IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY

ELECTION PETITION TRIBUNAL (PANEL 3)

HOLDEN AT UMUAHIA, ABIA STATE

THIS FRIDAY THE 29TH DAY OF SEPTEMBER, 2023

BEFORE THEIR LORDSHIPS

HON. JUSTICE ABUBAKAR IDRIS KUTIGI - CHAIRMAN

HON. JUSTICE AHMAD MUHAMMAD GIDADO - MEMBER I

HON. JUSTICE MOMSISURI ODO BEMARE - MEMBER II

PETITTION NO:EPT/AB/SHA/15/2023

BETWEEN:

1. BARRISTER CHUKWUMA UCHECHUKWU ONYEKWERE
2. AFRICAN DEMOCRATIC CONGRESS (ADC)

PETITIONERS

AND:

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. IHEONUNEKWU UGOCHUKWU COLLINS
3. PEOPLES DEMOCRATIC PARTY (PDP)

RESPONDENTS

JUDGMENT

(DELIVERED BY HON. JUSTICE ABUBAKAR IDRIS KUTIGI)

The 1st Petitioner and 2nd Respondent were candidates in the election to the House of Assembly for **Isiala Ngwa North State Constituency**, Abia State, held on 18th March 2023. The 1st Petitioner contested the election on the ticket of African Democratic Congress (ADC),the 2nd Petitioner, while the 2nd Respondent contested the election under the platform of the 3rdRespondent People's Democratic Party (PDP), among other candidates fielded by other political parties.

At the end of the exercise, the 1st Respondent, Independent National Electoral Commission (INEC) declared and returned the 2nd Respondent as the winner of the Isiala Ngwa North State Constituency with a score **of20, 402** (Twenty thousand four hundred and two). 1st Petitioner was **Seventh** with a score **of 146** (One hundred and forty six). The 1st Respondent is the statutory body charged with the responsibility of conducting the election.

The Petitioners being dissatisfied with the conduct and outcome of the election filed this petition at the tribunal on 8th April 2023 to challenge the results of the election upon the grounds as streamlined in **paragraph 16 (1) – (4)** of the petition as follows:

1. **That the 2nd Respondent was at the time of the election, not qualified to contest the election.**

2. **That the election of the 2nd Respondent was invalid by reason of corrupt practices.**

3. **That the election of the 2nd Respondent was invalid by reason of non compliance with the provisions of the Electoral Act, 2022.**

4. **That the 2nd Respondent was not duly elected by majority of lawful votes cast at the election.**

The petitioners may have situated the above grounds of the petition but the facts to situate the above grounds were not clearly streamlined or identified.

In paragraphs 1 – 16 and paragraphs 17 – 39 of the petition, the facts to support the petition were presented in an unclear manner making it difficult to situate which facts support a particular ground out of the four grounds identified by the petitioners.

From what we can discern from these identified paragraphs of the petition, the case made out in relation to **ground 1** on qualification from paragraphs 17 and 20 of the petition is simply that the 2nd Respondent parades himself as a member of staff of Economic and Financial Crimes Commission (EFCC) and that he represents that he resides in Canada with his wife.Further that the 1st Respondent did not show that he is a citizen of Nigeria and or that he is no longer a staff of EFCC and was not receiving salaries from EFCC.

In relation to the other **three grounds** in which the facts were haphazardly combined, the petitioners made varied allegations in the petition vide paragraphs 6 – 16 and 18, 19, 21 to 39 of corrupt practices

and violation of the Electoral Act which invalidated the election.There were complaints of overvoting and that the 1st Respondent did not disclose the number of invalid votes, destroyed voters ballot papers, destroyed and unlawfully carted away boxes containing unaccounted voters ballot papers in the election.

The petitioners also complained of manipulation of results, intimidation, inducement, vote buying and harassment by 2nd Respondent of his political opponents and voters. The petitioners also made allegations of carting of ballot boxes and violence meted out on voters in many polling units of the constituency.

The petitioners then contended that they won the majority of lawful votes cast at the election as the results uploaded did not represent the actual lawful votes but that what was uploaded was a product of massive over voting and manipulations.

The petitioners then prayed the tribunal for the **Reliefs** set out in **paragraph 40 (i) – (vii)** of the petition as follows:

I. That it be determined that at the time of the House of Assembly Election held on 18th March, 2023 the 2nd Respondent was not qualified to contest the election.

II. That it be determined that all the votes recorded for the 2nd and 3rd Respondents in the election are wasted votes, owing to the non-qualification/disqualification of the 2nd Respondent.

III. That by reason of corrupt practices particularly, over voting the 2nd and 3rd Respondents did not obtain the majority of lawful votes and their return as elected in the House of Assembly for Isiala Ngwa North Constituency, Abia State is void, null and of no effect in law and in fact.

IV. That by reason of corrupt practices and violation of the provisions of the Electoral Act, 2022, giving rise to over voting which arose from a single voter accreditation Process, the computed results declared by the 1st Respondent's Returning Officer, Dr. Osuabwa Chidiebere for Isiala Ngwa North Constituency in the House of Assembly election held on 18th March, 2023 as shown in FORM EC 8 E (I):

1. ONYWUNYIRUWA IKECHUKWU EDWARD M A 202 Two hundred and Two

2. OSUJI BASIL EKENEDKICHOKWA M AA 05 FIVE

3. ONYEKWERE CHUKWUMA M ADC 146 One hundred and six(sic)

4. UHURU MONDAY M ADP 21 twenty one

5. CHIBUIKEM ALEX CHIDIEBERE M APC 1,811 One thousand eight hundred and eleven

6. ENWEREMADU MIGHTY IYIERI M APGA 200 Two hundred

7. NWAOGWUGWU IKENWOKO CHINEDOZI M APP 33 thirty three

8. URUAKPA INNOCENT CHIEDOZIE M LP 8,750 eight thousand seven hundred and fifty

9. EGWU GLORY M NNPP 47 Forty Seven

10. IHUEZE FELIX ONYEKACHI M NRM 30 Thirty

11. IHEONUNEKWU COLLINS M PDP 20,402 Twenty thousand four hundred and two

12. NWAZUO CHUKWUDI HYACINTH OGBONNA M PRP 34 Thirty four

13. FRIDAY NWAZUO M SDP 34 Thirty four

14. NWOSU EZENWA MICHAEL M YPP 894 eight hundred and ninety four

AAC 22 twenty two

APM 33 thirty three

ZLP 23 Twenty three

BP 28 Twenty eight

are all unlawful and as such null, void and of no effect in law and in fact.

V. That the 7,627 votes or any votes at all obtained by the Petitioners as shown in 1st Respondent's EC 60 (E) Publication of Result of Poll, were the majority of lawful Votes cast in the House of Assembly for Isiala Ngwa North Constituency, Abia State

Election held on the 18th March, 2023 and as such the Petitioners were duly elected and ought to be returned as elected.

VI. That it be determined that the Certificate of Return wrongly issued to the 2nd Respondent is null and void and be set aside.

VII. An Order directing the 1st Respondent to issue the Certificate of Return to the 1st Petitioner as the duly elected member of House of Assembly Isiala Ngwa North Constituency, Abia State of Nigeria.

In the response to the Petition, all the respondents categorically joined issues by filing their Respondent's Replies. The 1st Respondent filed its Reply on 1st May 2023. The 2nd and 3rd Respondents filed their Replies on 27th April 2023 incorporating a Notice of preliminary objection. In further response to the replies of Respondents, the Petitioners filed replies pursuant to paragraph 16 (1) of the 1st schedule of the Electoral Act. The Petitioners Reply to the 1st Respondents reply was filed on 5th May 2023, while the Petitioners reply to the 2nd and 3rd Respondents Reply was filed on 2nd May 2023.

With the settlement of pleadings, Pre-hearing sessions were held in accordance with the provisions of paragraph 18 of the 1st schedule of the Electoral Act in which all parties as represented by counsel fully participated.

It is important to state that various interlocutory applications were taken at the pre hearing sessions and we indicated in compliance with law, that

Rulings on same will be delivered along with the final judgment. We also equally indicated that addresses/submissions on the preliminary objection incorporated in the Reply of 2nd and 3rd Respondents be made in the final address and a Ruling shall equally be delivered before the final judgment is pronounced.

The tribunal then issued a pre-hearing and scheduling report which encompassed all matters agreed to by all parties with respect to the trial of the petition.

We shall accordingly deliver the **Rulings**on the interlocutory applications taken at the pre-hearing sessions and **the preliminary objection incorporated in the 2nd and 3rd Respondent's Reply** before proceeding to deliver the final judgment.

Now at the pre-hearing sessions, the 2nd and 3rd Respondents filed **three applications** while the petitioners filed **one**. We shall take them seriatim starting with the three (3) Applications of the 2nd and 3rd Respondents.

The first Application is dated **14th May 2023** and filed same date at the Tribunal Registry. The Respondents/Applicants pray for the following:

"An Order dismissing or striking out this Petition No. EPT/AB/SHA/15/2023: Barr. Chukwuma Uchechukwu Onyekwere & Anor vs. INEC & 2 Ors for being incurably defective, incompetent and thereby rob the Tribunal of the Requisite jurisdiction to entertain the Petition".

The grounds for the application are as follows:

(i) The petitioners have no locus standi to present this petition having come a distant 7th position amongst the candidates that contested the election.

(ii) The non joinder of the mandatorily indispensible parties who scored Higher votes than the Petitioners as declared by the 1st Respondent (INEC) in Form EC8E (1), robbed the Tribunal of the requisite jurisdiction to entertain this Petition.

(iii) That the facts in support of Ground 1 for the Petition are inconsistent, incongruous and do not support the said Ground 1 and reliefs (i), (ii) and (vi); and therefore, the said ground, facts and reliefs should be struck out.

(iv) By the averments of the Petitioners in paragraphs 26, 27, 28, 29, 31, 33 and 35 of the petition, the persons mentioned therein are necessary or mandatory parties whose presence are fundamentally indispensible for a proper determination of this petition. The non-joinder of these fundamentally necessary parties rendered the petition incompetent and Liable to be dismissed.

(v) Reliefs (iv), (v) and (vii) are inconsistent and incongruous with or not supported by the averment of the Petitioners in paragraphs 26, 27, 28, 29, 31, 33 and 35 of the petition and therefore not grantable, incompetent and should be struck out.

(vi) The totality of the averment and evidence in the Written Statement on oath of the Petitioners and their witnesses do not

establish any of the grounds relied upon for the Petition or and the prayers sought. Furthermore, the Petitioners did not show, disclose or establish how their purported results in Form EC60E purportedly picked up at the various polling units added up to 7,627 votes as their scores at the election to warrant their Petition and the reliefs sought. Besides, the totality of the evidence of the Petitioners witnesses do not establish or prove any of the grounds or facts relied upon for this Petition.

(vii) No cause of action is disclosed by the entire petition to warrant the Petition proceeding to trial.

The application is supported by a 7 paragraphs affidavit and a written address in which four (4) issues were raised as arising for determination:

i. Whether the Petitioners having come a distant 7th position in the questioned election with only 146 votes, he has the locus standi to present this election petition to seek the reliefs claimed without joining the persons who have higher votes than him (Grounds i & i).

ii. Whether the non joinder of the Mandatony Parties Le. Candidates of the Labour Party, and APC and others against whom very serious allegations have been made in the Petition, does not rob this Tribunal of jurisdiction to entertain this petition in the absence of the parties or deny the Tribunal of the vires to determine facts touching on the averments (Ground iv).

iii. Whether Reliefs (i), (ii), (iii), (iv), (v) and (vii) should not be struck out same being inconsistent with the Grounds in support thereof and paragraphs 26, 27, 28, 29, 33 and 35 of the Petition (Grounds () and (v) of the Grounds for the objection).

iv. Having regard to the totality of the averment of the Petitioners and the written Statement on Oath of the witnesses, which are no more than hearsay evidence, whether the entire petition should not be dismissed as having no evidence to support the grounds and facts (Grounds (vi) & (vii)).

Submissions were then made on all the above issues which forms part of the Record of the Tribunal. We shall highlight the substance of the submissions made.

On issue 1, the case made out is that by the results declared by **INEC**, the 1st Petitioner took the **7th position** but that he did not join the 2nd – 6th persons who scoredhigher votes than him in the election and that this failure to join these parties who are necessary parties has impacted on the jurisdiction of the tribunal to entertain the petition.

On issue 2, it was submitted that the failure to join certain identified parties like APC, LP, APGA and YPP to the petition and others against whom serious allegations were made in the petition has served to rob the tribunal of the jurisdiction to determine these complaints made against parties not joined to the petition.

On the issue 3, it was submitted that the Reliefs (i) - (vii) sought by the Petitioners are completely inconsistent with paragraphs 26 – 33 and 35 of the petition and liable to be struck out.

Finally on issue 4, it was contended that the totality of the evidence on oath frontloaded by Petitioners are hearsay evidence which cannot sustain the serious allegations in the petition and accordingly that the petition be dismissed for lack of evidence in law to sustain the grave allegations made in the petition.

At the hearing, counsel to the 2nd and 3rd Respondents' relied on the contents of the supporting affidavit and adopted the submissions in the written address in urging the tribunal to grant the application.

The 1st Respondent's counsel filed an address which adopted the issues raised by the Applicants and the submissions made in urging the court to grant the application.

The Petitioners/Respondents in response filed a 15 paragraphs **Counter – Affidavit** and a written address in which 4 issues were raised as follows:

i) Whether the Petitioners have locus standi to present the substantive petition.

ii) Whether the Petitioners have any obligation to sue any party they have no relief or claim against.

iii) Whether the petition discloses no cause of the action and;

iv) Whether the present Preliminary Objection is not an abuse of court process.

Submissions were made on these issues which forms part of the Record of the tribunal. We shall briefly highlight the essence of the submissions as made out. On issue (1), it was submitted that the Petitioners particularly 1st Petitioner have locus standi to present the substantive petition having contested the election as a candidate. That the scores obtained at the election is not what determines whether a party can present an election petition or not.

On the issue (II), it was contended that a party only has a duty to sue those it has reliefs or claims against. That the reliefs sought in this petition are against the Respondents on record and therefore that the petition is competent.

On issue (III), it was submitted that a close look at the petition, the grounds, facts and reliefs which the Petitioners pray for will show that salient issues and questions have been raised by the Petitioners and therefore that it cannot be rightly argued that no cause of action was raised or disclosed by the petition.

Finally on issue (IV), it was submitted that the present motion on notice has already been canvassed in the 2nd and 3rd Respondent's Reply and accordingly that this present motion amounts to an abuse of process as the motion on notice and the same objection in the reply cannot be pending at the same time. That the extant motion on notice thus constitutes an abuse of process and should be dismissed.

At the hearing, counsel to the Petitioners relied on the contents of the Counter-Affidavit and adopted the submissions in the written address in praying that the application be dismissed.

We have carefully considered the processes filed and the submissions made and in our considered opinion, the 4 issues raised by the parties on both sides of the aisle are in substance the same even if couched differently. We shall however adopt the 4 issues raised by 2nd and 3rd Respondents in resolving the extant application.

The first issue is that the Petitioners came a distant 7th in the election and therefore don't have the locus standi to present this petition without joining the persons who scored higher votes than them.

It is a principle of general application that locus standi denotes the legal capacity based on or upon sufficient interest in a subject matter to institute proceedings in a court of law to pursue a cause. It is the legal capacity to institute an action in a court of law. If a party does not possess the required locus standi, that delimits the jurisdiction of the court or the tribunal to entertain his complaint. See **Emezi V Osuagwu (2003) 30 WRN 1 at 19 or (2005) 12 NWLR (pt. 939) 240 at 361.**

Citizens derive locus standi from the constitution, Section 6 (6) (b) of the 1999 constitution, the statutes, customary law or voluntary arrangement in an organization as the case may be.See **Odenye V Efunuga (1990) 7 NWLR (pt. 164) 618.**

In the extant case, we are obviously dealing with an election dispute which is ***sui generis.*** We must thus take our bearing from the Electoral Act 2022 which regulates matters of that particular nature.

Now section **133 (1) (a) and (b)** of the Act provides persons entitled to present election petitions as follows:

"An election petition may be presented by one or more of the following persons –

(a) A candidate in an election;

(b) A political party which participated in the election.

The above provisions are clear and unambiguous. **Candidates** who participated at the election and their political parties are thus the only persons vested with the requisite locus standi to present an election petition.

As stated earlier, the concept of **locus standi** is an aspect of jurisdiction. That being the case, the only petitions which a tribunal can take are those presented by **either a candidate** at the election or **the political party** which participated at the election or both of them. Once a party or Petitioner has expressly stated that he is a candidate in the election,that is enough that he has established his right to present the petition.See **Kamil V INEC (2010) 1 NWLR (pt. 1174) 125 at 142; Okonkwo V Ngige (2006) 8 NWLR (pt 981) 119**.

The converse is equally the case that a person who is not a candidate at an election has no locus to institute a Petition.See **P. P. A VINEC and ANR (2012) 13 NWLR (pt. 2327) 2154 at 235.**

In this case, on the pleadings filed by parties which has streamlined the issues in dispute; it is clear that the 1st Petitioner participated and or was a candidate in the State House of Assembly elections conducted on 25th February 2023. Indeed his participation in the election is a **common ground.**The fact that he came 7th as contended has no effect, absolutely, on his capacity to file the present petition.

The fact that he did not equally join the parties who scored higher than him has nothing to do with his locus standi or his right to file the extant petition within the purview of Section 133 (1) (supra). The provision of Section 133 (1) is clear on who can bring a petition and its remit cannot be expanded to include that his locus standi to sue is necessarily predicated on joining those who scored higher votes than him. No such interpolations or addition can be made to the provision of Section 133 (1) (a) and (b) (supra). The principle is settled that where the words of a statute are clear, plain and unambiguous, the court or tribunal shall give effect to their literal meaning. See **Adewunmi V A. G. Ekiti State (2002) 2 NWLR (pt. 751) 474 at 511 – 512 A-B.**

We therefore hold on this issue that the 1st Petitioner has the requisite locus standi to present this petition. Whether the petition will succeed ultimately or not is however a different matter altogether which goes to the substance and merit of the substantive case but which has nothing to do with his legal capacity to present the present petition.

This then leads us to the issue of whether the failure to join Labour Party, APC and others whom serious allegations were made against by the

Petitioners robs the tribunal of jurisdiction to entertain the petition in their absence.

Again we must take our bearing from the provision of **Section 133 particularly (2) and (3)** which provides thus:

"(2) A person whose election is complained of is in this Act, referred to as the respondent.

(3) if the petitioner complains of the conduct of an Electoral officer, a Presiding or Returning officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the Commission shall, in this instance, be –

(a) made a respondent, and

(b) deemed to be defending the petition for itself and on behalf of its officers or such other persons."

From the above, it is clear that the law recognizes those who can be called **statutory respondents**:

i) The person who was returned as elected and whose election or return is been questioned.It is now a matter of practice to join the political party, though nothing in law provides for that. It should be noted that it is successful candidates and not their political parties that are issued with certificate of return.

ii) The independent National Electoral Commission is also a statutory Respondent and where its **Officers** are accused of infractions, the law is clear that they need not be made parties.

We must here state the position of the law that an unsuccessful candidate in an election can be made a Respondent to an election petition with his consent or if he does not object to being so made. See **Eluemunoh V Obidigwe (2013) 13 NWLR (pt. 1371) 369; Yusuf V Obasanjo (2004) 9 NWLR (pt. 877) 144.**

Now with respectto **non-statutory respondents**, where allegations are made against them, we consider that it is important that they are joined as Respondents. This has constitutional implications for the reason that a person has a right to be heard in all cases which affects the determination of his rights. Where for instance, **allegations of commission of criminal offences are made against certain individuals or parties**, it will amount to a breach of their fundamental right to fair hearing if determination are made without their participation. See **Obasanjo V Buhari (2003) 17 NWLR (pt. 850) 510 at 576 – 577; Ayogu V Nnamani (2006) 8 NWLR (pt. 981) 160 at 195; Egolum V Obasanjo (1999) 7 NWLR (pt. 611) 423.**

On the basis of the provision of the **Section 133(2) and (3)of the Act (supra)** there may not be the imperative of joining **non statutory respondents** to the present action, thus ensuring the competence of the petition. However because of the importance of the concept of fair hearing, where serious criminal infractions are made in the petition against **persons** who are not joined, such paragraphs will be struck out.The contention by Petitioners that the court has powers to make orders of **joinder** clearly will not fly because no such major amendments to add to the petition can be made to the petition after 21 days of the filing of the petition within the

purview of **Section 132 (7)** of the Electoral Act and **paragraph 14 (2) a** of the 1st schedule of the Act. An application for joinder of a party after the time prescribed for the filing of a petition will not be granted as that would amount to granting extension of the time to file a petition. See **Uzondinma V Udenwa & ors (2003) 3 LRECN 516; Oke V Mimiko (2013) All FWLR (pt. 693) 1853.**

On the whole, this complaint by Applicants subject to the **reservations** made will not fly. The need to do substantial justice and to determine the petition on the merits must outweigh any technical considerations. The Supreme Court in **Ikpeazu V Otti (2016) 8 NWLR (pt. 1513) 38 at 97 per Galadima J.S.C** stated thus:

> **"No where else is the need to do substantial justice greater than in election petition, for the court is not only concerned with the rights of the parties inter se but the wider interest and rights of the constituents who have exercised their franchise at the polls"**

This then leads us to the complaints of whether Reliefs (i), (ii), (iii) (iv), (v) and (vii) should not be struck out same being inconsistent with the grounds in support and paragraphs 26, 27, 28, 29, 33 and 35 of the petition.

In line with our finding with respect to the issues already considered, we have carefully read the entire petition and we are of the view that the issue of the alleged inconsistency of some of the reliefs and the grounds are issues that can be taken in the substantive judgment and a final

determination made one way or the other. No prejudice or injustice will be occasioned to any partyby this approach.

The final issue in the application is the contention that the **entire witness depositions of the witnesses of Petitioners** are based on hearsay and that the petition be dismissed on that basis.

This ground is with respect completely misconceived.The tribunal has no jurisdiction to take any decision on the evidence of the Petitioners when they have not even had the opportunity to present the evidence. The tribunal cannot evaluate what is not before it. Until the depositions are properly adopted at the hearing and at the end or when delivering judgment, the tribunal will then be in a position to properly evaluate all evidence elicited at trial.That exercise cannot however be done now. That will be premature and prejudicial.

Before we round up, we note that the Petitioners/Respondents have contended that the extant motion form the basis of the objection raised in the Reply and therefore that the motion is an abuse of process.With respect, that contention is equally misconceived. The extant Electoral Act allows for a reply to incorporate an objection and for an application to be filed during the Pre-hearing session. The Act equally projects that a decision on the motion or objection shall be delivered when the substantive judgment is been delivered. What this simply means is that a decision taken on one of the two processes will affect the other. No more.

In the extant case, having dealt with the motion, **the decision has now taken care of the same or similar objection in the 2nd and 3rd Respondents Reply**. There is no abuse of process in the circumstances.

On the whole, except for the contention relating to the inconsistency of certain reliefs and grounds in the petition, which shall be taken in the final judgment, the **application fails and is dismissed**.

The second Application also **filed by 2nd and 3rd Respondents** on**14/5/2023** prays for the following relief:

(1) An order of this Honourable court striking out the Petitioners Reply to 2nd and 3rd Respondents Reply in this petition in that same contains new facts, issues and argument contrary to paragraphs 14 (2) (a) (i) – (iii) and 16 (1) (a) and (b) of the 1st schedule to the Electoral Act, 2022.

The grounds of the application are as follows:

i. The 1st and 2nd Respondents (now Applicants in this Motion) filed their Reply to the Petition.

ii. The Petitioners (Respondents in this Motion) in their Petitioners Reply to Respondents Reply, in paragraphs 9, 10, 11, 12, 13, 17, 19, 21, 23 – 26, 29, 31, 33, 34, 36 and 37 of their Reply raised new Facts,

Issues which ought to have formed the basis of the Petition from the very beginning.

iii. Furthermore, the Petitioners in paragraphs 2, 3-8, 15, 16, 18, 20, 22 – 28, 30 and 35 embarked on a repetition of facts already contained in their petition as well as legal arguments/submissions in their pleading contrary to the Rules of pleading.

iv. A Petitioner's Reply in an Election Petition is not a repair kit for an otherwise deficient petition or meant to afford a Petitioner another opportunity for additional/new facts in support of the Petition.

v. By paragraphs 14(2) (a)(i) – (iii) and 16 (i)(a) & (b) of the 1st Schedule to the Electoral Act 2022, material new issue(s), facts or Grounds introduced by way of a Petitioners Reply after expiration of the 21 days for filing a Petition is incompetent and liable to be struck out/dismissed.

The application is supported by an 8 paragraphs affidavit with a written address in which one issue was raised as arising for determination to wit:

> **"Having regard to the new facts, issues/grounds contained in the Petitioners reply, whether the said reply should not be struck out for being contrary to paragraphs 14 (2) (a) (i) - (iii) and 16 (1) (a) and (b) of the 1st schedule to the Electoral Act".**

The simple case made out here as streamlined above in the grounds particularly ground II is that in the paragraphs identified in the Reply, that the Petitioner has raised new issues and facts which ought to have formed the very basis of the petition. It was equally contended, again in the paragraphs highlighted in ground iii above that the Petitioners resorted to repeating facts already stated in the petition and making legal conclusions in violation of the provisions of the Electoral Act as stated in ground V above, making the Reply incompetent and liable to **be struck out.**

At the hearing, Counsel to the 2nd and 3rd Respondents relied on the paragraphs of the affidavit and adopted the submissions in his written address in praying that the application be granted.

In opposition, the Petitioners filed a 10 paragraphs counter affidavit and written address in which one issue was raised as arising for determination, to wit:

"Whether perusing the substantive petition, the 2nd and 3rd Respondents Reply and the Petitioners Reply, any new facts, issues or grounds not already in contention were introduced in the Petitioners Reply"

In the submissions on the issue, the Petitioners contend that the facts stated in the Reply to the 2nd and 3rd Respondents Reply are not new facts, issues or grounds as contended by the Applicants and that there was no violation of any provisions of the Electoral Act.

At the hearing, counsel to the Petitioners relied on the contents of the counter-affidavit and adopted the submissions in the written address in urging the court to dismiss the application as lacking in merit.

We have again carefully considered the processes filed on both sides and the submissions made and the narrow issue is whether the complaint that the Petitioners reply contains new facts and or **issues in violation** of the relevant provisions of the 1st schedule of the Electoral Act is validand thus liable to be struck out.

It is not in dispute that the jurisprudence on filing a Petitioners Reply is now fairly well settled. By the provision of paragraph 16 (1) of the 1st schedule of the Electoral Act, where a person in reply to an election petition raises new issues of fact in defence of his case, which the Petitioner has not dealt with, the Petitioner is entitled to file a reply in answer to new issues. He is however by paragraph 16 (1) (a) not allowed to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him. See **Ogboru V Okowa (2020) 11 NWLR (pt. 1522) 84 at 113 0 114.**

By the foregoing, the Petitioners are not entitled to set in their Reply to the 2nd and 3rd Respondents Reply to their petition either a **new course of action, ground or new facts** outside or inconsistent with their petition, thus their reply must not depart or contradict their petition and where it does, the tribunal will be justified and on solid legal ground to strike out the paragraphs of the reply where the defect(s) has occurred. See **Ogboru V Okowa (supra).**

In the present situation, we have carefully studied and or perused the entire 40 paragraphs petition and the facts averred therein in support of the grounds of the petition anchored on qualification, corrupt practices, non compliance with provisions of the Electoral Act and the final ground that the Respondent was not duly elected with a majority of lawful votes.

We have equally perused the 40 paragraphs of 2nd and 3rd Respondents Reply to the petition and the 30 paragraphs Petitioners reply filed in response and particularly the paragraphs which are said to be in violation of the Electoral Act and not within the purview of a Reply.

In the context of the principles on filing a reply, Paragraphs **10, 11, 12, 13, 17, 19, 21, 23, 24, 25, 26, 27, 29, 31, 33, 36 and 37** of the Petitioners Reply in the light of the existing pleadings are clearly new issues or facts which ought to be in the original petition. Paragraphs 10 introduces or seeks for production of a BVAS report of 17 Local Governments, the number of registered voters and accredited voters on the date of the election. Paragraph 11 then demand, for the 2ndand 3rd Respondents to come and prove how they got votes declared by INEC out of the accredited voters excluding rejected votes, spoiled votes got by the remaining contestants. These certainly cannot be matters for Reply or facts cognizable as a response to the averments in the 2nd and 3rd Respondents Reply.

Paragraph 12 then introduces the new fact or element of 2nd and 3rd Respondents engaging in corrupt practices as seen in different social media platforms particularly facebook.

Paragraph 13 again gives the 2nd and 3rd Respondent notice to produce another report of registered votes, spoiled votes on election date. These are all clearly new facts not contained in the petition.

Paragraph 17 then introduced the new facts that it was not possible to stop the **"2nd and 3rd Respondents and their thugs"** from engaging in acts of corrupt practices and that security operatives witnessed all these acts but looked away.

Paragraph 19 then clearly seeks to amend the petition by seeking to incorporate **new Isiala Nsulu ward 3** polling unit instead of the name **Amasaa Nsulu in ward 3** used in the petition. This is an addition or subtle amendment to the petition well outside the 21 days for filing of a petition.

Paragraph 21 then demands of 2nd and 3rd Respondents to state the correct number of accredited voters, number of registered votes, number of spoiled votes and scores of candidates in certain units and we find it difficult to situate how a reply can contain these averments which are not in the main petition.

Paragraph 23 then avers that **two form EC60 (E)** were posted in two polling units; one governorship and the other for House of Representative and again we wonder how these facts form the basis of a reply in the light of the clear contested assertions.

Paragraph 24, wherein averments were made including that 1st Petitioner had to direct his supporters to move from polling unit to polling unit where

elections were allegedly manipulated and the alleged challenge by certain gubernatorial representatives, are all clearly new facts or issues.

The averments in paragraph 25 that perusing the international passport of 2nd Respondent shows he has not lived for any reasonable time in Isiala Ngwa North and that 2nd Respondent has been boasting of his connections with the maladministration of the 3rd Respondent in Abia who probably know him from their numerous financial crimes handled by EFCC clearly also are not matters for a reply.

Paragraphs 26 and 31 equally seeks to project new figures or scores contrary to that the Petitioners had indicated in the petition. Paragraph 29 seeks to define what "mendacious" means and also states that the 2nd and 3rd Respondents do not believe in due process and the existence of opposing view and that to allow them get away with their corrupt practices will amount to elevating good over evil and we wonder how this should feature in a reply.

Paragraph 33 calls on the Tribunal to direct security agencies to investigate how the second 2nd and 3rd Respondents manipulated the electoral scores to their favour and we are in no doubt that this clearly cannot be part of a reply.

Paragraphs 36 and 37 which avers that the results uploaded by 1st Respondents IREV server stated that the election was cancelled by reason of "violence and threat to life" and the notice to produce certain certified documents are all clearly new facts or issues not contained in the petition.

We have demonstrated at length that the above paragraphs are an attempt by Petitioners to use the conduit of a reply as a leeway to aver new facts which ought to be in the original petition and appear to us, a clear attempt to overreach the 2nd and 3rd Respondents as nonew facts should feature in a Petitioners Reply.

In the circumstances, the application by 2nd and 3rd Respondents with respect to the following **paragraphs 10, 11, 12, 13, 17, 19, 21, 23, 24, 25, 26, 29, 31, 33, 36 and 37** of the Reply has considerable merit and we accordingly hereby strike out these paragraphs as no new facts should feature in a **reply.** See **Ogboru V Okowa (supra); Ermertor V Okowa (2016) 11 NWLR (pt. 1522) 1 at 32 – 33; Dingyadi V Wamako (2008) 17 NWLR (p. 1116) 395 at 442 – 443** and **Adepoju V Awuduyihemi (1999) 5 NWLR (pt. 603) 364 at 382.**

The complaint by Applicants that paragraphs 2, 3 – 8, 13, 16, 18, 20, 22 - 23 and 30 be struck out because they are simply repetition of facts in the petition and that they contain legal submissions will not fly in the circumstances.

If these facts are already contained in the existing petition, we do not consider that any harm or miscarriage of justice will be occasioned to the Respondents if we allow these paragraphs of the reply to stay. To the clear extent that the 2nd and 3rd Respondents have filed a reply joining issues on the averments in the existing petition, all that now remains is for the contested assertions to be proved at the trial on established legal threshold.

On the whole, the application partially succeeds as demonstrated above. For the avoidance of any doubt, **paragraphs 10, 11, 12, 13, 17, 19, 21, 23 – 26, 29, 31, 33, 34, 36 and 37 of the Petitioners Reply** to the 2nd and 3rd Respondents Reply are **hereby struck out.**

This then leads us to the **final application** filed by the 2nd and 3rd Respondents.

The application is dated **23/5/2023** and filed same date. The Respondents pray for.

1) An order granting the 2nd and 3rd Respondents leave to frontload the documents pleaded in their Reply to the petition to enable the Honourable tribunal receive the documents at the hearing.

2) An order of the tribunal deeming the 2nd and 3rd Respondents documents already frontloaded before the tribunal as duly frontloaded.

The groundsof the application are as follows:

(1) The Documents sought to be frontloaded are duly pleaded by the 2nd and 3rd(sic) in their Reply and referred to in the Written Statement on (sic) of the Witnesses.

(2) Some of the documents were/are not readily reachable/available to the Applicants at the time of filing the Reply due partly to some administrative challenges in the office of 1st Respondent and unavailability of some of the persons with the documents.

(3) Interest of justice and need for the determination of the Petitionon the merits.

(4) The Petitioners did not also frontload the documents pleaded by them just like the 2nd and 3rd Respondents. There is this thus need for equality of fairness of hearing/measure of justice to both parties being that the essence of frontloading is in order not to spring surprises on the opposite party.

The application is supported by a 19 paragraphs affidavit. A written address was filed in which one issue was raised as arising for determination to wit:

> **"Having regard to the grounds and facts stated in the affidavit evidence, whether, the 2nd and 3rdRespondents/Applicants have not made out a good case for the tribunal to exercise its discretion in their favour by granting this application in the interest of justice".**

Submissions were then made on the above issue which forms part of the Record of the tribunal.

The substance and summary of the submissions is that the documents sought to be frontloaded have all been duly pleaded and referred to in the written deposition of witnesses and accordingly that the failure to frontload the documents due to circumstances beyond their control is not fatal.The

case of **Ogboru V Uduaghan (2011) 2 NWLR (pt. 1232) 538** was cited.

It was contended that the Petitioners too did not frontload their documents and therefore that parties should in this case be given the same opportunity to present their case.

At the hearing, counsel to the 2nd and 3rd Respondents relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in using the tribunal to grant the application.

The Petitioners in opposition filed a counter affidavit and a written address in support. An issue was raised as arising for determination to wit.

> **"Whether the 2nd and 3rd Respondents have made out exceptional circumstance to justify granting them leave to remedy a defect they incurred in their Reply by not accompanying their documentary evidence with their said Reply".**

Submissions were made on the above issue which forms part of the Record of the tribunal. The substance and summary of the submissions is that the Applicants did not make out exceptional circumstances to allow the tribunal grant them leave to frontload their documentary evidence which they failed to do in contravention of paragraphs 15 and 12 (3) of the first schedule to the Electoral Act.

At the hearing, counsel to the Petitioners relied on the contents of the counter-affidavit and adopted the submissions in his written address in urging that the application be refused.

We have carefully considered the processes filed and the submissions and we don't think the question of frontloading of documents present any serious **legal issue** at all.

By the provision of **paragraph 4 (5)** of the 1st schedule of the Electoral Act, the election petition shall be accompanied by –

a) a list of the witnesses that the Petitioner intends to call in proof of the petition.

b) Written statements on oath of the witnesses; and

c) Copies **or** list of every document to be relied on at the hearing.

The above provision is clear and unambiguous with respect to the question of frontloading.

Paragraph 4 (5) above (c) states clearly that "copies **or** list of every document to be relied on at the hearing"

The word used here is **'or'** which is disjunctive participle indicating a choice or taking a pick from the two available options.

A petitioner may decide to choose to frontload the copies **or list** every document he intents to rely on.

The **1st schedule** did not make similar direct provision for the Respondents and accordingly to take care of thislacuna, the Honourable, the president of the Court of Appeal in the exercise of her powers under extant laws issued the **Election Judicial Proceeding Practice Direction 2023** which provides in paragraph 2 as follows:

"The requirements of paragraph 4 (5) of the First schedule to the Electoral Act, 2022 shall apply, mutadis mutandisto a Respondents Reply and the list of witnesses therein shall also be deemed complied with where the identity of the witnesses are presented by initials or alphabets or a combination of both"

The above paragraph is equally clear and self explanatory. The Respondent here too, like the Petitioner has an election to make; to either frontload the copies of documents to be relied on **or** to list documents. The 2nd and 3rd Respondents have on Page **90** of their **Response** or Reply listed the documents they will use at the hearing. That is more than sufficient compliance with the requirements of the law.

On the whole, there is no added requirement for them to seek leave to use or frontloaded the documents so clearly listed. The application is entirely unnecessary. We **strike** it out.

Having decided the position of the law with respect to the requirement of frontloading, it follows that the Application by Petitioners dated **19/5/2023 praying** essentially that the Respondents Reply be dismissed or struck out for non compliance with the mandatory provision of the Electoral Act **2022** in that they failed to frontload documentary evidence they intend to rely on clearly has no leg to stand on and must fail.

It may be necessary to just say that the 2nd and 3rd Respondents filed a counter-affidavit to which the Petitioners filed a Reply on points of law. As stated earlier, the provision of paragraph 2 of the Election Judicial Proceedings Practice Directions 2023, has unequivocally settled the

question. Just like the Petitioners, the Respondent may accompany his Reply with copies of documents to be relied on at the hearing or simply make a list of every such document.

The Application by Petitioners therefore is similarly unnecessary and is hereby struck out.As stated earlier the **objection in the Reply of the 2nd and 3rd Respondents** contains the same reliefs on which we have just delivered a ruling. The **preliminary objection** has been overtaken by events and is thus struck out.

Having dealt with all pending applications, we now deal with the substance of the grievance submitted by the Petitioners.

JUDGMENT ON THE PETITION

The facts of the petition, the grounds and the Reliefs have been set out at the beginning this judgment.

In the course of trial and in proof of their case, the petitioners called **five (5) witnesses**.

Mr. Adindu Peters testified as **PW1.** He deposed to a witness statement on oath on pages 44 – 45 of the petition which he adopted at the hearing. He stated that he was a registered voter and saw the election result form EC60 (E) pasted on the wall of his polling unit and that African Democratic Congress (ADC) won the election in his unit. That he was among the youths assembled at Umunachi in Mbaraugha area of Amasaa Ntigha on 17/3/2023 when 2nd Respondent drove a Siena bus and dropped a bag of money with instructions that it was to be used to buy votes. That he went round the polling units along with others who voted for ADC to extract the

INEC forms EC60 (E) so that he will know the actual results. The copies of forms EC60 (E) he extracted from different polling units was admitted as **Exhibits P1 (1 – 175).**

He was then cross-examined by counsel to the Respondents.

The 1st Petitioner, **Chukwuma Uchechukwu Onyekwere** testified as **PW2**. He made three (3) witness depositions which he adopted at the trial.His first witness deposition on pages 21 – 35 of the petition is essentially a rehash or repetition of the entire facts stated in the petition which we have earlier reproduced.The 2nd and 3rd depositions were filed along with the Replies he filed along with the petitioners replies to the 1st Respondents Reply dated 2/5/2023 and the Reply of 2nd and 3rd Respondents dated 5/5/2023.

PW2was then cross-examined by counsel to the Respondents. Indeed during the cross-examination by counsel to the 2nd and 3rd Respondents, Copies of the letter of withdrawal of service of 2nd Respondent dated **17/3/2022** written to the Executive Chairman EFCC and the approval of disengagement by EFCC dated**22/8/2022** were admitted through PW2 as **Exhibits P2a & 2b.**A copy of application for certified true copies of electoral materials dated 22/3/2023 was admitted through PW2 as **Exhibit P3.**

The final **three witnesses** called by the petitioners were on **subpoena.**

Mr.Austin Obasi testified as **PW3.** He is an electrician and on been served a subpoena, he made a witness deposition on 26/7/2023 of 26 paragraphs with the acronym ADCA which he adopted at the hearing. His

evidence is basically to the effect that he acted as an election observer for his party and that he observed elections in about 167 units out of 187 units in the constituency and he witnessed acts of corrupt practices, thuggery and inducement which he reported to the security officials. He was appointed as an Election observer by his party.

PW3 was equally cross examined by counsel to the Respondents.

Ngozi Madugba, also on subpoena testified as **PW4.** She operates a computer business and training center. On been served the subpoena, she prepared two witness depositions dated 27/7/2023 and a further deposition on 16/8/2023 with the acronym ADCB. She adopted the two depositions at the hearing.

In her evidence which was difficult to discern, she stated that, one hundred and eleven forms EC8A (1) result sheets produced by INEC IREV server is unreliable.She was then instructed by 1st Petitioner to download the statement of results for 185 polling units from INEC IREV server which she did using her computer which she said was in good working condition. She tendered in evidence, 185 polling units results, forms EC8A she said she downloaded for Isiala Ngwa North state constituency which were admitted in evidence as **Exhibits P4 (1 – 185).**

She was equally cross-examined by counsel to the 1st Respondent and counsel to the 2nd and 3rd Respondents respectively.

The final witness for the petitioners is **Uzomah Noah,** who testified as **PW5.** He is a school mathematics teacher and served a subpoena. On been served, he prepared a witness deposition on 16/8/2023 with the

acronym ADCC which he adopted at the hearing. His evidence is that he calculated the scores contained in the INEC forms EC60 (E) pasted at the different polling units and that his calculations showed that the 1st Petitioner of the ADC (2nd Petitioner) won the House of Assembly Election for Isiala Ngwa North State Constituency with a **"score of 8, 333 votes and not 7, 627 initially calculated".**

PW5 was also cross – examined by respondents and with his evidence, the **petitioners closed their case.**

The 1st Respondent called only one witness.**Mr.Ukaegbu Emmanuel Chukwudi,** a Public Servant with INEC testified as **DW1.** He made a witness statement with the acronym **INEC W1** which he adopted at the hearing.

His evidence is simply to the effect that there was no overvoting on the date of the election and 1st Respondent never said so. That the computation of votes was based on free electoral process and that no corrupt practices marred the process. That polling unit results are usually posted at the polling station after their announcement in the prescribed INEC form. That no results are posted at the polling stations after a declaration of winner.

DW1 further testified that Result sheets are kept in the custody of the Resident Electoral Commissioner and certified copies are made from there after payment of requisite fees. That result sheets do not come from any other source.

Finally, he stated that 1st Respondent did not engage in any manipulations or falsification of results and that 2nd Respondent emerged the winner after a careful collation of results and having scored the majority of lawful votes.

DW1 tendered in evidence the following documents:

1. Copy of his INEC I.D card was admitted as **Exhibit D1**.

2. Certified True Copies (CTC) of unit results, forms EC8A for 10 wards and units in the wards were admitted as **Exhibits D2 (1 – 15) – D11 (1 – 15)**.

3. C.T.C of summary of results, forms EC8B (1) for 10 wards were admitted as **Exhibits D12 – D21.**

4. C.T.C of summary of results from registration Area, forms EC8C (1) and C.T.C of form EC8E (1), Declaration of result of election were admitted as **Exhibits D22 and D23**.

DW1 was then cross-examined by counsel to the 2nd and 3rd Respondents and counsel to the Petitioners.

With his evidence, the **1st Respondent closed its case**.

The 2nd and 3rd Respondents also called one witness. The 2nd Respondent, **Iheonunekwu Ugochukwu Collins** testified as **DW2.** He deposed to a witness deposition on pages 17 – 29 of the 2nd and 3rd Respondents Reply which he adopted at the hearing.

His deposition essentially is a repetition of the averments in their reply which as earlier stated joined issues with the petition, denying same and putting the petitioners to the proof of the challenged averments made. He testified that he was qualified to contest the election having duly resigned from EFCC and that the elections were free and fair, and that he scored the majority of lawful votes cast at the election and that the petitioners came a distant **7th position**.

That there were no corrupt practices, manipulation of votes, voter buying or inducement, thuggery and violence as alleged by the petitioners.

DW2 then identified the results tendered by 1st Respondent vide Exhibits D2 (1 – 15) – D11 (1 – 15); Exhibits D12 – D21 and finally Exhibits D22 and D23 and indicating that he will be relying on these results in support of his case.

DW2 was then cross-examined by counsel to 1st Respondent and counsel to the petitioners. The petitioners tendered through DW2, a process filed by 2nd and 3rd Respondents titled "2nd and 3rd Respondents documents vol. 1" which was admitted as Exhibits D24 (1 – 189).With his evidence, the **2nd and 3rd Respondents close their case**.

At the conclusion of trial, parties filed and exchange their final written addresses.

In the final address of the 2nd and 3rd Respondents dated 28/8/2023 and filed on 29/8/2023, three issues were raised as arising for determination as follows:

(1) Having regard to the pleading and evidence before the Tribunal, whether the Petitioners proved that the 2nd Respondent was not qualified to contest the election as alleged in Ground 1 of the Petition.

(2) Whether the Petitioners proved their allegation of corrupt practices giving rise to over-voting, non compliance with the Electoral Act 2022 and that the 2nd and 3rd Respondents did not score majority of lawful votes at the election in Grounds 2, 3 and 4 of their petition.

(3) Whether the Petitioners proved their allegation of having won the Election based on purported figures allegedly derived from Unverified Forms EC60E (Exhibit P1 (1-175) purportedly picked up from various polling stations as against the election results in Forms EC8As, EC8Bs, EC8C and EC8E (1) in INEC custody, tendered as Exhibits D2 – D23 and the bundle of results tendered Via DW2 by Petitioners as Exhibit D24 (1 – 189).

Submissions were made on the above issues which forms part of the Record of the tribunal which we have carefully considered.The summary and or substance of the case made out by the 2nd and 3rd Respondentson these issues is that on all the grounds which the petitioners have predicated the extant petition, they were not able to establish creditably any of the grounds of the petition. That the 2nd Respondent was constitutionally qualified to contest the election and that grounds for

disqualification which is also constitutionally situated has not been established.

Further, that the petitioners have not established that the election was invalid by reason of corrupt practices and or that the election was not conducted in substantial compliance with the Electoral Act. It was finally submitted that the 2nd Respondent was duly elected with majority of lawful votes cast at the election.

The final address of 1st Respondent is dated 29/8/2023 and filed on 31/8/2023. In the address, one issue was raised as arising for determination:"

(1) Having regards to the clear provisions of the law whether the petitioner has made a case before this Honourable tribunal for the grant of the reliefs sought in this petition?

Submissions were equally made on the above issue which forms part of the record of the tribunal which we have also carefully considered. Here too, the substance and summary of the submissions made is that the petitioners have not discharged the burden placed on them in law to creditably prove the allegations made in the petition and accordingly that the petition must fail.

The petitioners in response to these addresses filed their final address dated 1/9/2023 and filed on 6/9/2023. In the address, three issues were raised as arising for determination:

1. Whether the evidence of DW1 and DW2 in defence of the petition were not inadmissible hearsay evidence.

2. Whether the disobedience of the order of the noble tribunal made on the 15th day of May, 2023 and duly served on A. Ogugua Ojeh, Esq. counsel for 1st Respondent and also served on 1st Respondent's administration officer, Onyebuchi Onyinyechi (Mrs.) at 1st Respondent's office at Umuahia, Abia State meant that the petitioners proved over voting against the respondents.

3. Whether the noble tribunal is not bound to rely on publication of result poster at the polling unit form EC 60 (E) admitted in evidence and marked as exhibits P1 1-175 when same was not disputed by any admissible evidence of respondents' witnesses before the noble tribunal.

Submissions were equally made on the above issues which forms part of the Record of the tribunal which we have carefully considered. The thrust of the submissions can be summarized on the following terms. On issue 1, it is contended that the entire evidence of DW1 and DW2 are hearsay evidence which is inadmissible under extant provisions of the Evidence Act. That all the results tendered through **DW1** and **DW2** was not made by them and such would amount to inadmissible hearsay evidence and should be expunged.

On issue 2, it was contended that the failure of counsel to the 1st Respondent and the INEC itself to comply with the order of this tribunal which was duly served on them for the production of electoral materials meant that the petitioners proved their allegation of over voting against the respondents.That the tribunal should presume that the withholding of the

electoral documents ordered to be furnished the petitioners meant that it was evidence which if given would have been unfavorable to the 1st Respondent.

Finally on issue 3, it was contended that results or form EC60 (E) admitted in evidence as Exhibits P1 (1 – 175) are results that the tribunal must act on to resolve the extent dispute since same were not disputed by any admissible evidence.

The 1st Respondent the filed a reply on points of law dated 9/9/2023 and filed on 10/9/2023. The 2nd and 3rd Respondent equally filed a reply on points of law dated 10/9/2023 and filed same date. The replies essentially accentuated some of the points earlier made in the main addresses.

We have set out above the issues as distilled by parties as arising for determination. The issues formulated by parties again appear the same in substance even if couched differently.

Nevertheless, upon a careful and thorough perusal and consideration of the entirety of the pleadings, the reliefs claimed and the grounds thereof, the totality of the evidence led on record by parties and the final addresses, it seems to us that the single issue raised by the 1stRespondent which the tribunal will slightly modify has captured the essence and crux of the dispute and it is on the basis of this issue which has fully encapsulated all the issues raised by the parties that we shall proceed to resolve the present electoral dispute.

In proceeding to determine the issue, we have carefully read and considered the addresses filed by parties and the oral submissions made in

addition. We shall endeavor to refer to these submissions as we consider necessary in the course of this judgment.

Before we however deal with substance of this dispute, it appears to us necessary to deal with **two preliminary issues raised by the 2nd and 3rd Respondents** to wit:

1) **The admissibility of 1) Exhibits P1 (1 – 175), copies of forms EC60E that PW1 said he picked from different polling units of the constituency and 2) Exhibits P4 (1 – 185) copies of forms EC8A that PW4 claimed she downloaded from INEC IREV from her business center.**

2) **The admissibility of evidence of subpoenaed witnesses of petitioners whose evidence or depositionswere not frontloaded with the petition.**

Now on the first set of documents under (1) above, the point made is that the results to wit: both the **forms EC60E (Exhibits P1 (1 – 175)** and **forms EC8A (Exhibits P4 (1 – 185) are secondary copies of public documents made by INEC**, 1st Respondent within the purview of section 102 of the Evidence Act and for purposes of admissibility, such copies must be certified. It was also contended that the witnesses who tenderedthe documents are not the makers of the two sets of results sheets and where the maker is not available, they must lay foundation which was not done here.

It was further contended that the second set of documents, **Exhibits P4 (1 – 185)** said to have been downloaded by PW4 from INEC server meant they are computer generated and must thus comply with the provisions of **section 84** of the Evidence Act. That there was no such compliance in this case and accordingly that the documents are inadmissable.

Now it is not a matter for argument that the first set of results, **Exhibits P1 (1 – 175)** said to have been randomly picked up by PW1, the forms EC60 (E) appears to be original copies of a public documentsaid to be posted by INEC and therefore admissible under the provision of sections 86 and 88 of the Evidence Act. To the clear extent that it is not a copy or photocopy or indeed secondary evidence of a public document within the meaning of section 102, there will be no requirement of certification under section 89 (e) and 90 (1) c of the Evidence Act.

It is true that PW1 is obviously not the maker of any of these results sheets or documents; different names appear on the Exhibits with no signatures; there is also no names of candidates; no complete signatures of agents of parties and most importantly there is absolutely nothing in the **Exhibits** to show that the forms EC60 (E) is even for the **Isiala Ngwa North** Stateconstituency election or for any identified unit in the constituency but all these in our opinion goes to the issue of weight or probative value that we will ultimately attach to the documents.

In law documentary evidence can be admitted in the absence of the maker. Relevance is the key to admissibility. In the hierarchy of our adjectival law, probative value comes after admissibility. A document could be admitted

without the court attaching probative value to it. See **Omega Bank (Nig.) Plc V O. B. C Ltd (2005) 8 NWLR (Pt 928) 547 at 582 E – F.**

Exhibits P1 (1 – 175) are thus admissible in law; the question of weight is a different matter altogether.

The second set of documents, **ExhibitsP4 (1 – 185)** is said to have been uploaded from an **undetermined INEC IREV** by **PW4,** a business woman who operates a computer business and training center. These results are certainly **public documents** within the purview of **section 102** of the Evidence Act.

By the combined provisions of sections 89 (e) and 90 (1) (c) of the Evidence Act, the only admissible copies of secondary evidence of public documents are certified true copies and no other kind of secondary evidence is admissible.

Section 104 of the Evidence Act then situates clearly the nature of the certification that must be done in such situation. Section 104 (1) provides that every public officer having custody of a **public document** which any person has a right to inspect shall give that **person on demand** a copy of it on payment of the legal fees prescribed in that respect together with a certificate written at the foot of such copy that it is a **true copy** of such document or part of it as the case may be.

Section 104 (2) then provides that the certificate mentioned in subsection (1) of this section shall be dated and subscribed by such officer with his name and official title and shall be sealed, whenever such officer is

authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

It is obvious that none of the **Exhibits P4 (1 – 185)** fulfilled any of these requirements. There was absolutely no certification of these public documents at all and they are clearly inadmissible in law. Nobody is allowed to in law to just produce copies of public documents from anywhere or an unidentified source as done by PW4 and then seek to project it as documents forming the official acts or records of official bodies such as INEC.

By section 105 of the Evidence Act, copies of documents certified in accordance with section 104 may be produced in proof of the contents of public documents or parts of the public documents which they purport to be copies. Section 146 of the Evidence Act provides or allows the tribunal to presume every such certified document which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized in that behalf to be genuine, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The extant documents produced by PW4 clearly do not fall within the category or class of documents that can enjoy the presumption under these sections of the Evidence Act.

On the issue of maker of the documents, we incline to the view that these are issues which go to weight as distinct from a matter of admissibility.

On the whole, however, the entire **Exhibits P4 (1 – 185)** tendered by PW4 are secondary evidence or copies of public documents and having not been certified are inadmissible and are to be marked **tendered** and **rejected**.

This then leads us to the question of **admissibility of the evidence ofPW3 – 5** who were subpoenaed witnesses of petitioners but whose witness depositions were not frontloaded along with the petition. However because of the fluid nature of the position in law of the evidence of subpoenaed witness(es) whose evidence is not frontloaded from the decision of our **Superior Courts of Appeal,** where there is no clear consensus of opinion on the issue, we will in deciding the issue **refer** to the latest decision of the Court of Appeal which we have on the issue. We have a certified true copy of the decision of the Court of Appeal in **CA/A/EPT/406/2020: Advance Nigeria Democratic Party (ANDP) V INEC & 2 Ors** delivered on **17th July 2020**, where the **Court**, coram Peter Olabisi Ige JCA, Emmanuel Akomaye Agim JCA (now JSC) and Yargata B. Nimpar JCA held clearly that the provision of paragraph 4 (5) of the 1st schedule to the Electoral Act 2010 which is in pari materia with the provision of paragraph 4 (5) of the 1st schedule of the Electoral Act 2022 on the contents of what shall accompany a petition as enumerated therein uses the word "shall" meaning that a violation of the provision will render incompetent any witness statement on oath not frontloaded along with the petition as was **"unlawfully and wrongly done by the Appellant in this petition"**. The court stated further that there is no dichotomy between the witnesses mentioned in paragraph 4 (5) of the 1st schedule to

the Electoral Act in respect of the **witness statement on oath of witnesses** and**witness statement of a subpoenaed witness**. That there is no distinction between ordinary witnesses and a subpoenaed witness under paragraph 4 (5) of the 1st schedule to the Electoral Act. That in essence, paragraph 4 (5) covers witnesses statement on oath of all categories of witnesses the petitioner intends to call. The court held that where a witness statement on oath is not filed along with the originating process or leave subsequently sought to file same, that such witness deposition is incompetent.

The above decision is clear and being the latest on the issue we have, we are bound by the said decision.

In the circumstances, the evidence or depositions of **PW3 – PW5** shall be discountenanced as incompetent since they were not frontloaded when the petition was filed and no leave was sought for extension of time to file same.

Having dealt with the above preliminary issues, we now deal with the **substance or merits of the petition**.

We had indicated earlier that we will slightly modify the issue raised by 1st Respondent. The issue on which this case will be determined is **whether the petitioners established the four grounds upon which the petition is anchored to entitle them to the reliefs sought?**

In determining this issue, it is expedient for us to predicate our consideration on certain basic principles of law. **Our** first port of call must

necessarily be sections 131 (1), 131 (2) and 132 of the Evidence Act 2011 which stipulate as follows:

> **"131 (1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist.**
>
> **(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.**
>
> **132 The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side".**

Our superior courts have enunciated and restated the time honoured principle on the fixation of the burden of proof on the Petitioner who is duty bound to prove positively the affirmative of his allegations as it is he who would lose if no evidence is elicited to establish creditably the grounds upon which the election is predicated.

The supreme court in the most recent case of **Oyetola V INEC** (2003) 11 NWLR (Pt. 894) 125 at 168 A – D Per Agim J. S. C., restated most instructively this same position in the following terms.

"The appellants in their petition desired the tribunal to give judgment to them the reliefs they claimed on the basis that the facts they assert in their petition exist. Therefore, they had the primary legal burden to prove the existence of those facts by

virtue of section 131 (1) of the Evidence Act 2011 which provides that "whoever desires any court to give judgment as to any legal right or liability dependent on the existence of those facts which he asserts must prove those facts exist". Because the evidential burden to disprove the petitioners case would shift and rest on the respondents only if the evidence produced by the petitioners establish the facts alleged in the petition by virtue of section 133 (1) and (2) of the Evidence Act, the tribunal was bound to first consider if the evidence produce by the petitioners establish the existence of the facts alleged in the petition, before considering the evidence produced by the respondents to find out if the evidence has disproved the case established by the petitioners on a balance of probabilities". See also **Buhari V INEC (2008) 19 NWLR (Pt. 1120) 246 at 350.**

Being properly guided by theses authorities, we shall now proceed to examine the **grounds** and the allegations made therein in the clear context of the **facts** streamlined in the pleadings.

As stated earlier, the burden was on the petitioners to provide credible evidence to support the grounds of the petition.

The first ground of the petition vide **paragraph 16 (1)** of the petition is that **the 2nd Respondent, was at the time of the election not qualified to contest the election**.

Now in the entire petition, it is only in paragraphs 17 and 20 where petitioners alluded to anything to do with qualification and we must

confess our difficulty in understanding the basis of the complaint. The paragraphs with respect are incoherent and unintelligible. Paragraph 17 states that the 2nd Respondent parades himself as a member of EFCC and represents that he and his family resides in Canada. That 2nd Respondent came from Canada to contest the election and did not show he is a citizen of Nigeria or that he is no longer a staff of EFCC and was not receiving salaries from EFCC and was therefore not qualified to be a candidate in the election.

In paragraph 20 of the petition, it was averred that the 2nd Respondent at various places addressed the public and stated that he took leave of absence from EFCC where he works as a staff and was in Canada where his family resides and from where he came.

As stated earlier, it is difficult to understand the **basis of the complaint on qualification**. The above paragraphs are difficult to fathom or understand.

Now even if we accept that the complaint is that 2nd Respondent is still a staff of EFCC; that he addressed the public that he took leave of absence from EFCC and that he resides in Canada, where is the **evidence**to support these challenged assertions? Absolutely nothing was proffered by petitioners beyond bare challenged oral assertions. Nothing was presented from EFCC to situate the fact that 2nd Respondent is still a staff of EFCC.

Nothing was equally presented to situate that 2nd Respondent lives in Canada with his family. Even if it is taken or accepted that his family lives in

Canada, what has that got to do with the constitutional requirements on qualification? We just wonder

It is trite law that facts deposed to in pleadings must be substantiated and proved by evidence, in the absence of which the averments are deemed abandoned. See **Aregbesola V Oyinlola (2011) 9 NWLR (Pt 1253) 458 at 594 paras A – B.**

It is equally settled principle that pleadings, however strong and convincing the averments may be, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the point which are in dispute with the other. Evidence must be led to prove the facts relied on by the party or to sustain the allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (Pt 1186) 1 at 27.**

The pleadings of petitioners on **qualification** is deliberately unclear, weak, vague and unconvincing. There is no clarity with respect to what case they are making and there is no scintilla of evidence to support the confusing and unclear case they have made on the question of qualification. The averments on qualification, with respect means nothing and proves nothing.

As stated earlier, by virtue of section 133 (1) and (2) of the Evidence Act, we were bound to first consider if the evidence produced by the petitioners established the existence of facts alleged in the petition before considering the evidence by the respondents to find out if the evidence has disproved the case established by the petitioners on a balance of probabilities.

In this case, the petitioners who desired the court to give judgment have the burden to prove the affirmative contents of their allegations on qualification. They **abysmally** failed in that respect.

The 2nd Respondent had no burden to present anything on qualification to disprove the allegations of petitioners but he still went ahead and tendered in evidence **Exhibit P2 (a)** his letter of withdrawal of service from **EFCC** dated 17/3/2022 and the acceptance of the resignation by EFCC dated **22/8/2022**vide **Exhibit P2 (b).**

These documents are clear situating the resignation of 2nd Respondent since **March 2022.** We note that the petitioners in their address made heavy weather of the fact that the documents were not listed or frontloaded. We really consider that this is simply clutching at straws as is said in popular parlance. With or without these documents, the petitioners proved nothing on qualification of 2nd Respondent to contest the election in question.

In any event, the documents were put in during cross-examination of 1st Petitioner to controvert the case made by them that the 2nd Respondent was still a staff of EFCC and receiving salaries.

In conclusion on this point, may we just add in passing that the qualifying factors for a person seeking a seat in the House of Assembly is situated within the purview of **section 106 of the 1999 constitution** whilethe disqualifying factors are situated within the provision of section **107 of the 1999 constitution.**

There is nothing in the petition where it was pleaded or evidence led showing thatthe 2nd Respondent has not met the constitutional threshold under section 106 or he is within the purview of the disqualifying factors in section 107.

The complaint situated on **ground 1**completely lacks merit and is resolved against the petitioners.

Ground 2 of the petition is that the election of the 2nd Respondent was invalid by reason of **corrupt practices**.

Now in law, where a party anchors his case as done here by the petitioners on corrupt practices, which are criminal in nature, the particulars of the crime must be copiously and distinctly pleaded with due particulars supplied.

In this case the petitioners in the pleadings have not situated, separated or delineated with clarity,facts in support of each ground of the petition. The facts were lumped together such that it is even difficult to situate the facts to situate the ground of corrupt practices as distinct from the facts to support the ground of non-compliance with the Electoral Act or ground of not scoring majority of lawful votes.

It is not the duty or responsibility of the tribunal to in chambers to engage in the arduous task of determining what facts or particulars of the petition relates to what ground.

We must therefore call attention to the provisions of **paragraphs 4 (1) (d)and (2)** of the Electoral Act which provides as follows:

"4 (1) An election petition under this Act shall –

…

(d) state **clearly the facts** of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioner.

(2) The election petition **shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts** of the election petition, and every paragraph shall be numbered consecutively".

The extant petition falls foul of these provisions in many respects. No attempt was made to separate the facts of each ground. The point we must underscore is that the aim of pleadings, like the petition in this case is to allow the case of each party to be stated clearly without ambiguity so that the opponent will know precisely the issues he is facing. See **Balogun V Adejobi (1995) 2 NWLR (Pt 376) 131 at 158 C; Bunge V Gov. of Rivers State (2006) 12 NWLR (Pt 995) 513 at 598 – 599 H – B.**

A petition must therefore in compliance with the above provisions of the 1st schedule of the Electoral Act (supra) be sufficiently comprehensive and accurate with no ambiguity as to the facts that support a particular ground to enable the adversary or respondent know the facts on which a ground is predicated upon which they will now prepare and present their case.

Now out of **abundance of caution**, this being an electoral dispute, we shall proceed to consider the case made out on **ground 2 on corrupt practices** by petitioners and then situate whether it meets the required legal threshold or standard of proof.

From the petition particularly from paragraphs 7 – 15, and 18 – 39 of the petition,the petitioners made the allegations of criminality the foundation of their case. These varied allegations include criminal offences of corruption, manipulation, alteration, falsification, inflation and deflation of electoral results, violence, over voting, voter intimidation, bribery, inducement with money and other materials including food and fertilizer.

Let us perhaps situate the several criminal complaints/allegations as deduced from the petition as follows:

(i) That the entire votes recorded, computed and uploaded at the election of 18/3/2023 for the constituency was the product of over-voting, arising from glaring corrupt practices manipulation and violation of provisions of the Electoral Act 2022. See**Paragraphs 7, 10, 11, 12, 13 and 14 of the Petition.**

(ii) That on 17/3/2023, the 2nd Respondent drove in a Sienna bus with registration No ENU 309YU to 1stPetitioners place called Mbaraugba in Amasaa Ntigha Ward 7 where he pulled out bag of Money in a Ghana-Must-Go bag and gave to the Youths of the Village to buy votes and instructed them to ensure he win the Election; i.e. offences of voter inducement and vote buying. See**Paragraph 18 of the Petition**.

(iii) That on 18/3/2023 date of the election, the 2ndRespondent also drove from polling unit to polling unit in the same Sienna bus alongside 5 other SUV vehicles with armed thugs whom he

gave instructions to physically force out any voter from the polling station who would not accept their money and vote for PDP and were giving dangerous instructions to his thugs i.e. offences of **voter intimidation**, violence etc. See **paragraph 21 of the Petition.**

(iv) That at Okpumuo Community Hall polling Unit 001-06-04-012 there was **ballot box snatching together with the votes**contained therein by one Chimezirim Ubani. That the same situation happened at Nbawsi polling units 001-06-1 0-003 O1 O6-10-004 where **voters were mercilessly beaten up by PDP, APC, LP, YPP, Accord and APGA** members excepting ADC **in order to force people to vote for them resulting in so many people** including **Lawyers and retired Judge(s) being disenfranchised** because they were avoiding being assaulted by these thugs, i.e. offences of **ballot snatching/stealing voter intimidation, assault and disenfranchisement.** See **paragraph 22 of the Petition.**

(v) That the Political parties fought one another **to finger-print more ballot papers** and **stuff in already thumb printed ballot papers** into Ballot boxes which generated over voting in various polling units including Agburuke Nsulu polling unit 001/06/03/007 and 001/06/03/008. See **paragraph 22 of the Petition**, i.e. offence of ballot box stuffing with already thumb-printed ballot papers.

(vi) That the polling unit results uploaded in the IRev server of INEC (1st Respondent) showed that staff and agents of 1st Respondent **faked** and **manipulated results to tally with accredited votes captured by the BVAS machine used to accredit voters such that the lawful votes showed thousands of more votes than were accredited. See paragraph 23 Petition**, i.e. offences of over-voting from fraudulent manipulation or alteration and inflation of votes.

(vii) There were also **violence** and **free-for-all-fight** in many polling units across the Constituency **resulting in bodily injuries** such that the **polling units were turned into War zones** as the **various parties competed with their thugs and money to buy votes** at Ngwa Ukwu 1 Ngwa Ukwu 11 (Wards 4 and 5) Isiala Nsulu (Ward 3) Ihie (Ward 6) Amasaa Nsulu (Ward 7) Amapu Ntigha (Ward 8) Umuomanta (Ward 10) and Umunna Nsulu(Ward 2). See **paragraphs 24 – 26 and 30 of the Petition**.

(viii) That at Amasaa Nsulu Ward3 polling unit 001-06-03-009 Petitioners **votes were swamped in favour of PDP** by a known PDP Chieftain and past Local Government Chairman See **paragraph 22 Petition**.

(ix) That there was voter inducement by way of the sharing of fertilizers,rice and money to induce voters, INEC staff and

security officers by the thugs of the various parties except the ADC. See **paragraphs 29 and 33, 34 of the Petition**.

(x) That uploaded results in INEC Server and IRev by 1st Respondent did not represent the actual results but rather manipulated incorrect results. See **paragraphs 30, 31, 34 and 35 of the Petition.**

Firstly, from the synopsis of the litany of corrupt practices made by petitioners highlighted above, it is obvious that allegations of commission of criminal allegations were made against **certain named individuals or parties**. All these defined individuals or parties the petitioners did not join to this action. The tribunal has no jurisdiction to determine the allegations made against them without their participation. As stated earlier, this has constitutional ramifications for the fundamental reason that a person has a fundamental right to fair hearing and to be heard in all cases that affects the determination of his rights.

In the clear absence of their been joined to the petition, the said paragraphs where allegations were made against them will be struck out. We so hold.

Secondly, there is no doubt as rightly described in the addresses of respondents that the varied allegations highlighted above are criminal in nature. The standard of proof required here is one of proof beyond reasonable doubt. Section 135 (1) of the Evidence Act is explicit on this as it states that:

"if the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt". See **Buhari V Obasanjo (2005) 13 NWLR (Pt 941) 1 at 209; Ayogu V Nnamani (2008) 8 NWLR (Pt 981) 160 at 182.**

The question is, to what extent have the petitioners been able to establish these various allegations within the threshold as allowed by law?

Unfortunately in this case, the petitioners effectively called only **2 witnesses**, the 1st Petitioner himself and PW1, Adindu Peters. The evidence of the other **3 witnesses whose evidence were not frontloaded** we have held are incompetent.

The evidence of 1st Petitioner or PW2 as stated earlier was simply a repetition of the facts in the petition which do not constitute credible evidence of the criminal complaints made. He was never a direct witness of these varied complaints in the 185 units. Under cross examination, he stated that he did not visit all the polling units on the day of the election but that he had his agents and observers at all **the 185** units of the constituency. Noneof these units agents were produced in court to speak to what happened in their units and none brought a single unit result to situate the varied complaints of manipulations, alterations, cancellations, inflation and deflation of results as alleged.

Again on the allegation of voter inducement, he agreed that he was not there when 2nd Respondent allegedly distributed money to voters. It is clear that apart from what 1st Petitioner may have witnessed in his unit, whatever may have been reported to him by his agents and observers in

the other **184**units of the constituency are obviously hearsay and inadmissible and certainly do not constitute proof of any kind of the criminal allegations in the petition. See **sections 37, 38 and 126 of the Evidence Act**.

We must therefore immediately underscore the fundamental point that hearsay evidence, oral or documentary is inadmissible and lacks probative value. Indeed once it is found that a witness deposition is laced with hearsay evidence, the court cannot ascribe probative value to it. See **Kakih V P.D.P (2019) 15 NWLR (Pt 1430) 418; Okereke V Umahi (2016) 11 NWLR (Pt 1524) 438.**

A case such as that of petitioners cannot certainly be established on the basis of hearsay evidence. The failure to call witnesses in nearly **185** units of the constituency to give direct evidence of what happened in the various units is fatal.

PW1 on his part said he was a voter but he did not tender any **evidence** to support or show that he was a voter or even voted on the day of the election. He said he was among the youth who assembled on 17/3/2023 when 2nd Respondent drove a Siena bus and dropped a bag of money for vote buying but apart from the challenged bare assertion, nothing was put forward by him to support these assertions. Nothing was placed before us to show that 2nd Respondent drove any Siena bus a day to the election and shared money(s). There is no evidence before us that 2nd Respondent has any Sienna bus with registration No **ENU 309 YU** used in the sharing of money. If the PW1 was part of a group to whom money was allegedly

given to, why was nobody brought forward to add credibility to the narrative of PW1? PW1 said the bag of money was handed to a "brother"?Who is the brother and why did petitioners not bring him to court to confirm that he was given any money?

Under cross-examination, PW1 said he was at his polling unit and did not visit any other polling units.He equally stated that it was the party agents that told him about the scores of their party in their units.Again under cross-examination, he said he acted as Agent for his party, yet he did not tender any accredited Agents tag to show he acted as an agent.

Now **PW1** who said he voted in his unit and was told about what happened in the other units now **incredibly went to 175 other units** on election day to pick up **Exhibits P1 (1 – 175)**. It is strange that none of the units agents petitioners said they had in the various units could pick up Exhibits P1 (1 – 175) of the 175 units which PW1 said he went round to pick up.

The evidence of **PW1** completely lacks credibility. From our observation of his demeanor in the witness box, he is not a witness of truth. With the restriction of movement, he could not have possibly gone to **175 units** on the election day to pick up the forms EC60 (E), when the units are not in the same place. We agree that if the forms were really placed or posted by INEC at the units, it is logical to hold that it is the unit agents of the petitioners at the units that will pick them up and hand over to the petitioners.

Most importantly, the **forms EC60 (E)** PW1 presented are clearly **not Electoral documents** for **Isiala Ngwa North State Constituency.** There is absolutely **no identified constituency** on any of the Exhibits P1 (1 – 175) and there is absolutely no unit mentioned in any of the forms.

What is strange about these documents is that there is equally no **names** of any of the candidates on the forms. The forms also carries different number of parties on it and most of the parties did not have agents and so the forms were mostly not signed by the agents.

The documents equally have different names of people who were said to have prepared them but none of them signed on the identification No. column.Indeed the column for signatures was not filled or signed at all by the purported makers. The petitioners did not also produce one single maker of any of these documents to give evidence on what they allegedly prepared.

We are in no doubt that **PW1** simply procured these documents from an unidentified source and in the absence of any established nexus with the **Isiala Ngwa North** state constituency or INEC, these **documents, Exhibits P1 (1 – 175)** would absolutely lack any probative value. These Exhibits P1 (1 – 175) suffer from serious debilitating defects making them completely unreliable.

The evidence of PW1 as we have demonstrated at length completely lacks credibility. In law, credible evidence means evidence worthy of belief and for evidence to be worthy of belief, it must not only proceed from credible source, it must be credible in itself in the sense that it should be

reasonable and probable in view of the entire circumstances. See **Agbi V Audu Ogbeh (2006) 11 NWLR (Pt 990) 65 at 116 E.**

Where the evidence of a witness is however so exaggerated that it enters into the realm of flamboyance or recklessness or appears as an affront to reason and intelligence, such as the evidence of PW1, no credibility ought to be accorded to it. See **Fatunbi V Olanloye (2004) 12 NWLR (Pt 887) 229 at 247 C.**

PW1 cannot be relied upon because he has by his performance destroyed any rational basis for accepting his evidence in part or in total based on credibility. We really cannot situate any credible evidence to support the **elaborate criminal allegations made in the extant petition**.

Indeed on the authorities, a petitioner who based his case on fraudulent cancellations, mutilations or alterations as the petitioners have elaborately done in this case must establish two ingredients i.e:

1) **That there were cancellations, alterations or mutilations in the electoral documents and**

2) **That the cancellations, alterations or mutilations were dishonestly made with a view to falsifying the result of the election.**

These two defined ingredients must both be established together before the result of an election can be cancelled on those grounds. See **Tunji V Bamidele (2012) 12 NWLR (Pt 1315) 477; Doma V INEC (2012) 13 NWLR (Pt 1317) 297 at 327.**

The petitioners did not tender a single credible result sheet from any unit of the constituency and they did not call any eye witness from any of these units to give evidence of or establish any of the corrupt practices which allegedly occurred in the units. It is difficult to accept that there were falsification, manipulation, inflation and deflation of results in the absence of evidence from those who falsified the result or those who were present when the falsification was carried out. See **Buhari V Obasanjo (2005) 13 NWLR (Pt 941) 1 at 193 C – D.**

Again with respect to over voting which traverses the entire petition, the petitioners did not lead any iota of evidence to support this allegation. The **Supreme Court in Oyetola V INEC (2023) 11 NWLR (Pt 1894) 125 at 187-188 G – C; 192 A – D; 197 C – H** made the point abundantly clear that whenever it is alleged that there was over voting in an election, the documents needed to prove over voting are 1) the voters register to show the number of registered voters, 2) the BVAS to show the number of accredited voters and 3) the forms EC8As to show the number of votes cast at the polling units.

These three documents will show exactly what transpired at the polling units and failure to tender these documents would be fatal to any effort to prove over voting. The petitioners in this case clearly failed to provide and prove these essential requirements on the allegation of over voting. There was really absolutely no evidence demonstrated before us situating clear evidence of heavy mutilation, cancellation and alteration of figures of petitioners as well as those of other parties as orchestrated by 2nd Respondent pleaded in the petition.

In real terms, as we have demonstrated above, no scintilla of **evidence** was produced to support the various allegations of corrupt practices which was streamlined extensively in the petition and this is fatal. None of the evidence of petitioners witnesses as we have demonstrated above absolutely bears any relevance to any complaints of corrupt practices in any of the units mentioned in the petition. There was thus no credible evidence before us by the witnesses of petitioners to support the complaints of cancellations, alterations or mutilations in the electoral documents and that they were dishonestly made with a view to falsifying the result of the election. See **Tunji V Bamidele (supra).**The effect of this is that the evidence of the petitioner's witnesses goes to no issue.

Before we round up on the issue of over-voting, let us quickly here address the contention vide issue 2 raised by the petitioners that the failure by**INEC** to produce certain **Electoral materials** meant that they have proved over voting.

We really fail to see the legal basis of this **misconceived submission** and we don't consider this a point we should dissipate any energy on. We have sufficiently stated the settled principles on burden of proof. We have referred to the relevant provisions of the **Evidence Act** and judicial authorities on the point. The burden to prove the extensive complaints made by petitioners including that of over voting remains fixed on the petitioners on settled legalthreshold. That threshold cannot be undermined under the guise that a court order for documents to be provided was not complied with.

If any orders were made by a different panel of the tribunal different from the extant one and there was non compliance, what steps did the petitioners take to ensure compliance? Orders of the tribunal or court are meant to be obeyed and the petitioners had more than ample time to ensure compliance if they really desired compliance.

Did the petitioners serve the orders as stated in the final address? What were even the terms of the order(s)? Where is the evidence to support service? Even if they served, did they take steps to make **necessary payments** to get certified true copies? These are not matters for **addresses** or**conjectures.**

What is particularly interesting in this case is that from the case file of the tribunal which we are at liberty to make reference to and make use of any relevant documents/evidence – See **Famadoh V Aboro (1991) 9 NWLR (Pt 214) 210 at 229 E,** the petitioners filed an application dated 15/6/2023 praying the tribunal to order **INEC**to certify statement of results, form EC8A (1) from **185** units which they downloaded themselves from what they said was INEC IREV. That application was opposed, argued and **dismissed**. An important element in that case was the deposition by 1st Petitioner in paragraph 4 thus:

"that "statement of result of poll from polling unit" form ECA (1) of the 185 polling units in Isiala Ngwa North State Constituency of Abia State used in the House of Assembly Election of 18/3/2023 certified and made available to the Petitioners/Applicants are not correct "statement of result of poll from polling units form EC8A

(1) of the 185 polling units in Isiala Ngwa North State Constituency of Abia State used in the House of Assembly Election of 18/3/2023 and uploaded to IREV server of 1st Respondent…"

The **above averment is clear**. Pursuant to the order of tribunal, the petitioners where given the certified true copies of forms EC8A (1) results of 185 units of the constituency.They, the petitioners however felt that the results, certified true copies given to them by **INECwere not correct**.They then jettisoned what INEC gave them and went ahead and got these results on their own which they now sought to tender through PW4 as **Exhibits P4 (1 – 185)**.

This **affidavit** of petitioners indicated to us to that the petitioners are not forthcoming with regards to whether they were furnished what they said they wanted from INEC and we cannot speculate.If they were given certified true copies of forms EC8A, it is difficult to believe that they were not given the other document(s). As stated earlier, these are not matters that can be resolved by speculations. There is nothing before us to prove or situate the alleged non-compliance with the orders of the tribunal. The question that then arises is why did petitioners not even tender**what INEC** gave them as units results? There is in law a rebuttable presumption that these results declared by INEC is correct and authentic and the onus is on petitioners to rebut the presumption. They never did.

The refusal or failure to tender these unit results allow for the invocation of the presumption under section 167 (d) of the Evidence Act that if the petitioners had tendered them, it will be unfavourable to their case.

The bottom line is that the petitioners cannot legally alter the burden of proof or shift responsibility for failure to prove their case within the threshold as allowed by law.

The **forms EC8A** remain the only documents into which election results of polling units are recorded. Many judicial authorities of our superior courts have underscored the importance of form EC8A.In **Hope V Elleh (2009) LPELR – 8520 (CA),** polling units results were described as the "basic or primary evidence of votes cast". In **Awuse V Odilli (2005) 16 NWLR (Pt 951) 416**, form EC8A was described as the "foundation or base on which the pyramid of an election process is built".

The importance of form EC8A in the process of our election cannot be over-emphasised, yet the petitioners refused to tender the certified copies given to them by INEC. In law, it is trite principle that the only admissible evidence of result of an election in accordance with the Electoral Act is the results **from INEC** and no other.

The petitioners therefore failed to prove with any shred of evidence the allegations of corrupt practices. The point to underscore is that the petitioners who alleged that results were falsified in favour of the 2nd Respondent as sated earlier must prove same beyond reasonable doubt. This can only done by calling either those who Falsified the results or those who were present when the falsification was carried out. The petitioners did nothing to establish their complaints of corrupt practices. If these were not established, then it is obvious that they are not even in a position to

show how the complaints substantially affected the outcome of the elections.

The 1st Petitioner agrees that there are **185** units in the constituency. He could however not produce one single voter or his units agents from any of these units; also, relevant electoral documents that will shed light on what transpired on election date were not tendered and we wonder how then theseallegations will be proved?

The paucity of evidence in this case,a reflection of the absence of witnesses to prove critical elements of the petition is almost palpable and underwhelming. The law is sacrosanct that averments in pleadings not supported by evidence are deemed abandoned. It is the law that mere averments in pleadings without proof of facts pleaded cannot constitute proof of those facts, if not admitted. See **Adegbite V Ogunfolu (1990) 4 NWLR (Pt 146) 518.**

The entire allegations of alterations, mutilations, over voting and corrupt practices made by the petitioners suffer from complete absence of credible evidence, oral or documentary. In the absence of evidence to put the tribunal in a clear position to determine the veracity and credibility of the allegations made, the allegations will remain in the realm of conjectures and speculations. We hold as a consequence that the allegations of corrupt practices remain unproven and unsubstantiated and are deemed abandoned.

In an election petition where a petitioner as in this case complains of non-compliance with the Electoral Act based on electoral malpractice and fraud,

once the issue of proof is resolved against the petitioner, the petition on that point is effectively determined against the petitioner. See **Doma V INEC (2012) 13 NWLR (Pt 1317) 297 at 319 – 320.**

The petitioners have clearly not established any acts of corrupt practices which could have invalidated the election.The complaints related to **ground 2** remain unproven and are resolved against petitioners.

Ground 3 of the petition is that the election was invalid by the reason of non-compliance with the provisions of the Electoral Act 2022.

Now the Respondents in an election based on non-compliance with the Electoral Act usually rest their case on substantial compliance with the Act and not on absolute compliance with the provisions of the Act in order to sustain the return of the declared winner of the election. Consequently the Petitioner who alleges non-compliance with the Electoral Act must call credible witnesses to prove that there was substantial non-compliance with the Electoral Act. See **Emmanuel V Umana (No 1) (2016) 12 NWLR (Pt 1526) 179 at 256 – 257 paras G – C; Nyesom V Peterside (2016) 7 NWLR (Pt 1512) 425.**

Indeed the burden on petitioner to prove non-compliance is three fold. In **Waziri & Anor V Geidam & ors (1999)7 NWLR (Pt 630) 227 CA,** it was held that for the Petitioners to succeed in their allegations of non-compliance, they must first plead in their petition the heads of non-compliance alleged. They must then situate clear and precise pleading necessary to sustain the evidence in proof of such allegations. Secondly, they must render cogent and compelling evidence to prove that such non-

compliance took place in the election and thirdly and finally, that the non-compliance substantially affected the result of the election to the detriment of the petitioners.

In this case, as found already, there are **185** units in the Isiala Ngwa North state constituency. In evidence the petitioners called only two witnesses; we have already found that their evidence particularly that of PW1 lack credibility. The evidence of 1st Petitioner himself largely consisting of hearsay evidence was of not much help to Petitioners. Not one single accredited polling agent of any unit was called. No valid electoral documents with probative value were tendered in evidence. Indeed no witness was produced from **184** units to say that the election was not free or fair.

Even if we bend over backwards and accept that the petitioners even pleaded the heads of non compliance from the unclear petition filed, they have **abysmally** failed to prove, show or tender compelling and cogent evidence to prove that such non-compliance took place and that the non-compliance substantially affected the result of the election to the detriment of the petitioners. The evidence elicited by petitioners which are bereft of cogency and credibility are clearly insufficient to negatively affect the election and return of 2nd Respondent. See **Isiaka& Anor V Amosun & Ors (2016) 9 NWLR (Pt 1518) 417 at 441 – 442 F – A; Omisore V Aregbesola (2015) 15 NWLR (Pt 1482) 205 at 280 – 281 para G – A, 298 B – F.**

As we conclude on this point, particularly on the question of substantial non-compliance, we must underscore the position of the law that while all provisions of the Electoral Act are to be complied with, however by the provision of section 135 (1) of the Electoral Act 2022, it is not every non-compliance that will lead to an invalidation of the election results. Thus, where it appears to the tribunal as in this case, that there was substantial compliance with the provisions of the Electoral Act such that the results are not affected substantially, the results will be upheld. See **Buhari & Anor V Obasanjo & Ors (2005) All FWLR (Pt 273) 1 at 145; Abubakar & Anor V INEC & Ors (2020) 12 NWLR (Pt 1737) 37 at 177 D – E; Yahaya V Dankwambo (2016) 7 NWLR (Pt 1511) 284 at 313 EG; 315 C – G.**

The Petitioners here woefully failed to establish substantial non-compliance and secondly that it did or could have affected the result of the election. It is only where they have established the foregoing, that the onus would have shifted to the respondents to establish that the result is not affected.

Ground 3 has equally not been established by petitioners and thus fails.

The **final ground** is that the 2nd Respondent was not elected by majority of lawful votes cast at the election.

We are here again confronted with a situation where a complaint is averred in the pleadings without evidence to support same.The law is settled that where a petitioner is alleging that the respondent was not elected by majority of lawful votes, he ought to plead and prove that the votes cast at the various polling units, the votes credited to the winner, the votes which

ought to be credited to him and also the votes which should have been deducted from that of the supposed winner in order to see if it will affect the result of the election. If this is not done, it will be difficult for the court to effectively address the issue. See **Nadabo V Dabai (2011) 7 NWLR (Pt 1245) 153.**

In this case, the petitioners absolutely proffered nothing either in the pleadings or evidence to support the contention that the 2nd Respondent did not score the majority of lawful votes cast at the election.

Thesecomplaints on ground 4 are also resolved against the Petitioners.

On the whole, **the single** issue raised is resolved against the Petitioners. The **whole reliefs** sought are vague, contradictory and ungrantable. The **Petitioners have woefully failed** to prove by any relevant, credible and admissible evidence their unclear allegations which now turn to us, to lack factual and legal basis. Contradictory and inconsistent facts may have been pleaded but no witnesses were produced to establish those facts. For the avoidance of doubt, all the reliefs/prayers contained in **paragraph 40 (i) – (vii)**of the petition are wholly incongruous and fail.

In closing, we should be permitted to paraphrase the words of Udo Udoma JSC (of blessed memory) to this petition in **Elias V Omobare (1992) NSCC 92** by saying that if there was ever a petition completely starved of evidence, in addition to haphazard manner it was drafted, this is certainly one.

This petition cries to high heavens in vain to be fed with relevant and admissible evidence. The petitioners fail to realize that judges do not act

like oracles. Judges cannot perform miracles in the handling of matters before them, neither can they manufacture evidence for the purpose of assisting a party to win his case. Cases are determined on the strength and quality of the evidence adduced before the Court. The quality of the evidence led by the petitioners clearly did not meet the required legal threshold.

This petition is wholly bereft and devoid of any merit or substance. It is hereby dismissed with ₦150, 000 costs payable to the Respondents; (₦50, 000 naira to each Respondent).

HON. JUSTICE ABUBAKAR IDRIS KUTIGI
CHAIRMAN

Appearance:

1. **Mike Onyeka, Esq., with C. U. Onyekwere, Esq., for the Petitioners.**

2. **C. K. Oluoha-steve, Esq., for the 1st Respondent.**

3. **C. C. Elele, Esq., with C. C. Nwogu, Esq., for the 2nd and 3rd Respondents.**