

**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/13/2022
APPEAL NO: FCT/ACEAT/AP/32/2022
DATE: 28/10/2022**

BETWEEN:

PEOPLES DEMOCRATIC PARTY (PDP)	}	APPELLANT
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AND

1. SARKI HAMIDU 2. ALL PROGRESSIVE CONGRESS (APC) 3. ABDULLAHI SULEMAN SABO 4. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)	}	RESPONDENTS
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JUDGMENT

This appeal No. FCT/ACEAT/AP/32/2022 at the instance of PDP, is a very interesting, simplistic, straight forward and one that rested wholly on the outcome of the sister appeal number

FCT/ACEAT/AP/30/2022. In fact the Appellant (PDP) is the 2nd Respondent in appeal number 30. The two appeals were consolidated together and heard on 19/10/2022.

The facts are the same. The issues are the same, arguments of Counsel are the same, both statutory and case laws cited and considered are the same. What do we mean?

The petition that gave rise to the Judgment appeal against sprung for the same election into the Kuje Area Council Chairmanship that was held on 12/2/2022. The gravamen of the complain before the Tribunal Below is the same and the judgment appeal against is the same.

The lone issue for determination in this appeal as submitted by both Counsel for Appellant i.e. Ogunwunmiju SAN and learned Counsel for 1st and 2nd Respondent i.e. Mr. Sarafa Yusuf are the same issue we broadly considered in Appeal number FCT/ACEAT/AP/30/2022. What is that issue? It is ***"Whether or not the learned trial Tribunal was wrong when it nullified the declaration and return of the 3rd Respondent as the Chairman of the Kuje Area Council."***

The arguments of the learned Silk with respect to that issue is found at pages 3 - 18 of the Appellant's Brief of Argument. The learned SAN in substance resolved the issue in the affirmative when he wrote at paragraphs 4.10, 4.12, 4.13 and 4.15 as follows:

"4.10 It is clear from the above-reproduced decision that the Trial Tribunal found that the Bimodal Voter Accreditation System was mandatory even though the same was not provided for in the Electoral Act 2010 (as amended) for accreditation of voters."

"4.12 It is clear from the above-reproduced judgment delivered by the Trial Tribunal that the decision to nullify the declaration and return of the 3rd Respondent was based on the alleged non-usage of the Bimodal Voter Accreditation System (BVAS) to accredit voters."

"4.13 The Appellant submits that the Trial Tribunal was wrong to have relied on the alleged non-usage of the Bimodal Voter Accreditation System (BVAS) to nullify the 3rd Respondent's declaration and return as the Chairman of Kuje Area Council. Your Lordships, the Bimodal Voter Accreditation System (BVAS) is an innovation introduced by the INEC Guidelines and Regulations 2022 to verify the identity of voters during the process of accreditation. In other words, the alleged non-usage of the BVAS is not a ground under the Electoral Act upon which an election can be questioned or nullified. At best, the non-usage of the Bimodal Voter Accreditation System (BVAS) is merely a non-compliance with the INEC Guidelines and

Regulations and not non-compliance with the Electoral Act."

"4.15 Your Lordships, the above reproduced Section 138(1) (b) of the Electoral Act 2010 (as amended) is clear and permits no ambiguity that the Electoral Act refers to non-compliance with the Act as a ground for challenging an election and not non-compliance with the Guidelines and Regulations issued by INEC. However, the pleadings and evidence of the 1st and 2nd Respondents before the Trial Tribunal was predicated on the alleged non-usage of the Bimodal Voter Accreditation System (BVAS), which is basically a non-compliance with the INEC Regulations and Guidelines for the Conduct of the Election, 2022. A cursory look at the Electoral Act 2010 (as amended) will reveal that there is no provision that an election can be invalidated because of non-compliance with the directive or guidelines of INEC. On the contrary, the Electoral Act is clear that an election cannot be questioned or nullified based on non-compliance with the directive or instruction of INEC or its official. For the avoidance of doubt, please see Section 138(2) of the Electoral Act 2010 (as amended) as reproduced below:

"138 (2) An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the

purpose of election but which is contrary to the provisions of this Act shall not be a ground for questioning an election."

It is therefore not foggy that it is the same argument put forward by Mr. Ologunorisa SAN in appeal No. FCT/ACEAT/AP/30/2022 which we just concluded.

Similarly and not surprisingly Mr. Sarafa Yusuf of Counsel to the 1st and 2nd Respondent put forward the same arguments as he did in appeal number FCT/ACEAT/AP/30/2022. See paragraphs 4.1, 4.2, 4.5, 4.10, 4.11, 4.12 and 4.13, pages 3, 4, 5, 6 and 7 of the Brief of Argument of the 1st and 2nd Respondents' Counsel. The paragraphs read thus:

"4.1 The 1st and 2nd Respondents shall respectfully contend that the question above ought to be answered in favour of the 1st and 2nd Respondents and against the Appellant, as evidence before the lower Tribunal amply demonstrate that the election and return of the 3rd Respondent was not in substantial compliance with the provisions of the Electoral Act, 2010 (as amended) and was, in fact, in gross violation of the Electoral Act, 2010 (as amended) as we shall show hereunder."

"4.2 The 1st and 2nd Respondents called a total of 62 witnesses, PW1 to PW62, to prove his case. The 3rd Respondents called a total of 14 witnesses, the Appellant

Respondent called 1 witness, while the 4th Respondent called 1 witness."

"4.5 It is important to point out that the Manual for Election Officials, 2022 is very much part of the rules for the conduct of the election with which the 4th Respondent is obliged to comply strictly as enunciated by the Court of Appeal in AJADI VS. AJIBOLA & 10 ORS. (2004) 16 NWLR (PT. 898) 91 at 170, para. F; thus:

"Elections at Adio, Ilupeju, Oko-Ode, Koko and declaration of 229 votes were made by the tribunal due to non-compliance with the Manual for election officials and consequently the Electoral Act. The Manual exhibit X1-X60 was issued based on section 149 of the Electoral Act for the purpose of giving effect to the provisions of the Electoral Act. The guidelines there must strictly be construed and followed by electoral officials in the process and procedure for the elections" (Underlining ours).

See also ANDREW VS. INEC (2018) 9 NWLR (PT. 1625) 507 at 563 paragraph D, where the Supreme Court held as follows:

"Let me state that manuals, guidelines and regulations made by the electoral body in aid of smooth conduct of the election are to be observed

by both ad-hoc and permanent staff of INEC for the good of the electoral process"

"4.10 It is submitted that the use of BVAS is made mandatory by the above provision and to emphasis the compulsory nature of use of BVAS at the election, where there is mid-way discontinuation of the use of the BVAS due to sustained malfunction the expected action, by the provision of Paragraph 3.2 (item 4 at page 62) of Manual for Election Officials, 2022 is that supplementary election should be conducted.

"4.11 It is submitted that where BVAS machine stopped working as a result of which some voters cannot cast their votes, it amount to disenfranchisement. A voter is disenfranchised when his right to vote is taken away. That is to say he claims to be registered but was not allowed to vote. "See NGIGE VS. INEC (2015) 1 NWLR (PT. 1440) 209 at 325."

"4.12 Thus, disenfranchisement connotes a denial of an electorate's right to exercise his franchise in an election or suffrage. It is further submitted that the effect of disenfranchisement of voters is that the result of election in the Polling Units affected must be cancelled and another election held. See Paragraph 3.2 (item 4 at page 62) of Manual for Election Officials, 2022."

"4.13 Where BVAS did not work at all or there is no election, it is submitted that supplementary election should be ordered particularly where the number of registered voters in such units is more than the margin of lead between the two leading candidates at the election.

The authorities cited by Mr. Ologunorisa SAN are the same cited by Mr. Ogunwunmiju SAN, while Mr. Sarafa Yusuf relied on the same authorities he cited in the forerunner sister appeal.

They both dwell on the provisions of the Electoral Act 2010 (as amended) especially Section 138(1) (b) thereof and the cases of **NYESOM VS. PETERSIDE & ORS (2016) 7 NWLR (PT. 1512) 452; UDOM VS. UMANA (NO. 1) (2016) 12 NWLR (PT. 1526) 179; EMERHOR VS. OKOWA (2016) 1 NWLR (PT. 1522) 1; CPC VS. INEC (2011) 18 NWLR (PT. 1279) 493; ADAMU MUHAMMED & ANOR VS. INEC & ORS. (2015) LPELR-26033 (CA); AJADI VS. AJIBOLA (2004) 16 NWLR (PT. 898) 91; ANDREW VS. INEC (2015) 9 NWLR (PT. 1625) 507; FALEKE VS. INEC (2016) 18 NWLR (PT. 1543) 61; NGIGE VS. INEC (2015) 1 NWLR (PT. 1440) 209; INEC VS. OSHIOMOLE (2009) 4 NWLR (PT. 1132) 607; BUHARI VS. OBASANJO (2005) 2 NWLR (PT. 910) 241; etc among others.**

It therefore need no stressing at all, that what stares us in the face in this sister consolidated appeal is the legal implication of none adherence to the provisions of INEC MANUAL vis-a-vis the use of BVAS. We considered this basic issue

extensively in FCT/ACEAT/AP/30/2022. We said most importantly,

***"All the above authorities recognised the use of BVAS as provided for in the MANUAL i.e. AJADI VS. AJIBOLA (Supra), ANDREW VS. INEC (Supra), FALEKE VS. INEC. They all attested to the singular fact that INEC can make rules of procedure for good conduct of election like accreditation, voting, announcement of result etc. but nowhere in those decisions did the Court say, where rules stipulated by INEC in the MANUAL is not followed it becomes FATAL as to lead to cancellation of result. No where did they say so. It seems to us that non-adherence to the provisions of Manual especially as in this case, improper use of BVAS, is only an IRREGULARITIES that cannot lead to cancellation of election or result declared. Putting it bluntly, it cannot amount to non-compliance with the provisions of the Electoral Act as to be a valid GROUND for questioning an election by way of a PETITION.....
.....
....."***

"The non-compliance provided for is in relation specifically with the provisions of the Electoral law and not rules or procedure made by Chairman of INEC in their MANUALS.

We must point it out in Black and White that accreditation of voters is ONLY by the use of voters Register as duly provided for under the Electoral Act 2010 (as amended). The said Statutory Act did not provide for use of BVAS. (It is now provided for under the 2022 Electoral Act). This clearly shows that the legislature knew what they wanted under the 2010 Electoral Act.

**It is therefore our firm view that non-compliance with the provisions of Manual as regard BVAS is not fatal and cannot invalidate or vitiate or nullify the result of an election.....
.....
....."**

In that same Judgment we referred and applied a portion of our earlier judgment in FCT/ACEAT/AP/27/2022 where we held as follows:

"In our humble view, the nucleus of this issue is not whether or not the BVAS malfunctioned or failed to work properly in some polling units as to affect the result of the election. The main issue is whether the use of BVAS is a constituent element or an integral part of the whole process of the election under the relevant law i.e. Electoral Act 2010 as amended. The quick answer is No. The entire provisions of Electoral Act 2010 has no

provision for the use of BVAS. It is only laudably and commendably provided for in the manual as issued by INEC. But non-compliance with the provisions of the manual is not a ground for questioning or challenging an election conducted pursuant to the provisions of the Electoral law. The introduction of BVAS is akin to introduction of card readers in our electoral process development. And that being the case, an election conducted pursuant to the provisions of the Electoral Act 2010 (as amended) cannot be faulted simply on the ground that the use of it was not in accordance with the provisions of the manual. The case of WIKE VS. PETERSIDE must instantly come into focus here.

Without wasting much time, writing resources and energy on this issue, it is our firm view that whether BVAS failed or not on the election day is not of the moment.....The most important point is that no election can be questioned on ground of non-use of BVAS not to talk of partial use or improper use."

In effect therefore, the *ratio decidendi* of that judgment is hereby applied to this appeal *mutatis mutandis*. Meaning, that the sole issue for determination is resolved in favour of the Appellant. The Judgment of the lower Tribunal delivered on 30th August, 2022 is hereby set aside.

And for completeness and clarity, we affirm the declaration of the 3rd Respondent (Abdullahi Suleiman Sabo) of the PDP

(Appellant) as the winner of the Chairmanship election for Kuje Area Council, FCT, as declared on 13th February, 2022 by the 4th Respondent (INEC).

**HON. JUSTICE SULEIMAN BELGORE
CHAIRMAN**

**HON. JUSTICE YUSUF HALILU
MEMBER**

**HON. JUSTICE JUDE O. ONWUEGBUZIE
MEMBER**