

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/36/2022
PETITION NO: FCT/ACET/EP/14/2022

BETWEEN:

1. PHILEMON IYAH
2. PEOPLES DEMOCRATIC PARTY (PDP) } **APPELLANTS**

AND

1. HARUNA DARA
2. ALL PROGRESSIVE CONGRESS (APC) } **RESPONDENTS**
3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)

JUDGMENT

The 3rd Respondent (Independent National Electoral Commission) on the 12th February, 2022 conducted Councillorship Election for Gaube Ward of Kuje Area Council of the Federal Capital Territory. At the said Election, the 1st Appellant was the candidate of the 2nd Respondent. At the end of the said Election, the 3rd Respondent declared the 1st Appellant, candidate of the 2nd Appellant winner of the said Election.

The 1st (HarunaDara) and 2nd (All Progressive Congress) Respondents dissatisfied with the result of the Election, filed a Petition dated

and filed on the 4th day of March, 2022 before the Trial Tribunal. The 1st (Philemon Iyah) and 2nd (Peoples Democratic Party) Appellants filed a joint reply. The 3rd Respondent filed a reply dated and filed 12th April, 2022. The Trial Tribunal on the 29th August, 2022 delivered a considered Judgment in favour of the 1st and 2nd Respondents. The said Judgment is at pages 326 to 352 of Records of Appeal. It is against this said Judgment that the Appellants filed a Notice of Appeal on the 16th day of September, 2022. The said Notice of Appeal is at pages 353 to 359 of Records of Appeal.

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

i. Bitrus Musa	ADC	5
ii. Joshua Titus	ADP	18
iii. HarunaDara	APC	1812
iv. Fanimi Adebayo Oluwabusayo LP		99
v. Philemon Iyah	PDP	2,131
vi. Nuhu James	SDP	4

By ordinary mathematical calculation, the difference between votes scored by the Appellants and that of the 1st and

2nd Respondents according to declaration made by the 3rd Respondent is 319.

It is on the basis of the said result that the 3rd Respondent returned the 1st Appellant as the winner of the election.

The grounds in support of the petition are as follows:-

- i. That the 1st Appellant was not duly elected by majority of lawful votes cast at the Election.
- ii. That the Election was invalid by reason of corrupt practices.

iii. That the Election was invalid by reason of non-compliance with the Electoral Act.

The Trial Tribunal found that Election was not concluded in 5 Polling Units and the margin of lead between the 1st Appellant and the 1st Respondent in the Election is less than the number of Registered Voters in the 5 Polling Units. It was on that basis that the Trial Tribunal nullified the return of the 1st Appellant and ordered supplementary Election in 5 Polling Units.

C.I Okoye, Esq. counsel for the Appellants (Philemon Iyah and Peoples Democratic Party) filed Appellate brief of argument

wherein he formulated the following issues for determination, to wit:-

- 1. Whether the Trial Tribunal was correct to hold that the Election in Gaube Ward was inconclusive on the alleged failure of (Bimodal Voter Accreditation System) BVAS Machine used for the Election to work. (Ground One of the Notice of Appeal).*
- ii. Whether the Trial Tribunal erred in law in holding that: “notedly, in column 11, Gude/KofarSarki, the 3rd Respondent’s Agent who entered the result and or transferred the results from Form*

EC8A(1) entered “zero” even on the Section for registered Voters. The point now, is by Independence National Electoral Commission (INEC) Regulations for the conduct of Election, assuming, there was no Election in the affected Polling Unit, the 3rd Respondent ought to have filed Form 40G. Well, it was the 3rd Respondent’s duty to have explained what really happened in that Polling Unit but they have completely admitted the evidence of the Petitioners as the truth of the case, giving reasons why they did not call any witness or

evidence. (Ground Two of the Notice of Appeal).

iii. Whether the Trial Tribunal erred in law when they discredited Exhibits “P13” and “D2”, find merit in the Petition, granted the reliefs of the Petitioners, nullified the Election and Ordered Supplementary Election. (Grounds 3, 4, 5, 6 and 7 of the Notice of Appeal).

Learned counsel for the 1st and 2nd Respondents, on their part filed joint Respondents’ reply and distilled a lone issue for determination, to wit:-

Whether the Trial Tribunal was right when it nullified the return of the 1st Appellant and ordered supplementary election in 5 polling units.

Respondents/Appellants reply to the petition is at pages 89 – 109 of the records.

Similarly, 3rd Respondent reply is at pages 72 – 88 of the records of appeal.

Before the Lower Tribunal, in prove of its petition, Petitioners/Respondents called a total number of 15 witnesses who were largely polling unit agents.

Petitioners' counsel tendered from the Bar the following:-

- a. CTC of Form EC8E(1),
- b. CTC of Form EC 8B,
- c. CTC of manual for election officials and
- d. Receipts for the certified true copy in question.

They were admitted and marked as Exhibits “P7”, “P8”, “P9” and “P10” respectively.

On the part of 1st and 2nd Respondents, three witnesses were called who testified as “DW1”, “DW2” and “DW3”.

Agent Tags, duplicate copy of result sheets were tendered and marked Exhibits “D1”,

“D2”, “D3”, “D4”, “D5”, “D6” and “D7” respectively.

The argument on the issues formulated are already contained in the records and would make no meaning reproducing same in this judgment, word for word and line by line.

To resolve the present appeal, we have adopted the issue formulated by the 1st and 2nd Respondents for determination, i.e:-

Whether the Trial Tribunal was right when it nullified the return of the 1st Appellant and Ordered supplementary election in 5 polling units.

The reliefs sought by the Petitioners before the Lower Tribunal were as follows:-

1. That the return of the 1st Respondent as Councilor of Gaube Ward, Kuje Area Council be nullified.
2. That the supplementary Councillorship Election in Gaube Ward, Kuje Area Council be conducted in Dibe Primary School, Gaube Primary School, Gapere settlement, Gwaupe Primary School, GawuKuimi Primary School, GidanBawa Primary School and GudeKofarSarki Polling Units.

The evidence of the witnesses called by the Petitioners who were largely polling unit agents suggest clearly that election held in their respective polling units, whilst in the case of other polling units, BVAS Malfunctioned thereby making impossible for voters who turned – out to be accredited hence could not vote thereby disenfranchising them.

It spent that it is the duty and responsibility of a Petitioner who alleges disenfranchisement or non –compliance with the provision of the Electoral Act or Guidelines to lead evidence, credible enough to prove.

The law is similarly settled, that any result of election declared by INEC enjoys presumption of regularity. See section 150 (1) of the Evidence Act, 2011 as amended. See also *BUHARI VS. OBASANJO (2005) ALL FWLR (Pt. 273)*.

As we observed, all the polling units agents for the Petitioners contended largely that BVAS did not work thereby making it impossible for the said prospective voters to be accredited.

We are constrained to also observe the fact that majority of these witnesses called by the Petitioners have confirmed in evidence that

they did not carry – out head count of the voters that were not accredited on account of the malfunctioning of the BVAS Machines.

Petitioners have similarly not called the said prospective voters who could not be accredited to vote to give evidence, nor were the voters registers of the affected polling units aforementioned tendered in evidence to show number of accredited voters or the fact that no accreditation took place at the affected polling units to establish disenfranchisement.

Whereas Form EC8A series i.e polling unit results for the affected polling units were tendered by the Petitioners.

1st and 2nd Respondents equally tendered Exhibits “D1”, “D2” and “D3” which were polling units results for Gaube Primary School, Gapere settlement and GawuKurmi Primary School. This is contained at page 348 of the records.

It is not enough for a Petitioner to allege non – compliance with the provision of Electoral Act without more. Such a Petitioner is under a duty to call – all the prospective voters who must give evidence as such and tendervoters register showing their names as voters from the affected polling unit in issue. Failure to do that, petition, no matter how well packaged, must fail.

See ***ODEH & ANOR VS AHUBI & ANOR (2015) LPELR 41783 (CA);***

NGIGE VS. INEC (2015) 1 NWLR (Pt. 1440) 209 at 325.

The evidence as revealed from the records of appeal led by the Petitioners, put side by side with that of the 1st and 2nd Respondents has been dwarfed. The Lower Tribunal merely acted on speculation and not heard evidence.

Courts are not meant to speculate or make conjecture.

See ***UNITY BANK PLC. VS. RAYBAM (2017) LPELR – 41622 (CA).***

The conclusion by the Lower Tribunal that Petitioners had established inconclusive election and that they have more registered voters than the lead between the leading candidates, was not founded on any good evidential ground but mere conjecture and unreliable and unsubstantiated evidence.

The judgment of the Lower Tribunal is hereby set aside.

The declaration and return of the 1st and 2nd Respondents/Appellants made by the 3rd Respondent is hereby re – affirmed.

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

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

APPEARANCES

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

UsmanSani. S, Esq., with Abdulhakam A., Esq. and Bashir ShehuAbubakar, Esq. – for 1st and 2nd Respondents.

E.M Akafa, Esq. – for the 3rd Respondent.