

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/37/2022
PETITION NO: FCT/ACET/EP/16/2022

BETWEEN:

1. ROBO WURU
2. PEOPLES DEMOCRATIC PARTY (PDP) } **APPELLANTS/
APPLICANTS**

AND

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

JUDGMENT

This is an Appeal against the decision of the Area Council Election Tribunal, Abuja, delivered on the 29th August, 2022. The Judgment nullifying the declaration and the return of the Appellants as the winners of the Councillorship election of Kujekwa Ward, Kuje Area Council, Federal Capital Territory can be found at pages 296 – 311 of the record of Appeal.

Being dissatisfied with the judgment, Appellants appealed against the Judgment of the Trial Tribunal by filing a Notice of Appeal which is at pages 312 – 318 of the records dated and filed on the 16th day of September, 2022.

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

- i. IRIMIYA ADAMU APC 81
- ii. ROBO WURU PDP 95

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 14.

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

The 1st and 2nd Respondents not satisfied with the declaration of the 1st Appellant as the winner of

the said election filed a petition before this Honourable Tribunal on the following grounds:

- i. The 1st Respondent was not duly elected by Majority of lawful votes cast at the election.
- ii. The election was invalid by reason of corrupt practices.
- iii. The election was invalid by reason of non – compliance with the Electoral Act.

C.I Okoye, Esq. Counsel for the Appellants (ROBO WURU AND PEOPLES DEMOCRATIC PARTY (PDP)) in their brief of argument formulated four (4) issues for determination to wit;

- i. *Whether the Trial Tribunal was right in holding that the 3rd Respondent abandoned*

their Defense, called no witness in Petition No: FCT/ACET/EP/16/2022. (Ground 1 of the Notice of Appeal).

- ii. *Whether the Trial Tribunal was correct to overrule Appellants (1st and 2nd Respondents) objections on the admissibility of documents tendered by the Petitioners (1st and 2nd Respondents). (Ground 2 of the notice of Appeal).*
- iii. *Whether it was right of the Trial Tribunal to hold that the case of the Petitioners was that elections were inconclusive, relied on the evidence adduced by the 1st and 2nd Respondents witnesses to support Petitioners case. (Ground 3 of the Notice of Appeal).*

iv. Whether the Trial Tribunal erred in law when it finds merit in the Petition and entered judgment in favour of the Petitioners, when the grounds of the Petition was not proved by the Petitioners, nullified the declaration and return of the 1st and 2nd Respondents, Ordered supplementary election. (Grounds 4, 5 and 6) written ground 7 on the Notice of Appeal), of the Notice of Appeal.

Abdulahkam Adamu, Esq., for the 1st and 2nd Respondents' filed reply brief and formulated two issues for determination to wit:-

1. Whether the Trial Tribunal was right when it overruled the objection of the Appellants to the admissibility of Exhibits "P1", "P3",

“P5”, “P6”, “P7” and “P9” (distilled from ground 2).

2. *Whether the Trial Tribunal was right when it nullified the return of the 1st Appellant and ordered supplementary election (distilled from grounds 1, 3, 4, 5 and 6).*

The arguments on the distilled issues can be found at pages 312 to 318 of the records of Appeal.

Needless to say that, I shall not be reproducing the argument again, hook, line and sinker. I would however where necessary, make reference to such argument in the course of this judgment.

Petitioners called a total number of 9 witnesses i.e PW1 – PW9 in prove of their petition. 6 witnesses

were in-turn called by the 1st and 2nd Respondents. 3rd Respondent (INEC) did not call any witness.

Petitioners' witnesses were largely polling unit agents and voters from the affected polling units.

The witnesses called by the 1st and 2nd Respondents, gave evidence as "DW1" – "DW6".. They equally tendered Form EC8A (1) series.

From the issues distilled by both Petitioners and Respondents, issue No. 2 distilled by 1st and 2nd Respondents seem most apt. We hereby adopt it as our own for determination. The issue is whether the Trial Tribunal was right when it nullified the return of the 1st Appellant and ordered supplementary election (distilled from grounds 1, 3, 4, 5 and 6).

At page 6 of the records of Appeal, Petitioners sought for the follows reliefs before the Lower Tribunal:-

- a. That the return of the 1st Respondent as Councilor for Kujekwa Wards, Kuje Area Council be nullified.
- b. That supplementary Councillorship election in Kujekwa Ward, Kuje Area Council be conducted in GidanBawa Primary School, GidanBawaHealth Care, Sabe Open Space, Bida Primary School, Bida Primary Health Care and SabeKofarGidanMadaki Polling Units.

The grounds of the petition are as contained at page 3 of the records, as follows:-

- i. That the 1st Respondent 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.

In our judgments in Appeal Nos. **FCT/ACEAT/AP/24/2022** and **FCT/ACEAT/AP/36/2022**.

We stated the law on what a Petitioner alleging non-compliance must do for judgment to be in their favour, be it on grounds of non – compliance with Electoral Act or disenfranchisement of voters based on guidelines.

The said position in the aforementioned judgment is hereby adopted in resolving the same issues.

On the issue of allegation of corrupt practices as raised by the Petitioners, proof is always beyond reasonable doubt, same being criminal allegation.

See *CPC VS. INEC & ORS (2012) LPELR – 15522*.

See also section 135 (1) of Evidence Act, 2011.

On the other aspects of allegation of non – compliance with the Electoral Act and or Guidelines, the standard of proof required of a Petitioner is on the balance of probabilities or on the preponderance of evidence.

See ***OMOBORIOWO VS. AJASIN (1984) 1 SCNLR 108;***

INEC VS. OSHIOMOLE (2009) 4 NWLR (Pt. 1132) 607.

For a Petitioner to succeed on non – compliance with the Electoral Act, the Petitioner must prove not only that there was non – compliance with the Act but that the non – compliance substantially affected the result of the election.

In other words, Petitioner has to prove that non – compliance took place, and that the non – compliance affected the result of the election.

See ***BUHARI VS. OBASANJO (2005) 13 NWLR (Pt. 941) 1 at 80;***

***BUHARI VS. INEC (2008) 19 NWLR (Pt. 1120)
246 at 435.***

It is to be noted that the polling unit agent for the Petitioners testified to the effect that election material arrived and election commenced in their respective polling units except for the fact that BVAS malfunctioned hence election could not be concluded since voters who were on the queue could not vote. This style of evidence ran through almost all the Petitioners witness testimonies.

It is one thing to allege a fact and another to lead credible evidence with a view to substantiating such an assertion. Election petition though is a class of its own, the elementary principle with respect to standard of proof as required is applicable.

Court has though a long line of decided authorities re-iterated the fact that election result declared by Independent National Electoral Commission (INEC) enjoys presumption of regularity. A Petitioner therefore who challenges such a result is under an obligation to proof same or he looses.

The mode for proving there was neither accreditation nor voting at any particular polling unit is by calling the alleged persons who were all out to vote but could not be accredited to vote and or were accredited but could not vote. Such prospective voters must be called as witness and the voters register of the affected polling units must be tendered in evidence to show that the witnesses once called are voters at the affected polling units, with their names ticked or not

ticked. See *PDP VS. INEC & ORS (2011) LPELR – 883 (CA)*;

AUDU VS. INEC & ORS (2010) 13 NWLR (Pt. 1212) 456 at 523.

Eventhough Petitioners/Respondents called polling unit agents and voters for some polling unit, the whole witnesses gave evidence for the polling units in issue without calling the many other alleged prospective voters..Similarly, no voters' registers were for the affected polling units were tendered showing ticked or un-ticked names of the persons who would have given evidence. Thus, we must say is fatal to the case of the Petitioners as they are the Petitioners who have a duty to prove their petitions.

It is more than just asserting non – compliance or the fact that election is marked by corrupt practices.

Cogent evidence must be led to sway the court. Thus, Petitioners have failed to do in this case.

We therefore have come to the conclusion that the decision of the Lower Tribunal nullifying the return of the 1st Respondent as Councilor for Kujekwa Ward, Kuje Area Council was not properly reached.

The said judgment is hereby set aside.

The order for the re – run in the said polling units aforementioned is equally hereby set aside.

The declaration and return of the 1st and 2nd Respondents/Appellants made by the

3rd Respondent as winner of the election held on the 12th February, 2022 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

I.C Okoye, Esq., with Simon Dauda, Esq., OsarNnadi, Esq., W.S Bako, Esq. and A.J Adagami, Esq. – for the Appellants.

UsmanSaniSalamu, Esq. with AbdulhakamAdamu, Esq. and Bashir Shehu, Esq. – for the 1st and 2nd Respondents.

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