FCT Area Council Election for Bwari Central Ward of Bwari Area Council held on 12th February, 2022 scored the highest number of valid votes of **1,373** while the 2nd Respondent lost the said FCT Area Council Councillorship Election for Bwari Central Ward of Bwari Area Council held on the 12th February, 2022 with **1,153** votes.

On the 4th March, 2022 the 1st and 2nd Respondents filed this Petition No: FCT/ACET/EP/11/2022 before the FCT Area Council Election Tribunal challenging the outcome of the election and return of the 2nd Appellant as Councilor of Bwari Central Ward of Bwari Area Council, Federal Capital Territory. The Petition can be seen at **pages 1-19 of the Record of Appeal.**

The 1st and 2nd Respondents in their purported Petition No: FCT/ACET/EP/11/2022 against the Appellants and the 3rd Respondent (INEC) sought for the following reliefs:

i) ***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 Councilor, Bwari Central Ward Bwari Area Council held on 12th February, 2022.***

ii) An Order that a fresh election be conducted in the two polling units complained of in this petition.

ALTERNATIVELY:

iii) An Order for declaring the petitioners as winners of the election. See page 6 of the Record of Appeal.

The 1st and 2nd Respondents anchored their Petition on the following grounds:

i) The 3rd Respondent was not duly elected by majority of lawful votes cast at the election.

ii) The election of the 3rd Respondent is invalid by reason of non-compliance with the provisions of Electoral Act. See Page 4 of the Record of Appeal.

The facts in support of the Petitioners' grounds are contained in paragraphs 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the Petition. See **pages 4-5 of the Record of Appeal.**

The case of the 1st and 2nd Respondents/Petitioners is that over-voting occurred at polling unit code 003 of Bwari Central Ward in the Councillorship election held on the 12th February, 2022, and that as a result of the said over-voting they sought the two reliefs requesting the Honourable Tribunal to declare that the 2nd Appellant was not duly elected or returned by

majority of lawful votes cast and therefore, an order for fresh election be made in the respect of the polling unit code 003.

The 1st and 2nd Respondents/Petitioners complaint was only in respect of one polling units i.e. Polling Unit Code 003 from a total of 44 polling units in Bwari Central Ward at Bwari Area Council, Abuja. The 1st and 2nd Respondents/Petitioners tendered *inter alia* Form EC8A(1) series of all the Polling Units Results for Bwari Central Ward which were admitted in evidence as **Exhibits P4 A1-A42** and the Form EC8A for Polling Unit Code 003 of Bwari Area Council was admitted as **Exhibit P4 A3** which same is required in law for the 1st and 2nd Respondents/Petitioners to use to prove their complaint on the outcome of a polling unit result. The said Form EC8A(1) polling unit code 003 result shows that APC has a contradictory score of 106 votes in words and score of 126 votes in figures. **See page 26 of the Record of Appeal.**

The 1st and 2nd Respondents/Petitioners in their attempt to prove their case, have called a total of 3 witnesses, who testified as PW1, PW2 and PW3.

The 1st and 2nd Respondents/Petitioners tendered documents which were admitted as **Exhibits P1 A1-A244, P2, P3, P4 A1-A42, P5, P6, and P7** respectively. The aforementioned exhibits for ease of reference are hereby reproduced as follows:

1) Voter Registers for Polling Unit Code 003 for Bwari Central Ward admitted as **Exhibit P1 A1-A244** which revealed that only **227 voters** were accredited;

2) INEC Form EC40G(1) admitted as **Exhibit P2;**

3) INEC Manual for Election Officials 2022 admitted as **Exhibit P3;**

4) Form EC8A(1) series Polling Units Results admitted as **Exhibit P4 A1-A42;**

5) Form EC8E(1) Declaration of Result for Bwari Central Ward admitted as - **Exhibit P5;**

6) Form EC8B(1) Summary of Results from Polling Units for Bwari Central Ward admitted as - **Exhibit P6;** and

7) INEC payment receipt for CTCs dated 2nd June, 2022 admitted as **Exhibit P7.**

After close of trial, and adoption of final written addresses of respective parties, the lower Tribunal on the 17th August, 2022 delivered its judgment against the Appellants nullifying the 2nd Appellant's return and ordered a rerun election in the said one polling unit of code 003 of Bwari Central Ward. The judgment can be seen at **pages 134-167 of the Record of Appeal.**

The Appellants being dissatisfied filed their Notice of Appeal on the 26th August, 2022 see **pages 168-174 of the Record of Appeal** and subsequently filed another Notice of Appeal on the 6th September, 2022 see **pages 175-191 of the Record of Appeal.** The Appellants now rely on the Notice of Appeal filed on the 6th September, 2022 in this appeal and abandon the one filed on the 26th August, 2022. The Record of Appeal was Compiled and Transmitted on the 22nd September, 2022.

Following exchange of Brief of Arguments, the 1st and 2nd Respondents, incorporated a Preliminary Objection into their own Brief of Argument.

On the 11/10/2022, Counsel on both sides of the divide adopted their respective Briefs as their arguments. They urged us to grant their reliefs as they canvassed in arguments.

The Preliminary Objection was taken first. Mr. P. D. Pius for 1st Respondent referred to **P7 - 26** of their Brief of Argument wherein the Preliminary Objection was canvassed. Referring to pages 190-191 of the Record of Appeal, Mr. Pius said the Notice of Appeal was purportedly signed but no ticking of the name of the Counsel who did so. This according to him violates the established principle as enunciated by the Supreme Court in **GTB VS. INNOSON NIG. LTD (2017) LPELR.** He then argued no appeal before us.

On his part, Mr. Baba Isa of Counsel to the 2nd Respondent, referred to pages 7 - 27, adopted the arguments contained

therein and submitted further that the Appellant did not serve them the Notice of Appeal; and that the jurisdiction of this Court was thereby not properly activated. Learned Counsel submitted that the Notice of Appeal was served on the Counsel who handled the case at the Lower Tribunal and not personally on the 2nd Respondent. He cited **Okey's Case (Supra)** in support of his argument.

The Appellant filed a joint Reply Brief to the Preliminary Objection of both 1st and 2nd Respondents. It is contained at pages 2 - 9 of the Reply Mr. Okpatah adopted same as their Reply argument and urged us to dismiss the Preliminary Objection.

By way of adumbration, learned Counsel to the Appellants posited the following:

(1) The grounds of appeal they challenged are in order. He said nothing is wrong with the grounds of appeal as framed.

(2) Seal affixed to the bottom of the Notice of Appeal is enough to authenticate the process. He said his name is on the seal and his name is among the names of Counsel listed. He cited the case of **MAINA VS. EFCC (2020) 2 NWLR (PT. 1708) 230.**

(3) On the issue of service, the case of **Odey** (Supra), he argued, is no longer good because the Supreme Court moved further in **AKANDE VS. JEGEDE (2022) 14 NWLR (PT. 1849) 122.**

In this case, Supreme Court said service of an originating process if served through the Court bailiff is good service. Learned Counsel cited also, **AMAECHI VS. GOVT. OF RIVERS STATE (unreported) SC/CV/911/2017.** Mr. Okpatah finally urged us to dismiss the Preliminary Objection.

Replying on point of law, Mr. Pius of Counsel to the 1st Respondent argued that the case of **MAINA VS. EFCC** cited by Mr. Okpata is a Court of Appeal decision which cannot override the Supreme Court decision **GTB VS. INNOSON (Supra)** which still remains the applicable principle.

On the issue of service, Mr. Okpata said since they supplied an address for service, it is wrong for the appellant to still effect service through their Counsel. He referred to page 2 of the Record of Appeal where address for service of 1st and 2nd Respondent was stated as oppose to address of Counsel for purposes of service as can be found at page 6 of the Record.

Mr. Baba Isa for 2nd Respondent said **Amaechi's** case (Supra) did not override **Odey's** case as both are distinguishable.

We have considered this Preliminary Objection. It rested on 3 pivots - No ticking as to who sign the Notice of Appeal, no personal service on the two Respondents and grounds having no nexus to the *ratio decidendi* of the lower Tribunal's Judgment. In short, there are other grounds upon which the objection generally rested. We intend to consider them all.

First, the issue of none ticking is not as fatal as Mr. Pius and Baba Isa would like us to believe. Since the seal of learned Counsel appears conspicuously on the process with his name clearly written, it is no longer in doubt as to who signed the process. The requirement of ticking becomes a surplusage and would be carrying the purposefulness of ticking too far to say the process is not genuine or proper for use.

Secondly, whether service on Counsel or party personally is not of the moment. The purpose of service is to let the other party 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.

Thirdly, objection in ground 10 of the Preliminary Objection is laughable.

It reads:

> ***"The Appeal is incompetent being an appeal against non-existing decision of non-existing Federal Capital Territory Election Tribunal".***

So because appellant did not put the word 'petition' before Tribunal, the Tribunal becomes non-existing. Haba! This is ridiculous.

Fourthly and furthermore, is it true that the remaining grounds of this appeal has no bearing on the *ratio decidendi* of the Lower Tribunal's Judgment? We have dealt with grounds 9, 10 and 12. We are left with grounds 1 - 8, and 11. Those grounds are reproduced below as follows:

GROUND ONE

The Federal Capital Territory Area Council Election Tribunal erred in law and misdirected itself when it held at pages 18-19 of the Judgment, that:

> ***"The case at hand, the learned Counsel to the 2nd and 3rd Respondents never raised any form of objection in terms of the grounds of objection raised by them before the Honourable Tribunal. Well, we agree with the Petitioners Counsel that the aforementioned documents where pleaded in paragraph 13 of the Petition which the 2nd and 3rd Respondents ought to familiarise with."***

GROUND TWO

The Federal Capital Territory Area Council Election Tribunal erred in law, misdirected itself and occasioned a miscarriage of justice when it held at page 20 of the judgment, thus:

"We would not reproduce again, the pleadings of the Petitioners but the case shows and reveals adequate pleadings of facts which the exhibits could rest. The argument and submission of the 2nd and 3rd Respondents that the documents are at variance with the pleadings is refused."

GROUND THREE

The Federal Capital Territory Area Council Election Tribunal erred in law, misdirected itself and occasioned a miscarriage of justice when it held at page 22 of the judgment, that:

"It should be noted that the 1st, 2nd and 3rd Respondents did not contest the petition as they failed to call any witness. The implication in law is that their defence or reply to the Petition stands abandoned. What then is the implication of an abandoned Reply or defence? Now, in a case where a Defendant did not call any witness, though he had filed his pleadings, not only is the pleadings deem abandoned, the case to be considered on merit is the case as presented by the Petitioners who had called evidence in support of his claim and since there is no evidence from the Respondents to be put on one side of the imaginary scale of justice, the Petitioners is required to prove his claim on a minimal basis. The defendant will thus have only himself to blame should the Court find that the Claimant had successfully discharged the minimal proof of his unchallenged claim against the Defendant."

GROUND FOUR

The Federal Capital Territory Area Council Election Tribunal erred in law and misdirected itself when it held at page 23 of the judgment, that:

> ***"Note please, averment in a reply to a petition just like a statement of defence are not evidence until a witness is call to speak to the said averment through his witness statement on oath that the court would consider whether the said witness is an eye witness or he is narrating the event of a third party. Whatever, the none calling of a witness is a condition precedent to see the filed averments as defence or reply to the petition has been abandoned."***

GROUND FIVE

The Federal Capital Territory Election Tribunal erred in law and misdirected itself when it held at page 23 of the judgment that:

> ***"This 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 (2015) LPE-24740(SC) Pp. 34 paras D) where it held: "The Defendant must call evidence to support his averments. Where this is not done, the***

Defendant is deemed to have abandoned his defence. See OKECHUKWU VS. OKAFOR (1961) 2 SCNLR p. 369. "Per RHODES-VIVOUR. Well, they are, while the Supreme Court in EVA ANIKE AKOMOLAFE & ANOR VS. GUARDIAN PRESS LIMITED (PRINTERS) & ORS. (supra) is talking about the nature of cross examination and its import in a suit, CBN & ORS. VS. OKOJIE (supra) which is earlier in time is analysing the nature of evidence filed and not calling a witness to speak to that evidence. Assuming, they are the same, CBN & ORS. VS. OKOJIE (supra) is earlier in time and we are bound by that authority on that subject."

GROUND SIX

The Federal Capital Territory Election Tribunal erred in law and misdirected itself and occasioned a miscarriage of justice when it held at page 28 of the judgment, that:

"The amazing question that only the 1st Respondent would be called to answer, assuming they presented a witness, is, why did the returning officer not order a rerun after the election in polling unit 003 that was cancelled in line with the express and mandatory provision in the INEC Manual for Election Official, 2022? We would not have the opportunity to have cleared the query, but would only come to the conclusion that the principle of "lead Margin" or "margin of lead" applies effectively and completely to the fact of this case."

GROUND SEVEN

The Federal Capital Territory Election Tribunal erred in law and misdirected itself when it held at page 28-29 of the judgment, that:

> ***"Let us make it abundantly clear, that the fact of the case is not dealing with an allegation of "over voting" which has it interpretation and application of law or put different, the case at hand , is not sourcing for the "reasons" behind the cancellation of polling unit 003 but after the cancelation of polling unit 003, what would/should the 1st Respondent do and or after the cancelation of Polling unit 003, and the marging of lead between the Petitioners and the 2nd and 3rd Respondents is less than the actual registered voters in that polling unit, can the 1st Respondent correctly collate the remaining unchallenged polling units and return a candidate as validly elected? This fact is what the 2nd and 3rd Respondent with respect, could not appreciate but ventilated so much time, energy, resources and effort in giving interpretation as it relates to over-voting..."***

GROUND EIGHT

The Federal Capital Territory Election Tribunal erred in law and misdirected itself when it held at page 29-30 of the judgment, that:

> ***"In a bit of more recent times, specifically in APC VS. ADELEKE & ORS. (2019) LPELR-47736(CA) the facts show that INEC conducted an election into the office of the Governor of Osun State on the 22nd of September 2018. It then found that elections were not held in 7 polling units in the State and the margin between the two leading candidates was less than the registered voters in the 7 polling units. It therefore refrained from making a return but ordered and scheduled a re-run election on the 27th September 2018."***

GROUND ELEVEN

The judgment of the Federal Capital Territory Area Council Election Tribunal is against the weight of evidence adduced at the trial.

Let us now answer the question we posed earlier. Is it true that grounds of this appeal have no bearing on the *ratio decidendi* of the Lower Tribunal's judgment? Our answer is in the NEGATIVE. We note emphatically and particularly ground eleven which says: "The judgment of the Federal Capital Territory Area Council Election Tribunal is against the weight of evidence adduced at the trial". This ground alone knock of

the bottom of the arguments of both Counsel to the 1st and 2nd Respondents as can be found at pages 11 - 25, 7 - 25 respectively of their Briefs of Arguments. This ground 11 covers the entire reasoning or *ratio decidendi* upon which the judgment of the lower Tribunal rested.

In short, those grounds especially grounds 9, 10, 11, and 12 are competent as put in the Notice of Appeal. Therefore, this Preliminary Objection is lacking in merit and it is therefore dismissed.

We now move to the merit of this appeal. Lets move straight without rigmaroling to the issues for determination.

ISSUES FOR DETERMINATION:

Learned Counsel to the Appellants submitted eight (8) issues for determination to wit:

1) Whether Exhibits and evidence led on facts not pleaded goes to no issue and must be expunged from the record of the Tribunal. **As distilled from Grounds 1 and 2 of the Notice of Appeal.**

2) Whether the Appellants, and the 3rd Respondent (INEC) who cross-examined the 1st and 2nd Respondents/Petitioners witnesses and elicited evidence in support of their defence and also discredited Petitioners witnesses, can be rightly held by the lower Tribunal to have not called evidence and have

abandoned their pleadings. **As distilled from Grounds 3 and 4 of the Notice of Appeal.**

3) Whether the apex Court decisions in **EVA ANIKE AKOMOLAFE & ANOR VS. GUARDIAN PRESS LIMITED (PRINTERS) & ORS. (2010) LPELR-366 (SC)** and **CBN & ORS. VS. OKOJIE (2015) LPELR-24740(SC)** are not contradictory, but supports the Appellants' case and that the lower Tribunal is bound to follow recent decision of the apex Court. **As distilled from Ground 5 of the Notice of Appeal.**

4) Whether by the express provisions of Sections 26 and 53 of the Electoral Act 2010 (as amended) and the outcome of polling unit code 003 election contained in Exhibit P4 A3, the principle of margin of lead applies to this Petition and the cancellation of election in polling unit code 003 where accreditation of voters in 227 substantially affected the outcome of Bwari Central Ward Election held on the 12th February, 2022. ***As distilled from Ground 6 of the Notice of Appeal.***

5) Whether the election in polling unit code 003 was challenged on ground or allegation of over-voting, and that the 2nd Appellant's return by 3rd Respondent's (INEC) as validly elected Councilor of Bwari Central Ward was in substantial compliance with the Electoral Act, 2010 (as amended). ***As distilled from Ground 7 of the Notice of Appeal.***

6) Whether election having been conducted in polling unit code 003 of Bwari Central Ward and election result in Form

EC8A(1) issued, the 3rd Respondent (INEC) was right to return the 2nd Appellant as a validly elected councilor. ***As distilled from Ground 8 of the Notice of Appeal.***

7) Whether considering Exhibits P5 and P4 A3 used for the conduct of election in polling unit code 003, the lower Tribunal wrongly voided the return of the Appellants and order for a rerun election in the said polling unit code 003. ***As distilled from Ground 9 of the Notice of Appeal.***

8) Whether 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. ***As distilled from Grounds 10 and 11 of the Notice of Appeal.***

Learned Counsel to 1st Respondent distilled two (2) issues for determination. They are:

1) Whether Exhibit P2 and P4 A1-A42 were properly admitted by the Trial Tribunal and they are not in variance with pleadings. (Arising from grounds 1 and 2 of the Notice of Appeal).

2) Whether the trial Tribunal was right to order re-run election in polling unit 003 Bwari Central Ward, Bwari Sarki/New Chief Palace. (Arising from grounds 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Notice of Appeal).

Learned Counsel to the 2nd Respondent Mr. Baba Isa adopted the same issues for determination as framed by the Counsel to the 1st Respondent Mr. Pius.

All Counsel profered written arguments in their Briefs under various headings of the issues distilled for determinations. They cited various authorities such as .....
.....

All of them are on record and need no further recapturing in this judgment.

In our view however, only four (4) issues as framed by the learned Counsel for the Appellant are very pertinent for determination. They are to be listed separately but would be considered together as if they are one. The issues are:

1) Whether the election in polling unit code 003 was challenged on ground or allegation of over-voting, and that the 2nd Appellant's return by 3rd Respondent's (INEC) as validly elected Councilor of Bwari Central Ward was in substantial compliance with the Electoral Act, 2010 (as amended). As distilled from Ground 7 of the Notice of Appeal.

2) Whether election having been conducted in polling unit code 003 of Bwari Central Ward and election result in Form EC8A(1) issued, the 3rd Respondent (INEC) was right to return the 2nd Appellant as a validly elected councilor. As distilled from Ground 8 of the Notice of Appeal.

3) Whether considering Exhibits P5 and P4 A3 used for the conduct of election in polling unit code 003, the lower Tribunal wrongly voided the return of the Appellants and order for a rerun election in the said polling unit code 003. As distilled from Ground 9 of the Notice of Appeal.

4) Whether 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. As distilled from Grounds 10 and 11 of the Notice of Appeal.

We note that the election in polling unit code 003 was challenged by the 1st and 2nd Respondents/Petitioners on ground that there was over-voting. See paragraph 19 of the Petition, paragraph 33 of the 2nd Respondent/Petitioners' Witness Statement on Oath who testified as PW3 and paragraph 4 of Witness Statement on Oath of PW2 at pages 5, 10 and 13 of the Record of Appeal. We however note that the 1st and 2nd Respondents/Petitioners did not plead Form EC8A(1) i.e. result of the polling unit code 003 which was admitted in error as Exhibit P4 A3. We also note that no witness of the 1st and 2nd Respondents/Petitioners testified to the voters' register for polling unit code 003 to establish the over voting. The law mandate the Petitioners who allege over voting to tender voters' register and Form EC8A(1) in order to establish the over voting. The law further provides that the Petitioners must further establish that the non-compliance which led to over voting is inured to the Respondents' victory and that the noncompliance

substantially affected the outcome of the election. See the case of **YAHAYA & ANOR V. DANKWANBO & ORS. (2016) LPELR-48364 (SC) Pages 26-28, Paras. C-C** where the Supreme Court, held inter alia that:

> ***"It is not enough for the petitioner to allege and prove over-voting. In addition to the above, the petitioner must show that the said over-voting inured to the winner of the election in particular as the over-voting can be for any of the candidates in the election, respondent or any of the other contestants in the election in question. The Court must also be satisfied that it was due to the over-voting traceable to the respondent that the respondent won the election."***

See also the case of **APC VS. PDP (Supra) at 435 Paras. B-E,** where apex Court held that:

> ***"Over-voting is only established by reference to the number of voters accredited to vote as contained in the voters' register and further authenticated in Forms EC8A which further signifies that fact. In the instant case, the Appellant, in the absence of that overriding fact from the body of evidence it led, could not be said to have established the ground of over-voting alleged in its petition."***

There are 44 polling units in Bwari Central Ward of Bwari Area Council wherein election was conducted on the 12th February, 2022 and the Appellants were declared winners in

43 polling units. The instant election is challenged only on one polling unit code 003; hence, we hold that the election was conducted in substantial compliance with the provisions of the Electoral Act 2010 (as amended). See paragraph 17 of the Petition and paragraph 31 of PW3 witness statement on oath at pages 4, 10 and of the Record of Appeal. We also note that PW2 during his cross-examination testified that "There are 44 polling units in Bwari Central Ward." See page 124 of the Record of Appeal. He testified that "Out of the 44 polling units where election was conducted, it was only polling unit 003 that election was cancelled." See page 125 of the Record of Appeal.

Now PW1 and PW2 who testified for the 1st and 2nd Respondents/Petitioners where consistent during their cross-examination that "227 voters were accredited." See pages 121 and 125 of the Record of Appeal. The figure 227 accredited voters in polling unit code 003 cannot amount to substantial non-compliance. It is therefore our view that the 2nd Appellant's return by the 3rd Respondent's (INEC) as validly elected Councillor of Bwari Central Ward in the election held on 12th February, 2022 was in substantial compliance with the Electoral Act, 2010 (as amended) i.e. Section 135 of the Electoral Act 2022 which provides that:

> ***"An Election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and***

that the non compliance did not affect substantially the result of the election."

That election having been conducted in polling unit code 003 of Bwari Central Ward and election result in Form EC8A(1) issued, the 3rd Respondent (INEC) was right to return the 2nd Appellant as a validly elected councillor. The case of **YUSUF VS. INEC (2021) 3 NWLR (PT. 1764) at P. 563, Paras. E-H** relied upon by the lower Tribunal at page 162 of the Record of Appeal is inapplicable to the instant case. The case of **YUSUF VS. INEC (Supra)** borders on election result that could not be reconstructed; hence, an order of Court for a re-run became inevitable. But, in the instant case the election result of polling unit code 003 was available, but the 1st and 2nd Respondents/Petitioners refused to plead it in the Petition; however same was tendered and admitted in error as Exhibit P4 A3.

It is our further view that the of **APC VS. ADELEKE & ORS. (2019) LPELR-47736 (CA)** also relied upon by the lower Tribunal at pages 162-163 of the Record of Appeal is also inapplicable to the instant case. The lower Tribunal in its judgment held that:

"In a bit of more recent times, specifically in APC VS. ADELEKE & ORS. (2019) LPELR-47736(CA) the facts show that INEC conducted an election into the office of the Governor of Osun State on the 2nd of September, 2018. It then found that elections were not held in 7 polling units in the State and the margin between the two leading

candidates was less than the registered voters in the 7 polling units. It therefore refrained from making a return but ordered and scheduled a re-run election...." We submit that the case of APC VS. ADELEKE & ORS. (Supra) is different from the instant. In the instant case, election was held in the challenged polling unit code 003 and polling unit result was issued which shows that 227 voters were accredited. We further submit that the 227 accredited voters who cast their votes to the respective political parties cannot substantially affect the outcome of the Bwari Central Ward upon cancellation of polling unit code 003 result.

Considering that Exhibits P5 (i.e. Form EC8E(1) duly pleaded) and P4 A3 (i.e. Form EC8A(1) not pleaded at all) was used for the conduct of election in polling unit code 003, the lower Tribunal wrongly voided the return of the Appellants when it ordered a rerun election in the said polling unit code 003.

We note that Exhibit P4 A3 i.e. Form EC8A(1) did not disclose over voting seeing that the score of APC in words is "One Hundred and Six." See the evidence of PW2 at page 126 of the Record of Appeal.

Before closing on this all important issue of over-voting we like to draw our attention to our decision in the case of Bashir Umar Abdullahi & 1 Or. Vs. INEC & 2 Ors. (unreported) SUIT NO: FCT/ACEAT/AP/03/2022 the judgment delivered end of September 2022 in this Tribunal wherein we stated categorically and emphatically as follows:

"We must point it out very loudly that allegations of over-voting considering our law is not as weighty as some official or candidate(s) would like Tribunals or Court to believe. It is not a magic wand or word that once flung, it must lead to disastrous consequences.

The law is clear that even if over-voting is proven to be occasioned, there must be further proof that it enures in favour of the candidate declared as the winner. Otherwise, it would be treated as one of those abberrations or human errors that can happen. In BUHARI VS. OBASANJO (Supra) it was held that:

> ***"It is not enough for the petitioner to allege and prove over-voting. In addition to the above, the petitioner must show that the said over-voting inured to the winner of the election in particular as the over-voting can be for any of the candidates in the election……"***

It is baffling and disturbing that a candidate who won in 43 polling units out of 44 is being harrassed with this petition. What other evidence of compliance are the petitioners (now Respondents) looking for in this election cum victory of the Appellants as eloquently attested to by the election umpire (3rd Respondent INEC) not only do we find compliance with

the provisions of the electoral law. We find highly substantial and near total compliance.

Condescending finally, 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 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 PW1, PW2 and PW3 at pages 119-127 of the Record of Appeal.

The law empowers the appellate Court to carefully weigh and consider the judgment appealed against and the evidence adduced and over rule or set it aside if it comes to the conclusion that the judgment was wrong. See **PATAMA LTLD & ORS. VS. UNION BANK (2015) LPELR-24535(CA) pages 21-22, Paras. 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 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 S.C. 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."***

This exactly is what we have done. We resolve those four (4) issues in favour of the Appellants and consequently allow the appeal.

We therefore set 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/11/2022 delivered on the 17th day of August, 2022, and;

We affirm the declaration and return of the 2nd Appellant as Councillor of Bwari Central Ward, Bwari Area Council at the FCT Area Council Election held on the 12th day of February, 2022.

HON. JUSTICE SULEIMAN BELGORE
CHAIRMAN

HON. JUSTICE YUSUF HALILU
MEMBER

HON. JUSTICE JUDE O. ONWUEGBUZIE
MEMBER